

# The New Gold Rush:

---

## Financing California's Legislative Campaigns

1985 Report and Recommendations of the  
California Commission on Campaign Financing



# **The New Gold Rush:**

---

## **Financing California's Legislative Campaigns**

**1985 Report and Recommendations of the  
California Commission on Campaign Financing**

Copyright © 1985 by California Commission on Campaign Financing and publisher, Center for Responsive Government. All rights reserved. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system, without permission in writing from the publisher, Center for Responsive Government, 10951 West Pico Boulevard, 3rd Floor, Los Angeles, California 90064. However, reproduction of the two Model Laws contained in Appendices A and B to the Commission's full report is permitted and encouraged to promote the widest possible discussion of the Commission's recommendations.

Library of Congress Catalog Card Number: 85-72890



## **Prefatory Note**

This report of the California Commission on Campaign Financing is published in two volumes. The first volume is devoted to a summary of the Commission's report and includes, as an appendix, a detailed outline of the contents of the second volume. 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 the Commission's alternative proposal. Copies of both volumes are available from the Commission. Send inquiries to the publisher, Center for Responsive Government, 10951 West Pico Boulevard, 3rd Floor, Los Angeles, California 90064.



# Table of Contents

<b>List of Tables</b>	<b>ix</b>
<b>Foreword</b>	<b>xi</b>
<b>INTRODUCTION AND SUMMARY</b>	
California's New Political Gold Rush	1
The Commission's Recommendations	2
Skyrocketing Campaign Costs	3
Shifting Sources of Campaign Money	5
The Appearance of Corruption and Diminished Competition	8
Comparisons with Other Jurisdictions	11
Synopsis of the Commission's Proposals	12
The Need for Significant Change	16
The Commission's Principal Campaign Finance Proposal (Chart)	18
The Commission's Alternative Campaign Finance Proposal (Chart)	19
Outline of the Commission's Full Report—Volume II	20
 <b>PART I—Campaign Finance Today in California: Problems, Causes and Consequences</b>	
<b>1. The Problem of Skyrocketing Costs</b>	<b>23</b>
A. Costs of Campaigning for the California Legislature Are Escalating Dramatically	23
B. Incumbents Are Widening Their Fundraising Advantage over Challengers	31
C. Competitive Races Are Diminishing in Number	32
D. Election Expenditures Are Rising Primarily Due to Increased Use of Direct Mail, Not to Increased Costs	35
E. Broadcast Advertising Is Effective but Not Cost-Efficient for Most Legislative Campaigns	38
F. Other Spending Categories Vary Between Campaigns	39
G. Similar Trends Have Been Found in a Recent Washington State Study	40
H. A Variety of Spending Choices Is Apparent in 1982 Campaigns	40
I. Expenditure Ceilings Can Stem Rapidly Escalating Campaign Costs	40
<b>2. The Causes of Escalating Fundraising and Campaign Costs</b>	<b>45</b>
A. An "Arms Race" Mentality Destabilizes Campaigns and Increases Campaign Costs	46
B. Easy Access to Large Sums of Cash Accentuates the Fear of Sudden or Unexpected Defeat	46
C. Continued Reapportionment Battles over the Past Five Years Have Increased the Level of Legislative Insecurity	48
D. Contributors Are Willing to Pay	49
E. Candidates Are Afraid Not to Purchase Available New Technologies	50
F. Legislative Incumbents Are Using Campaign Funds for Non-Campaign Expenses	51
G. High Spending Has Not Caused a Voter Backlash	51

<b>3. Who Pays for California's Legislative Campaigns?</b>	
<b>The Disappearance of the Mom and Pop Contributor</b>	<b>53</b>
A. The Prototype for Future Elections May Be the Candidate from Riverside, Not the Candidate from San Mateo	54
B. The Small, Individual, In-District Contributor Is an Anachronism	55
C. The Institutional Contributor Is Now the Dominant Source of Funds	59
D. The Commission's Model Law Will Encourage Small In-District Contributions	62
<b>4. The Growth of PAC, Business and Labor Contributions</b>	<b>67</b>
A. PACs Have Grown to Prominence at the Federal Level	68
B. PAC, Business and Labor Contributions Are the Largest Source of Campaign Contributions in California's Legislative Races	72
C. Reforms Are Desirable to Moderate the Influence of PAC-Business-Labor Contributions in California	84
<b>5. Partisan Sources of Campaign Money:</b>	
<b>Transfers, Legislative Caucus Contributions and Political Party Contributions</b>	<b>95</b>
A. Democrats and Republicans Rely Equally on Partisan Sources of Money Although Their Techniques Differ	96
B. Transfers Are the Fastest Growing Source of Campaign Money in California	96
C. Legislative Caucus Contributions Aid Assembly Republicans	106
D. Political Party Contributions: Republicans Outstrip Democrats	107
E. Summary and Conclusions: Reforms Are Needed to Address Problems Raised by Partisan Contributions	110
<b>6. Off Year Fundraising:</b>	
<b>California's Secret Campaign Finance Problem</b>	<b>115</b>
A. Off Year Fundraising Is Growing in Importance	116
B. There Is a Dangerous Relationship Between Off Year Contributions and Improper Legislative Influence	117
C. Off Year Fundraising Has an Alarming Impact on the Competitiveness of Elections	118
D. Off Year Money Is Often Raised for a Variety of Non-Campaign Purposes	120
E. Reforms Are Needed to Address the Problems of Off Year Fundraising	121
<b>7. Negative Consequences on Legislation, Elections and Public Confidence</b>	<b>127</b>
A. The Legislative Process Is Being Impaired	128
B. Electoral Competition Is Being Distorted	141
C. Public Confidence in Government Is Diminished	148
<b>8. Wealthy Candidates and Independent Expenditures:</b>	
<b>Potential Problems That Have Not Yet Appeared in California</b>	<b>153</b>
A. Wealthy Candidates Have Had Minimal Impact in the State	154
B. Independent Expenditures Have Yet to Play a Major Role in the State	157
C. Limited Reforms Are Appropriate	160

## **PART II—The History of Campaign Finance Reform: Goals, Limits and Alternatives**

<b>9. California: A Century of Campaign Finance Reform</b>	<b>165</b>
A. California Attempts Its First Campaign Finance Reforms: 1849 to 1907	165
B. Indifference to Reform Grows: 1907 to 1922	166
C. Artie Samish Uses Contributions to Influence the Legislature: 1923 to 1949	167
D. The Legislature Passes Weak Laws Which Are Unenforced or Declared Unconstitutional: 1949 to 1970	168
E. The Legislature Is Forced to Renew Its Interest in Reform: 1971 to 1974	168
F. New Campaign Reform Proposals Are Considered: 1975 to 1984	169
G. California Law Today: Disclosure and a Limited Number of Other Requirements Are Imposed on Political Campaigns	171
<b>10. Campaign Finance Laws in Other States:     The Laboratories of Reform</b>	<b>177</b>
A. Other States Have Experimented with a Wide Variety of Reform Measures	177
B. Contribution Controls Are the Most Prevalent Type of Reform	179
C. Eleven States and One City Provide for Partial Public Financing of Elections	182
D. A Number of States Use the Tax System to Encourage Political Contributions	188
E. Summary and Conclusions: Contribution Limits, Expenditure Ceilings and Partial Public Financing Have Accomplished Many of Their Goals in Other States	190
<b>11. The Federal Experience: Contribution Limits,     Expenditure Ceilings and Partial Public Financing</b>	<b>199</b>
A. Contribution Limits Have Met with Partial Success in Congressional Elections	200
B. Expenditure Limits and Public Financing for Presidential Elections Have Met with Considerable Success	202

## **PART III—The Commission's Recommendations**

<b>12. The Commission's Model Campaign Finance Law:     A Proposal for California</b>	<b>211</b>
A. The Commission Recommends a Comprehensive Approach to California's Campaign Finance Problems	212
B. Expenditure Ceilings Are Necessary to Limit the Fundraising Arms Race	213
C. Contribution Limits Are Necessary to Mitigate the Real or Apparent Influence of Large Contributors	215
D. Limited Matching Funds Are Necessary to Ease Fundraising Pressures and to Encourage Acceptance of Expenditure Ceilings	216
E. The Prospects for Reform Are Open	220

<b>13. A Detailed Analysis of the Commission’s Model Law</b>	<b>225</b>
A. Expenditure Ceilings Will Cap the Escalating Demand for Campaign Funds	225
B. Contribution Limits Are Tailored to Address a Wide Range of Contributor Problems	228
C. Limited Public Matching Funds Will Encourage Acceptance of Expenditure Ceilings and Smaller Contributions	233
D. Additional Model Law Provisions Are Required for Adequate Enforcement	235
<b>14. The Constitutionality of the Commission’s Recommended Model Law</b>	<b>239</b>
A. The Commission’s Contribution Limits Are Valid Attempts to Eliminate Actual or Apparent “Corruption” in the Political Process	240
B. The Commission’s Expenditure Ceilings Are Voluntary and Constitutionally Valid	246
C. Limited Public Matching Funds Are Constitutionally Valid Because They Further Important Governmental Interests	247
 <b>PART IV—Appendices</b>	
<b>A. Model Law Provisions</b>	<b>253</b>
<b>B. An Alternative Proposal</b>	<b>271</b>
Background and Summary of the Alternative Proposal	272
Political Tax Credits Analyzed	275
The Pros and Cons of Political Tax Credits	277
Variable Political Party and/or Legislative Caucus Contribution Limits Analyzed	279
The Pros and Cons of Variable Contribution Limits	280
The Constitutionality of the Alternative Proposal	281
Conclusion	283
Statutory Provisions for the Alternative Proposal	283
<b>C. Consultants</b>	<b>301</b>
<b>D. How Legislative Candidates Raise Money Today: A Hypothetical Case Study</b>	<b>307</b>
<b>E. How Legislative Candidates Might Raise Money Under the Commission’s Recommended Model Law: A Scenario</b>	<b>313</b>
<b>F. Analysis of Proposition 40: The Ross Johnson Campaign Finance Initiative</b>	<b>323</b>
<b>G. Analysis of the Vasconcellos-Lockyer Bill (S.B. 87)</b>	<b>335</b>
<b>H. Recent Public Opinion Polls on Campaign Finance Reforms</b>	<b>339</b>
<b>I. Issues for Further Study</b>	<b>343</b>
<b>J. Selected Bibliography</b>	<b>347</b>

## List of Tables

<b>1.1</b>	<b>Total Campaign Expenditures for State Senate and State Assembly (1958-1984 Primary and General Elections)</b>	<b>24</b>
<b>1.2</b>	<b>Total Campaign Expenditures for Governor (1958-1982 Primary and General Elections)</b>	<b>25</b>
<b>1.3</b>	<b>Cost Per Vote (State Legislature, 1958-1984 General Elections)</b>	<b>26</b>
<b>1.4(a)</b>	<b>Cost Per Vote (1982 General Election Competitive Assembly Campaigns)</b>	<b>27</b>
<b>1.4(b)</b>	<b>Cost Per Vote (1984 General Election Competitive Assembly Campaigns)</b>	<b>28</b>
<b>1.5</b>	<b>Legislative District Population Sizes Across the Country</b>	<b>30</b>
<b>1.6</b>	<b>California State Assembly Major Party Candidates—Comparison of 1976, 1978, 1980, 1982 and 1984 General Elections (Median Expenditures)</b>	<b>31</b>
<b>1.7</b>	<b>Incumbency Reelection: California State Legislature</b>	<b>33</b>
<b>1.8</b>	<b>Number of Competitive California State Legislative Races</b>	<b>34</b>
<b>1.9</b>	<b>Campaign Budget Allocations for Competitive Assembly Candidates</b>	<b>36</b>
<b>1.10</b>	<b>Campaign Expenditures in Four 1982 Competitive General Election Assembly Races</b>	<b>41</b>
<b>1.11</b>	<b>Proposed Expenditure Ceilings for Legislative Candidates</b>	<b>42</b>
<b>1.12</b>	<b>\$225,000 Budget with Broadcast Advertising (Assembly General Election)</b>	<b>43</b>
<b>1.13</b>	<b>\$225,000 Budget Without Broadcast Advertising (Assembly General Election)</b>	<b>43</b>
<b>3.1</b>	<b>Sources of Contributions of \$100 or More for the 1980, 1982 and 1984 General Elections (Classified by General Categories)</b>	<b>57</b>
<b>3.2</b>	<b>1982 Legislative Winners and Losers: Sources of Campaign Contributions of \$100 or More in Primary and General Elections (Classified by Specific Industry Groups or Affiliations)</b>	<b>60</b>
<b>3.3</b>	<b>Sources of Contributions to 1982 General Election Assembly Candidates by 580 Major Donors Who Contributed \$5,000 or More During 1981-1982</b>	<b>61</b>
<b>3.4</b>	<b>Contributors Who Gave \$25,000 or More to 1982 Assembly Candidates</b>	<b>63</b>
<b>4.1</b>	<b>National PAC Contribution Patterns for 1981-1982</b>	<b>72</b>
<b>4.2</b>	<b>Contributions by Top 25 PACs to 1982 General Election Assembly Candidates</b>	<b>74</b>
<b>4.3</b>	<b>Comparison of Contribution Patterns to 1982 General Election Assembly Candidates by the Top 25 PACs in California</b>	<b>76</b>
<b>4.4</b>	<b>Comparison of Contribution Patterns to 1982 General Election Assembly Candidates by All Large Donor Interest Groups, and by the Top Corporate and Other PACs in California</b>	<b>77</b>
<b>4.5</b>	<b>Membership and Average Annual Contributions by Selected PACs in the Top 25 California PACs</b>	<b>79</b>
<b>4.6</b>	<b>Corporate PAC Contributions (1982 Assembly and Senate General Election Candidates)</b>	<b>80</b>

<b>4.7</b>	<b>Financial Summary of Five Selected California PACs</b>	<b>85</b>
<b>4.8</b>	<b>Partisan-Oriented Sources of Campaign Money: Political Action Committees, Corporations and Unions</b>	<b>86</b>
<b>4.9</b>	<b>Comparison of PAC and Business Contributions to Candidates for the U.S. House of Representatives and the California State Legislature: 1980, 1982 and 1984</b>	<b>87</b>
<b>4.10</b>	<b>Comparison of PAC/Business Contributions to Incumbents, Challengers and Open Seat Candidates for the U.S. House of Representatives and the California State Assembly: 1982</b>	<b>88</b>
<b>5.1</b>	<b>Partisan Sources of Campaign Money: 1984 General Election</b>	<b>97</b>
<b>5.2</b>	<b>Assembly Campaign Funds Compared - 68th A.D. (1982 General Election): Competitive District, Open Seat</b>	<b>98</b>
<b>5.3</b>	<b>Assembly Campaign Funds Compared - 66th A.D. (1982 General Election): Republican Challenges a Democratic Incumbent at Last Minute</b>	<b>99</b>
<b>5.4</b>	<b>Assembly Campaign Funds Compared - 9th A.D. (1982 General Election): Democrat Challenges a Republican Incumbent</b>	<b>101</b>
<b>5.5</b>	<b>Assembly Campaign Funds Compared - 65th A.D. (1982 General Election): Republican Challenges a Democratic Incumbent</b>	<b>102</b>
<b>5.6</b>	<b>Assembly Campaign Funds Compared - 35th A.D. (1982 General Election): Competitive District, Open Seat</b>	<b>103</b>
<b>5.7</b>	<b>California Republican Party Income and Expenditures</b>	<b>108</b>
<b>5.8</b>	<b>Composition of California Political Party Organizations</b>	<b>109</b>
<b>6.1</b>	<b>Funds Raised in 1983 by 1984 Challengers</b>	<b>119</b>
<b>6.2</b>	<b>Off Year Contributions: Impact of Limitations on Assembly Incumbents in 1983</b>	<b>123</b>
<b>7.1</b>	<b>Campaign Contributions by Major Supporters of Assembly Bill to Weaken Rent Control (A.B. 3808)</b>	<b>135</b>
<b>7.2</b>	<b>Newcomers (1982 Candidates for Party Nominations in Selected Assembly Districts)</b>	<b>146</b>
<b>8.1</b>	<b>Contributions by Candidates (and the Families of Candidates) to Their Own Campaigns (1982 and 1984 Legislative Races)</b>	<b>155</b>
<b>10.1</b>	<b>Federal and State Tax Credit and Deduction Participation</b>	<b>189</b>
<b>10.2</b>	<b>Campaign Finance Laws in Other States</b>	<b>192</b>
<b>10.3</b>	<b>State-by-State Summary of Contribution Limitations to Legislative Campaigns</b>	<b>194</b>
<b>12.1</b>	<b>Projected Costs of Commission's Limited Matching Funds Proposal Based on Three Previous California Legislative Elections</b>	<b>221</b>
<b>13.1</b>	<b>Proposed Expenditure Limitations for S.B. 87 and the Commission's Proposal</b>	<b>227</b>
<b>13.2</b>	<b>Maximum Amount of Matching Funds Under the Commission's Proposal</b>	<b>233</b>
	<b>Summary Chart—The Commission's Principal Campaign Finance Proposal for California Legislative Elections (Expenditure Limitations, Contribution Limitations and Limited Matching Funds)</b>	<b>252</b>
	<b>Summary Chart—The Commission's Alternative Campaign Finance Proposal for California Legislative Elections (Contribution Limitations, Expenditure Limitations and Tax Credits)</b>	<b>270</b>



## Foreword

This is the final report of an eighteen-month study conducted by the California Commission on Campaign Financing. The Commission, formed in 1984, is a bipartisan, non-profit, private organization funded by the Weingart Foundation of Los Angeles. Twenty-one Californians from the state's business, labor, agricultural, legal, political and academic communities, both Republicans and Democrats, agreed to serve as its 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 on a study of 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 in the state. The Commission believes that the problems discussed in its report require urgent action and hopes its unanimous recommendations will stimulate discussion leading to useful reform.

The Commission was deeply saddened by the death of its esteemed member Donald Wright during the course of its work. The Commission members and staff benefited greatly from his good judgment. We all miss his wisdom and integrity.

The Commission extends its warm appreciation to the Weingart Foundation, its trustees John T. Gurash, Dr. William H. McGill, Sol Price, Marcus H. Rabwin, M.D. and Harry J. Volk, and its President Morris A. Densmore, who were so generous in funding the Commission's work. Without their support this report could not have been written.

In the course of the Commission's research, Commission members and staff met with hundreds of political experts, academicians, politicians, political consultants, reporters and concerned citizens. A list of these people appears in Appendix C to the full report. We thank them all for their valuable comments and advice, and we absolve them of responsibility for any Commission conclusions which may differ from their own.

Particularly useful to the Commission were the extensive materials published by the California Fair Political Practices Commission, including valuable analyses of raw data collected by the FPPC since 1975. Where figures and statistics appear in this report without specific attribution, they are from published FPPC studies.

For supplemental printing grants so that this report could be widely distributed, the Commission thanks The Ahmanson Foundation, Carter Hawley Hale Stores, Inc. and Philip Stern; and it thanks the Annenberg School at the University of Southern California for its help and encouragement.

The Commission wishes to express its particular gratitude to its talented staff. Executive Director Tracy Westen oversaw the Commission's study and was responsible for the preparation of the report. General Counsel Robert M. Stern brought to the Commission a wealth of experience as former FPPC General Counsel and former counsel to the Legislature's Assembly Elections Committee. Associate Counsel Dennis M. Orfirer added his knowledge as a campaign consultant. Office Manager Janice E. Lark contributed her outstanding administrative skills. The Commission looked to Attorney Catherine Rich for valuable editing and research. Interns Russell Kramer and Robert Martin assisted the staff in gathering essential information and analyzing campaign reports.

## Commission and Professional Staff

- Co-Chairs** ■ **Cornell C. Maier**—Chairman of the Board and Chief Executive Officer of Kaiser Aluminum & Chemical Corporation, Oakland; Chairman of the Bay Area Council.
- **Rocco C. Siciliano**—Chairman of the Executive Committee of Ticor, Los Angeles; currently Vice Chairman of the California Roundtable and Of Counsel to the law firm of Jones, Day, Reavis & Pogue, Los Angeles; former Under Secretary of Commerce, Special Assistant to President Eisenhower and Assistant Secretary of the Department of Labor, and former member of the Federal Pay Board and the California Commission on Government Reform.
- **Francis M. Wheat**—Senior partner in the Los Angeles law firm of Gibson, Dunn & Crutcher; former Commissioner of the Securities and Exchange Commission and past President of the Los Angeles County Bar Association.

- Members** ■ **Warren Christopher**—Chairman of the O'Melveny & Myers law firm, Los Angeles; former Deputy Secretary of State, Deputy Attorney General of the United States and President of the Los Angeles County Bar Association; recipient in 1981 of the Medal of Freedom, the nation's highest civilian award.
- **Robert R. Dockson**—Chairman of the Board of CalFed Inc. and California Federal Savings and Loan Association, Los Angeles; former Dean of the School of Commerce and the Graduate School of Business Administration at the University of Southern California and past President of the California Chamber of Commerce.
- **Walter B. Gerken**—Chairman of the Board and Chief Executive Officer of the Pacific Mutual Life Insurance Company, Newport Beach; former Supervisor of Budget Analysis for the State of Wisconsin, recent Chairman of the California Roundtable and immediate past Chairman of the United Way of Los Angeles.
- **Marvin L. Goldberger**—President of the California Institute of Technology, Pasadena; former member of the President's Science Advisory Committee and a recent U.S. Representative to the International Union of Pure and Applied Physics.
- **Stafford R. Grady**—Chairman of the Board of Lloyds Bank California, Los Angeles; former Insurance Commissioner of California and past President of the California Bankers Association.
- **Neil E. Harlan**—Chairman and Chief Executive Officer of McKesson Corporation, San Francisco; former Assistant Secretary of the Air Force and former Professor at the Harvard Business School.
- **Ivan J. Houston**—Chairman of the Board and Chief Executive Officer of the Golden State Mutual Life Insurance Company, Los Angeles; Co-Chairman of the National Conference of Christians and Jews; former Chairman of the Board of the Los Angeles Urban League.
- **Michael Kantor**—Partner in the Los Angeles law firm of Manatt, Phelps, Rothenberg & Tunney; key strategist for several recent major political campaigns.
- **Donald Kennedy**—President of Stanford University; former Commissioner of the United States Food and Drug Administration.

- **Melvin B. Lane**—Vice Chairman of the Board and Publisher, Lane Publishing Company, Menlo Park; former Chairman of the California Coastal Commission and past Chairman of the San Francisco Bay Conservation and Development Commission.
- **Vilma S. Martinez**—Partner in the Los Angeles law firm of Munger, Tolles & Rickershauser; Chair of the Board of Regents of the University of California; former President and General Counsel of the Mexican-American Legal Defense and Educational Fund (MALDEF).
- **Robert T. Monagan**—President of the California Economic Development Corporation, Sacramento; former President of the California Manufacturers Association, Speaker of the California Assembly (1969-1970), California Assemblyman and Assistant Secretary of the United States Department of Transportation.
- **Susan Westerberg Prager**—Dean and Professor of Law at the UCLA School of Law, Los Angeles; President-Elect and Executive Board Member of the Association of American Law Schools; past Member of the Board of Trustees of Stanford University.
- **William R. Robertson**—Executive Secretary-Treasurer of the Los Angeles County Federation of Labor, AFL-CIO; former Vice President of the California Labor Federation.
- **Peter F. Scott**—Chairman and Chief Executive Officer of the Di Giorgio Corporation, San Francisco; Director of the California Chamber of Commerce and the San Francisco Boys Club; Member of the Cabinet of the Bay Area United Way.
- **Jean R. Wente**—Vice President, Chair of the Executive Committee and Chief Financial Officer of the Wente Bros. Winery, Livermore; past President of the Oakland Museum Association.
- **Samuel L. Williams**—Partner in the Los Angeles law firm of Hufstedler, Miller, Carlson & Beardsley; former President of the State Bar of California and past President of the Los Angeles Board of Police Commissioners.
- **Donald R. Wright**—Former Chief Justice of the California Supreme Court (1970-1977) capping a distinguished 23-year judicial career; honored as “Appellate Judge of the Year 1972” by the California Trial Lawyers Association.

- Staff**
- **Tracy Westen**—Executive Director of the Commission; Assistant Professor of Law at the Annenberg School of Communications and the USC Law Center, University of Southern California; former Deputy Director of the Federal Trade Commission, Washington, D.C., and past Director of the Communications Law Program at the UCLA School of Law.
  - **Robert M. Stern**—General Counsel to the Commission; former General Counsel to the California Fair Political Practices Commission, principal co-author of the Political Reform Act of 1974 (Proposition 9) and former staff member for the California State Legislature.
  - **Dennis M. Orfirer**—Associate Counsel for the Commission; graduate of the University of California School of Law at Davis and an experienced political consultant.
  - **Catherine Rich**—Staff Attorney for the Commission; graduate of the UCLA School of Law and former presidential campaign staff member.
  - **Janice E. Lark**—Office Manager for the Commission; experienced administrative assistant and executive secretary for law firms in Boston and Los Angeles.



# Introduction and Summary

## California's New Political Gold Rush

California's political campaigns for the State Assembly and Senate are the most costly in the nation. In 1982 candidates in one Assembly race spent over \$3.2 million for the right to occupy a seat which then paid \$29,000 a year. Four additional legislative races each cost over \$1 million—the first such million-dollar races in the nation's history. By 1984, \$1 million-plus races had become fixtures on California's political landscape. Campaign spending reached an all-time high—\$44.8 million for 100 legislative seats.

California is witnessing a new political gold rush. Candidates are enticed by professional consultants, dazzled by expensive new campaign technologies, alarmed by rising costs and frightened by last-minute spending attacks. 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. Reporters warn that legislators are being corrupted with money. Contributors complain they are hounded with incessant fundraising appeals. Lobbyists protest they are covertly "shaken down" with threats of adverse legislation.

Candidates report that some spend 50% to 70% of their time raising money. Incumbents vastly outraise challengers. Newcomers are deterred from politics.

Money may be the "mother's milk of politics," as former Assembly Speaker Jesse Unruh once said, but for many its taste has turned sour. The vast quantities of money flooding into the state's political races, the drumbeat of press accounts linking contributions to "special interest legislation" and the lack of competitive new candidates in many elections have all drawn alarmed criticism from contributors, politicians, lobbyists, academics, the press and most importantly, the public. Dan Stanford, current Chairman of the California Fair Political Practices Commission (FPPC), reports: "Virtually every legislator, political action committee representative, lobbyist and corporate executive I've talked with agrees there is a tremendous need for campaign financing reform in California."

Ten years ago California adopted the most detailed campaign contribution disclosure law in the nation. Yet today California remains one of the few jurisdictions without legislation to stem the gush of money into political coffers. California state law places *no restrictions* on campaign contributions or expenditures. If campaign spending is not limited in this

state, the average competitive Assembly race by 1990 may cost over \$1 million.

### **The Commission's Recommendations**

After extensive study the Commission has concluded that comprehensive reforms are necessary to address the full range of legislative campaign finance problems in California. It believes that piecemeal solutions will be ineffective. Strict limitations on the amounts of campaign contributions, for example, may deprive candidates of enough money to communicate adequately with voters and handicap newcomers in their competition with incumbents. Ceilings on total campaign expenditures have been declared unconstitutional by the United States Supreme Court unless they are accompanied by limited public funding. Yet limited public financing will not slow the escalation in campaign spending unless coupled with expenditure ceilings.

The Commission therefore believes that effective proposals for campaign finance reform in California must include limits on both contributions and expenditures and develop new sources of funding to encourage candidates to accept expenditure ceilings. The Commission has drafted two model laws for possible use in California. It hopes they may be of use in other states as well.

The Commission's principal recommendation embodies a combination of expenditure ceilings, contribution limits and limited public matching funds for candidates who accept expenditure ceilings. It includes the following major 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, PACs, corporations, businesses and labor unions are limited to \$1,000 per election; specially qualifying "Small Contributor PACs" (receiving all member donations in amounts of \$50 or less) can make contributions up to \$5,000.
- Transfers of money by candidates or legislators to other candidates are prohibited.
- Fundraising during non-election years is prohibited.
- Honoraria and gifts are counted towards the contribution limitations.
- Political parties and legislative caucuses are allowed to make contributions up to \$50,000.
- 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 accepting expenditure ceilings will qualify for limited public matching funds; candidates who do not raise threshold amounts or who lack competitive opponents (who raise, spend or have cash on hand of at least \$35,000) will not qualify.
- Candidates are encouraged by higher matching fund ratios to seek smaller in-district contributions.
- Spending by independent expenditure committees and wealthy candidates is discouraged.

The Commission estimates its proposed matching funds program will cost the state approximately \$4.6 million a year, the lowest amount of any comparable matching funds proposal in recent years. The program will be funded by a voluntary individual \$3 state income tax checkoff.

The Commission's alternative proposal substitutes for limited matching funds a combination of (i) 100% tax credits for small in-district contributions and (ii) large political party and legislative caucus contributions for candidates accepting expenditure ceilings. The Commission estimates this alternative tax credit proposal would cost approximately \$4.7 million a year.

Further details of the Commission's principal recommendation and alternative



proposal are contained in this Introduction and Summary under the caption, "Synopsis of the Commission's Proposals." One-page summary charts appear at the end of this Introduction and Summary. A comprehensive analysis of both proposals will be found in Chapters 12 and 13 and Appendix B of the full Commission report.

## **Skyrocketing Campaign Costs**

In 1958 all legislative races in California cost a total of \$1.4 million. In 1984 these same races cost \$44.8 million (an increase of 3100% in 26 years) and the average legislative election cost \$448,000. Tom Hayden spent more (\$2 million) running for his 1982 Assembly seat than did all 1958 California legislative candidates combined.

### ***California's Legislative Campaign Costs Are Rising Sharply***

California's rising campaign costs have outstripped inflation and population growth. In 1958 candidates for the State Assembly spent an average of 10¢ per vote. In 1984, discounting for inflation, Assembly candidates spent an average of 51¢ per vote. In "competitive" races, defined by the FPPC as races in which either side had a reasonable chance to win, 1984 candidates spent \$1.23 per vote after adjusting for inflation. Contributions to California legislative campaigns have increased three times faster than contributions to California congressional campaigns.

Campaign expenditures in legislative races doubled between 1978 and 1982 alone—from \$20.2 million to over \$43 million. Spending in competitive races increased even faster. A typical competitive Senate candidate spent \$98,000 in 1976. By 1984 a competitive Senate candidate was spending \$556,000, 5½ times more. One Assemblyman won his 1982 race spending \$235,000; two years later he narrowly won reelection spending \$636,000, 2½ times more.

### ***Incumbents Are Widening Their Fundraising Advantage over Challengers***

Incumbents win elections for many reasons: proven ability, experience in office, widespread name recognition, reapportionment and one-party districts and, increasingly, superior fundraising power. Challengers need large sums of money to compete effectively against incumbents. Yet challengers are falling further behind incumbents in the fundraising wars.

In 1976 the median Assembly incumbent spent \$25,100 while the median challenger spent \$9,400, a ratio of almost 3-to-1. By 1984 the incumbent's advantage had increased to 14-to-1. Incumbents' cash outlays increased four-fold during this period (from \$25,100 to \$115,400) while challengers' expenditures actually decreased from \$9,400 in 1976 to \$8,500 in 1984. In the 1984 primary elections, Assembly incumbents outspent challengers by 105-to-1. Senate incumbents outspent challengers by 229-to-1.

Fundraising superiority along with reapportioned districts are major incumbent advantages. From 1974 to 1984, legislative incumbents won an average 96% of all their races. In 1984 incumbents won 98% of their elections.

### ***Competitive Races Are Diminishing in Number***

Although overall legislative spending increased between 1980 and 1984, these increases were concentrated in fewer competitive races. Truly competitive races (defined by this Commission as races where two candidates each spent \$35,000 or more) are decreasing in number. In State Senate primary elections the percentage of such competitive races dropped from 10% to 5%. In Assembly primaries competitive races dropped from 21% to 6%.

In competitive districts spending is often extreme. Like political black holes, high-spending races suck in time, talent

and money at an accelerating rate. New-comers are deterred by high costs from entering politics; incumbents are driven to contributors with a large economic stake in pending legislation; and the public is dismayed by apparent *quid pro quo* arrangements between contributors and candidates.

***Overall Election Expenditures Are Rising Primarily Due to Increased Spending, Not Increased Costs***

Campaign expenditures in competitive races are rising because candidates are deciding to spend more, particularly on direct mail. Between 1968 and 1982, Assembly candidates increased their direct mail expenditures from 43% to 61% of their overall budgets. Spending on other items decreased proportionately—from 8% to 7% on radio and television ads, 10% to 1% on newspaper ads and 11% to 4% on outdoor advertising. Candidates in most races avoid broadcast advertising due to its high costs per voter. California's fundraising arms race has been fueled by direct mail techniques which candidates believe they must utilize to remain competitive.

Increased direct mail expenditures by competitive candidates are not due to inflation or population growth. Although direct mail spending increased 155% between 1978 and 1982, the number of registered voters only increased by 12%. Bulk mail postage costs of 8.4¢ per letter in 1978 actually dropped to 7.9¢ in 1982 for candidates using carrier route presort and to 3¢ for political parties.

***Psychological Factors Are Destabilizing Campaigns and Increasing Costs***

Fear and money are the principal factors stimulating California's fundraising arms race. Candidates fear that opponents will outspend them, that first strikes will overwhelm them, that last-minute attacks will unseat them, and that innovations will make their contemporary weapons and defenses obsolete. Candidates turn to

deterrence, the massive buildup of money and arms, for security. They seek the expensive campaign consultants and technologies often identified with the political military-industrial complex.

The increased availability of political money has added a new destabilizing element to modern legislative campaigns. Twenty years ago candidates knew their opponents could only raise modest amounts. Today the rapid growth of private contributions and partisan political transfers has given candidates quick access to enormous sums of money. This increased access has intensified candidates' fears of being outspent, hit by a last-minute blitz or faced with wealthy opponents. Candidates know they can lose elections by spending too little. They therefore spend twice what they need to ensure their success. Some unopposed legislators spend over \$100,000 on campaigns just to deter future challengers.

Modern fundraising pressures are linked to the politics and psychology of self-defense. Threats to job security from the reapportionment battles of the past five years have heightened legislators' fears and stimulated fundraising. The 1980 Assembly Speakership battle between Howard Berman and Leo McCarthy raised the psychological incentives another notch. Legislators then saw they could raise larger sums than any had thought possible, and the fundraising genie was let out of the bottle. Fundraising events shifted to Sacramento. Dinners were pegged at \$100 a plate, then \$250, then \$500 and even \$1,250.

Legislators were asked to contribute a portion of their receipts to legislative leaders for transfer to other party candidates. Fundraising quotas were set. Committee and leadership positions were assigned to legislators who anted up large sums of cash. Even legislators in safe seats began to raise more money. Incumbents pressured contributors for larger contributions, and contributors expected political returns for their money.

Some legislators increased their fundraising to defray the cost of trips to



their districts and conventions, supplemental living expenses, Sacramento apartments, office supplies, constituent entertainment and staff salaries. Many legislators came to view these expenditures as "perks" of office and raised increasing amounts of money to preserve their political lifestyles.

The lack of significant adverse public reaction has lessened incentives for candidates to moderate their expenditures. Without voter resistance at the polls, high spending will continue. The psychology of modern campaigns encourages more spending, not less.

### **Shifting Sources of Campaign Money**

Rising campaign costs force candidates to seek new funding sources. Candidates find it less efficient to seek small contributions from individual constituents inside their own districts. Instead they cultivate large, organized contributors in central state locations. Candidates today have thus acquired two separate constituencies: the district residents who vote for them, and the statewide contributors who pay for their campaigns. These two constituencies have diverged almost totally over the past ten years.

A recent Riverside race may be the prototype for future California campaigns. In 1982 a Democratic Assembly candidate raised \$195,000 against a tough Republican opponent who raised \$229,000. Of the Democrat's money, however, only \$2,319 (or 1%) came in amounts under \$100, only six contributions of \$100 or more came from individuals within his district, and only 68 contributions of \$100 or more were received during the entire campaign. Instead, the Democrat received \$134,000 from other legislators and emerged victorious.

#### ***Contributions from Inside Candidates' Own Districts Are Vanishing***

Legislative candidates are no longer principally funded by their own constitu-

ents. In 1982, for example, *winning Assembly candidates received 92% of their itemized contributions (\$100 or more) from out-of-district sources*. Two successful candidates, Alister McAlister and Bruce Young, received 100% of their itemized contributions from out-of-district sources. Former FPPC Chairman Tom Houston has commented on the emergence of out-of-district money: "These figures represent a startling shift of influence away from local citizens and alarming growth of the power of outside special interests in determining the outcome of legislative district elections."

#### ***Contributions from Individuals Are Relatively Minor***

Individuals supply a very small portion of candidates' funds. In the 1984 general election, *individuals contributed only 13% of the money collected by legislative candidates in amounts of \$100 or more*. By contrast, presidential candidates in the 1980 primaries received 98% of their contributions from individuals, and California candidates for the U.S. House of Representatives in the 1982 general election raised 73%. Large organizational and partisan political contributors in California are the largest, most predictable and most easily accessible source of money for candidates.

#### ***Small Contributions Are Becoming an Anachronism***

Contributions under \$100 are rapidly becoming an insignificant part of the state's political system. In 1982 *small contributions comprised only 6% of all campaign money received by legislative candidates*. Between 1980 and 1982, the percentage of small contributions in California dropped 33%.

Many candidates do not actively solicit small contributions because the effort is costly and time-consuming and the returns are small. Soliciting contributions by mail often takes years to become profitable. A \$500-a-plate fundraising dinner costing \$50 to prepare is more rewarding than a \$50-a-plate dinner costing \$20.

Some individuals make small contributions through political action committees (PACs) and not to candidates directly. However, candidates perceive PAC contributions differently than individual contributions. PAC contributions are normally linked to specific positions on issues and thus carry more weight than dispersed individual contributions. The shift of small contributions from candidates to PACs has increased the clout of organized givers.

### ***Large Contributions Are Few but Significant***

In the 1981-1982 period, *contributions from 580 donors in \$5,000-plus amounts provided 47% of all the money received by general election legislative candidates.* Of these contributors, 370 were interest groups (174 businesses and 196 PACs), 84 were officeholders transferring funds and 24 were candidates contributing to their own campaigns.

Very large contributions are influential but infrequent. Although \$43 million was spent on 1982 legislative races, only six contributions over \$50,000 (excluding transfers) were received by candidates. Assembly Speaker Willie Brown received three of these, totaling \$373,000. Twenty-three contributions in the \$25,000 to \$50,000 range were given. Speaker Brown received 12 of these, totaling \$359,000. Large contributions are few in number because contributors interested in legislative access or influence often believe they can achieve it with smaller amounts. Large contributions may tag a candidate as a tool of a particular interest group.

Some organizations disperse large sums of money to many candidates. The California Medical Association PAC gave \$614,000 to candidates and the California State Employees Association gave \$391,000 in 1982. Some large contributors are partisan in their giving. The United Farm Workers gave \$750,000, exclusively to Democrats. United for California gave \$536,000 and the Gun Owners PAC \$123,000, almost exclusively to Republicans.

### ***PAC, Corporate and Labor Contributions Are the Largest Source of Campaign Money in California***

During the 1980 through 1984 general elections, *legislative candidates received an average 56% of their contributions from PACs, labor unions and businesses.* Incumbents gathered much of this money. In 1982, California PACs supported incumbents over challengers by an 8-to-1 ratio. PACs and other organizational contributors hedge their bets by giving to all candidates regardless of party or philosophy. Some give to all incumbents; others even give to opposing candidates in the same race.

PAC-corporate-labor contributions are a more significant source of campaign money in California than are national PAC contributions at the federal level. Under California law, corporations and labor unions can contribute directly to candidates (unlike under federal law) as well as make additional contributions through corporate and labor PACs. California Assembly and Senate candidates thus received 66% of all their reported contributions from PACs, corporations and labor unions in 1980, 48% in 1982 and 55% in 1984. By contrast, U.S. House of Representatives candidates nationwide received 29% of their contributions from PACs in 1980, 32% in 1982 and 36% in 1984. Presidential candidates received only 2.1% of their contributions from PACs in the 1980 primaries. In 1982, California Assembly candidates from districts half the size of congressional districts raised \$7,000 more in PAC-corporate-labor contributions than the average California congressional candidate raised from national PACs.

### ***Partisan Contributions Are Rapidly Growing in Importance***

During the 1984 general election, *legislative candidates combined received 28% of their contributions from partisan sources.* Partisan contributions include transfers of money from one candidate or

officeholder to another, caucus contributions from the members of each party in each house of the Legislature and donations from the state Democratic and Republican Parties. Such contributions have rapidly become one of the most important sources of campaign money in California today. Democrats and Republicans both rely on partisan contributions, although Democrats stress transfers (mostly from Assembly Speaker Willie Brown and Senate President pro Tem David Roberti) while Republicans rely equally on transfers, caucus contributions and party donations.

*Transfers* are an important source of money for legislative campaigns. In 1982 Democrats received \$5 million in transferred funds and Republicans \$1.1 million. Between 1980 and 1982, transfers to successful Assembly candidates rose from 10% to 20%. Transfers to winning senatorial candidates increased from 4% to 25%. One Democratic Assemblyman received 75% of his \$213,000 in transfers in 1982; in 1984 he received \$294,000 in transfers.

Transfers have mixed effects on campaigns. In some cases they enhance competition, help new candidates with poor fundraising power, immunize some transfer recipients from special interest influence, allow candidates to spend less time fundraising and more time debating issues and offset the advantages of wealthy candidates. In a 1982 Santa Barbara Assembly race, for example, a lesser-funded Democratic candidate defeated a wealthier Republican by a narrow 50.6% margin only after receiving \$122,000 in transfers from Assembly Speaker Brown.

But transfers also destabilize campaigns. In 1984, for example, Republican legislators pumped \$193,000 into one general election race in an unsuccessful last-minute attempt to surprise an incumbent Democratic Senator. Transfers bankroll last-minute attacks, encourage stockpiling, allow incumbents to deter challengers in primaries, weaken candidates' bonds with their own constituents, obscure sources of

money and dismay contributors who see their money end up in other candidates' hands.

Transfers have their most damaging impact on the legislative process. They encourage legislators to raise transfer money from special interest contributors, increase the appearance of *quid pro quo* arrangements between contributors and public officials, require transferring legislators to spend more time raising money, influence the selection of legislators to leadership and committee posts, factionalize legislative leadership and undermine the public's opinion of the Legislature.

*Legislative caucus contributions* flow to candidates from the members of the two major political parties in each house of the Legislature. In 1982 Democrats received \$440,000 from their caucuses and Republicans received \$1.2 million. Although Republicans rely more heavily on caucus contributions and Democrats on individual transfers, the differences between the two approaches are often indistinct. Democratic transfers are controlled by a small group of Democratic leaders; Republican caucus contributions are also controlled by a few key Republican leaders.

*Political party contributions* in California are heavily Republican. In 1982 the Republican Party gave over \$1.2 million to candidates; the Democratic Party gave only \$85,000. The Republican Party has spent a decade successfully building a list of 400,000 contributors throughout the state. Democrats have barely started this task.

### ***Off Year Fundraising Is California's Secret Campaign Finance Problem***

California legislators raise enormous sums of money in off-election years. *In 1983 incumbent legislators raised a record \$14.3 million even though they were not up for reelection, had no foreseeable opponents and most had no debts.* Off year fundraising has increased 150% in the past six years.



Off year fundraising exclusively benefits incumbents. In 1983 incumbents raised 99.7% of all off year money (\$14.3 million) while their challengers raised only 0.3% (\$46,000). Some candidates raised large sums and were unopposed in 1984. One Assemblyman raised over \$250,000 even though his opponents raised only \$5,000 in 1982 and no money in 1983. Another candidate raised \$190,000 and then retired.

Off year fundraising is particularly susceptible to legislative abuse. In 1983, legislators raised 76% of their off year money by soliciting Sacramento-based lobbyists, businesses and PACs that had ongoing relations with legislators. Legislators often schedule fundraising events shortly before key legislative votes. Lobbyists complain that undue pressure is placed on them to contribute during the off year. Fewer disclosure reports are filed during the off year and incumbents lack opponents and press attention to scrutinize their receipts.

### ***Wealthy Candidates and Independent Expenditures Have Not as Yet Been Significant in California***

A few personally wealthy legislative candidates have campaigned in California, but they have not been a major factor in most campaigns. In 1982 only 14 candidates spent more than \$20,000 on their own campaigns and only two spent more than \$100,000. Low salaries and the diminished visibility of legislative office attract fewer wealthy candidates than statewide or national offices.

Independent expenditure committees have gained prominence in national campaigns but not in California races. Independent expenditure committees are difficult to organize, expensive to operate and unlikely to coalesce around comparatively minor legislative races. Independent expenditure organizations spend large portions of their revenues on administration, overhead and fundraising, and they typically have little remaining for direct campaign expenditures.

### **The Appearance of Corruption and Diminished Competition**

Californians pay a heavy price for their current campaign finance system. Experienced reporters for major newspapers have sounded repeated warnings:

- "[T]he passage or defeat of a bill frequently is tied directly to a bidding war and little else." (William Endicott, *Los Angeles Times*)
- "[V]otes on legislation are being bought, sold and rented on a wholesale basis." (Dan Walters, *Sacramento Bee*)
- "[T]horoughly institutionalized corruption... permeates the current system of politics and government in this state because of the skyrocketing costs of political campaigns." (Vic Pollard, *Gannett News Service*)
- "Powerful special interests bankrolling the election of our representatives have attained such a position of privilege that even some lawmakers fear that the Legislature is becoming a kept house." (Gale Cook and James Finefrock, *San Francisco Examiner*)
- "One veteran and well-placed lobbyist privately estimates that 50 or so bills each session are decided by how much is given by whom in campaign contributions that more accurately could be described as bribes." (Martin Smith, *Sacramento Bee*)

Sharply rising expenditures and shifting sources of money have distorted the legislative process, changed the nature of electoral competition and undermined public confidence in the state's legislative institutions.

### ***The Appearance of Legislative Corruption Is Growing***

Newspaper stories suggesting a *quid pro quo* between campaign contributions and legislative votes are difficult to verify. But their constant repetition has created the widespread public impression that the California Legislature is unduly influenced by money.

In 1983, for example, the California Podiatry PAC contributed \$146,000 to legislators to support a bill giving podiatrists the right to operate on the ankle. The Legislature reversed its seven-year opposition to the measure and passed the bill. The President of the California Podiatry Association said, "There is only one way to get the attention of legislators in a turf fight—financially." A doctor said, "I think they bought the bill, but you can't prove that."

Other examples are readily available. Fireworks magnate Patrick Moriarty reportedly gave over \$260,000 to lawmakers and candidates. The Senate and Assembly passed bills (vetoed by the Governor) which prevented local governments from banning the sale and use of fireworks. Moriarty later pleaded guilty to laundering his contributions illegally. The truckers PAC contributed \$57,000 to state legislators. A bill was passed into law giving truckers amnesty from violations of the state's loaded truck weight limits. The farm workers union contributed \$750,000 to legislative campaigns in 1982. Bills they opposed which had passed the Legislature in previous years were defeated in both Senate and Assembly committees. FPPC Chairman Dan Stanford has observed: "There is a direct and disheartening relationship between the amount of campaign contributions and the level of interest by the contributors in pending legislation."

### ***Coalitions Multiply Contributors' Clout***

A number of contributors often make simultaneous contributions when a particular legislative measure is considered. Nine separate organizations supporting a bill to weaken local rent controls, for example, gave \$304,000 to legislators during the first 4½ months of 1984 and spent an additional \$488,000 on lobbying. The Assembly passed the bill, despite the fact that California's voters in 1980 had rejected a similar measure by a 2-to-1 margin (the measure died in Senate com-

mittee). Coalitions multiply the contributors' clout and enhance the appearance of a link between contributions and legislation.

### ***Local Decisions Are Being Overruled***

Contributors use the Legislature as a "court of appeals" to overturn local zoning decisions. A San Francisco developer gave legislators over \$22,000 in 1982 during consideration of a bill to overturn a San Francisco ordinance blocking his condominium development, and spent another \$50,000 in dinners and lobbying fees while his bill was pending in 1983. A San Diego developer contributed over \$20,000 to legislators at the time a bill was pending to remove certain land from agricultural preserve status. A Carlsbad planning consultant described \$150,000 in campaign contributions as a "potential requirement" for passage of a bill exempting local property from environmental coastal protection. A Riverside developer gave or arranged for \$68,000 in legislative contributions during consideration of a bill to override a local decision blocking sewer hookups for his new shopping center. All these contributions were given while legislation was being considered to reverse local governmental decisions.

### ***Questions of Public Safety Are Raised***

Contributions are occasionally made in support of bills that involve questions of public safety. Whether podiatrists should be able to operate on the ankle, whether fireworks should be sold in local communities, whether raw (unpasteurized) milk should be recalled throughout the state—such questions raise legitimate public health and safety concerns. When health-related legislation is preceded or followed by large contributions, members of the public will inevitably question whether bills are considered on their merits or the strength of their financial backing.

### ***Taxpayers Are Shouldering Higher Costs***

California's current system of campaign finance is costly to taxpayers. The horse racing industry won a \$20 million tax break in 1980 after it donated \$1 million to legislators over a five-year period. Doctors received a \$40 million fee increase for treating injured workers after the California Medical Association contributed nearly \$600,000 to legislators in 1980 races. Beer wholesalers made contributions for years to protect a three-decade-old regulation prohibiting beer wholesale discounts at a cost to consumers of \$100 million annually. The oil industry contributed \$2.5 million to California candidates between 1979 and 1982 and an oil severance tax worth an estimated \$400 million a year consistently has been rejected—making California the only large oil producing state that does not tax the “severance” of oil from the ground. “The net result of years of special interest fiddling with the tax code is that the state loses about \$9 billion per year in revenue,” estimated Dan Walters in the *Sacramento Union*.

### ***Legislative Efficiency Has Decreased***

Fundraising pressures have impaired the effectiveness of the State Legislature. Legislators spend large amounts of their time raising money. One commented, “I’ve been sitting here for two hours this morning trying hard to listen to testimony. But all I ended up doing was making lists of people who might put down \$1,000 for a table at my next fundraiser.” Leadership posts often go to legislators who commit themselves to substantial fundraising activities for caucus members. Relatively minor issues disputed by large contributors command disproportionate attention. Heavy contributions on both sides of important issues make the Legislature reluctant to act. “Everybody’s trying to make money off [the unitary tax revision

bill] without its passing,” one legislator observed.

### ***High Campaign Costs Have Inhibited Electoral Competition***

California's campaign finance system has discouraged new candidates from presenting their views to the voters. By early 1982, for example, one new candidate raised \$150,000 for an Assembly seat, then dropped out of the race and ran for another office when his opponent raised over \$600,000. Voters had no opportunity to choose between the two.

### ***Incumbents Use Their Fundraising Advantages to Deter Challengers***

To many contributors a losing candidate represents an investment with no return. Contributors seeking access to decision-makers thus favor incumbents with their donations since incumbents have won overwhelmingly in recent years. In 1984 incumbents outspent challengers 14-to-1 in the Assembly and 63-to-1 in the Senate and won 98% of their elections.

Incumbents often raise large war chests to dissuade potential challengers from running against them. One Assemblyman reelected by wide margins during the past ten years still raised \$1.1 million in campaign funds between 1981 and mid-1984. Challengers have great difficulty persuading contributors to support them in the face of such awesome war chests.

Incumbent fundraising advantages also impede competition in primary elections. Statewide interest groups which provide the bulk of campaign funding see little advantage and great risk in helping challengers tackle incumbents.

### ***Partisan Contributions Have Altered Competition in Targeted Races***

Partisan transfers, caucus and party contributions have changed the competitive balance in selected election races. One



Democratic incumbent lost his 1982 race against a Republican who received almost half his contributions from out-of-district partisan sources. A Republican open seat candidate lost his Assembly race after his opponent received \$170,000 in partisan Democratic transfers. Increasingly the outcome of electoral battles is being influenced by out-of-district political money.

### ***Candidates Spend Excessive Time Fundraising***

Candidates believe they need large sums of money to communicate their message through direct mail and paid media. They spend their time raising money instead of talking with voters, canvassing door-to-door, attending local events or studying important issues. "California politicians think about campaign money when they get up in the morning, they think about it all day and they think about it at night," said Assemblyman Art Agnos (D-San Francisco). Candidates who dislike fundraising leave politics. "If good people ... feel that 80% of their time has to be devoted to fundraising, they'll get out," observed Lieutenant Governor Leo McCarthy.

### ***Political Parties Remain Weak***

Massive fundraising by candidates, incumbents and legislative caucuses has dwarfed California's political parties. Without money to distribute, parties lack the clout to attract new candidates and develop political platforms. Although Republican candidates have traditionally received money from their party, Democratic candidates receive almost no funds from their party and bypass their party apparatus altogether. In California's high-spending climate, political parties continue to play a minor role.

### ***Public Confidence in Government Has Diminished***

Opinion polls indicate low public confidence in state government. "The voters...

envision Sacramento as a distant sinful island surrounded by a green sea of money," says former FPPC Commissioner Mickey Ziffren. In 1981 California residents ranked their state legislature 23rd out of 34 national institutions in public confidence. In 1984, 74% of Californians reported that "state legislators are either very or somewhat obligated to their campaign contributors"; 46% of this group believed the result is "unfairness" to the average citizen. Massive campaign expenditures, large private donations and legislative bills linked to sizable donations contribute to the loss of public confidence in California's governmental institutions.

### ***Comparisons with Other Jurisdictions***

Although California was once the leading state in campaign finance reform legislation, this reputation has largely been lost. Other states have adopted campaign finance reforms that greatly surpass California's in imagination and breadth.

### ***California Imposes No Limitations on Campaign Contributions or Expenditures***

Nearly 100 years ago, California enacted the most sweeping campaign finance reform in the nation—including campaign expenditure ceilings and prohibitions on transfers and independent expenditures. Today California has no laws restricting the amount of money candidates can receive or spend. The state's 1974 Political Reform Act requires only that contributions and expenditures be disclosed. Bills changing the way campaigns are financed have failed to pass the Legislature or have been vetoed by the Governor. Proposition 40 on the 1984 ballot would have severely limited campaign contributions, but no money was spent on its behalf and it was defeated at the polls.

### ***Other States Have Implemented a Wide Variety of Reforms***

Supreme Court Justice Louis Brandeis observed that the states are "the laboratories of reform." Other states' campaign finance laws confirm this observation. Al-

most three-fourths of them limit contributions, impose expenditure ceilings, provide tax credits for political contributions, offer limited public financing or impose other controls:

- Twenty-three states limit the size of individual contributions;
  - Twenty-two states prohibit and 13 states limit corporate contributions; nine states prohibit and 17 states limit labor union contributions;
  - Seventeen states limit PAC contributions; one state (Montana) limits the aggregate money candidates can receive from all PACs;
  - Seventeen states limit or prohibit transfers; one state (Wisconsin) limits the aggregate money candidates can receive from political parties and/or legislative caucuses;
  - Two states (Minnesota and Texas) limit off-election year contributions;
  - Eleven states offer limited public financing from the government; three states offer it directly to legislative candidates; still other states give it to statewide candidates or to the political parties;
  - Four states offer partial or total tax credits to encourage small contributions;
  - Five states impose expenditure ceilings on candidates accepting partial public financing; and
  - Seventeen states raise campaign money through their income tax systems.
- Most states are satisfied with their reforms. Many have strengthened them.

### ***Contribution Limits in Congressional Elections Have Met with Partial Success***

Congress limited all contributions to federal candidates in 1974. Individuals can give no more than \$1,000; PACs can give no more than \$5,000. These measures have successfully reduced the influence of single large contributors. But election expenditures continue to rise, candidates spend more time fundraising, "bundlers" of contributions have gained in influence

and independent expenditure committees have grown.

### ***Limited Public Financing in Presidential Campaigns Has Achieved Its Announced Goals***

The campaign finance system for presidential races includes not only contribution limits but also expenditure ceilings and limited public financing. The presidential reforms have met with considerable success. Campaign expenditures have been controlled (inflation-adjusted expenditures in 1980 were 31% less than in 1972). Candidates have decreased their reliance on large contributions. Individual contributions are substantial. PAC contributions remain a modest 2.1% of all contributions. The costs of public financing are relatively small (less than the money one cigarette company spent on advertising in a single year). Incumbents have not gained an advantage (challengers have won two out of the last three elections). Despite the growth of independent expenditure committees, campaign expenditures have been capped, fundraising pressures reduced and the appearance of corruption lessened. Public support for the tax checkoff program has remained relatively constant.

### ***Synopsis of the Commission's Proposals***

The Commission has concluded that California's rising election costs and changing patterns of campaign financing have seriously distorted the state's legislative and electoral systems. In some races too little money is spent to inform voters of relevant issues. In other competitive races far too much money is spent—detering qualified newcomers from entering politics, encouraging candidates to solicit money from organized statewide interests and drawing legislators into seeming *quid pro quo* arrangements with contributors. Small local contributors are disappearing. Legislators are spending more time raising money and less time formulating policy. Partisan political battles



are intensifying. Public confidence is eroding. Without comprehensive measures to address these most serious problems, the situation in California will worsen.

### ***Campaign Finance Laws for California Must Have Balanced Objectives***

Experience with campaign finance laws at the federal level and in other states suggests that campaign finance laws for California must seek to restore public trust in the state's legislative institutions. This can be done by:

- Decreasing the perception (and the reality) that large contributors with financial or other interests in pending legislation unduly influence legislative votes;
- Decreasing the time candidates and legislators spend on fundraising and increasing the time they spend addressing important state issues;
- Increasing competition between legislative candidates in many races;
- Increasing the flow of information to the voters; and
- Offering all individuals and interest groups regardless of wealth a fair and equal opportunity to participate in the state's electoral and legislative processes.

These objectives can only be achieved with a balanced package of reforms.

### ***The Commission Recommends a Comprehensive Model Campaign Finance Law for California***

*The Commission recommends a combination of campaign finance reforms including voluntary expenditure ceilings, contribution limitations and limited public matching funds for candidates who accept expenditure ceilings. (See one-page chart of the Model Law at the end of this Introduction and Summary, and see Appendix A, "Model Law," at the end of the full Commission report.)*

**Expenditure Ceilings Will Limit Excessive Fundraising.** The critical campaign finance problem facing the state is candidates' potentially unlimited demand for money. So long as elections can be won or lost by the expenditure of money, candidates will devote excessive attention to fundraising, open themselves to influence-peddling and neglect important state issues. Newcomers will be deterred from seeking office; increased political gamesmanship will take place in the State Capitol; and the responsiveness of the Legislature will suffer. Expenditure ceilings stabilize campaigns, diminish the fear of last-minute attacks, reduce access by special interest contributors, ease the fundraising advantages of incumbents, decrease the time spent raising money and help abate the fundraising wars.

The Commission's proposed Model Law thus establishes expenditure ceilings for all candidates in primary and general elections. Assembly ceilings are \$150,000 in the primary and \$225,000 in the general election. Senate ceilings are \$250,000 in the primary and \$350,000 in the general election. These ceilings are high enough to allow for vigorous competition between candidates yet low enough to curtail excessive spending. These ceilings would have required 77% of the competitive candidates running in the 1984 general election to reduce their total spending by 27%.

**Contribution Limits Will Mitigate the Real and Apparent Influence of Large Contributors.** Contribution limits lessen the impact of money on the legislative process and encourage candidates to seek their funding from a larger number of smaller contributors. Legislators are able to solicit contributions without subjecting themselves to the charge that they favor large donors. Prohibitions on transfers and off year contributions stabilize campaigns and allow legislators to focus on legislation. Limited seed money exemptions to contribution limits allow candidates to raise larger initial contributions to start

their campaigns. Contribution limits can improve public confidence in the legislative process.

The Commission's Model Law places a basic limit of \$1,000 on all contributions subject to a few exceptions. Small contributor PACs (receiving all their money in amounts up to \$50) can make \$5,000 contributions. Transfers and off year fundraising are prohibited. Political parties and legislative caucuses can jointly contribute up to \$50,000. Limits are placed on the aggregate amount of money individual candidates can receive from PAC, corporate, business and labor contributors combined. Candidates are allowed to raise \$35,000 of seed money in amounts exempted from contribution limits.

**Limited Matching Funds Will Encourage Candidates to Accept Voluntary Expenditure Ceilings.** The U.S. Supreme Court has ruled that expenditure ceilings cannot be imposed on candidates against their will, but that expenditure ceilings can be required as a condition for their receipt of public funds. The availability of limited matching funds encourages candidates to limit their expenditures. Matching funds also substitute a new source of campaign money for special interest contributions, create incentives for candidates to seek funds in their districts and allow candidates to spend less time raising money.

The Commission's Model Law contains a unique limited matching funds proposal. Candidates will not receive matching funds unless they voluntarily restrict their expenditures *and face competitive opponents who raise, spend or have cash on hand of at least \$35,000*. In-district contributions up to \$250 are encouraged by matching them at a higher ratio (5-to-1) than out-of-district contributions (3-to-1). Surplus matching funds are returned to the state. Expenditures by independent committees and wealthy candidates are discouraged. Voluntary taxpayer checkoffs fund the matching grants. All provisions

are indexed to California cost-of-living increases.

**The Commission Has Addressed the Arguments Opposing Reforms.** Opponents of expenditure ceilings contend they hurt challengers and are difficult to enforce. The Commission, academic experts and experienced politicians believe, however, that the Commission's proposed expenditure ceilings are set high enough to permit strong competition between candidates. Opinion polls show that 81% of California residents support expenditure ceilings. Expenditure ceilings have been successfully adopted in presidential and other states' campaigns.

Opponents of contribution limits contend they hurt challengers, force candidates to increase their fundraising efforts and reward bundlers (who raise contributions from others and transmit them in packages to candidates). The Commission believes, however, that *these arguments do not apply to contribution limits accompanied by other reforms*. Limited matching funds compensate for reduced contributions, expenditure ceilings limit time-consuming fundraising and special provisions in the Commission's proposed Model Law disclose the participation of bundlers. Twenty-three states and the federal government already limit individual contributions. Public opinion polls show strong support for such limitations.

Opponents of limited public financing contend it will support frivolous candidates, favor incumbents, increase campaign costs, force taxpayers to subsidize candidates they oppose, risk governmental meddling in the electoral process and be opposed by a majority of the public. The Commission believes, however, that the Model Law's special matching funds provisions avoid these problems. The Model Law withholds matching funds both from frivolous candidates (who cannot raise the threshold amount) and from candidates whose oppo-

nents are not competitive (who fail to raise or spend at least \$35,000). Limited matching funds and expenditure ceilings enable challengers to become more competitive in selected races and simultaneously restrain incumbents from vastly outspending their opponents. Expenditure ceilings prevent election costs from rising. Voluntary tax checkoffs give taxpayers the freedom to withhold their support from the matching funds account. Governmental oversight is kept to a minimum. And public opinion polls demonstrate acceptance of limited public matching funds when part of a comprehensive package including expenditure ceilings and contribution limits.

**The Costs of the Commission's Proposal Are Modest.** The Commission estimates that its limited matching funds program will cost approximately \$4.6 million a year based on fundraising patterns for candidates in the last three California elections. These net costs are modest and far less expensive than any limited public financing proposal for California yet advanced. (The proposal's costs are less than the \$6.5 million a year California now spends on advertising to promote tourism and business expansion.) The Commission's Model Law minimizes costs by withholding matching funds from candidates who fail to raise threshold amounts and do not face competitive opponents. The proposal also repeals California's political tax deduction which now costs \$2 million a year. To the extent that limited matching funds help sever the connection between large contributors and costly legislation, they will save Californians far more than they cost. A limited matching funds program is an efficient and effective investment in the state's political future.

***The Commission Has Also Designed an Alternative Proposal***

The Commission believes its basic proposal presents the best long-run solution for California's campaign finance prob-

lems. Some political observers question, however, whether the public will support even limited matching funds. The Commission has therefore designed an alternative proposal that some Commission members believe to be a more practical approach. (See one-page chart of Alternative Proposal at the end of this Introduction and Summary, and see Appendix B, "Alternative Proposal," at the end of the full Commission report.)

**Candidates Accepting Expenditure Ceilings Would Qualify In-District Contributors for 100% Tax Credits.**

Contribution limits are imposed on all candidates, as under the Commission's basic proposal. However, candidates accepting expenditure ceilings can authorize their individual in-district contributors to receive state tax credits of 50% for contributions up to \$100 a person or \$200 for a married couple. When this 50% state tax credit is added to the existing 50% federal tax credit, it will give in-district contributors the ability to make virtually "free" contributions. Contributors will also receive 100% tax credits for contributions to political parties and legislative caucuses. (The Commission notes that the recent Administration bill to revise the federal income tax would eliminate the 50% federal tax credit. Passage of this provision would require the state portion of the tax credit to be raised to 100%.)

The federal government, four states and the District of Columbia currently provide tax credits for political contributions. Minnesota and the District of Columbia provide 50% local tax credits which, when added to the existing 50% federal credit, give contributors a 100% return on small donations. Approximately 6.5% of Minnesota's taxpayers and 7% of federal taxpayers take advantage of tax credits. A statewide Commission poll indicates that 35% of California residents would either increase their political contributions or give for the first time if they received a 100% tax credit.

**Candidates Accepting Expenditure Ceilings Would Also Qualify for Larger Variable Party and/or Caucus Contributions up to One-Half of the Candidates' Allowable Expenditures.**

In a system of contribution limits and no limited matching funds, candidates need some alternative source of money to remain competitive. The Commission's alternative proposal would allow the parties and/or caucuses to give Assembly candidates accepting expenditure ceilings up to \$112,500 and Senate candidates accepting expenditure ceilings up to \$175,000. The availability of large party/caucus grants will encourage acceptance of expenditure ceilings and still provide candidates with enough money to communicate their views to the public. Candidates who decline expenditure ceilings will only be allowed to receive \$10,000 party/caucus contributions.

**The Commission Has Considered the Pros and Cons of the Alternative Approach.** Although this alternative is new and untested, the Commission believes that tax credits would encourage candidates to raise money from their own constituents, increase the willingness of smaller contributors to participate in the political process, substitute a new source of money for special interest contributions, strengthen the political parties and allow contributors to target contributions to those candidates they support. On the other hand, tax credits may give a windfall to individuals who already contribute, generate insufficient new funding to encourage candidates to accept expenditure limits voluntarily, fail to compensate for the loss of special interest contributions, encounter opposition from federal and statewide candidates who will not benefit, possibly favor Republicans over Democrats in the initial stages of implementation and be criticized as an indirect form of public financing.

Variable party/caucus contribution limits are a new concept. Under the Commission's proposal a basic limit is first

imposed on all contributions to candidates from parties and/or caucuses. This contribution limit is then raised for candidates accepting expenditure ceilings. These larger party/caucus contributions may provide a large source of money to candidates, are simpler than matching funds, will encourage candidates to accept expenditure ceilings and may strengthen California's political parties. On the other hand, party/caucus contributions are unavailable in the primaries. Variable party/caucus contributions may give political leaders excessive control over disbursement of funds and may not sufficiently reduce the appearance of corruption. Moreover, questions have been raised about their constitutionality which have not been tested in the courts.

**The Costs of Tax Credits Are Also Modest.** Political tax credits might cost the state approximately \$4.7 million a year. This estimate assumes that 7% of California taxpayers would claim tax credits (as in Minnesota and at the federal level), that credits would be available only to in-district contributors, that contributors to political parties would also qualify and that California's current political tax deduction would be repealed. Although tax credits are less efficient than limited matching funds, their \$4.7 million estimated cost is approximately the same as the estimated \$4.6 million cost of the Commission's limited matching funds proposal.

**The Need for Significant Change**

Supreme Court Justice Oliver Wendell Holmes once commented that "judicial reform was no sport for the short-winded." The same might be said of campaign finance reform. Numerous legislative bills have been introduced in the past ten years, but none has been accepted. The reasons are found in the intricate politics of campaign finance reform.

Incumbent legislators are openly reluctant to change a fundraising system they have mastered. Money is the lifeblood of politics and members of each political

party fear that even slight changes in the fundraising process may give their opponents an advantage. Reforms also involve long-range uncertainties. Even the proponents of change fear loopholes or unanticipated consequences. Many legislators want to preserve the rules of a fundraising game they have won and hope to win again.

Campaign finance reforms have been offered by legislators and various groups in the past. Some have been piecemeal; others have been regarded as benefiting one party or the other. For example, contribution limits and bans on transfers are opposed by some Democrats. Public financing is opposed by some Republicans. Prohibitions on off year fundraising are opposed by many incumbents (both Democrats and Republicans). Expenditure ceilings are opposed by candidates who hope to outspend their opponents.

The Commission believes that partial

solutions such as bans on transfers or limits on contributions will be ineffective or generate stiff political opposition. Only a comprehensive package of measures can fully address California's wide range of campaign finance problems. The Commission has thus designed its Model Law as a package of carefully balanced solutions. *The component parts are interrelated and cannot be adopted separately or with substantial modifications without seriously changing the Model Law's overall effect.*

Political deadlock over campaign finance reform will perpetuate a system which is rapidly growing worse. If unchecked, current campaign finance practices may seriously damage political institutions in this state. The Commission hopes its report and proposed Model Law will contribute to the process of public education and debate and provide the stimulus which can lead to meaningful and constructive change.



**THE COMMISSION'S  
PRINCIPAL  
CAMPAIGN FINANCE PROPOSAL  
FOR CALIFORNIA STATE LEGISLATIVE ELECTIONS**

Expenditure Limitations, Contribution Limitations and Limited Matching Funds

**I. Expenditure Limitations**

	<u>Primary</u>	<u>General</u>	<u>Total</u>
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 2-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 candidate	\$20,000
Senate candidate	\$30,000

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

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:

	<u>Primary</u>	<u>General</u>	<u>Total</u>
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 2-year period from:

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

Improved identification of PAC sponsoring organizations

FPPC 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

# THE COMMISSION'S ALTERNATIVE CAMPAIGN FINANCE PROPOSAL FOR CALIFORNIA STATE LEGISLATIVE ELECTIONS

## Contribution Limitations, Expenditure Limitations and Tax Credits

### I. 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

Legislative Caucus and/or Party (general election only). (Will be increased for those candidates accepting expenditure limitations.) \$10,000

Transfers Prohibited

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

### II. Expenditure Limitations

	<u>Primary</u>	<u>General</u>	<u>Total</u>
Assembly	\$150,000	\$225,000	\$375,000
Senate	250,000	350,000	600,000

### III. Incentives for Accepting Expenditure Limits

Tax credit for contributions of \$100 or less to parties, caucuses and in-district legislative candidates: state credit is 50% plus federal credit of 50% for \$100 contribution.

Disincentives for wealthy candidates, those who exceed expenditure limitations, and independent expenditure committees. (Unlimited party/caucus money and no expenditure limitations for opponents.)

Maximum contributions from party/caucus:

	<u>General Election</u>
Assembly	\$112,500
Senate	175,000

### IV. Miscellaneous

Limitations on all 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

FPPC administration and enforcement

Cost of living adjustments





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



## CHAPTER 1

# The Problem of Skyrocketing Costs

*[T]horoughly institutionalized corruption... permeates the current system of politics and government in this state because of the skyrocketing costs of political campaigns.*

— Vic Pollard, *Gannett News Service*<sup>1</sup>

**M**oney is the lifeblood of modern political campaigns. Contributions pay for the mailings, newspaper ads, radio and television commercials, billboards, leaflets and campaign events that familiarize voters with candidates and their positions. Without money, candidates would lose their ability to speak to the public through the communications media of the twentieth century.

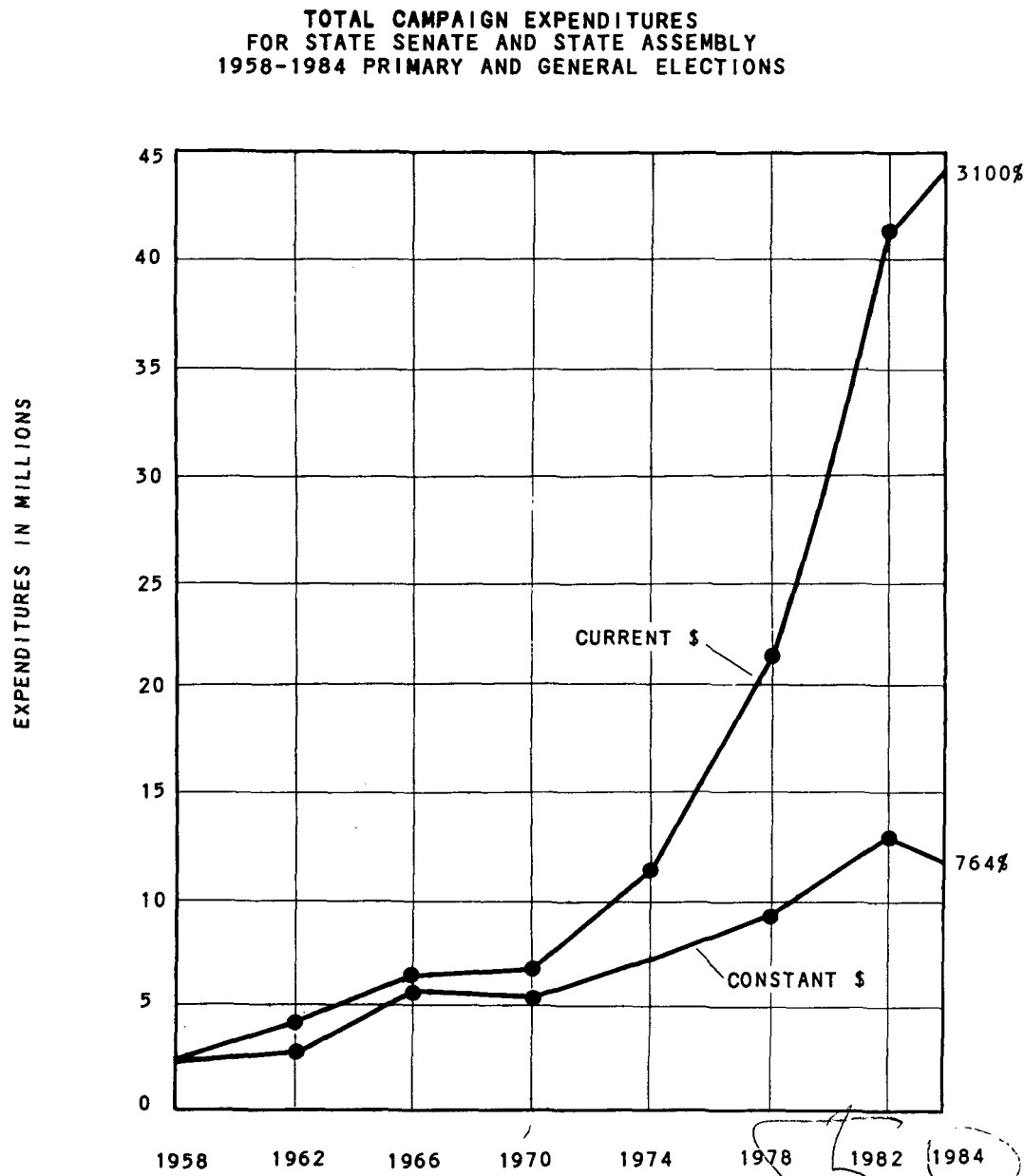
In many California campaigns, however, there can be such a thing as too much money. California now has the most expensive state legislative races in the nation and each election sees higher and higher spending. Rising campaign costs in the State Assembly and Senate are placing increasing pressures on candidates to raise larger and larger amounts of money. The resulting distortions in the state's legislative and electoral processes are raising serious problems for all Californians.

### **A. Costs of Campaigning for the California Legislature Are Escalating Dramatically**

During the 1982 California election, legislative candidates spent over \$43 million, candidates for Governor and all other statewide offices spent nearly \$41 million, committees supporting or opposing statewide ballot measures spent \$36 million and congressional candidates spent \$31 million.<sup>2</sup> Tom Bradley and George Deukmejian alone spent more than \$18 million on the Governor's race, a 120% jump over the \$8.2 million spent by gubernatorial candidates Jerry Brown and Evelle Younger four years earlier. The 1982 Bradley-Deukmejian gubernatorial race cost more than the 1952 presidential contest between Dwight Eisenhower and Adlai Stevenson.

Over the past 26 years, however, the greatest campaign cost increases in California have occurred in state legislative campaigns. In 1958 all races for the State Assembly and Senate combined cost \$1.4 million. In 1984 these same legislative races cost \$44.8 million—an increase of more than 3,000%. (See Table 1.1.) This rate of growth has far outstripped that of campaigns for Governor. (See Table 1.2.)

Table 1.1



Source: FPPC Study, "Campaign Costs: How Much Have They Increased and Why?" for 1958-1978 elections, and California Commission on Campaign Financing data analysis for 1980-1984 elections

Increases in campaign spending are also apparent when calculated per vote cast (thus adjusting for population increases) and discounted for inflation. According to such calculations, candidates for the State Senate in 1958 spent an average of 9¢ per vote while Assembly candidates spent 10¢ per vote. By 1984, after discounting for inflation, these expenditures had risen to 46¢ per vote for Senate aspirants and 51¢ per vote for Assembly candidates. (See Table 1.3.)

Table 1.2

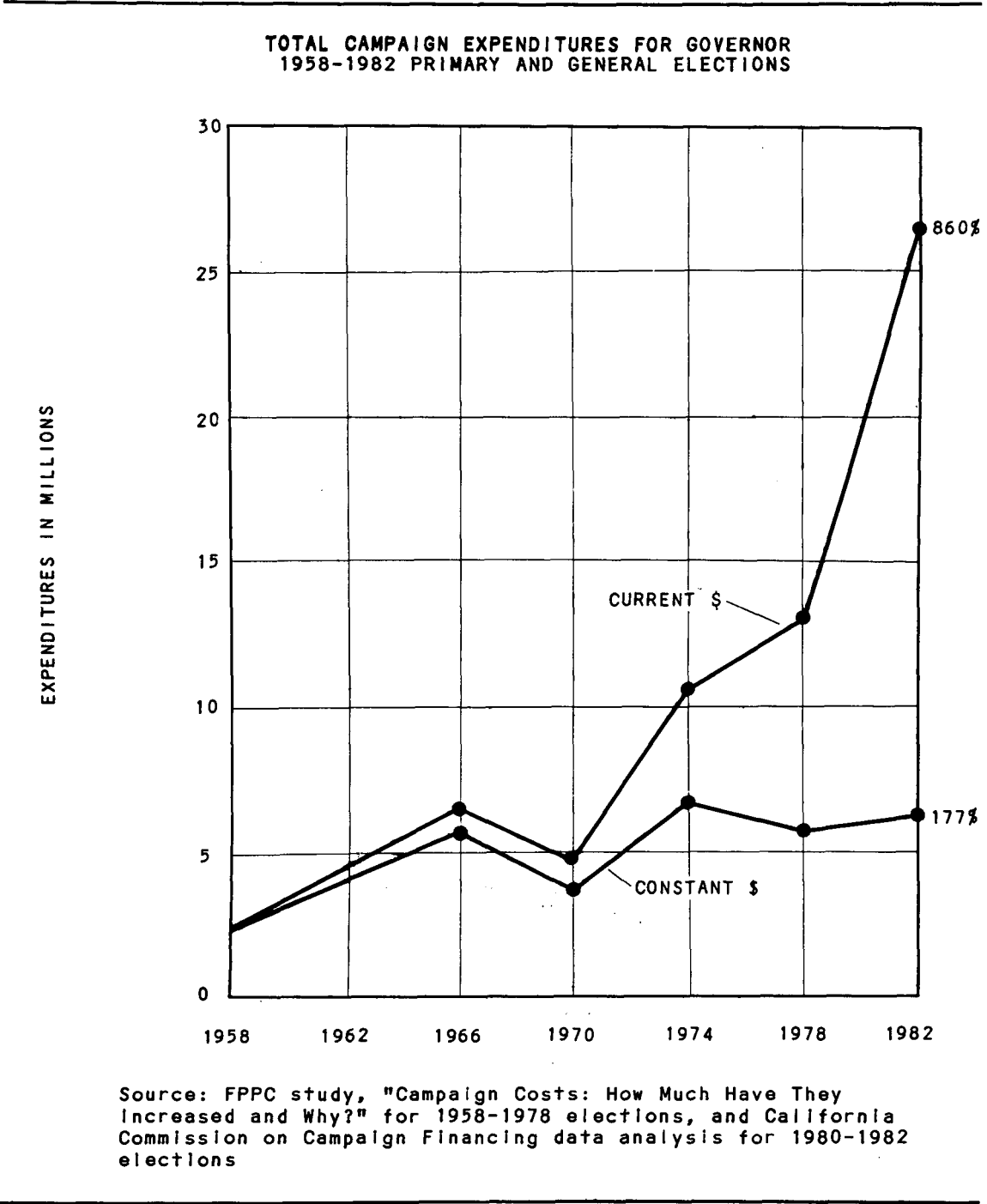


Table 1.3

COST PER VOTE				
State Legislature 1958-1984 General Elections				
Year	Senate		Assembly	
	Current Dollars	Constant Dollars	Current Dollars	Constant Dollars
1958	\$ .09	\$ .09	\$ .10	\$ .10
1960	.08	.07	.14	.13
1962	.10	.10	.17	.16
1964	.10	.09	.15	.14
1966	.25	.22	.29	.25
1968	.18	.15	.28	.23
1970	.35	.26	.35	.26
1972	.28	.20	.38	.26
1974	.42	.25	.72	.43
1976	.66	.33	.69	.35
1978	.79	.35	1.07	.47
1980	.97	.33	1.82	.62
1982	1.70	.49	2.24	.65
1984	1.70	.46	1.87	.51

The average cost per vote dipped in 1984 because there were only four open seat races out of 100 where incumbents were not running for reelection--the lowest number since 1968. Open seat contests are highly competitive and drive up expenditures. In 1982, by contrast, there were 28 open seat races. Moreover, the 1984 dip was caused by a 35% drop in non-incumbent spending. Incumbents increased their spending by an average 22%.

Source: FPPC Report, "Campaign Costs: How Much Have They Increased and Why?" January, 1980, for years 1958-1978, and California Commission on Campaign Financing data analysis for years 1980-1984

These average figures understate the cost escalation in many races since incumbents from safe districts can often win their campaigns without spending much money. In *competitive* races, however, the typical Assembly candidate spent \$4.56 per vote in the 1984 general election. (See Table 1.4.) Adjusting these figures for inflation to 1958 levels, the median competitive Assembly candidate in 1984 spent \$1.23 per vote—or 12 times more than the average candidate spent in 1958.

Table 1.4(a)

COST PER VOTE				
1982 General Election Competitive Assembly Campaigns				
Assembly District	Name*	Expenditures	Votes Received	Cost Per Vote
2	Hauser-D	\$ 243,904	60,610	\$ 4.02
	Partain-R	181,206	54,945	3.30
5	Moorhead-D	256,983	65,522	3.92
	Grenz-R	197,196	48,810	4.04
9	Filante-R	230,359	67,619	3.41
	Chignell-D	153,489	55,035	2.79
14	Kiehs-D	84,796	51,728	1.64
	Duncan-R	109,083	41,870	2.61
25	Areias-D	168,965	48,949	3.45
	Norris-R	144,073	25,677	5.61
27	Condit-D	325,706	52,606	6.19
	Nyegaard-R	134,049	26,064	5.14
31	Bronzan-D	288,150	51,815	5.56
	Slinkard-R	132,773	32,443	4.09
33	Rogers-R	386,198	39,617	9.75
	Means-D	432,600	37,769	11.45
35	O'Connell-D	201,780	51,870	3.89
	Firestone-R	330,043	50,680	6.51
37	Wright-R	265,792	55,849	4.76
	Stine-D	107,195	38,574	2.78
38	LaFollette-R	278,726	58,558	4.76
	Afriat-D	210,190	45,866	4.58
44	Hayden-D	1,310,268	65,435	20.02
	Hawkins-R	778,352	54,637	14.25
65	Bader-R	204,064	37,147	5.49
	Cramer-D	193,072	33,421	5.78
66	Gogglin-D	240,556	41,289	5.83
	Miller-R	87,290	38,741	2.25
68	Clute-D	196,751	44,945	4.38
	Stanton-R	229,517	38,659	5.94
71	Allen-R	212,470	48,103	4.42
	Wray-D	159,882	41,734	3.83
78	Killea-D	289,840	60,494	4.79
	Baker-R	158,813	41,041	3.87
80	Peace-D	232,672	36,709	6.34
	Perry-R	209,233	32,954	6.35
MEDIAN COST PER VOTE - \$4.67				
*Winner listed first.				
The campaigns listed in this table were designated as competitive by the FPPC. The FPPC defines a competitive campaign as one where both candidates had a reasonable chance to win.				
Source: FPPC Report on the 1982 General Election; Secretary of State Statement of Vote for 1982 General Election				



Table 1.4(b)

COST PER VOTE				
1984 General Election Competitive Assembly Campaigns				
Assembly District	Name*	Expenditures	Votes Received	Cost Per Vote
2	Hauser-D	\$ 331,225	73,496	\$ 4.51
	Walsh	303,054	66,698	4.54
5	Moorhead-D	257,619	70,450	3.66
	Leslie-R	268,734	69,071	3.89
8	Sebastiani-R	283,259	76,167	3.72
	Jadiker-D	200,523	70,219	2.86
26	Johnston-D	403,255	64,486	6.25
	Wilhoit-R	236,318	48,393	4.88
33	Rogers-R	354,612	59,302	5.98
	Tackett-D	191,515	39,637	4.83
35	O'Connell-D	250,599	77,470	3.23
	Carpenter-R	281,647	50,117	5.62
39	Katz-D	257,319	48,562	5.30
	Thoreson-R	115,258	41,208	2.80
63	Grisham-R	242,670	53,199	4.56
	Xitco-D	241,249	43,004	4.98
66	Eaves-D	167,215	52,588	3.18
	Henley-R	239,893	39,935	6.01
68	Clute-D	284,982	59,504	4.79
	Olivarria-R	204,214	53,786	3.80
72	Robinson-D	636,456	37,112	17.15
	Longshore-R	139,821	36,856	3.80
MEDIAN COST PER VOTE - \$4.56				
*Winner listed first.				
The campaigns listed in this table were designated as competitive by the FPPC. The FPPC defines a competitive campaign as one where both candidates had a reasonable chance to win.				
Source: FPPC Report on the 1984 General Election; Secretary of State Statement of Vote for 1984 General Election				

The recent sharp increases in the costs of many legislative races are also significant. From 1978 to 1982 alone, the costs of campaigning for a seat in the California Legislature doubled—from \$20.2 million to more than \$43 million—even though California's registered voters only increased by 12%. In competitive races the cost increases were higher. In 1978 the typical Assembly candidate in a competitive general election campaign spent \$101,000. In 1982 that candidate spent \$221,000. In 1984 that same competitive Assembly candidate spent \$257,000—up two-and-a-half times in six years.

Spending in specific districts illustrates this trend. In 1982, for example, Assemblyman Dan Hauser (D-Eureka) won a narrow general election victory in a highly competitive district, spending \$244,000. Two years later Hauser won the 1984 general election by an equally narrow margin, spending \$331,000.

In another 1982 general election race, Assemblyman Richard Robinson (D-Santa Ana) spent \$235,000 against a Republican opponent who spent \$28,000. In the 1984 general election, Robinson spent \$636,000 against an opponent who spent \$140,000.

In 1982 dollar escalation had produced the first instances in the United States of legislative races (primary and general) costing a total of \$1 million or more:

— Hayden & Hawkins (44th A.D.)	\$3.0 million
— Hart & Imbrecht (18th S.D.)	\$1.4 million
— Doolittle & Greene (6th S.D.)	\$1.2 million
— Torres & Garcia (24th S.D.)	\$1.2 million
— Robbins & Michael (20th S.D.)	\$1.0 million

Tom Hayden alone spent more (\$2 million) running for his Assembly seat than did all California legislative candidates in 1958 combined. By 1984 million dollar-plus races had become a fixture in California politics:

— Morgan & Gregorio (11th S.D.)	\$1.7 million
— Doolittle & Johnson (1st S.D.)	\$1.6 million
— Marks & Belli (3rd S.D.)	\$1.4 million
— Robinson & Longshore (72nd A.D.)	\$1.1 million

California is thus witnessing dramatic growth in campaign spending for legislative office. If uncontrolled, the factors that generate this growth will continue to produce further increases in future elections. Commission projections indicate that *by 1990 the average competitive general election Assembly campaign may cost over \$1 million—or at least \$500,000 for every candidate.*

### ***1. Arguments in Defense of High Campaign Spending***

Some political observers argue that too little is actually spent on many California political campaigns. First, they contend that the essential question is not how much money is spent but whether enough is spent to inform voters adequately. Candidates must spend significant sums to establish name recognition, describe their positions on issues and rebut their opponents' claims. New candidates in particular must reach a high threshold of spending merely to gain visibility with voters. As candidates spend more and more, voters may acquire a greater understanding of campaign issues and be able to cast their ballots in a more enlightened manner. Because many voters are ignorant of political issues, some observers feel spending is actually too low.

Second, some observers suggest that California legislators have to spend far more money to reach their constituents than do legislators in other states. Campaign spending is arguably high because California has the largest population of any state (24.7 million) and its legislators represent the most populous districts in the country. (See Table 1.5.) California's 80 Assembly districts each contain approximately 309,000 people. New York, the second largest state, has Assembly districts slightly over one-third the size of California's—containing an average of 117,700 people. Vermont and New Hampshire have Assembly districts containing approximately 3,400 and 2,400 voters, respectively. California would have to create 210 new Assembly districts to match New York's district populations, 7,272 to match Vermont's and 10,302 to match New Hampshire's.

Third, some argue that California candidates spend far less money on their campaigns than private companies spend to promote their products, and that California campaigns are relatively cheap by commercial standards. Proctor & Gamble, Sears Roebuck, General Motors and Philip Morris, for example, each spent more money on advertising apportioned to California than all 1982 campaigns spent to elect the entire California Legislature.<sup>3</sup> Compared to private sector advertising, therefore, California's campaign costs seem small.

### ***2. Arguments Against High Campaign Spending***

Those who rebut these arguments concede that too little is spent to educate voters in some California campaigns, but contend that this low spending has been caused by a campaign finance system which allows incumbents to use their fundraising advantage to deter

competitors and by reapportionment (which has carved out non-competitive safe districts). They acknowledge that California’s districts are larger than in other states, but they point out that California’s campaign expenditures are higher per vote than elsewhere.

More significantly, many politicians, campaign consultants and other experts believe the destructive consequences of California’s high campaign spending have overwhelmed any resulting benefits from increased voter awareness in a few races. (See full discussion in Chapter 7, “Negative Consequences.”) Growing pressures to raise huge sums of money discourage qualified new candidates from running for office. Candidates who do run spend too much time raising money and not enough discussing vital issues. Those with personal wealth acquire a substantial advantage over those who must raise money from outside sources. Incumbents with superior fundraising powers gain enormous leverage over challengers. Candidates and legislators are tempted to exchange their legislative consciences for campaign contributions. High campaign costs in California thus undermine the integrity of the state’s legislation and the quality of its elections.

Table 1.5

LEGISLATIVE DISTRICT POPULATION SIZES ACROSS THE COUNTRY						
State	No. of Lower House Dists.	Pop. Per District	No. of Senate Dists.	Pop. Per District	No. of Cal. Dists. Needed to Match this Pop./District	
					Lower House	Senate
California	80	309,000	40	618,100	80	40
Largest States						
New York	150	117,700	61	289,500	210	85
Texas	150	101,900	31	492,900	243	50
Pennsylvania	203	58,000	50	237,300	426	104
Illinois	118	97,000	59	194,000	255	127
Smallest States						
Alaska	40	10,900	20	21,900	2,268	1,128
Wyoming	64	7,800	30	16,700	3,170	1,480
Vermont	150	3,400	30	17,200	7,272	1,437
Delaware	41	14,700	21	28,700	1,682	861
Other Selected States						
Georgia	180	31,300	56	100,700	790	246
Massachusetts	160	36,100	40	144,500	685	171
Nebraska	49	32,400	--	--	763	--
New Hampshire	400	2,400	24	39,600	10,302	624
Source: California Commission on Campaign Financing data analysis						

High campaign costs can also undermine a basic tenet of democracy. In principle, voters are offered a choice between a number of candidates qualified to transact the state's legislative business. In practice, however, California voters are increasingly offered a choice between candidates whose threshold qualification is the ability to raise money. This emerging phenomenon is seriously threatening the vitality of California's system of government.

**B. Incumbents Are Widening Their Fundraising Advantage over Challengers**

Incumbents have widespread name recognition and superior fundraising power. Challengers, in contrast, often have difficulty raising enough money to bring their candidacies to the attention of the average voter. Although the median Assembly candidate spent \$87,000 in 1984 (a nearly four-fold increase from \$22,000 in 1976), these median figures do not reveal the startling expenditure differentials that exist between incumbents and challengers. (See Table 1.6.)

In 1976 the median Assembly incumbent spent about \$25,000 in the general election, while the median challenger spent \$9,400, a differential ratio of nearly 3-to-1. This ratio increased to 5-to-1 in 1978, 8-to-1 in 1980, 9-to-1 in 1982 and 14-to-1 in 1984. While incumbents' expenditures jumped four-fold from \$25,000 to \$115,000, challengers' expenditures actually decreased — from \$9,400 in 1976 to \$8,500 in 1984, the lowest level since the FPPC began compiling its data.

Table 1.6

CALIFORNIA STATE ASSEMBLY MAJOR PARTY CANDIDATES COMPARISON OF 1976, 1978, 1980, 1982 AND 1984 GENERAL ELECTIONS MEDIAN EXPENDITURES					
Type of Candidate	1976	1978	1980	1982	1984
All	\$ 22,064	\$ 42,861	\$ 68,996	\$ 78,766	\$ 87,048
Democrats	25,540	42,434	68,531	80,959	88,195
Republicans	16,935	42,861	68,996	61,274	82,924
Winners	36,582	53,415	96,248	117,924	118,306
Losers	12,643	13,070	18,229	26,760	8,406
Incumbents	23,135	47,379	84,956	94,122	115,410
Non-Incumbent					
Challengers	9,421	10,359	10,108	10,705	8,475
Open	66,306	45,013	163,377	154,222	202,253
Competitive Candidates	70,571	100,520	166,443	220,994	253,959
Non-Competitive Candidates	12,643	30,192	34,709	53,877	74,619

Source: FPPC Report on the 1984 General Election

Assembly figures for the recent 1984 primary election are even more striking. Incumbents' median primary expenditures rose to \$122,000 from \$94,000 in 1982. Non-incumbents, on the other hand, virtually dropped out of sight. They spent practically nothing in the 1984 primary — \$1,165. (The lowest before 1984 was \$5,190 in 1976.) The highest amount spent by a non-incumbent challenger (\$114,000) was \$8,000 less than spending by the *average* incumbent. Challengers were thus outspent by a 105-to-1 ratio.

Figures for the State Senate, with only twenty incumbents up for reelection each year, demonstrate the same trend. In the 1976 general election, the median incumbent State Senator spent \$86,000 while the median challenger spent \$26,000—a 3-to-1 ratio. In 1984, the median Senate incumbent spent \$242,000 while the median challenger spent only \$3,800—a 63-to-1 ratio.

The fundraising disparities are more pronounced in Senate primary elections. In the 1976 primary elections, the median incumbent spent \$36,000 while the median challenger spent \$8,600. In 1984 the median incumbent spent \$205,000 while median expenditures for non-incumbents dropped to \$899, the lowest sum in the FPPC's records. Challengers for the State Senate were outspent by a 229-to-1 ratio.

During the past ten years, California legislative incumbents have won an average 95.8% of all their primary and general election races. In 1984 incumbents won an average 98% of their elections. (See Table 1.7.) Fundraising superiority is a clear advantage incumbents have over challengers.

Incumbents raise far more funds than challengers for several basic reasons. First, incumbents have well-established name recognition with voters and are in a better position to act on legislation at the request of major contributors. Campaign contributors seeking to support winners traditionally place their bets on incumbents.

Second, reapportionment of districts has given many incumbents relatively safe seats. Challengers have great difficulty raising money when they enter what appear to be hopeless contests.

Third, incumbents are able to raise huge sums in the off-election year, while challengers raise virtually nothing. (See Chapter 6, "Off Year Fundraising.") This off year advantage gives incumbents a major fundraising edge.

Fourth, although incumbents in safe districts can often coast to victory without waging active campaigns, they frequently raise and spend large sums just to deter future opponents from running against them. State Senator Alan Robbins (D-San Fernando), for example, recently announced a fundraising goal of "having \$500,000 in the bank by the beginning of 1986." He commented, "While that may seem like a lot of money to have for the start of a campaign, *I want to discourage any possible serious would-be challenger, either in the primary or the general election.*"<sup>4</sup>

Fifth, incumbents feel compelled to spend considerable sums of campaign money on constituent mailings, trips to their districts and non-election related payments for office staff. Incumbents thus have a strong incentive to raise and spend greater amounts of money than challengers.

## C. Competitive Races Are Diminishing in Number

Although total legislative spending increased between 1980 and 1984, this spending was concentrated in fewer and fewer competitive races. (For purposes of this discussion, this Commission defines a "competitive" race as one in which at least two candidates each spent \$35,000 or more.) Competitive State Senate primary elections dropped from 10% in 1980 to 5% in 1984. Competitive Assembly primaries dropped from 21% to 6%. (See Table 1.8.)

These figures highlight an important aspect of California campaign expenditures. In a handful of very competitive races, campaign spending is extremely high. Like political “black holes,” these races suck in time, talent and money at an accelerating rate. In perhaps 80-90% of the remaining races, however, relatively little money is spent *by any challenger*. In these races the incumbent is almost always victorious — either by spending very little and coasting to victory, or by spending large amounts to deter future competition.

Differences between competitive and non-competitive campaigns are striking. In 1982 the median Assembly candidate spent only \$79,000 (an average figure for both competitive and non-competitive candidates) and some candidates spent far less. In the general election, for example, incumbent Assemblyman Tom Bates (D-Oakland) won his race by spending only \$32,000.

Table 1.7

INCUMBENCY REELECTION: CALIFORNIA STATE LEGISLATURE							
Primary Election							
	1974	1976	1978	1980	1982	1984	Ave.
Assembly							
Inc. Losers	4	0	2	2	1	1	
% of Inc. Winners	94%	100%	97%	97%	98%	99%	97.5%
Senate							
Inc. Losers	0	0	1	0	1	0	
% of Inc. Winners	100%	100%	94%	100%	93%	100%	97.9%
General Election							
Assembly							
Inc. Losers	4	2	6	4	2	0	
% of Inc. Winners	93%	97%	91%	94%	97%	100%	95.3%
Senate							
Inc. Losers	2	3	2	1	2	1	
% of Inc. Winners	88%	79%	87%	94%	86%	94%	88.3%
TEN YEAR AVERAGES:							
--Incumbents winning in primary elections:				97.6%			
--Incumbents winning in general elections:				93.8%			
--Incumbents winning in both elections:				95.8%			
Source: California Commission on Campaign Financing data analysis of Secretary of State's Statements of Vote							



Table 1.8

NUMBER OF COMPETITIVE CALIFORNIA STATE LEGISLATIVE RACES*			
	1980	1982	1984
<b>Assembly (80 Seats)</b>			
Primary	17 (21%)	16 (20%)	5 (6%)
General	30 (38%)	33 (41%)	17 (21%)
<b>Senate (20 Seats)</b>			
Primary	2 (10%)	5 (25%)	1 (5%)
General	7 (35%)	11 (55%)	7 (35%)
*Competitive races are defined as races in which at least two candidates each spent over \$35,000.			
Source: California Commission on Campaign Financing data analysis			

By contrast, the median *competitive* Assembly candidate in 1982, defined by the FPFC as a candidate with a reasonable chance of victory, spent \$221,000, and the median competitive Senate candidate spent \$351,000. Some candidates far exceeded this median. In the general election, for example, Republican Bill Hawkins spent \$778,000 only to lose a hotly contested race for an open West Los Angeles Assembly seat. (His opponent Tom Hayden spent even more.) In 1984 the median competitive Assembly candidate spent \$254,000 while the median competitive Senate candidate spent \$543,000.

A key factor affecting the competitiveness of elections is distribution of party strength throughout a particular district. In a district with fairly even Democratic and Republican strength, campaigns can be highly competitive. Candidates have to spend large amounts to influence the crucial swing voter and tip the electoral result. As a result of reapportionment, however, voter registration in most districts gives either a Democrat or a Republican a relatively safe seat. In such districts the incumbent can generally coast to victory without spending much. Despite this, safe incumbents often raise large sums — as insurance against potential competition, or for transfers to other candidates.

## **D. Election Expenditures Are Rising Primarily Due to Increased Use of Direct Mail, Not to Increased Costs**

Campaign expenditures are rising in competitive races because candidates are deciding to spend more money—particularly on direct mail. Indeed, the history of modern legislative campaigns is essentially the story of direct mail and its growing importance.

### ***1. Direct Mail and the Birth of the Modern Campaign***

In the early 1950s campaign costs were relatively low. A typical Assembly candidate might have spent between \$2,000 to \$10,000 on his campaign, depending on the size of the district and whether the candidate was an incumbent or a challenger.<sup>5</sup> By the late 1960s campaign costs had risen. However, according to one veteran campaign manager, most competitive Assembly campaigns still cost only \$45,000 to \$50,000.

These early legislative campaigns were less aggressive or professional than today's. Candidates would typically put up billboards and signs, send one or two mailers to each voter and operate a telephone bank allowing campaign workers to contact voters directly. Campaign workers were often unpaid volunteers. Office space and other supplies were occasionally donated. Radio and television were infrequently used in Assembly campaigns.

In 1972 West Los Angeles Democrat Howard Berman's campaign for the Assembly revolutionized legislative campaigns. Berman successfully challenged incumbent Republican Charles Conrad, winning with over 58% of the vote. His victory was particularly notable because the same voters were simultaneously favoring Nixon over McGovern by 54% to 44% and rejecting school busing by a 63% to 37% margin.

Berman's campaign, engineered by his younger brother Michael, made extensive use of relatively new direct mail techniques. Berman entered into a computer detailed information taken from voter registration forms on every voter in the district. Voters could thus be classified by sex, age, place of birth, occupation and other characteristics. By dividing the district's voters into smaller and more specialized groups, Berman no longer had to write campaign messages in general terms. Instead, he could address the concerns of specific groups.

This direct mail program allowed strategist Michael Berman to bypass those voters felt to be unresponsive to his brother's appeal. It also allowed Berman to keep the number of appeals to friendly voters to a modest (and inexpensive) level. Campaign resources were freed to focus on "swing voters," some of whom received as many as 40 different pieces of mail from the Berman campaign. These sophisticated campaign techniques came with a price—Berman spent in excess of \$100,000, probably a record at the time.

One anecdote illustrates the refinement of Michael Berman's technique. As part of his brother's campaign, Berman designed an endorsement letter to be sent from Assembly Speaker Bob Moretti to all Italians in his brother's district. This came to be known as the "Italian letter." Shortly after the letters were mailed, Deputy Secretary of State Tom Quinn called to ask why the letter had been mailed to the Quinn household. Berman reacted with shock, thinking perhaps that all the Italian letters had mistakenly been sent to Irish households. He quickly interrogated Quinn about his family's history and was relieved to learn that Quinn's wife had been born in Rome. Berman then explained: "We checked each voter's birthplace on his or her voter registration statement and sent the Italian letter to all voters born in Italy."

The dramatic success of Michael Berman's direct mail techniques demonstrated that targeted mail could be "a devastating tool of political persuasion," according to one veteran Republican campaign manager. Another experienced campaign manager has commented, "Whether it's arms for Israel or nuclear weapons control, there's something that is the cutting issue for each household. If you know what that issue is, you'll win."<sup>6</sup>

Candidates across California began to concentrate their efforts on extensive direct mail, causing campaign costs to rise sharply. While few strategists have matched the high technology sophistication of Berman's operation, all have substantially increased the quantity of mail they send. From 1968 through 1982, direct mail has been the largest and fastest growing portion of overall spending. (See Table 1.9.)

## 2. High Technology Available Today

Today computers can store at least 160 separate bits of information on each voter. Basic information on each voter, such as address, precinct number, party registration and sometimes birthplace and occupation, is available for purchase on computer tapes from county registrars and the Secretary of State. Campaigns can also obtain information from other sources such as census tracts, voter registration forms and county tax records. Information learned about the voter from precinct walking or telephone bank operations may be added to the data bank.

Once campaigns have assembled these data they can program their computers to analyze them in useful ways. This can be as simple as identifying family units at one address (so that only one letter need be sent to the family) or as sophisticated as searching for young males with different last names living at one address in a predominantly gay neighborhood (for a gay rights message).<sup>7</sup>

Table 1.9

CAMPAIGN BUDGET ALLOCATIONS FOR COMPETITIVE ASSEMBLY CANDIDATES			
General Election			
	Amounts		
	1968	1978	1982
Direct Mail	\$ 15,600	\$ 52,800	\$134,800
Broadcast Ads	2,700	8,800	15,500
Newspaper Ads	3,800	3,200	2,200
Outdoor Ads	4,100	4,700	8,800
Operations/Miscellaneous	9,800	31,500	59,700
TOTAL	\$ 36,000	\$101,000	\$221,000
	Percentages		
Direct Mail	43%	52%	61%
Broadcast Ads	8%	9%	7%
Newspaper Ads	10%	3%	1%
Outdoor Ads	11%	5%	4%
Operations/Miscellaneous	27%	31%	27%
Source for 1968 and 1978: FPPC Report on Campaign Costs Source for 1982: California Commission on Campaign Financing data analysis			

Computer-assisted direct mail allows a candidate to send highly targeted, almost personalized messages to very narrow groups. "I've been involved in campaigns in every one of the 50 states, and there is no place else in the world as sophisticated as the Westside [of Los Angeles]," reports political consultant Bill Butcher.<sup>8</sup> But this level of sophistication, while expensive and labor intensive, comes with no guarantee. "Most consultants agree that direct mail is not a science. A great deal depends on the creativity of the specific consultant. Consultants have their own trade secrets, but they also copy each other's ideas," says *Los Angeles Times* staff writer Lyndon Stambler.<sup>9</sup>

### **3. Rising Direct Mail Expenditures**

From 1968 to 1982 the average competitive legislative campaign increased its direct mail expenditures by 763%—from \$15,600 to \$134,800. Between 1978 and 1982 alone, direct mail spending increased 155%. These increases are a result of candidates deciding to spend more total money and a larger percentage of their campaign budgets on direct mail.

Today 61% of a modern day competitive campaign's budget might typically be spent on direct mail. Most campaigns currently emphasize quantity rather than sophistication. One campaign manager has said, only half jokingly, that the ideal legislative campaign would spend 100% of its funds on direct mail.

Increased spending is not caused by inflation or increased population. Only a small portion of increased spending may be attributed to the overall growth in the number of registered voters in California (which was only 12% between 1978 and 1982).

Postage rates were also not a factor in rising direct mail expenditures during the 1978 to 1982 period. While the basic bulk mailing rate increased from 8.4¢ to 10.9¢ per piece, a discount for carrier route presort was introduced in 1979; this reduced the effective bulk rate in 1982 to 7.9¢. In 1985 this rate was 8.3¢. Even though some added costs are associated with presorting by carrier route, the costs of postage actually declined during this period. Moreover, mail sent directly to voters from the political parties (which may urge the election of an individual candidate) now qualifies for a subsidized non-profit rate. When carrier route presorted, such mail could be delivered in the fall of 1982 at just 3¢ per piece. In 1985 this rate was 3.3¢.

The dominant factor in the rise of direct mail costs has been the higher volume of mail that candidates now send. Higher printing costs add somewhat to this increase as do the fees of professional consultants needed to advise candidates on text, design and targeting. Direct mail is sent today with higher levels of sophistication than ever before.

Direct mail costs vary substantially according to the number of registered voters the candidate needs to reach. While Assembly districts in California are approximately equal in population (about 309,000), the number of registered voters per Assembly district varies widely—from 54,000 to 196,000. It is considerably cheaper to send mailers to districts with fewer registered voters.

In primary elections, candidates need only to reach voters registered in one party. Yet the number of voters registered within each major party also fluctuates widely among California districts. Registered Republicans in Assembly districts vary from 6,200 to 104,000, while registered Democrats range from 40,000 to 123,000. A Republican candidate in a heavily Democratic district might spend relatively little to reach Republican voters in the primary, yet be required to increase direct mail costs substantially if he or she tries to reach all the district's voters in the general election.

Campaigns sometimes reduce the size of their mailing lists by sending "purge" mailings. This mailer looks like any other campaign mailer but is sent out early in the campaign. The envelope bears the legend, "RETURN POSTAGE GUARANTEED." The postal service returns

all undeliverable mailers and the campaign then deletes these households from its mailing list. Campaigns thus avoid wasting money sending mailers to people who have died or moved away.

A typical single mailer in a competitive race today might cost 20¢. Sending 100,000 mailers to all voting households in a typical district might cost \$20,000. This figure reflects lower costs available to professional consultants who can order campaign supplies in bulk quantities for several campaigns.

Many factors can vary these typical figures. Although mailer costs include typesetting, graphic design, photography, printing, computer address labels and postage, computer processing must be done before address labels can be produced. Adding supplemental computer data from other sources can raise costs substantially. A computer-printed letter is more costly but may be made to look more personal and allows for variations in the text. A mailer which contains a giveaway item—for example, a potholder with a special envelope to hold it—will more than double the 20¢ basic mailer cost, but it increases the likelihood that the envelope will actually be opened and offers an opportunity to keep the candidate's name before the voter.

## **E. Broadcast Advertising Is Effective but Not Cost-Efficient for Most Legislative Campaigns**

The biggest variable in shaping a modern competitive campaign budget for some districts is the availability of broadcast advertising. Most campaign managers like to use television and radio whenever possible. Many feel that television is the most effective way a candidate can communicate with the voters. Radio and television, however, are too expensive or economically inefficient for most legislative campaigns. About two-thirds of the state's voters live in the Los Angeles and Bay Area media markets. The coverage of a radio or television station in these markets is much greater than the geographic size of an Assembly or even a State Senate district. Candidates who buy expensive advertising on Los Angeles or San Francisco broadcast stations reach the relatively small number of constituents within their own districts, but these candidates are also forced to pay for millions of viewers or listeners who live outside of, and who do not vote in, the candidates' districts.

In smaller California media markets where broadcast stations can target voters more efficiently this problem is less severe. Legislative candidates frequently use broadcast media in communities such as Sacramento, Fresno, San Diego and Santa Barbara.

The costs of producing and airing broadcast advertising vary widely. The production of radio spots can be quite inexpensive. A candidate producing four different 60-second spots might pay less than \$500 for production. These costs might drop to zero if a radio station on which the candidate plans to advertise agrees to produce a very simple spot at no charge.

Television production, on the other hand, is comparatively expensive. A simple 30-second spot produced in the studio might cost \$4,000 while a more sophisticated spot featuring location shooting and computer graphics might cost \$20,000 or more. Since the costs of materials are relatively low, most of these costs are for professional services. Occasionally these services may be donated or offered at reduced rates.

The cost of air time on both radio and television depends on the ratings which indicate how many viewers or listeners the station has at the time the commercial is aired. Federal law requires stations to sell time to candidates at the lowest rates they make available to commercial customers. In Sacramento, for example, a 60-second spot during "morning drive time" on a highly rated radio station would cost \$59, while a 30-second spot on a top rated prime time TV show could cost as much as \$5,000. Campaign managers and media consultants agree that it takes many airings of a spot to have a significant impact on the public.



The costs of broadcast time have increased markedly over the past ten years. Radio spots nearly doubled in cost from 1975 to 1982 and the price of television spots more than doubled during the same period. The cost of television time to candidates also increased 110% from 1980 to 1984.<sup>10</sup> These increases have driven up campaign costs for those who use the broadcast media. For campaigns in which broadcast usage is marginal, rising electronic media costs encourage candidates to rely more heavily on direct mail.

## **F. Other Spending Categories Vary Between Campaigns**

Legislative candidates spend varying amounts on campaign management, person-to-person campaigning, outdoor advertising and newspaper advertising. Candidates and campaign managers frequently disagree over the effectiveness of these expenditures. "Is too much money spent on campaigns? No, too much is wasted," says political consultant Doug Watts.

### **1. Campaign Management**

Fees paid for campaign management vary widely. Serious campaigns rely on someone in a managerial capacity even if their time is donated. Managers are often drawn from public relations or advertising agencies. However, to an increasing extent candidates are turning to partisan strategists and other professionals who specialize in campaign management.

A professional campaign consultant might charge \$25,000 to \$50,000 or more for his or her services. Some campaigns receive free services from the legislative caucuses—such as the Assembly Democrats campaign organization—and thus might spend only \$5,000 for a field coordinator.

Professional consultants supply a wide range of services. Some map out a campaign with detailed scenarios. These scenarios include polling, suggested advertising themes, recommendations on tactics and timing and contingency strategies—for example, the defensive steps a candidate might take if attacked by an opponent on specific issues. Consultants also make recommendations on staffing, advertising agencies, media buying and budget priorities.

### **2. Person-to-Person Campaigning**

While person-to-person campaigning is a less significant part of legislative campaigns than it once was, some campaigns still consider this activity important and a significant share of the campaign budget can go to support it. A campaign may hire a staff person and rent a headquarters office to coordinate these activities. Computers produce lists of registered voters block-by-block with telephone numbers when available. Many candidates spend the bulk of their own time during the campaign walking door-to-door. Throughout the campaign, and especially during the final weeks, volunteer and/or paid canvassers may also go door-to-door distributing the candidate's brochures. On election day these same people may contact loyal party members to remind them to go to the polls and vote. Voter registration programs, often conducted in conjunction with the official party organization, can also be a critical part of a legislative campaign.

### **3. Outdoor Advertising**

Outdoor advertising has declined as a medium for promoting legislative candidates. Outdoor advertising includes billboards, bus signs, signs posted on public property and construction sites, and yard signs posted on private lawns. One California company does a significant business posting signs for candidates on city property and vacant lots. However, the U.S. Supreme Court recently ruled that cities may under the Constitution prohibit the posting of signs on city property.<sup>11</sup> In parts of the state, outdoor advertising is out of favor because some voters regard it as a form of environmental pollution. Many campaign managers now feel it is a poor medium. Outdoor ads took 11% of the average competitive campaign budget in 1968; in 1982 the comparable figure was 4%.



#### **4. Newspaper Advertising**

Newspaper advertising has declined in campaigns even more substantially than outdoor advertising. The reason appears to be a widespread conviction among campaign managers that this type of campaign advertising is ineffective. Some ads are still placed in hopes of inducing a friendly editorial policy, but as a whole newspaper ads have fallen from a 10% share of the budget in 1968 to a 1% share in 1982.

#### **G. Similar Trends Have Been Found in a Recent Washington State Study**

California's rapid growth in campaign spending on legislative contests has been paralleled in other states. Early in 1984 the Washington State Public Disclosure Commission released a thorough study of campaign spending in selected districts from 1974 through 1982.<sup>12</sup> Many of Washington's trends are similar to those found in California.

Spending on direct mail in Washington, for example, was up sharply. "[A]fter adjusting for increases in postal rates, the amount of money spent in 1982 to mail campaign materials was double the amount reported in 1974," the Commission noted. It also reported that spending on broadcast advertising and professional consulting was on the upswing while spending on newspaper advertising had declined.

Many political observers have asserted that inflation in the costs of goods and services used in political campaigns has increased at a rate far in excess of the general inflation rate. The Washington study rejects this claim. "Inflation in the major types of political campaign items—printing, postage and advertising—has been only slightly higher than inflation in the components of the consumer price index." In Washington, as well as California, candidates are deliberately spending more money and opting for bigger and more professional legislative campaigns.

#### **H. A Variety of Spending Choices Is Apparent in 1982 Campaigns**

The following tables summarize campaign expenditures in four competitive 1982 California Assembly general election races. The figures show a wide range of expenditure choices and indicate how campaigns in different areas allocate their campaign dollars. (See Table 1.10.)

#### **I. Expenditure Ceilings Can Stem Rapidly Escalating Campaign Costs**

Escalating campaign costs can be controlled by placing a legal ceiling on the amount of money each candidate can spend. The United States Supreme Court has held, however, that expenditure ceilings imposed on candidates against their will violate their First Amendment freedom of speech.<sup>13</sup> Instead, candidates can be bound by expenditure ceilings only if they voluntarily accept them in exchange for some public benefit—such as partial public financing of their campaigns.

A few state governments (as well as the federal government) now impose expenditure ceilings on candidates accepting limited public financing. (See Chapter 10, "Laws of Other States.") Hawaii, Minnesota and Wisconsin impose expenditure ceilings on legislative and gubernatorial candidates. Massachusetts, Michigan and New Jersey impose expenditure limits on gubernatorial candidates only. U.S. presidential candidates are bound by expenditure limits in both primary and general elections.

The critical issue in California is determining the appropriate dollar ceiling for legislative races. If ceilings are set too low, candidates may lack the funds to wage competitive campaigns and new candidates may be unable to communicate their message adequately to voters. If expenditure ceilings are set too high, they will be ineffective in limiting candidates' demand for contributions.

Table 1.10

**CAMPAIGN EXPENDITURES IN FOUR 1982 COMPETITIVE  
GENERAL ELECTION ASSEMBLY RACES**

<b>9TH ASSEMBLY DISTRICT (Marin/Sonoma)</b>				
	<b>FILANTE-R(Inc.)(W) 55% of Vote</b>		<b>CHIGNELL-D 45% of Vote</b>	
Direct Mail	\$90,505	40%	\$112,124	74%
Broadcast Ads	37,272	16%	0	0%
Newspaper Ads	3,029	1%	2,668	2%
Outdoor Ads	17,928	8%	5,443	4%
Operations/Miscellaneous	78,301	35%	30,172	20%
<b>TOTAL</b>	<b>\$227,035</b>	<b>100%</b>	<b>\$150,407</b>	<b>100%</b>
<b>35TH ASSEMBLY DISTRICT (Santa Barbara/Ventura)</b>				
	<b>O'CONNELL-D(W) 50.6% of Vote</b>		<b>FIRESTONE-R 49.4% of Vote</b>	
Direct Mail	\$145,957	64%	\$130,567	36%
Broadcast Ads	34,613	15%	114,148	32%
Newspaper Ads	722	0%	10,910	3%
Outdoor Ads	5,318	2%	5,991	2%
Operations/Miscellaneous	42,959	19%	96,388	27%
<b>TOTAL</b>	<b>\$229,569</b>	<b>100%</b>	<b>\$358,004</b>	<b>100%</b>
<b>66TH ASSEMBLY DISTRICT (San Bernardino)</b>				
	<b>GOGGIN-D(Inc.)(W) 52% of Vote</b>		<b>MILLER-R 48% of Vote</b>	
Direct Mail	\$111,526	50%	\$78,927	90%
Broadcast Ads	964	0%	0	0%
Newspaper Ads	11,581	5%	0	0%
Outdoor Ads	8,671	4%	978	1%
Operations/Miscellaneous	89,730	41%	7,530	9%
<b>TOTAL</b>	<b>\$222,472</b>	<b>100%</b>	<b>\$87,435</b>	<b>100%</b>
<b>68TH ASSEMBLY DISTRICT (Riverside)</b>				
	<b>CLUTE-D(W) 54% of Vote</b>		<b>STANTON-R 46% of Vote</b>	
Direct Mail	\$151,267	53%	\$144,676	64%
Broadcast Ads	36,172	13%	2,924	1%
Newspaper Ads	1,072	0%	250	0%
Outdoor Ads	14,075	5%	14,952	7%
Operations/Miscellaneous	81,143	29%	64,841	28%
<b>TOTAL</b>	<b>\$283,729</b>	<b>100%</b>	<b>\$227,643</b>	<b>100%</b>

Source: California Commission on Campaign Financing analysis of candidates' campaign statements

### The Commission's Model Law

The Commission has proposed a Model Law (see Chapter 12, "Commission's Recommendations," and Appendix A, "Model Law") which would create the following expenditure ceilings for the State Assembly and Senate campaigns:

Table 1.11

PROPOSED EXPENDITURE CEILINGS FOR LEGISLATIVE CANDIDATES			
	Primary	General	Total
Assembly	\$150,000	\$225,000	\$375,000
Senate	250,000	350,000	600,000

Source: California Commission on Campaign Financing Recommended Model Law

These limits are near the median spending levels in 1982 general election competitive campaigns and include all categories of spending. They would have required 77% of the competitive candidates running in the 1982 general election to reduce their total spending by 27%.

Under the Commission's proposal, Assembly candidates in primary elections would be allowed to spend up to \$150,000. These ceilings are generous in the primaries to encourage greater competition. In 1982, 245 major party candidates running in contested races could have comfortably campaigned within these limits and 13 would have exceeded them. (The highest amount spent in the 1982 primary was by Tom Hayden who spent \$750,000; next was Gray Davis who spent \$356,000.) In 1984, four candidates would have exceeded the limit. (Top spenders were Ken Carpenter and Gil Ferguson who spent \$363,000 and \$256,000 respectively for an open Orange County seat.)

The spending limit for Senate primary elections is placed at \$250,000. Although Senate districts are roughly twice the size of Assembly districts, many campaign costs remain constant and Senate expenditure ceilings need not be twice as high as Assembly ceilings. Only two of the 60 candidates running in 1982 senatorial primaries (Art Torres and Alex Garcia, who ran against each other) would have exceeded the specified amount.

In 1984, four senatorial candidates running against primary opponents would have exceeded the limits. These candidates included Rebecca Morgan who spent \$443,000 to defeat former Senator Marz Garcia who spent \$309,000 for the Republican nomination in a Santa Clara County open seat.

In the general election the proposed expenditure limits are higher due to the candidates' need to reach a larger number of eligible voters (voters of both parties and independents). In the 1982 general election, 19 of the 150 Assembly candidates would have exceeded the \$225,000 limitation set forth in the proposal. These include Tom Hayden who spent \$1,310,000, his opponent Bill Hawkins who spent \$778,000, and John Means who spent \$433,000 against Kern County incumbent Don Rogers who spent \$386,000. In 1984, 20 candidates would have exceeded the limit. The largest spenders were Assemblymen Robinson (D-Santa Ana), Johnston (D-Stockton) and Filante (R-Marin), who spent \$636,000, \$403,000 and \$389,000, respectively.

In the 1982 State Senate general election, eight of the 38 candidates would have exceeded the \$350,000 level. These include Gary Hart who spent \$568,000 and Chuck Imbrecht, his opponent, who spent \$494,000.

In the 1984 State Senate general election, nine of the 41 candidates would have spent more than the \$350,000 maximum. Rebecca Morgan spent \$701,000 in her winning campaign for an open seat in Santa Clara County, while her Democratic opponent Arlen Gregorio spent \$382,000.

Within the proposed expenditure ceilings, candidates would be free to spend money as they pleased. In an area where the use of broadcast media is cost-effective, an Assembly campaign might spend its money as in Table 1.12:

Table 1.12

\$225,000 BUDGET WITH BROADCAST ADVERTISING	
Assembly General Election	
Direct Mail (Includes printing, postage, labels and lists, and computer services)	\$110,000
Broadcast Advertising	50,000
Signs and Billboards	5,000
Operations and Miscellaneous (Includes consultants, staff, telephone, polling, headquarters rental and fundraising costs)	60,000
Source: California Commission on Campaign Financing analysis	

In an area where use of broadcast media is less efficient, such as Los Angeles or San Francisco, the same budget might be allocated as in Table 1.13:

Table 1.13

\$225,000 BUDGET WITHOUT BROADCAST ADVERTISING	
Assembly General Election	
Direct Mail	\$150,000
Signs and Billboards	10,000
Operations/Miscellaneous	65,000
Source: California Commission on Campaign Financing analysis	

An overall direct mail budget of \$150,000 would give an Assembly candidate wide latitude in developing a direct mail program. Each candidate could send an average of seven to eight simple mailers to each household in the district. Many candidates could be expected to make extensive use of direct mail targeting, sending fewer mailers to all voters but more mailers to narrower subgroups in their districts. Senate candidates could be expected to spend proportionately less on "operations/miscellaneous" and more on direct mail and broadcast advertising.

The proposed expenditure limits would be indexed to inflation and allowed to rise in reasonable increments over time. The Commission's proposed expenditure ceilings would provide ample funding for competitive campaigns yet curtail the current escalation in California campaign costs.

---

## NOTES

1. Vic Pollard, *Campaign Financing: It's Thoroughly Institutionalized Corruption*, Stockton Record, Nov. 19, 1984.
2. Unless otherwise indicated, statistics in this report are compiled from published reports of the California Fair Political Practices Commission. For 1958 through 1970, the FPPC relied on J. OWENS, *TRENDS IN CAMPAIGN SPENDING IN CALIFORNIA, 1958-1970: TESTS OF FACTORS INFLUENCING COSTS* (Citizens' Research Foundation 1973). Campaign reporting prior to 1974 was incomplete and total spending was probably under-reported. Data from prior years may therefore be imprecise. FPPC reports on the 1984 legislative races in California became available too late for extensive study. Data on 1984 races is included where possible.
3. *See 100 Leading National Advertisers*, Advertising Age, Sept. 8, 1983. Figures are for national advertising budgets and apportioned to California according to California's 10.8% of the U.S. population.
4. Fundraising letter from State Senator Alan Robbins, June 25, 1985 (emphasis in original).
5. DEAN CRESAP, *PARTY POLITICS IN THE GOLDEN STATE* 88 (1954).
6. Lyndon Stambler, *Direct Mail Advisors Put Their Stamp on Political Campaigns*, Los Angeles Times, July 8, 1984.
7. Frank Tobe, *New Techniques in Computerized Voter Contact*, Campaigns & Elections, Summer 1984.
8. *See Stambler, supra* note 6.
9. *Id.*
10. *TV Ad Rates Raise Campaign Costs*, New York Times, Oct. 25, 1984.
11. *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 104 S. Ct. 2118 (1984).
12. WASHINGTON PUBLIC DISCLOSURE COMMISSION, *THE INCREASED COST OF LEGISLATIVE CAMPAIGNS: 1974 TO 1982*, (Feb. 1984).
13. *Buckley v. Valeo*, 424 U.S. 1 (1976).

## CHAPTER 2

# The Causes of Escalating Fundraising and Campaign Costs

**QUESTION:** *How much money had you estimated it would cost to run for election in 1984 against Sebastiani?*

**ANSWER:** *\$500,000.*

**QUESTION:** *Why would it cost that much?*

**ANSWER:** *Because he would spend that much or more, and in order to win I needed to come close to spending as much as he did.*

**QUESTION:** *What if you were both limited to spending only \$250,000?*

**ANSWER:** *That would be terrific. I would have enough money to get my message across and I wouldn't be afraid that I would be outspent by him.*

— Mike Gage, former  
Assemblyman<sup>1</sup>

**W**hy have California's campaign costs risen so rapidly in the past few years? Why do many legislative candidates raise and spend far more than they need to win elections? Why are contributors being pressured to donate campaign funds as never before?

Spending for legislative campaigns has increased at a dizzying pace—over 3000 percent since 1958. Yet there seems no limit in sight on the dollar amounts that can be spent in competitive races. Each year new records are set.

Nearly all legislative candidates complain about the rising costs of running for office and the expensive new campaign technologies they feel compelled to buy. Yet the money to fund high-spending campaigns flows unabated into campaign coffers.



Many political professionals and candidates believe competitive races now cost twice as much as they should. Even legislators who are unopposed or face token opposition often spend over \$100,000 on phantom reelection campaigns. The causes of rising campaign costs in California are embedded in the psychology of modern political campaigns.

### **A. An "Arms Race" Mentality Destabilizes Campaigns and Increases Campaign Costs**

Modern political fundraising is often compared to an armaments race. In both campaigns and weaponry, fear is a principal motivation. Candidates and countries are afraid the other side will outspend them. They fear that sneak attacks will overwhelm their defenses. They believe the best security lies in deterrence. They raise and spend massive sums out of fear they will be outspent by their opponents.

Candidates and countries also feel compelled to develop new technologies. If one side builds a new weapon, the other side must construct comparable or superior weapons. Both sides worry that innovations will make existing defenses obsolete. But new technologies are often costly and unstable. So combatants turn to professionals with expertise to perfect new implements of destruction. These professionals are expensive and have a stake in ensuring that costs are kept high.

Publicly candidates often support limitations treaties. Privately they express doubts. The superpowers are incumbents who have achieved their status through the existing system. Limitations require new rules. Treaties necessitate inspection systems. Change brings uncertainty. One side always fears the other will cheat.

The arms race analogy is appropriate to modern political campaigns. Today's uniformed soldiers in the campaign wars are mailmen who deliver targeted hit pieces. The insecurity of each side, the access to ever-improving technologies, the reliance on deterrence, the urge to stockpile resources and the instability of a system in which last-minute spending at the margin may provide a slim victory—all these factors increase the candidate's demand for money. In today's campaign wars there are winners, but there are more losers than just candidates. The growing arms race mentality is undermining the integrity of this state's political democracy.

### **B. Easy Access to Large Sums of Cash Accentuates the Fear of Sudden or Unexpected Defeat**

All candidates fear losing. But in recent years, three new elements have intensified this fear. First, as the Legislature has become more involved in governmental decision making, some legislators increasingly fear the loss of their newly-acquired status, visibility and influence. One legislator has said he could retire and receive three times his current salary as a political consultant but he decided to stay in office. "I love the power," he conceded.

Second, many legislators fear a defeat at the polls would deprive them of their only profession. Unlike the part-time legislator of earlier days with a separate business or profession in the district, today's incumbent is often a professional politician. Many began their careers in Sacramento as legislative aides, made the right connections, gained the support of party leaders and successfully ran for an open seat. They have no fallback profession and are nervous about losing their seats. As Dan Walters has described it, they comprise "a corps of legislators who ha[ve] no other trade than politics."<sup>2</sup> Senator H.L. Richardson (R-Arcadia) has commented:

Today, we have the slick professional politician, the career legislator whose sole profession is politics and staying in office.... Today 30 percent of the California Legislature is comprised of former staff members of other legislators. Eighteen years ago there were none.<sup>3</sup>

Third, candidates fear their opponents have increasing access to large sums of campaign money. Twenty years ago candidates knew that campaign funding was relatively limited and their opponents could only draw on modest resources. Today the rapid growth of massive partisan transfers and legislative caucus contributions gives each candidate potentially instant access to extremely large sums of money. (See Chapter 5, "Partisan Sources.") The growth of PAC, business and labor contributions has added a new reservoir of capital from which to fund last-minute surprise attacks. (See Chapter 4, "PACs.") Money has thus become a new and destabilizing element. The widespread availability of campaign money has intensified candidates' fears of a higher spending opponent, a last-minute blitz or a wealthy opponent.

### **1. *Fear of Being Outspent***

Candidates are raising larger and larger sums of money because they are afraid they will be outspent. In 1974 Jack Mayesh ran for a Los Angeles Assembly seat against Republican Paul Bannai. Mayesh used the services of Democratic strategist Michael Berman. As the campaign drew to a close, Berman prepared one last mailer that could be delivered at a cost of approximately \$20,000. But Berman was uncertain as to whether Mayesh should spend the money since it would force him to go into debt. After intense discussion they decided not to send the mailer. Mayesh lost the election by fewer than 500 votes. Berman has blamed himself ever since. He believes that last mailer would have given Mayesh a narrow margin of victory.

The Mayesh story has been told and retold to candidates whenever they question the need for an additional mailer or the expenditure of an additional sum of money. Candidates are advised, "You have already invested enormous amounts of time and money into this campaign. Don't lose the election by not sending out one last mailer."

Campaign management is not a scientific process and strategists cannot predict the precise impact of an additional mailer or an extra \$50,000. Candidates therefore raise and spend as much as they can, hoping their campaign will not be overwhelmed by larger expenditures from the other side. At the very least they try to spend as much as the other side to prevent defeat or ensure victory.

Some candidates manage their campaigns like chess games, always looking several steps ahead. Incumbents often raise and spend large sums of money to deter well-funded competitors from entering future elections. California Congressman Fortney (Pete) Stark (D-Alameda) recently demonstrated a tactic often used by state legislators. Stark faced a little-known and under-funded challenger who had no chance of unseating him. Yet Stark spent close to \$400,000 because he wanted to score an overwhelming victory. Stark reasoned that a huge 1984 victory would deter strong challengers from entering the race against him in 1986. Such pre-emptive strikes are not uncommon at the state legislative level.

### **2. *Fear of Last-Minute Spending Blitzes***

Last-minute sneak attacks are a relatively new feature of California campaigns. In the past, candidates were unable to raise the huge sums of money necessary to mount surprise attacks. If word leaked out that one candidate was trying to raise a large war chest, opponents had time to respond in kind. In 1980, however, the last-minute sneak attack emerged as a new weapon.

The classic last-minute blitz was the 1980 Sacramento race between Democratic Senator Albert Rodda and Republican challenger John Doolittle. Rodda had served in the Senate for 22 years. His district contained a high percentage of registered Democrats. But Republican strategists noted that Rodda had not run a serious campaign in many years and that many new voters moving into the district did not know him well. Doolittle, who had been an aide to conservative State Senator H.L. Richardson (R-Arcadia), decided to mount a last-minute blitz

against Rodda. Senator Richardson agreed to supply much of the necessary cash. Doolittle spent almost all of his \$145,000 during the closing days of the campaign. His mailings and saturation radio spots accused Rodda of being soft on crime.

Rodda was caught completely unprepared and was only able to prepare a few newspaper ads in the last days of his campaign. Rodda spent just \$77,000 and ended his campaign with over \$20,000 in the bank, helpless to mobilize a strategy to defend himself. Doolittle won with 51.6% of the vote to Rodda's 48.4%.

Doolittle's last-minute blitz was made possible by large contributions of partisan funds. Republican Party organizations contributed over \$18,000, Richardson provided \$20,000 and Richardson-controlled political action committees gave over \$33,000. These sums were roughly one-half of Doolittle's total expenditures.

Rodda's defeat had far-reaching repercussions. Rodda had been a respected veteran. The message of his defeat to many Senators (and especially to Democrats) was that no one was safe. Previously, Senators had not aggressively sought to oust fellow incumbents and had restricted partisan competition to the occasional open seat. Rodda's defeat caused many incumbent Senators to increase their fundraising efforts. Senator David Roberti was elected Senate President pro Tem in part on the basis of his pledge to protect Democratic incumbents by raising and transferring more money, much as the Speaker had done in the Assembly.

The last-minute blitz has also been used in a primary. In 1980 the battle for the Assembly Speakership raged across the state. Strategists for Assemblyman Howard Berman saw the telltale signs of a sleeping incumbent in Assemblyman Jack Fenton (D-Montebello), a 16-year veteran and ally of incumbent Speaker Leo McCarthy. Although Berman and his allies transferred funds directly to challenger Matthew "Marty" Martinez, Berman also asked his supporters to contribute to Martinez directly. Jack Holland gave \$25,000 and Max Palevsky and Jerry Weintraub each made \$10,000 loans. Martinez received \$60,000 in large loans and contributions that were attributable to Berman. These funds comprised approximately half of Martinez's total contributions and were received in the closing days of the campaign. While Fenton spent almost as much as Martinez, he could not withstand the barrage of Martinez mailers to district residents in the final days of the campaign. Martinez received 49% of the vote to Fenton's 41%.

### ***3. Fear of Wealthy Opponents***

Incumbent legislators often express the fear that wealthy opponents will enter the race against them. Incumbents therefore build large campaign war chests to deter wealthy potential opponents. Their fear, however, may be misplaced. There is little evidence in California that wealthy candidates have been a serious threat to legislative incumbents. (See Chapter 8, "Wealthy Candidates and Independent Expenditures.")

When wealthy candidates have run for legislative seats, they have typically entered open seat campaigns. Ollie Speraw, for example, ran for the Long Beach Senate seat vacated by George Deukmejian when he ran for Attorney General in 1978. Brooks Firestone sought an open Santa Barbara Assembly seat in 1982 when Gary Hart ran for the Senate. Tom Hayden shattered all spending records when he ran for an open seat in 1982 and used his wife's money as his major funding source. All these open seat candidates won except for Firestone. None challenged an incumbent.

## **C. Continued Reapportionment Battles over the Past Five Years Have Increased the Level of Legislative Insecurity**

Reapportionment can be political life or death for legislators. The once-a-decade process which redraws district lines can force two incumbent legislators to run against each other. Population shifts may add a seat in the North and take away a seat in the South, or vice versa, leaving a legislator with no district in which to run. Reapportionment can increase the power

of the dominant party and make it more difficult for the minority party to regain the majority position. Fear of reapportionment and continuous preparations for a series of reapportionment battles since 1980 have forced legislators into a series of costly fundraising activities.

Reapportionment as an issue would not die in the early 1980s. After the high-spending 1980 election, the Democrats, pursuant to the requirements of the State Constitution, reapportioned legislative and congressional districts. But Democratic reapportionment plans were upset by Republican-sponsored referenda approved by the voters in June 1982. After the voters rejected a subsequent Republican initiative in the fall of 1982 which would have established an independent reapportionment commission, the Democrats again reapportioned the state. In 1984 the voters rejected an initiative by Governor Deukmejian which would have created a reapportionment commission. The uncertainty of reapportionment has kept legislators on edge for half a decade. Millions and millions of dollars have been raised and spent around this basic threat to political job security.

## **D. Contributors Are Willing to Pay**

A demand for campaign contributions does not necessarily correspond with a funding supply. In California, however, the seemingly endless stream of campaign contributions has never run dry. As one political veteran has remarked, "during the 1984 campaign, money was flowing in like water."

### **1. *The Berman-McCarthy Fundraising Struggle***

The genesis of California's recent fundraising growth stems from events in 1980 and 1981. First and most important was the Berman-McCarthy leadership fight in 1980. Assemblyman Howard Berman was appointed Majority Leader by Leo McCarthy when Berman provided the key votes needed for McCarthy to become Speaker in 1974. In 1980 Berman became worried that McCarthy was devoting too much time to a possible run for statewide office and not enough to preserving Democratic control of the Assembly. Berman decided to compete for McCarthy's Speakership position.

Both Berman and McCarthy tried to elect slates of supporters in the 1980 primary and general elections. To fund these candidates, the Berman and McCarthy forces went after campaign funds in an unprecedented manner. Individuals and special interests were pressed to contribute huge sums to either side—and in some cases to both sides. To the surprise of many legislators, contributors did not resist. They gave much larger contributions than they had in the past. They also did not complain when McCarthy and Berman transferred their money to other candidates. When the battle ended, Berman and McCarthy had collected millions of dollars and set new fundraising records. Until then no one had imagined that so much money could be raised. After 1980 everyone saw it was possible. The fundraising genie had been let out of the bottle.

### **2. *Increased Sacramento Fundraising***

When Assembly Republicans and State Senators studied the 1980 campaign disclosure statements, many of them were infuriated to learn they were not receiving their "fair share" of contributions. Republican Assembly Minority Leader Carol Hallett called representatives of the business community into her office and asked why they were giving more money to Democrats who were not known for supporting business interests. Democratic Senator Paul Carpenter, Chairman of the Senate Democratic Caucus, told lobbyists, "disproportionate contributions of their clients to the Assembly might well make some members of the Senate feel that as a body they were being ignored."<sup>4</sup> The Berman-McCarthy Speakership battle had encouraged other legislative leaders to increase their fundraising efforts as well.

Legislators began to hold fundraising dinners and other events in Sacramento instead of in their own districts. Solicitations were pitched at lobbyists and interest groups with a stake in pending legislation. Dinners were held in the non-election year — sometimes 18 months



before the next election. These fundraisers were much more successful than anyone had imagined. Legislators began to feel left out if they, too, had not scheduled an off year fundraiser. Dinners—originally pegged at \$100 a plate—were raised to \$250, then to \$500 and even up to \$1,250.

As the funds began to roll in, legislators were asked to contribute a portion of their receipts to the legislative leadership. Quotas were set. To become a member of the leadership or be appointed chair of an important committee, legislators had to ante up large sums of cash. With the accession of Willie Brown to the Speakership in late 1980, transfers by individual legislators actually decreased. Democrats pooled their funds into one committee controlled by the Speaker and the Speaker became the dominant source of partisan money.

Money became more easily obtainable. Even legislators who did not need contributions for their own reelection campaigns began to raise more and more money for the party leadership. Safe incumbents were often the most successful. By raising large sums they acquired committee assignments and positions of power where they had considerable influence over dozens of issues affecting potential contributors. Their ability to raise contributions thus increased. The incumbents' demand for contributions matched a growing willingness of contributors to increase the supply of funds.

### **E. Candidates Are Afraid Not to Purchase Available New Technologies**

Candidates, like governments, are often afraid their opponents will develop new weapons that can be used to overwhelm existing defenses. Computer targeting and slate mailings are the "Star Wars" of today's campaign technologies. (See Chapter 1, "Skyrocketing Costs," for a description of computer mailings and their costs.) But these new technologies are expensive. Candidates hoping to challenge incumbents, incumbents hoping to defend themselves, newcomers hoping to win an open seat—all feel they need to purchase the latest and most expensive campaign technologies (accompanied by expensive consultants) to remain competitive.

Some candidates regard volunteers, once a key part of legislative campaigns, as an inconvenience or even a nuisance. Volunteers are costly in terms of organization, time and office space. Voters are increasingly reluctant to open their doors to strangers, making volunteers less effective as door-to-door canvassers. Campaign literature can be mailed through professional mailing houses in far less time than it takes volunteers to hand-deliver brochures.

Campaign management is a growth industry. More and more candidates are turning to professionals instead of volunteers to guide their campaigns and design their literature. Sacramento-based campaign managers can design nearly identical literature for distribution by many different candidates throughout the state. Consultants can offer candidates lower rates by preparing campaign materials in bulk.

### **F. Legislative Incumbents Are Using Campaign Funds for Non-Campaign Expenses**

The term "campaign expenditure" may now be a misnomer. Although candidates raise large sums in contributions, legislative incumbents spend significant portions of this money on non-campaign related goods and services. A recently enacted state law prohibits campaign funds from being used for "personal" purposes.<sup>5</sup> But legislators can legitimately spend funds on travel to their districts, trips to conventions, supplemental living expenses, office supplies, computers and staff salaries. Most if not all of these expenditures can be legally justified as relating to campaigns or government work, even though they are not spent on direct voter contacts. Since the campaign disclosure reports do not distinguish between expenses that are governmentally related, politically related or used for direct voter communication, it is impossible to calculate the extent of these non-campaign expenses.

Legislators strongly defend the use of campaign contributions for office expenses. They contend that their low salaries force them to tap their campaign accounts. Yet ten years ago legislative salaries were even lower. Except for airplane trips to legislators' districts, contributions were used primarily for campaign expenditures. Most legislators did not raise funds in the off year and did not carry over large campaign surpluses.

Assemblyman Tom Bane (D-Tarzana), recognizing the growing use of campaign funds for governmental as opposed to campaign activities, has introduced a bill allowing legislators to raise donations from contributors who could receive a tax deduction for their contributions. The bill would allow these funds to be spent on trips to the district, travel to functions related to legislative business, postage, printing, office rent, office equipment and staff salaries.<sup>6</sup> The bill is not expected to pass.

### **G. High Spending Has Not Caused a Voter Backlash**

Although most voters decry the large amounts spent on campaigns, they have not translated their disapproval into votes against high-spending candidates. Tom Hayden spent nearly \$2 million on his 1982 race to capture an open Assembly seat in West Los Angeles. His campaign manager said the press tried to make an issue out of the cost of the campaign but the voters did not care. The Hayden polls showed no measurable adverse voter reaction.<sup>7</sup> One reporter commented that people were so numbed to rising campaign costs that even the extreme Hayden/Hawkins campaign (which cost all primary and general election candidates a total of \$3.3 million) failed to generate a voter backlash. In California, voters react more negatively to "dirty campaigns" than to expensive ones.<sup>8</sup>

---

## **NOTES**

1. Interview with Mike Gage, former State Assemblyman, June 21, 1985.
2. Dan Walters, *An Old-Timer vs. New Breed*, Sacramento Bee, Sept. 26, 1984.
3. *See id.*
4. Gale Cook and James Finefrock, *When Lobbyists Put Green in Assembly Fields*, San Francisco Examiner, Feb. 2, 1982.
5. CAL. ELEC. CODE, §§12400-12407 (West Supp. 1985).
6. Proposed A.B. 833 (1985 Legislative Session).
7. Telephone interview with Steve Rivers, former legislative aide to Assemblyman Tom Hayden, Los Angeles (Mar. 14, 1985).
8. Telephone interview with Will Thorne, Political Writer for the *Santa Monica Evening Outlook* (Mar. 14, 1985).





## CHAPTER 3

---

# **Who Pays For California's Legislative Campaigns?**

## **The Disappearance of the Mom and Pop Contributor**

*So where has the money for these ever more costly campaigns come from? It has been coming less and less from the average voters, who are using all their income these days for life's basic necessities. Instead, it has been coming more and more from large corporations and special-interest groups.*

— Assembly Speaker Willie Brown<sup>1</sup>

*[The] real find is someone with a lot of money who doesn't want anything. They're rare, and when you find one, you guard him like your own wife.*

— William J. Keefe<sup>2</sup>

**C**alifornia legislators and legislative candidates have now acquired two almost completely separate constituencies: the residents of their districts who vote for them, and the out-of-district contributors who pay for the costs of their campaigns. In an idealized world these two constituencies might be identical. Candidates would solicit both money and votes from their own constituents. Voters and contributors, in turn, would support those candidates in their representation of district interests and needs.

This fictional world of individual constituent “mom and pop” contributors who support their representatives with small donations and votes is increasingly removed from the reality of California politics today. The past decade has witnessed striking shifts in the state’s legislative fundraising patterns:

- The great bulk of contributions now comes from outside of candidates’ own districts. Average Assembly winners in 1982 received 92% of their money from out-of-district contributors.
- Individual contributions are of relatively minor importance. California legislative candidates received 13% of their contributions from individuals in 1982 and 1984. By contrast, congressional candidates received over 70% of their contributions from individuals in the same elections.
- PACs and businesses contributed 55% of all contributions received by California legislative candidates in 1984. By contrast, congressional candidates received 36% of their funds from PACs in 1984. Most of the California PAC and business contributors are involved or expect to be involved in pending legislation at the time they make their contributions.
- Small contributions in amounts under \$100 have sharply declined to insignificance. In 1982 small contributors only gave candidates 6% of their general election contributions. Candidates rarely hold \$25 spaghetti feeds and \$15 coffee klatches. The \$10 contributor is now a relic.
- Large contributions over \$5,000 provided 47% of all contributions received by legislative candidates in 1982. These contributions came from only 580 donors. A few very large contributions typically flow to Speaker Brown, legislative leaders and the caucuses. A larger number of \$1,000 to \$5,000 contributions are given to other legislative candidates from sources interested in pending legislation.
- Partisan contributions—transfers from other legislators and contributions from the legislative caucuses and political parties—are the fastest rising new source of campaign funding. In the 1984 general election candidates received 28% of their money from partisan sources. Some candidates receive over 70% of their money from partisan political sources.

### **A. The Prototype for Future Elections May Be the Candidate from Riverside, Not the Candidate from San Mateo**

A Democratic candidate from Riverside, Steve Clute, may be the best example of the modern day candidate. Running for a 1982 open seat against a tough Republican opponent, Clute raised \$195,000—*yet only one percent (or \$2,319) of his money came in amounts under \$100*. Even more startling, Clute received only six contributions of \$100 or more from individuals within his district, and he received only 68 contributions of \$100 or more for the entire general election. But because he received \$110,000 from Speaker Willie Brown and another \$23,500 from other legislators, Clute was able to conduct a competitive campaign and emerge victorious.

Clute’s campaign may present the following lessons to future candidates: they do not need to raise small contributions under \$100; they do not need to raise contributions from within their districts; and they do not need to raise contributions from individuals. If a candidate has the strong support of a special interest contributor (whether this contributor be a legislative leader or an interest group), the candidate can raise enough money to win.

On the other extreme is former Senator Arlen Gregorio, a Democrat from San Mateo. Gregorio, elected in 1970 after defeating a veteran Republican Assemblyman, quickly became known as a campaign reformer who sponsored public financing and contribution limitation bills. When Gregorio ran for reelection in 1974 and 1978, he vowed to take no special interest

money and to limit his contributions from individuals to \$250 or less. Gregorio won overwhelmingly in 1974, a good Democratic year because of the Watergate scandal. But in 1978 Gregorio was outspent 4-to-1 (\$184,000 to \$52,000) by his Republican opponent, Marz Garcia, who did not limit his contributions. Gregorio lost by 93 votes. Gregorio's narrow defeat, which was clearly caused by his self-imposed limitation, was often cited by other Democratic legislators when they opposed reform bills, particularly those calling for contribution limitations without alternative sources of money.

In 1984 Gregorio again ran for the Senate. Because of reapportionment, he ran in a more Republican district than the old one he had represented. Nevertheless polls showed him far ahead early in the campaign. Facing a well-financed, moderate Republican who spent over \$700,000, Gregorio did not repeat his contribution limitation vow. He spent \$382,000, with the bulk of his money coming from the Senate Democratic Caucus, but again he was narrowly defeated. While Gregorio did not impose a contribution limitation on himself in 1984, he is still a strong believer in contribution and expenditure limitations.

Congressman Bill Frenzel (R-Minnesota) said in 1973: "Popular candidates rarely have a shortage of funds, while unpopular candidates are usually unable to raise large amounts of funds."<sup>3</sup> The Clute and Gregorio examples are indications of how times have changed since Frenzel's comments. Relatively unknown candidates can win by raising lots of money from out-of-district sources, and popular candidates can lose by being significantly outspent.

## **B. The Small, Individual, In-District Contributor Is an Anachronism**

Before the recent escalation in campaign costs, candidates conducted fundraising events in their own districts, not in Sacramento. Candidates could rely on small, individual, in-district contributors for much of their funding. Today the vast majority of funds comes from large PACs, businesses, partisan groups and other organizations located outside the candidates' districts.

### **1. In-District Contributions: Less than Ten Percent of the Funds Collected**

As more money comes in from outside the district, you get 120 little governors.

— Diana Dooley, Chief Lobbyist for former Governor Jerry Brown<sup>4</sup>

In 1981 the media devoted extraordinary attention to a Fair Political Practices Commission study which reported that 79% of the campaign contributions to winning Assembly candidates in the 1980 general election came from outside the candidates' districts. One legislator, Assemblyman Alister McAlister (D-San Jose), was besieged by reporters when the FPPC noted that he had received no money from any contributor within his district.

The Commission's analysis of the 1982 general election data shows an even greater reliance on out-of-district money. General election winners in 1982 Assembly races received over 92% of their itemized contributions from contributors outside their own districts, a significant increase over 1980's figures.<sup>5</sup> In 1982 two successful candidates, Alister McAlister (again) and Bruce Young (D-Norwalk), received 100% of their itemized contributions from out-of-district sources. Clearly the days of in-district constituent funding are long gone.

Commenting on the FPPC's 1980 study, FPPC Chairman Tom Houston said, "These figures represent a startling shift of influence away from local citizens and alarming growth of the power of outside special interests in determining the outcome of legislative district elections." Houston went on to say:

We were aware, of course, that outside money was playing a major role. We are, frankly, amazed at the percentage of funds these outside sources provide to a candidate. We now have a situation where there is essentially no difference—at least in terms of where the bulk of contributions come from—between a legislator who represents Los Angeles and one who represents Siskiyou County; between a legislator who represents suburban areas and one representing the inner city. They all get the majority of their contributions from the same place—special interests, usually centered in Sacramento.<sup>6</sup>

### ***a. Arguments in Favor of In-District Contributions***

Those in favor of encouraging in-district contributions argue that legislators have become less concerned about their constituents as a result of out-of-district money. They assert that out-of-district contributors now have as much if not more influence over legislators' votes than do in-district constituents.

Observers also decry the predominance of Sacramento fundraising events and the shift away from in-district fundraising. In Sacramento the bulk of contributions flows from special interest groups who feel pressured to attend the fundraisers of nearly all legislators, particularly those legislators on key committees. A greater number of in-district fundraising events would connect the legislator more closely to his or her own districts' needs and interests, and would provide constituents with a greater sense of participation in the affairs of government.

A shift to in-district fundraising might also help challengers compete more effectively against incumbents. Incumbents can raise out-of-district money in Sacramento quite easily. But challengers find little response to fundraising pleas in Sacramento since a contribution to a challenger may alienate the incumbent who is voting on the contributor's legislation.

In-district contributions might also increase the legislative candidates' sense of well-being, since in-district contributions often accompany other types of support—such as volunteer activity or small fundraisers in private homes. The commitment of in-district contributors to candidates and the intensity of their efforts in electing them are far greater than from out-of-district contributors.

### ***b. Arguments in Defense of Out-of-District Money***

The defenders of out-of-district money make several rebuttals. First, they argue that in-district contributions are meaningless in both the political and governmental processes. Since legislators vote on issues of statewide concern, legislators should feel free to accept contributions from throughout the state. A San Francisco podiatrist may care as much if not more about a Los Angeles legislator's vote on a key health measure than the legislator's own constituents. In addition, few races are truly competitive and contributors should appropriately concentrate their resources on those out-of-district races in which they can have the most impact.

Critics of this argument reply that out-of-district contributors do not principally channel their donations to competitive races. Instead, they generally focus their contributions on incumbents and legislators in leadership positions. Bruce Young, for example, received 100% of his itemized contributions from out-of-district sources during the 1982 general election, yet he was unopposed during that election.

Out-of-district supporters also argue that district lines cross city and county borders and do not necessarily reflect communities of interest. Instead, district lines reflect the need of the party in power to preserve its incumbents. Because neighbors across the street from each other may have different legislators who represent parts of the same city or area, legislators should not be penalized or stigmatized for receiving a contribution from the neighbor who is across the street from his district. However, this argument ignores the basic fact that most contributions come from entities far from the legislator's district lines.

PAC managers and legislators who receive a large percentage of their contributions from PACs sometimes argue that PAC contributions are incorrectly described as "out-of-district." Because some PACs receive their money from contributors within the legislators' own districts, some PAC contributors should actually be viewed as in-district. However, in most cases PACs make their contribution decisions in Sacramento and not in the recipient legislator's district. From the legislator's perspective, a PAC contribution does not come from his or her district but from a centralized source.

Table 3.1

SOURCES OF CONTRIBUTIONS OF \$100 OR MORE FOR THE 1980, 1982 AND 1984 GENERAL ELECTIONS CLASSIFIED BY GENERAL CATEGORIES			
	1980	1982	1984
Partisan Money (Transfers, Parties and Party Organizations)	\$ 2,787,133 (20%)	\$ 7,586,654 (31%)	\$ 6,725,923 (28%)
PACs	6,266,356 (45%)	7,530,997 (31%)	8,199,357 (35%)
Businesses	2,871,726 (21%)	4,081,799 (17%)	4,710,851 (20%)
Individuals	1,961,880 (14%)	3,206,223 (13%)	3,156,237 (13%)
Candidates' Personal and Family Money	Not Available	1,753,902 (7%)	834,802 (4%)
TOTAL	\$13,887,095	\$24,159,575	\$23,627,170

Source: California Commission on Campaign Financing data analysis of FPPC General Election Reports

## 2. Individual Contributions

In 1984 individual contributors gave \$3.2 million of the \$24 million collected by legislative candidates running in the general election. Individual contributors accounted for approximately 13% of the money collected by candidates in amounts of \$100 or more. Individual giving has stayed at this level each election year since the FPPC began compiling this data in 1980. (See Table 3.1.)

### a. Reasons Candidates Encourage Individual Contributions

One might expect candidates to stress individual donations. Individual money in many cases is given for philosophical or ideological reasons rather than business reasons. Individuals give to candidates because they believe in the candidate's philosophy and want the candidate to win. Many of these contributors—even the very largest—do not ask candidates to support or oppose specific bills. Individual contributors are often personal friends and acquaintances who believe in the candidate.

Individual contributions also appear to be cleaner money than PAC or business contributions. The press generally focuses its attention on the amount of special interest money which a candidate receives rather than on individual contributions.

Individuals qualify for a substantial tax break when they make contributions to candidates. For a contribution of \$100 an individual may receive \$50 in federal tax credits and up to \$11 more in California state income tax deductions. A married couple can receive twice that amount—up to \$122 for a \$200 contribution. Political action committees, businesses and other donors are not allowed to receive these tax breaks.



### **b. *Reasons Candidates Discourage Individual Contributions***

Although these factors should encourage candidates to solicit individual donations, many candidates discourage them. It may often take a candidate more effort to solicit individual contributions than institutional donations. Many Sacramento-based contributors are prepared to give sizable amounts every year as part of their planned budgets. Individual contributors, on the other hand, do not typically budget campaign contributions into their normal expenses.

Candidates also complain that some individual contributors—even those who only give \$50 to \$100—are more demanding than their large donors. Some individual contributors believe a small contribution entitles them to call up the candidates and give them advice or visit them when they are in office. Candidates view individual contributors as less sophisticated than PAC and business contributors and more likely to have their feelings hurt if the candidate does not spend time with them.

On the other hand, candidates realize that business and PAC donors want something in return for their money and are less likely to pester the legislators on other issues. PAC and business donors generally want to ensure the candidate's support or opposition on only one or two major questions. PACs and businesses also take a longer-term approach to the governmental process and are more likely to be forgiving in the short run of an incumbent's position on a single issue.

### **c. *Reasons Individuals Do Not Make Contributions***

"It is perhaps easiest to understand why individuals do not contribute to the candidate of their choice," writes Gary Jacobson in his book, *Money in Congressional Elections*.<sup>7</sup> Individuals do not contribute for a number of reasons:

- Many individuals and small contributors believe their contributions will have little impact on the election. Individuals rationalize (probably correctly) that a \$50 contribution to a candidate who needs to raise \$300,000 is a drop in the bucket. Fifty dollars to an individual contributor who has income of \$25,000 to \$50,000 per year is far more costly to that person than is the loss of \$50 to a candidate who is collecting \$300,000.
- Many individuals regard politicians and candidates as untrustworthy or somewhat dishonest. They would never contribute to any candidate's campaign because they believe the money would be wasted or improperly spent.
- Some individuals may not like any of the competing candidates in an election. Both of the candidates may appear to be saying the same things or may be altogether unknown to the average voter. Most voters will never meet the candidates and in many cases will not even know their names.

### **3. *Small Contributors: An Anachronism***

In 1980 an FPPC report found that only 9% of the campaign money given to general election legislative candidates came in amounts under \$100.<sup>8</sup> FPPC Chairman Tom Houston decried the disappearance of the "Mom and Pop contributor" and the "\$20 spaghetti feed." Since 1980, however, the situation has apparently worsened. In 1982 contributions of under \$100 dropped to less than 6%.

Why are small contributors a dying breed? Many contributors believe their small contributions will go unappreciated by the candidate. Contributors undoubtedly feel that their small donations mean very little to candidates who are relying on contributions in thousands of dollars and transfers in hundreds of thousands of dollars.

In terms of money and time, candidates may find it far more efficient to pursue the large contributor. A \$500-a-plate fundraising dinner which costs \$50 is more profitable than a \$50-a-plate fundraising dinner costing \$20.

## **C. The Institutional Contributor Is Now the Dominant Source of Funds**

If you need money, you have a cocktail party and invite the PACs—they've got so much money, they're an easy hit for at least something. Also, PACs don't drink much. They just buy tickets and leave the wine to the staff.<sup>9</sup>

The small in-district contributor is no longer coveted by legislative candidates. Instead, candidates are forced by rising campaign costs to turn to institutional givers. These include political action committees, businesses, labor unions and partisan contributors.

### **1. Political Action Committees and Businesses**

Political action committees and businesses together gave 55% of the contributions received by legislative candidates in the 1984 general election. Political action committees gave over \$8 million or 35% of candidates' money. Business gave nearly \$5 million or about 20% of the total money received.<sup>10</sup> (See Table 3.1 above.)

Democrats and Republicans receive approximately the same percentage of contributions from business entities. Each party in 1982 received about 22% of its funds from business entities, with the Democrats receiving a slightly higher percentage than the Republicans. This is somewhat surprising since businesses tend to be more Republican than Democratic. However, many businesses feel they must give to the Democrats so long as they control the Legislature.

As with individuals and business entities, PAC money is evenly divided between Democrats and Republicans. One might expect that the Democrats would receive a higher percentage of PAC contributions since labor union PACs contribute a predominant share of their money to Democratic candidates. This is not the case.

When contributions from all business sources are added together (an FPPC compilation which includes contributions by employees of businesses), the total indicates that candidates in 1982 received 58% of their contributions from sources connected with business. On the other hand, labor contributors (including public employees) gave 9% of the total money received by legislative candidates. Business is thus outspending labor by more than 6-to-1. (See Table 3.2.) In the 1984 general election, business contributors exceeded labor contributors by a ratio of 8-to-1.

Why do PACs and businesses make contributions to legislative candidates? Some argue they give because they want to elect candidates who believe in the same philosophy as the PAC or business. Clearly in some cases this is true. For example, the Gun Owners of California provide contributions to those candidates who agree with their principles on gun control. While the Gun Owners primarily give to Republicans, they also give to Democrats who agree with them on basic concerns.

Other PACs apparently disregard the candidates' philosophies. These PACs give to candidates or, in particular, incumbent legislators who can help them advance their legislative agendas. They give to legislators who are sitting on appropriate committees and they give even more to the chairs of these committees.

Finally, some PACs give to all incumbents whether or not they agree with them. The California Medical Association is a good example. In 1982 CMA gave to 90 of the 100 winning candidates in legislative races. Contributions were given to the most conservative of Republicans and the most liberal of Democrats. In many cases CMA gave to both candidates running in the same campaign. Wherever CMA gave a contribution to a losing 1982 Senate candidate, it also gave a contribution to the winning candidate. Many PACs consider campaign contributions to be part of doing business.

Table 3.2

**1982 LEGISLATIVE WINNERS AND LOSERS: SOURCES OF CAMPAIGN  
CONTRIBUTIONS OF \$100 OR MORE IN PRIMARY AND GENERAL ELECTIONS  
CLASSIFIED BY SPECIFIC INDUSTRY GROUPS OR AFFILIATIONS**

<b>Business</b>			<b>\$24,175,342 (58%)</b>
Agriculture	1,765,896	(4.1%)	<i>Business 4/9/90</i>
Entertainment/Recreation	1,524,102	(3.7%)	<i>Like</i>
Finance/Insurance	3,071,894	(7.4%)	<i>any interest</i>
Health	3,028,976	(7.3%)	
Industrial/Manufacturing	1,288,183	(3.1%)	
Legal	1,784,009	(4.3%)	
Merchandise/Retail	1,606,986	(3.9%)	
Miscellaneous	4,451,656	(10.7%)	
Petroleum	740,601	(1.8%)	
Professional/Trade	1,852,698	(4.5%)	
Real Estate	2,144,822	(5.2%)	
Transportation	578,674	(1.4%)	
Utilities	336,845	(.8%)	
<b>Labor and Public Employees</b>			<b>3,665,300 (9%)</b>
<b>Political</b>			<b>9,155,415 (22%)</b>
<b>Candidates' Own Money</b>			<b>2,291,365 (6%)</b>
<b>Miscellaneous</b>			<b>1,583,787 (4%)</b>
<b>Not Reported</b>			<b>560,087 (1%)</b>
<b>TOTAL</b>			<b>\$41,431,296 (100%)</b>

Source. FPPC Reports on 1982 Campaigns

## 2. Partisan Money

When contributions from officeholders, political parties and political organizations are aggregated for the primary and general elections, partisan money is the third largest contribution category (just behind PAC and business contributions). However, nearly all partisan money is given in the general election. In 1984 partisan money amounted to nearly \$7 million or 28% of total general election contributions. Thus, when 1984 *general election* contributions are viewed in isolation, political money becomes the second largest source of all campaign money. Indeed, two years earlier in 1982, partisan money was the largest source of candidate funding in the general election. (See Table 3.1 above.)

Partisan money includes transfers from legislators such as Willie Brown, money from legislative caucuses such as the Assembly Republican Political Action Committee and money directly from California's political parties. Until 1984 partisan money was only given to members of the same party. But in the 1984 general election, Democrats poured thousands of dollars into Independent Senator Ray Johnson's losing campaign against Republican Senator John Doolittle. Johnson, a former Republican, bolted the party after his district was reapportioned in Doolittle's favor.

### 3. Large Contributors

In 1982, 580 large donors contributed \$5,000 or more to the primary and general election campaigns of legislative candidates who ran in the general election. Large contributions constituted 47% of all money raised by these legislative candidates. Of these "major donors," 370 were interest groups (174 businesses and 196 PACs), 84 were officeholders transferring funds and 24 were candidates using their personal funds. (See Table 3.3.) Approximately one-half (49%) of all contributions from sources giving \$5,000 or more came from PACs, businesses and labor unions. Business interests alone (combining individual businesses, associational PACs and business PACs) provided \$7.1 million, the largest single component (38%).

With over \$43 million spent on legislative races in 1982, one might assume that large contributions were being given by many contributors. In fact, if contributions to and from Assembly Speaker Willie Brown and other party leaders are disregarded, only three contributions in excess of \$50,000 were made to legislative candidates. None of these contributions was made by prominent special interest groups.

When contributions of \$25,000 or more are considered, only 11 additional contributors can be included. (See Table 3.4.) A substantial number of contributions of \$5,000 were made, but these \$5,000 contributors to legislative races are an extremely small minority of the total number of contributors.

Why aren't more large contributions given to legislative candidates? Interest groups believe they do not need to spend a substantial sum of money on a particular candidate to acquire influence if that candidate becomes a legislator. A contribution of \$500 or \$1,000 or \$2,500 is a big contribution to many legislative candidates. Once that contribution is made the contributor has easy access to the recipient.

Table 3.3

SOURCES OF CONTRIBUTIONS TO 1982 GENERAL ELECTION ASSEMBLY CANDIDATES BY 580 MAJOR DONORS WHO CONTRIBUTED \$5,000 OR MORE DURING 1981-1982		
Source of Contribution (and number of contributors)	Amount of Contribution	Percent of Total Contributions of \$5,000 or More
Business (174)	\$ 2,179,663	12%
Candidates' Own Money (24)	365,644	2%
Individuals (84)	1,852,199	10%
PACs (196)	7,084,467	37%
Associational (119)	(4,490,920)	(24%)
Business (23)	(461,656)	(2%)
Ideological (18)	(263,989)	(1%)
Labor (36)	(1,867,902)	(10%)
Parties	1,431,654	8%
Transfers (85)	5,988,670	32%
<b>TOTAL: (580)</b>	<b>\$18,902,297</b>	
Source: Statistics are drawn from Campaign Disclosure Statements filed with the Secretary of State's Office by donors contributing \$5,000 or more during the 1982 primary and general election campaigns.		

On the other hand, a substantial contribution of more than \$10,000 will often tag candidates as tools of particular interest groups. That can be damaging both to candidates in their election campaigns and to interest groups which do not want to receive publicity for their contributions.

During the last ten years an interest group has only once single-handedly sponsored a candidate for the Legislature. In 1976 Assemblyman John Miller (D-Alameda County) served as Chair of the Assembly Judiciary Committee which had jurisdiction over proposals to reform the state's medical malpractice claim process. This was a critical issue for the medical community at the time. Miller rejected proposals of the California Medical Association (CMA), the leading association of doctors, to restrict malpractice claims.

The CMA decided to conduct a campaign to oust Miller from the Legislature. They sponsored a challenge by Berkeley Mayor Warren Widener in the Democratic primary. The CMA and several other health industry committees gave \$18,000 directly to Widener. The CMA also encouraged its individual members to support Widener and 325 members gave Widener an additional \$16,000. Altogether, approximately 70% of Widener's campaign funds came from CMA sources.

Assembly Speaker Leo McCarthy saw the CMA challenge to Miller as a threat to the independence of the Legislature. He vowed that no special interest group would defeat any Democratic Assemblymembers. McCarthy and his colleagues directed over \$20,000 into Miller's reelection campaign and McCarthy reportedly asked various interest groups to make contributions to Miller. On election day Miller trounced Widener, winning 74% of the vote. No interest group since 1976 has attempted so directly to spend thousands of dollars in order to assure either the election, reelection or defeat of any legislative candidate. McCarthy's statements and actions accomplished his stated goal.

Speaker Brown is the one candidate who receives large contributions. In 1981-82 Brown received three contributions each in amounts over \$50,000, totaling \$373,000. In addition he received 12 contributions in amounts between \$25,000 and \$50,000, totaling \$359,000. Brown does not use these large contributions for his reelection but for redistribution to other candidates and officeholders. Brown thus acts on behalf of all Democratic Assembly candidates in receiving these funds.

## **D. The Commission's Model Law Will Encourage Small In-District Contributions**

Sources of campaign money in California have changed dramatically over the past ten to fifteen years. Small in-district contributions from individuals have diminished to virtual insignificance. Larger out-of-district contributions from PACs, businesses and partisan sources have become dominant. Voters who are asked to cast their ballots in legislative elections are no longer the principal financial supporters of candidates from their own districts. This divergence between voters and campaign contributors is a remarkable feature of contemporary state politics.

This shift in California fundraising patterns is illustrated by two Mendocino Assembly races ten years apart—one in 1972 and one in 1982. In 1972 the Democrats held the Assembly by a 44-36 margin, Republican Frank Belotti was retiring from his Mendocino seat, and each party thought the vacant position was winnable. The Democrats recruited Barry Keene, the Republicans promoted Gary Antolini, and both parties sent managers and money to the race. When the dust settled each candidate had raised over \$100,000—the first time any candidate had broken the \$100,000 mark in a state legislative race—and Keene had won by a few thousand votes. Editorial writers across California denounced the spending as extreme.

What is significant today about the race is that each candidate managed to raise the bulk of his funding from local contributors. Keene raised his money from local residents (the largest contribution being \$500), labor groups, Democratic Assembly leaders (including a



Table 3.4

CONTRIBUTORS WHO GAVE \$25,000 OR MORE TO 1982 ASSEMBLY CANDIDATES		
Contributor	Candidate	Amount
Warhol, Andy (donation of paintings)	Hayden, Tom	\$200,000
Campaign for Economic Democracy	Hayden, Tom	91,516
Burke Williams & Sorensen (law firm of candidate)	Calderon, Chas.	50,864
Steve Binder Prod. (entertainment industry)	Hayden, Tom	50,000
United for California	Hawkins, Wm.	50,000
United for California	Wright, Cathie	45,000
Mott, Stewart (Washington, D.C. philanthropist)	Hayden, Tom	40,500
United for California	Rogers, Donald	35,000
Operating Engineers #39	Connelly, Lloyd	26,827
Crown Printers (San Bernardino)	Cramer, Jim	25,307
United for California	Bader, Chas.	25,000
Supervisor Deane Dana Committee	Hawkins, Wm.	25,000
United for California	Mojonner, Joyce	25,000
United for California	Allen, Doris	25,000
Source: California Commission on Campaign Financing data analysis		

\$5,500 contribution from the Assembly Democratic Fund), and local events (one "hot dogs and beans" dinner generated \$182.50). Antolini's funding came from local Republicans (in contributions up to \$1,000), a few larger donations from local Republican groups, and \$26,000 from the state Republican Party.

In 1982, ten years later, the Mendocino seat again fell open. This time Democrat Dan Hauser raised \$225,000 to defeat Republican Jerry Partain who raised \$197,000. The significant aspect of this increase was the shift in funding sources. Hauser raised \$178,000 from Assembly Speaker Willie Brown and much of the rest from organizations outside his district. Partain received \$62,000 from the Republican Party and caucuses and the rest from business and political organizations both inside and outside the district. As reporter Dan Walters commented, this time "[n]either candidate got more than a fraction of his money from individual supporters within the district."<sup>11</sup>

The Commission has drafted a Model Law which would tend to reduce the importance of larger out-of-district contributions and increase the importance of smaller, individual, in-district contributions. (See Appendix A, "Model Law.") The Commission believes this approach will increase legislators' responsiveness to their own districts and help restore public confidence in the state's legislative process.



### **1. Contribution Limitations and the Reduction of Large Contributions**

The Commission's Model Law limits individual contributions to \$1,000 and small contributor PAC contributions to \$5,000. It prohibits transfers and off year contributions, and it places an aggregate limit on all contributions from non-individuals. (See Chapter 12, "Commission's Recommendations.") The impact of the Commission's proposals is best seen by examining a 1982 FPPC analysis of an analogous proposal.

In 1982 the Vasconcellos-Lockyer bill proposed to ban transfers, limit contributions from PACs and individuals and place an aggregate limit on non-individual contributions. (See Appendix G, "Analysis of Vasconcellos-Lockyer.") An FPPC analysis concluded that the proposed limits would have reduced the amount of money raised by candidates in 1982 by 57%. PAC contributions would have been reduced by about 25%. Limits on individual contributions would have reduced receipts by winning Senate candidates by 33% and winning Assembly candidates by 52%.<sup>12</sup> However, the FPPC included Jane Fonda's large contribution of over \$1,000,000 to her husband Tom Hayden in its individual contributions. Had her substantial contribution been counted as Hayden's own money and not subject to the proposed limitations, individual contributions would have been reduced by only 10% for victorious Assembly candidates.

The FPPC also analyzed the impact of contribution limitations on individual candidates. It found that for most legislative winners, limitations would have had the biggest impact on contributions from PACs. Of the 20 Senate winners, 19 would have had less money from PACs. Of the 80 Assembly winners, 53 would have had fewer contributions from PACs. For Senate candidates, the median amount would have been reduced by \$8,750 and for Assembly candidates it would have been reduced by \$3,000.

On the other hand, only 13 of the 20 winning Senate candidates would have had their contributions from individuals reduced, a median reduction of \$500. For Assembly candidates, 39 of the 80 winning candidates would have had their contributions from individuals reduced.

If a \$1,000 limitation were placed on PAC contributions, the average winning Assembly candidate would have had 29 PAC contributions reduced to \$1,000. With a \$3,000 limitation on PACs, the average candidate would have had eight PAC contributions reduced to \$3,000.

The FPPC also examined the important distinction between average candidates and competitive candidates. Projecting the package of limitations set forth in the Lockyer-Vasconcellos bills, FPPC figures indicate that the average competitive candidate who won a seat in the 1982 Assembly would have had a reduction in contributions of 38%. Losing candidates in these same competitive Assembly seats would have seen a 28% drop in contributions. Thus, winners would have been much more affected than losers but both would have been significantly impacted by limitations.

### **2. Incentives for In-District Contributions**

No legislation in California has been introduced to limit or prohibit out-of-district money and no state has enacted any restrictions on out-of-district money. However, in 1983 Assemblyman Ross Johnson (R-La Habra) proposed a public financing bill which would have matched only small in-district contributions with public funds. Johnson's bill passed the Assembly but was defeated in the State Senate.

The Commission has proposed a limited matching funds system in which out-of-district contributions of \$250 or less would be matched at a 3-to-1 ratio, but in-district contributions of \$250 or less from individuals would be matched at a 5-to-1 ratio. (See Appendix A, "Model Law.") The Commission has made an alternative proposal in which in-district contributors

giving \$100 to local candidates would receive a special 100% combined state-federal tax credit. (See Appendix B, "Alternative Proposal.") Analysis of the impact of tax incentives for small in-district contributions is difficult since contributions under \$100 are not itemized in FPPC reports. But this Commission believes along with many political experts that a bonus for in-district contributions will strongly encourage candidates to increase their solicitation of smaller individual contributions in their own districts.

---

## NOTES

1. Willie Brown, *Public Funds for Campaigns Can Aid Legislative Integrity*, Los Angeles Times, June 10, 1983.
2. WILLIAM J. KEEFE, *PARTIES, POLITICS AND PUBLIC POLICY IN AMERICA* 83 (2nd ed. 1976).
3. *Public Financing of Federal Elections: Hearings Before the Subcomm. on Privilege and Elections of the Senate Comm. on Rules and Administration*, 93d Cong., 1st Sess. 151 (1973).
4. Gale Cook and James Finefrock, *In Sacramento, Money Talks Louder than Voters*, San Francisco Examiner, Feb. 1, 1982.
5. The difference between the 1980 and 1982 figures is due in part to the different methodology used in compiling the two reports. This Commission's staff matched 1982 contributors' zip codes to district zip codes. The FPPC matched 1980 contributors' cities to district cities. The FPPC approach is not as precise as this Commission's methodology and probably reported more in-district contributions than were actually given.
6. FPPC, Press Release, Aug. 5, 1981.
7. GARY C. JACOBSON, *MONEY IN CONGRESSIONAL ELECTIONS* 57 (1980).
8. See FPPC Press Release, *supra* note 6.
9. An unidentified politician quoted in Eleanor Randolph, *Political Fund Committees Give Business a Big Stick*, Los Angeles Times, May 11, 1980.
10. In computing the figure for PACs, this Commission has altered the FPPC percentages by deleting contributions from political organizations and placing them in a separate category. This Commission believes its PAC figures are more reflective of actual PAC contribution patterns because recipient political committees are excluded.
11. Dan Walters, *Critical 1972 Elections Sparked High Level Spending*, Sacramento Union, Jan. 3, 1984 (containing a full description of the 1972 and 1982 Mendocino elections).
12. The FPPC assumed a limitation of \$1,000 on contributions from individuals and \$3,000 on contributions from political action committees. The FPPC also assumed that transfers would be banned. See FPPC, *THE IMPACT OF CAMPAIGN CONTRIBUTION LIMITATIONS AND PUBLIC FINANCING ON CANDIDATES FOR THE CALIFORNIA STATE LEGISLATURE* (Dec. 8, 1983).



## CHAPTER 4

---

# The Growth of PAC, Corporate and Labor Contributions

*The growth in PACs has fostered greater interest and participation in the election process which in turn has produced a healthier pluralism that is the foundation of our free political system.*

— Donald Lambro, *Political Commentator*<sup>1</sup>

*When these political action committees give money, they expect something in return other than good government. It is making it difficult to legislate. We may reach a point where everybody is buying something with PAC money. We cannot get anything done.*

— U.S. Senate Majority Leader  
Robert Dole (R-Kansas)<sup>2</sup>

**P**olitical action committees (or “PACs”)<sup>3</sup> have proliferated dramatically during the last decade. At the federal level, the number of registered PACs has increased 559%—from 608 in 1974 to 4,009 in 1984.<sup>4</sup> Expenditures by these PACs have risen even faster, jumping 1,166% in ten years—from \$21 million in 1974 to \$266 million in 1984.<sup>5</sup>

California PACs have grown apace.<sup>6</sup> Contributions by California PACs, however, cannot be directly compared to contributions by federal PACs. At the federal level corporations and labor unions are prohibited from contributing directly to candidates. Instead, they may subsidize their own PACs by making contributions to defray administrative costs and overhead. In California, corporations and labor unions can both contribute to candidates directly and can make additional contributions to candidates through state PACs. Thus, corporations and labor unions can only participate in federal elections through their PACs, whereas in California they can contribute to candidates directly. For comparison purposes, therefore, federal PAC contributions may be treated as roughly equivalent to a combination of California PAC, corpo-

rate and labor contributions. Measured by this standard, California's PAC-corporate-labor contributions are an even more dominant source of political money to legislative candidates than are PAC contributions at the federal level.

In California's 1980, 1982 and 1984 general elections, an average of 56% of all reported contributions to legislative candidates came from PACs, corporations and labor unions. The actual amounts contributed rose from \$9 million in 1980 to \$13 million in 1984.<sup>7</sup>

By contrast, candidates for the U.S. House of Representatives received an average of 32% of their contributions from PACs between 1980 and 1984.<sup>8</sup> Presidential candidates received far less. In the 1980 primary, presidential candidates received 97.9% of their private contributions from individuals and only 2.1% from PACs.<sup>9</sup> PACs and their equivalents thus contribute almost twice the percentage of money to California legislative candidates as they contribute to congressional candidates.

The growth of PACs has generated considerable controversy.<sup>10</sup> Supporters of PACs argue that PACs encourage individuals and groups to participate in the political process and allow them to speak with a more unified and powerful voice. Opponents of PACs argue that PACs distort legislation in favor of special interests, support incumbents against challengers and institutionalize the participation of major interest groups in the governmental process. Opinion polls tend to show the public is divided, although a plurality of Californians (42% to 36%) apparently believe that PACs are a "bad thing."<sup>11</sup>

## **A. PACs Have Grown to Prominence at the Federal Level**

PAC growth in this country began its sharp rise after 1974. The antecedents of this growth date back to the beginning of the century.

### **1. History of Federal PACs**

At the request of President Theodore Roosevelt, Congress passed the 1907 Tillman Act which prohibited corporations and national banks from making contributions to candidates in federal general elections.<sup>12</sup> Corporate contributions were prohibited as a way to protect shareholders against the dissipation of corporate assets for "political" purposes and to prevent the "corruption" of candidates by wealthy organizations. The prohibition on corporate contributions was reaffirmed and strengthened in the Corrupt Practices Act of 1925.

Despite the Tillman and the Corrupt Practices Acts, corporations continued to contribute to political candidates by channeling their contributions through officers, directors and other wealthy individuals associated with the corporation. Labor unions, however, were still allowed to contribute directly to federal candidates. The amounts involved were not large and attracted no particular notice.

In 1936, however, labor unions sharply increased their political expenditures to more than \$750,000 and continued to make large contributions in following years. Congress reacted by passing the temporary War Labor Disputes (Smith-Connally) Act of 1943 which prohibited unions from directly contributing to federal general election candidates. This prohibition became permanent in the Labor Management Relations (Taft-Hartley) Act of 1947.

Unlike corporations, labor unions were unable to channel their contributions through wealthy union officials to individual candidates. Unions therefore established and operated what were called "separate, segregated funds" for political contributions. Union members would typically contribute one to two dollars a year to a fund maintained separately from all other union funds and used exclusively for political contributions. A negative option or reverse checkoff was frequently used to deduct PAC contributions automatically from union salaries unless the employee asked to be excluded. This practice at the federal level has recently been prohibited by the courts.<sup>13</sup> Since the mid-1930s labor unions have consistently employed separate, segregated funds to make their contributions to federal candidates.

In 1963 a number of large corporate associations, such as the Business-Industry Political Action Committee (BIPAC), began to emulate labor's technique and form their own separate, segregated funds. Other corporations followed suit, and by 1972 business PACs contributed \$6.8 million compared to labor PACs' \$8.5 million.<sup>14</sup> A congressional study summarizing pre-1970 PAC history has concluded that "[t]he PAC evolved as a means of legally circumventing the prohibition on corporate, and, later, union contributions to candidates....[P]olitical action committee activity...pre-dated the campaign finance reforms of the 1970's. Indeed, they set the precedents for today's PACs."<sup>15</sup>

In the 1970s PAC growth was accelerated by changes in the law. The 1971 Federal Election Campaign Act (FECA) explicitly authorized corporations and unions to subsidize PAC operating expenses even though corporations and unions could not directly contribute to candidates. This allowed all the contributions of PAC members to be used for candidate contributions and thus considerably increased PACs' financial clout.

Other FECA amendments allowed "multicandidate committees" to make contributions up to \$5,000 per election to an unlimited number of federal candidates.<sup>16</sup> Individuals and other political committees were limited to contributions of \$1,000 per election. The special \$5,000 limit encouraged the formation of additional PACs which could contribute these larger amounts.

The penalties for violating the ban on direct corporate and union contributions to federal candidates were increased five-fold. Violators were subject to fines up to \$75,000. This also encouraged corporations and labor unions to funnel their contributions through PACs.

The FEC's *Sun-PAC* decision allowed corporations to use payroll deduction plans to solicit funds for PAC accounts and expand their solicitation base to include stockholders as well as employees.<sup>17</sup> These changes further encouraged corporations to make greater use of PACs.

Finally, although the Supreme Court's landmark *Buckley v. Valeo* decision upheld limitations on PAC contributions to candidates, it struck down limits on independent expenditures by PACs—those expenditures made in support of or in opposition to candidates without the prior approval of, or coordination with, the candidate's own campaign.<sup>18</sup> These decisions have particularly encouraged the growth of independent ideological PACs.<sup>19</sup>

## **2. Influence and Growth of Federal PACs**

Most of the growth in PAC contributions has been in congressional and not presidential races. Although multi-candidate PACs can give presidential primary candidates up to \$5,000, these PAC contributions do not qualify for federal matching funds. Presidential candidates thus have an incentive to seek out individual instead of PAC contributions. Only 1.2% (\$1.6 million) of all 1980 presidential primary campaign funds came from PACs; 69% (\$74 million) came from individuals and 29% (\$31 million) from public matching funds.<sup>20</sup>

PACs are major contributors to congressional candidates. PACs gave House and Senate candidates a combined total of \$55.2 million in 1979-80, \$84 million in 1981-82 and \$105 million in 1983-1984. House candidates received \$36 million of their funds from PACs in 1979-80, \$58 million in 1981-82, and \$76 million in 1983-84. PAC contributions to House candidates thus increased 100% in four years.<sup>21</sup>

PACs exhibit no clear preference for either Democrats or Republicans. But they demonstrate strong support for incumbents and a general reluctance to support challengers or open seat candidates. Of 1,957 primary and general election candidates for House seats in 1982, only 402 were incumbents. These incumbents received 67% of all PAC contributions, an average of \$104,000 per incumbent. Their 817 challengers, on the other hand, received only 18% of all PAC contributions, averaging only \$13,600 each. The 426 open seat candidates fared somewhat better than challengers, collecting an average of \$22,100 from PACs.<sup>22</sup> PAC managers have difficulty justifying contributions to challengers if it is apparent from polls or voter registration that the incumbent is going to win.



In 1982 PACs gave House Democrats 56 cents and House Republicans 44 cents out of each PAC dollar. This disparity reflected different numbers of Democrats and Republicans in the House. Democratic candidates outnumbered Republicans 903 to 742. Moreover, Democratic incumbents outnumbered Republican incumbents 228 to 174. On a per capita basis, Republican House candidates received \$37,000 while Democrats received only slightly more, \$39,000 each. Incumbent Democrats received an average of \$262,000 from PACs; incumbent Republicans received an average of \$293,000.<sup>23</sup>

### **3. Types of Federal PACs**

Overall figures tend to obscure the preferences that different types of PACs exhibit in their contribution patterns. In 1982, for example, labor PACs contributed 95% of their funds to Democrats, 57% to incumbents and 28% to Democratic challengers. Corporate and trade/associational PACs gave 62% of their money to Republicans, 73% to incumbents and only 10% to Republican challengers.<sup>24</sup> While the contribution patterns of the different PAC categories have remained constant, the relative strength of PACs has been changing.

#### **a. Corporate PACs**

Corporate PACs have multiplied faster than any other type of PAC. Their numbers jumped from 89 in 1974 to 1,317 in 1982, an increase of 1,380%.<sup>25</sup> In 1980 total corporate PAC disbursements (\$32 million)—a figure which includes contributions plus other expenditures—exceeded labor PAC disbursements (\$25 million) for the first time. In 1982 corporate PAC disbursements totaled \$43 million compared to \$35 million for labor PACs.<sup>26</sup>

PACs cannot accept more than \$5,000 from any one contributor during a calendar year. Corporate PACs may freely solicit contributions from corporate executives, administrative personnel and stockholders (and their families), but may only solicit contributions from other corporate employees (who are often members of labor PACs) at their homes twice a year.<sup>27</sup>

Individual corporate PACs typically make contributions well below the \$5,000 federal maximum and no single corporate PAC has ever been included in the list of top 20 PAC contributors to congressional candidates. But corporate PACs in the *aggregate* are now the largest source of PAC contributions to congressional candidates. The combined contributions of more than 1,317 corporate PACs (\$29 million in 1981-1982) are significantly more than the fewer, albeit larger, contributions of 293 labor PACs (\$21 million in 1981-1982).<sup>28</sup>

#### **b. Professional and Trade Association PACs**

Professional PACs represent individuals who are often more affluent than labor union members or corporate employees and who share common professional interests—such as doctors, dentists, podiatrists, trial lawyers, real estate brokers and funeral directors. The number of professional PACs has increased in recent years. They have become quite effective in focusing legislative attention on specific issues of interest to their professions.

Trade association PACs typically represent the interests of a specific industry, such as the milk producers or the canning industry. Trade association PACs contributing to federal candidates receive their funds from PAC members and employees of companies in the industries involved. In states which have no restrictions on PACs, such as California, corporations can contribute directly to trade association PACs.

The number of professional and trade association PACs at the federal level has increased from 318 in 1974 to 570 in 1982, an increase of 79%.<sup>29</sup> They are increasing nearly twice as fast as labor PACs, but much more slowly than corporate PACs. Their expenditures are large. In 1982 aggregate professional and trade association PAC disbursements reached \$46 million, roughly equaling corporate PAC disbursements (\$43 million). These professional and trade PACs gave 75% (\$17 million) of their 1981-1982 contributions to incumbents, and they divided their contributions 57% to Republicans and 43% to Democrats.<sup>30</sup>

Professional and trade association PACs tend to be large and well-organized. Roughly 55% of their expenditures (\$25 million in 1982) take the form of contributions to congressional candidates.<sup>31</sup> A strong argument can be made that in recent years PAC effectiveness in blocking or promoting legislation has been noteworthy.

In 1980, for example, the used car dealers successfully persuaded the House and Senate to overturn a Federal Trade Commission regulation requiring dealers to disclose known defects in used cars. The used car dealers made \$675,000 in contributions during the 1980 campaign, and 242 of the 286 House members voting to kill the regulation received used car dealer money. "Of course it was money," one House member said...afterward. "Why else would they vote for used-car dealers?"<sup>32</sup> Other studies have shown statistical correlations between PAC contributions and congressional voting.<sup>33</sup>

### ***c. Labor PACs***

Between 1974 and 1982 the number of nationally registered PACs representing organized labor interests increased 46%, from 201 to 293. Total labor PAC expenditures (including contributions to candidates) increased 216%, from \$11 million to \$35 million. The growth in the number of labor PACs and their expenditures was, however, less than any other PAC category. Between 1974 and 1982 labor PACs fell from being the largest spending PAC category to the smallest.<sup>34</sup>

Labor PACs tend to be large and well-organized. They generally make large contributions (up to the \$5,000 federal maximum) and focus them on congressional candidates. Labor PACs contributed \$21 million to congressional candidates in 1982.<sup>35</sup> Because labor PACs are individually large, ten to twelve labor PACs are consistently included in the twenty largest PAC contributors to federal candidates, even though labor PAC contributions as a whole have declined relative to other PACs since 1974.

### ***d. Ideological PACs***

Ideological PACs are typically organized to present views on a single issue or cluster of related issues such as conservatism in politics, handgun control, abortion or environmental preservation. Unlike corporate, trade, associational and labor PACs which tend to represent economic interests, ideological PACs represent philosophical interests and attract contributors from all segments of society. Representing groups as diverse as anti-nuclear activists and gun owners, 407 of these issue-oriented PACs spent \$64 million in 1982, more money overall than any other PAC category.<sup>36</sup> Ideological PACs included eight out of the 20 highest spending PACs in the country. Extensive fundraising efforts by conservative ideological PACs, such as the National Conservative PAC (NCPAC), account for most of the staggering 7,938% increase in ideological PAC expenditures between 1974 and 1982.<sup>37</sup>

Although ideological PACs raise and spend more money than any other PAC category, they actually contribute less money to congressional candidates than other PACs. In 1982, ideological PACs gave only \$11 million, or 17% of ideological PAC expenditures, to congressional candidates.<sup>38</sup> (See Table 4.1.)

There are three explanations for this discrepancy between contributions and expenditures. First, the administrative costs of ideological PACs must be paid out of contributions from members, while the administrative costs of corporate, trade, associational and labor PACs are paid by their sponsoring organizations. Second, ideological PACs typically spend large sums on expensive fundraising techniques, such as direct mail solicitations to the general public. Net funds available after costs may range between 10% to 30% of gross. Third, some ideological PACs prefer to make independent expenditures for or against candidates. These PACs make few, if any, contributions directly to candidates.

Table 4.1

NATIONAL PAC CONTRIBUTION PATTERNS FOR 1981-1982				
	No. of PACs	Total Exp. (millions)	Total Exp. (millions)	Conts. as a % of Total Exp.
Corporate PACs	1,317	\$ 43.3	\$29.4	68%
Trade and Association PACs	524	41.9	22.9	55%
Labor PACs	293	34.8	20.9	60%
Ideological PACs	407	64.3	11.0	17%
<b>TOTAL</b>	<b>2,541</b>	<b>\$184.3</b>	<b>\$84.2</b>	

Source: FEC Press Release, "FEC Publishes 1981-82 PAC Study," Nov. 29, 1983, p. 2

Legislators who do not receive direct contributions from ideological PACs but whose campaigns benefit from independent PAC expenditures may feel obligated to these PACs. Other legislators may be intimidated by the prospect of large independent PAC expenditures against them.<sup>39</sup> Ideological PACs may thus be able to influence legislation or elections, even though their contributions do not as easily create the appearance of a *quid pro quo* exchange of money for votes.

#### ***e. Political PACs***

Political candidates have also formed their own PACs to receive money from contributors and redistribute it to other candidates. Senators Helms and Kennedy, for example, have developed these redistributive mechanisms at the federal level. Members of each political caucus in each house of Congress also raise and redistribute money to party members. And the national political parties raise thousands of smaller contributions to support party candidates.<sup>40</sup> The role of political money in California is explored below in considerable depth. (See Chapter 5, "Partisan Sources.")

### **B. PAC, Business and Labor Contributions Are the Largest Source of Campaign Contributions in California's Legislative Races**

In California politics, PACs, corporations and labor unions play an even greater role in financing legislative campaigns than they do at the federal level.<sup>41</sup> The available figures indicate that all three contributor groups have increased their contributions to California candidates during the past few years.

#### ***1. Overall Contribution Patterns for California PACs, Businesses and Labor Unions***

Contributions from all sources to candidates for the California Legislature in the general election have increased from approximately \$5 million in 1974 to \$24 million in 1982. Adjust-

ing for inflation, these figures demonstrate a 132% escalation in campaign contributions over an eight-year period. More significantly, contributions to California legislative campaigns have increased nearly *three times* faster than contributions to congressional elections, which increased only 45% (inflation-adjusted) between 1974 and 1982.<sup>42</sup>

In three recent California general elections, combined PAC-business-labor ("interest group") contributions constituted 64% (\$7 million) of Assembly candidates' revenues in 1980, 53% (\$9.6 million) in 1982 and 59% (\$9.9 million) in 1984.<sup>43</sup> These contributions averaged \$56,000 for each of 149 major party Assembly candidates running in the 1982 general election, excluding Assembly Speaker Willie Brown who received \$1.2 million in his capacity as the chief fundraiser for Assembly Democrats.<sup>44</sup>

By contrast, 1982 general election candidates for the U.S. House of Representatives from California, whose fundraising activities were controlled by federal law, raised only 27% of their campaign contributions from interest groups.<sup>45</sup> California's 88 major party congressional candidates in fact raised an average of only \$49,000 in interest group contributions, \$7,000 less than the average of \$56,000 raised by California Assembly candidates representing districts that are about half the size of congressional districts.<sup>46</sup>

During the 1982 California general election Assembly campaign, incumbents received 64% of all interest group money. The average incumbent received \$96,000 in interest group contributions. Open seat candidates received 28% of interest group money and an average of \$62,000 per candidate. Challengers received only 8% and an average of only \$15,000 per candidate.

Large interest groups (except for labor unions) give significantly larger contributions to Republicans than Democrats. Even in the current Democratic-controlled Assembly, per capita interest group contributions flow more heavily to Republicans (\$85,000 each) than Democrats (\$72,000 each). Democrats, however, receive larger total amounts of interest group contributions. Assembly Speaker Willie Brown, for example, raised \$1.2 million in interest group contributions in 1982. Overall, Democrats received a total of \$3.3 million in 1982 while Republicans received \$2.7 million. In a Republican-controlled Assembly, interest group contributions might favor Republicans more strongly.

## ***2. Specific Fundraising and Contribution Patterns for PACs, Businesses and Labor Unions***

This Commission has studied the 25 largest PAC contributors to Assembly candidates during the 1982 general election. The top 25 PACs include 16 trade or associational PACs, eight labor PACs and one corporate PAC (Hughes Corporation). (See Table 4.2.)

As at the federal level, the top 25 California PACs divide their contributions in proportion to the number of Democrats and Republicans. Incumbents, however, receive a far larger proportion of contributions than challengers. (See Table 4.3.)

The Commission has also studied 21 additional corporate PACs which contributed at least \$5,000 to 1982 California campaigns.<sup>47</sup> These 21 corporate PACs, when combined with the 25 largest PACs, provide a representative sampling of the larger PAC contributors in California.<sup>48</sup> Their contribution patterns are similar to the patterns of all major donors in aggregate. (See Table 4.4.)

The 46 PAC contributors studied (the 25 largest PACs plus 21 other corporate PACs) accounted for 41% of all 1982 general election Assembly candidate contributions and 56% of all major donor contributions. Contributions were proportionately divided between Democrats and Republicans. Incumbents received eight times as much money as challengers (64% compared to 8%).

Table 4.2

**CONTRIBUTIONS BY TOP 25 PACS TO 1982  
GENERAL ELECTION ASSEMBLY CANDIDATES**

Rank	Name	Democrats	Republicans	Incumbents	Open Seats	Challengers	Total Contributions	Highest Contribution	Lowest Contribution	Median Contribution
1	United for California	\$ 7,500 (2)*	\$ 488,500 (25)	\$ 277,500 (9)	\$ 210,000 (15)	\$ 58,500 (3)	\$ 496,000 (27)	\$250,000	\$ 2,500	\$18,370
2	CA Medical PAC	140,550 (42)	218,250 (43)	254,050 (62)	81,750 (18)	23,000 (5)	358,800 (85)	17,000	400	4,221
3	National United Farm Workers PAC	353,000 (10)	-0- (0)	334,000 (8)	19,000 (2)	-0- (0)	353,000 (10)	250,000	2,000	35,300
4	CA Real Estate PAC	68,995 (40)	212,578 (57)	151,744 (62)	106,154 (25)	23,675 (10)	281,573 (97)	10,000	200	2,903
5	CA State Employees Ass'n	201,322 (62)	26,650 (18)	139,644 (57)	79,078 (21)	9,250 (2)	227,972 (80)	10,640	200	2,850
6	ABC/CA Teachers Ass'n	209,577 (7)	25,950 (6)	130,283 (43)	67,459 (21)	37,785 (12)	235,527 (76)	15,413	500	3,099
7	Operating Engineers Local/No. 3	209,699 (42)	-0- (0)	71,318 (17)	116,827 (17)	21,354 (8)	209,699 (42)	16,517	116	4,993
8	CA Labor Federation (COPE)	195,350 (48)	-0- (0)	112,350 (26)	60,500 (16)	22,500 (6)	195,350 (48)	11,850	1,000	4,070
9	Bankers Resp. Gov't Committee	72,300 (35)	94,000 (38)	125,300 (55)	35,000 (16)	6,000 (2)	166,300 (73)	17,300	250	2,278
10	CA Trial Lawyers PAC	146,987 (49)	8,050 (10)	102,087 (39)	35,700 (13)	17,250 (7)	155,037 (59)	26,101	200	2,628
11	Evergreen Ass'n	57,140 (29)	93,000 (39)	114,140 (49)	32,000 (16)	4,000 (3)	150,140 (68)	10,000	1,000	2,208
12	Western Growers PAC	20,500 (15)	120,000 (41)	100,500 (40)	35,000 (14)	5,000 (2)	140,500 (56)	15,000	500	2,509
13	Californians for a Better Business Climate	70,500 (25)	66,000 (20)	81,500 (30)	51,000 (14)	4,000 (1)	136,500 (45)	10,000	1,000	3,033

14	CA Dental PAC	78,140 (40)	56,950 (33)	118,090 (61)	15,000 (11)	2,000 (1)	135,090 (73)	16,640	1,000	1,851
15	Associated General Contractors PAC	45,000 (26)	83,700 (39)	79,700 (42)	42,300 (19)	6,700 (4)	128,700 (65)	6,000	200	1,980
16	Apartment PAC	25,500 (16)	101,000 (44)	85,500 (43)	36,000 (15)	5,000 (2)	126,500 (60)	10,000	1,000	2,108
17	Hughes Organization PAC	71,450 (40)	38,850 (24)	99,800 (33)	10,500 (11)	-0- (0)	110,300 (64)	5,500	100	1,723
18	Alliance for Representative Gov't (Deane Dana and Mike Antonovich, L.A. County Supervisors)	-0- (0)	105,000 (17)	19,000 (5)	28,000 (7)	58,000 (5)	105,000 (17)	30,000	500	6,177
19	United Auto Workers Region 6	102,300 (43)	-0- (0)	59,800 (24)	31,500 (13)	11,000 (6)	102,300 (43)	10,200	600	2,379
20	Laborers for Equality & Progress	96,500 (67)	-0- (0)	57,500 (41)	27,000 (18)	12,000 (8)	96,500 (67)	4,000	500	1,440
21	CA Farm Bureau Federation PAC	7,800 (6)	82,200 (31)	42,500 (22)	37,500 (12)	10,000 (3)	90,000 (37)	10,000	300	2,432
22	CA Cable Television Ass'n	61,922 (51)	20,075 (36)	68,277 (65)	13,000 (20)	750 (2)	82,027 (87)	11,950	100	943
23	Certified Public Accountants PAC	41,000 (17)	39,500 (17)	47,000 (17)	30,500 (15)	3,000 (2)	80,500 (34)	5,000	1,000	2,368
24	Retailers Good Gov't Council	46,500 (44)	32,950 (21)	71,450 (56)	7,000 (7)	1,000 (2)	79,450 (65)	7,000	100	1,222
25	PACE/CA School Employees Ass'n	70,147 (37)	2,000 (2)	57,747 (33)	9,400 (5)	5,000 (1)	72,147 (39)	6,747	500	1,850
TOTAL:		\$2,399,709 (856)	\$1,915,203 (561)	\$2,750,980 (959)	\$1,217,168 (361)	\$346,764 (97)	\$4,314,912 (1,417)	\$577,858	\$15,566	\$114,935

\*Number of candidates receiving contributions  
Source: California Commission on Campaign Financing data analysis of Major Donor Campaign Statements



Table 4.3

COMPARISON OF CONTRIBUTION PATTERNS TO 1982 GENERAL ELECTION ASSEMBLY CANDIDATES BY THE TOP 25 PACS IN CALIFORNIA						
Type of PAC	No. of PACs	Total to Democrats	Total to Republicans	Total to Incumbents	Total to Challengers	Total to Open Seats  Total
Trade or Associational	16	\$ 890,364	\$1,821,753	\$1,688,358	\$ 227,879	\$ 795,904 \$2,712,141
Labor	8	1,437,895	54,600	962,842	118,889	410,764 1,492,495
Corporate*	1	71,450	38,850	99,800	-0-	10,500 110,300
TOTAL	25	\$2,399,709	\$1,915,203	\$2,751,000	\$ 346,768	\$1,217,168 \$4,314,936
*Hughes Organization Public Affairs Committee						
Source: California Major Donor Campaign Disclosure Statements						

Table 4.4

COMPARISON OF CONTRIBUTION PATTERNS TO 1982 GENERAL ELECTION ASSEMBLY CANDIDATES BY ALL LARGE DONOR INTEREST GROUPS, AND BY THE TOP CORPORATE AND OTHER PACS IN CALIFORNIA					
	Percentage of Contributions				Open Seat Races
	Rep.	Dem.	Inc.	Chal.	
Top 25 PACs plus 21 Corporate PACs	44%	56%	64%	8%	28%
All 370 Identified Interest Groups	45%	55%	62%	8%	30%

Source: California Major Donor Campaign Disclosure Statements

3. Types of California PACs

California PACs can be divided into five categories: corporate, trade and associational, labor, ideological and partisan. These PACs raise their contributions in differing amounts and through differing collection methods. Labor PACs, for example, typically use a negative option or reverse checkoff system in which a small monthly amount is deducted from the union member's paycheck unless the member affirmatively declines.<sup>49</sup> Amounts range from 60 cents (California Federation of Labor) to \$5.40 (California State Employees Association) a year. By contrast, trade or professional PACs raise larger contributions up to \$100 a year (Certified Public Accountants), but not all members contribute. Associational or industry PACs receive even larger contributions (bankers contribute an average of \$1,120). (See Table 4.5.)

The following discussion describes the median and average contribution and solicitation patterns for corporate, trade, associational, labor union and ideological PACs in California.<sup>50</sup>

a. Corporate PACs

Although many corporations make contributions in California, only 22 corporate PACs gave \$5,000 or more to legislative candidates during the 1982 election. Only one corporate PAC (Hughes Corporation) was ranked among the 25 largest California PAC contributors to 1982 Assembly candidates. (See Table 4.6.)

The median California corporate PAC gave to more Republicans than Democrats, but each Democrat received a slightly larger contribution. Fourteen Republicans each received an average of \$508 from the median corporate PAC, while ten Democratic candidates each received an average of \$601.

Support for Democrats tends to reflect the strong pro-incumbent bias in corporate PAC contributions. The median corporate PAC gave 92% of its contributions to incumbents, with 20 incumbents receiving \$598 each. Three open seat candidates each received \$344. High support for Democrats results at least in part from the Democratic majority in the Assembly and the ability of important Democratic incumbents to attract corporate PAC funds. Few corporate PACs gave significant amounts to challengers.

The Commission studied available campaign data on 17 corporate PACs to determine their sources of funds. The total receipts of these corporate PACs were \$752,000. Receipts ranged from \$136,000 (Pacific Telephone State PAC) to \$7,500 (Ameron PAC).

These corporate PACs follow three patterns of political fundraising. In the first group, five of the 17 PACs received all their funds directly from the corporate treasuries of their sponsoring corporations. No funds were received from officers, shareholders or employees. The average size of these direct corporate donations to their PACs was \$32,000. The smallest corporate donation was \$7,900 and the largest \$66,800.

In the second group, two of the corporate PACs collected all of their political funds through donations from employees or shareholders in amounts under \$100. Santa Fe Industries collected \$50,000 in such contributions and Johnson Co. collected \$10,000.

In the third group, ten corporate PACs received a total of \$529,000 in a combination of contributions from corporate treasuries and from individual employees or stockholders. Although eight of these PACs received large contributions from corporate treasuries, they also received more total contributions in under-\$100 amounts. The largest corporate PACs raised their funds in this fashion, averaging \$53,000 in receipts. Of these PACs' total receipts, 54% were collected from individuals in amounts under \$100 and 46% came directly from corporate treasuries.

#### ***b. Trade and Associational PACs***

Contributions from trade and associational organizations are the largest source of interest group funding for California legislative candidates. These PACs accounted for 48% of all interest group contributions to 1982 general election Assembly candidates. Sixteen of California's 25 largest PAC contributors in 1982 were trade or associational organizations.

The typical median large trade or associational PAC in this group of 16 contributed a total of \$130,000 to Assembly candidates. This money was distributed to 28 Democrats receiving an average of \$1,800 each, and 32 Republicans receiving an average of \$2,400 each. Democrats received 40% of all contributions, while Republicans received 60%. The median associational PAC gives approximately three to four times as much to candidates as does the median corporate PAC (\$500 to \$600).

Trade and associational organizations were more incumbent-oriented in their giving patterns than labor unions, but less so than corporations. The median trade or associational PAC gave 71% of its contributions to 43 incumbents who received \$2,400 each. Five percent went to three challengers who received \$2,400 each, and 24% went to 15 open seat candidates who received \$2,300 each.

The two most notable deviations from the median contribution pattern were displayed by the California Cable Television Association and United for California. The California Cable Television Association contributed to a large number of candidates (87), but gave them a relatively small average contribution (\$943). By contrast, United for California contributed to only 27 Assembly candidates in the 1982 general elections, but gave the average recipient \$18,300. Twenty-five Republicans received 98.5% of United for California's funds while two Democrats received the remaining 1.5%. More than half of the organization's funds went to challengers and open seat candidates in competitive races. Funding for United for California comes principally from large corporations, many of whom also contribute to candidates separately. Large California corporations may use their direct contributions to support incumbents and their indirect contributions through United for California to alter the partisan and ideological composition of the Legislature.

Seven of the 16 trade or associational PACs in California's top 25 responded to a Commission telephone survey to ascertain their funding sources. Trade groups representing individual professionals collect political contributions from members' monthly dues. Trade organiza-

Table 4.5

MEMBERSHIP AND AVERAGE ANNUAL CONTRIBUTIONS BY SELECTED  
PACS IN THE TOP 25 CALIFORNIA PACS

Type/Name of Group	Total Membership	Contributing Members	Average Annual Contributions	Total Received
Labor				
California Teachers	160,000	160,000	\$ 5.00	\$ 800,000
California Labor Federation	650,000	650,000	0.60	390,000
California State Employees Ass'n	85,000	82,000	5.40	442,800
California School Employees Ass'n	80,000	64,000	N/A	N/A
UAW Region 6	55,000	44,000	N/A	N/A
United Teachers	18,000	18,000	5.00	90,000
Trade (Professional)				
California CPA	23,000	11,000	100.00	1,100,000
California Dental	14,000	6,160	50.00	308,000
California Medical	27,000	9,000	70.00	630,000
California Trial Lawyers	6,000	4,000	N/A	N/A
Associational (Business Groups)				
General Contractors	N/A	500	N/A	N/A
Bankers Responsible Gov't	172	172	1,120.00	193,000
California Association of Health Facilities:				
Hospitals	900	475	720.00	342,000
Individuals	1,000	1,000	10.00	10,000
Evergreen Ass'n (Timber)	N/A	N/A	N/A	N/A
Western Growers:				
Farmers	1,200	400	500.00	200,000
Individuals	1,200	1,000	50.00	50,000
Ideological				
Campaign for Economic Democracy	50,000	4,000	20.00	80,000

Corporate

Little specific data, varies widely. Employees often contribute less than \$100 per year, but these contributions are not individually reported. Contributions over \$100 are often from corporate treasuries. (Except for Hughes, the remaining 21 corporate PACs are not in the top 25.)

N/A = Not Available

Source: This data applies only to a Commission study of the top 25 PACs in California, which consist primarily of trade, associational and labor PACs, with one corporate PAC (Hughes) and one ideological PAC (Campaign for Economic Democracy).

Table 4.6

CORPORATE PAC CONTRIBUTIONS  
(1982 Assembly and Senate General Election Candidates)

Rank	Name	Democrats	Republicans	Incumbents	Open Seats	Challengers	Total Contributions	Highest Contribution	Lowest Contribution	Average Contribution
1	Northern Californians for Good Gov't (Lloyd Arnold)	\$ 38,850 (28)*	\$ 13,450 (17)	\$ 47,750 (32)	\$ 4,050 (12)	\$ 500 (1)	\$ 52,300 (45)	\$10,000	\$ 250	\$ 1,162
2	Good Gov't Comm. (Calif. Savings & Loan League)	35,900 (31)	14,600 (16)	50,000 (46)	500 (1)	-0- (0)	50,500 (47)	5,000	250	1,075
3	State & Local Citizens Resp. Group (Southern California Edison)	25,450 (38)	16,450 (29)	40,000 (62)	1,900 (5)	-0- (0)	41,900 (67)	1,900	200	625
4	Shell Good Gov't Fund	9,700 (10)	21,300 (29)	24,000 (29)	5,200 (8)	1,200 (2)	31,000 (39)	2,500	500	795
5	Pacific Telephone State PAC	12,775 (43)	10,926 (33)	15,731 (51)	7,670 (22)	300 (3)	23,701 (76)	2,700	100	308
6	General Telephone of CA Employees PAC	5,900 (10)	17,720 (16)	18,620 (20)	3,900 (4)	1,100 (2)	23,620 (26)	2,000	200	909
7	Wickland Oil PAC	10,350 (10)	10,100 (16)	19,450 (23)	500 (2)	500 (1)	20,450 (26)	4,000	250	787
8	Alcoans for Political Action	2,350 (5)	14,800 (31)	12,050 (26)	3,600 (7)	1,500 (3)	17,150 (36)	750	350	476
9	Santa Fe Ind. Inc. Public Affairs PAC	4,300 (16)	7,850 (32)	10,350 (39)	1,400 (7)	400 (2)	12,150 (48)	600	150	253
10	Hamilton Test Systems CA Inc. PAC	10,330 (13)	1,280 (4)	11,610 (17)	-0- (0)	-0- (0)	11,610 (17)	3,605	200	683
11	McDonalds CA Operators PAC	2,750 (5)	7,000 (13)	8,250 (15)	1,500 (3)	-0- (0)	9,750 (18)	1,000	250	542
12	PG&E Co. Employees Good Gov't Fund	3,300 (11)	4,800 (14)	7,450 (23)	650 (2)	-0- (0)	8,100 (25)	750	100	324

13	Merck PAC: CA	2,550 (10)	3,550 (13)	5,350 (20)	750 (3)	-0- (0)	5,350 (23)	400	250	265
14	Ameron	-0- (0)	5,350 (9)	1,900 (4)	3,450 (5)	-0- (0)	5,350 (9)	2,500	150	594
15	United Southern California PAC (Telacu Industries)	5,000 (1)	-0- (0)	5,000 (1)	-0- (0)	-0- (0)	5,000 (1)	5,000	5,000	5,000
16	Shaklee Corp. State Good Gov't Fund	1,000 (3)	3,500 (9)	3,500 (8)	1,000 (4)	-0- (0)	4,500 (12)	1,000	250	375
17	Searle PAC	2,750 (2)	750 (1)	3,500 (3)	-0- (0)	-0- (0)	3,500 (3)	2,500	150	594
18	Johnson & Johnson Employees PAC	1,300 (2)	1,950 (3)	3,250 (5)	-0- (0)	-0- (0)	3,250 (5)	1,000	250	650
19	Committee for Responsible Gov't-State (Home Federal Savings & Loan of San Diego)	450 (2)	2,350 (7)	2,050 (7)	750 (2)	-0- (0)	2,800 (9)	500	200	311
20	San Diego Gas & Elec. Co. PAC	100 (1)	1,900 (6)	1,000 (4)	1,000 (3)	-0- (0)	2,000 (7)	600	100	286
21	Matt PAC Inc.	1,250 (2)	100 (1)	350 (2)	1,000 (1)	-0- (0)	1,350 (3)	1,100	100	450
TOTAL:		\$176,355 (243)	\$159,726 (299)	\$291,761 (437)	\$38,820 (91)	\$5,500 (14)	\$335,331 (542)	\$48,505	\$9,250	\$16,464

\*Number of candidates receiving contributions

Source: California Commission on Campaign Financing data analysis of California Major Donor Statements



tions such as the California Trial Lawyers PAC or the Certified Public Accountants PAC (CPA PAC) solicit members annually for a suggested voluntary contribution. Many trade organizations scale the suggested contributions according to the professional income of their members, but they rarely suggest amounts over \$100.

Membership in the trade organizations examined by the Commission varied from 6,000 for the California Trial Lawyers to 27,000 for the California Medical Association. Typically 25% to 50% of the members of each trade organization contribute annually to their PAC's political fund, each donating an average of between 50% and 70% of the suggested contribution amount. The CMA PAC estimated its overhead costs at approximately \$25,000, and the CPA PAC estimated its costs at \$14,000. Overhead costs are usually paid by the organization sponsoring the PAC.

Associational PACs raise funds from organized business interests rather than individual professional members. Total regular membership in the associational PACs examined varied from 420 in the Bankers for Responsible Government to 1200 in the Western Growers Association. Some associational PACs also hold fundraising events attracting hundreds or even thousands of individual contributors.

Associational PACs often request contributions keyed to the size of the member's business. Bankers for Responsible Government, for example, suggests a contribution in an amount equal to 0.001% of bank assets, with a contribution averaging \$1,120. The California Association of Health Facilities asks each member hospital to make a political donation of \$3.60 per bed per year, with an average contribution of \$760 a year. Other associational PACs employ either a fixed solicitation amount or make no suggestion as to contribution amount. Most business members of associational organizations donate amounts over \$100, while individuals contributing at fundraisers donate in amounts less than \$100. (See Table 4.5.)

PAC board members who distribute PAC funds are either elected by vote of the total regular membership or appointed by the board of the association sponsoring the PAC. Western Growers indicates that large contributors have a major say in which candidates will receive funds. Overhead costs of \$20,000 to \$25,000 are generally paid by the sponsoring organization or by one of the contributing members. In other cases overhead is paid out of general contributor receipts.

### ***c. Labor PACs***

Twenty percent of all interest group contributions over \$5,000 to California Assembly candidates in 1982 came from labor unions including public employee groups. During the general election, the median large labor union contributed a total of \$135,000 to 45 out of 150 candidates for the California Assembly, with each candidate receiving approximately \$3,000. All 45 candidates were Democrats, and no Republican received contributions from the median labor union.

Labor unions demonstrate a greater willingness to contribute to challengers and open seat candidates than do either trade and associational organizations or corporations. While the median union contributed 52% of its funds to incumbents, it also contributed 35% to open seat candidates and 13% to challengers. The median union gave open seat candidates contributions of approximately \$3,500 each, compared to \$3,000 each for incumbents and \$2,900 each for challengers.

Although most labor unions made no contributions to Republicans in 1982, three of the unions examined were exceptions. The California State Employees Association made average contributions of \$1,500 to 18 Republicans in addition to average contributions of \$3,200 to 62 Democrats. The California Teachers Association made large contributions to six Republicans (an average of \$4,300 each), and the California School Employees Association made small contributions to two Republicans.

Labor PACs structure their political fundraising efforts almost entirely around voluntary contributions deducted from monthly paychecks. The payments are small and usually amount to about five dollars per member per year. The unions often use a negative checkoff which allows their members to avoid making political contributions or to transfer their contributions to a general fund. Union member participation in political fundraising nonetheless approaches 100%.

While the amounts contributed by each individual union member are small, large memberships provide the unions with large political funds. Eight of the 25 largest PAC contributors to 1982 California Assembly candidates were labor unions. The contributing membership of these unions varied from 18,000 in United Teachers of Los Angeles to 650,000 in the California Labor Federation. (See Table 4.5.)

The political funds of California labor unions are administered by union PACs which contribute to both state and federal candidates. Union PAC administrative costs usually run about \$20,000 a year but may be higher for a large union such as the California Labor Federation (which estimated election year overhead costs of \$60,000). PACs' costs are often paid by the union from a fund, allowing member contributions to be spent exclusively in support of candidates and causes.

Union decisions on distribution of political funds are usually made by a political committee appointed by the union board. Officers of the union board are elected by a vote of the union membership. The frequency of political committee meetings varies. Some unions hold meetings once a month during election years but only quarterly or less in off-election years. As with most PACs, union PACs rely on advice from their lobbyists and other politically experienced advisors in deciding which candidates will receive contributions.

#### ***d. Ideological PACs***

Considering California's reputation for political activism and ideological extremism, it is surprising to find that ideological PACs are much less significant in California politics than in national politics. While ideological PACs contributed 12.7% of all contributions to 1982 congressional candidates, they contributed only 2.8% of 1982 contributions to California Assembly candidates. Ideological PACs have made significant contributions to California ballot measure campaigns, but only 18 ideological PACs made contributions of more than \$5,000 to 1982 legislative candidates and no ideological PAC was among the 25 largest PAC contributors to California candidates.

The Commission's sampling of ideological PACs was too small to construct a statistically meaningful picture of the median ideological PAC. Some general observations are nonetheless possible.

Ideological PACs tend to be the least incumbent-oriented of all California PACs and are often willing to support even a longshot challenger or open seat candidate if the candidate's ideology comports with their own. Their pursuit of ideologically compatible candidates often results in contribution patterns which are highly partisan. In 1982 the conservative Gun Owners of California PAC contributed \$157,000 to California Republicans and \$0 to Democrats. In the 1984 primary the Gun Owners PAC tried to give \$3,000 to Gerald Eaves, a Democrat running against incumbent Democrat Terry Goggin. After the contribution generated much controversy, Eaves returned the money (although he kept \$10,000 from United for California). Other ideological PACs, such as the Campaign for Economic Democracy (CED), are strongly liberal in outlook and support Democrats.

Major fundraising efforts of ideological PACs are usually conducted through mass mailings. Occasionally these mail solicitations are sent "blind" to the general public. More often the mailings are narrowly directed and generate a higher response rate. CED, for example, reported that the response rate to general public solicitations is typically 1% to 3%, but rose to

13% when the PAC conducted a pro rent control mailing directed towards Santa Monica renters. Some 3,000 pro rent control contributors donated an average of \$19.50 each.

Mass mailings are a much more expensive method of fundraising than automatic union payroll deductions or solicitations of members or employees of a parent organization. Overhead therefore usually consumes 40% to 80% of all donations received by an ideological PAC, rather than the \$20,000 or so it costs other PACs to run their day-to-day operations. Moreover, ideological PACs do not have a sponsoring organization to defray their administrative costs.

The following chart illustrates the solicitation, contribution and expenditure patterns of five different California PACs. (See Table 4.7.) Some of these PACs go into debt in election years and recoup their losses in the following off-election year. Most of these PACs pay relatively little for overhead and administration. All of them gave large sums of money ranging from \$425,000 to \$728,000 in the 1982 election year.

#### ***e. Partisan PACs***

Some California PACs are controlled by political candidates or officeholders. (These PACs are considered separately in Chapter 5, "Partisan Sources.") Other California PACs which are privately funded concentrate their contributions primarily along partisan political lines. Major political party candidates often cite these PACs as significant funding sources upon which they can reliably draw.<sup>51</sup>

The following chart lists those PACs, businesses and unions that gave 80% or more of their money to candidates of one party and contributed at least \$25,000 to candidates during 1981-1982. (See Table 4.8.) Democrats received 100% of the contributions of a number of union PACs, such as the United Farm Workers, United Auto Workers and Laborers for Equality and Progress (the Laborers International PAC). Republicans received 100% of the Gun Owners' contributions and 98% of United for California's contributions. Democrats apparently receive more contributions from partisan-oriented PACs than do Republicans.

Most partisan-oriented PACs are motivated by ideology. They feel their interests will be best advanced if the party they favor is strengthened in the Legislature. Labor union PACs, for example, give an overwhelming proportion of their campaign contributions to Democrats, while United for California, the business PAC, is just as consistent in its support of Republicans.

Partisan campaign strategists have learned that these PACs are reliable sources of large campaign contributions. Some of these PACs work closely with partisan strategists. When a last-minute campaign spending blitz is mounted, strategists may receive funds from these PACs to further the attack or to defend against such an attack from the opposition.

### **C. Reforms Are Desirable to Moderate the Influence of PAC-Business-Labor Contributions in California**

Organized interest groups contribute a substantially higher percentage of campaign contributions to California legislative candidates than they do to candidates for the U.S. House of Representatives. (See Table 4.9.) California PAC-business-labor contributors, like federal PACs, throw the bulk of their support to incumbents. (See Table 4.10.) These patterns may be attributed to several factors.

Federal candidates are prohibited from receiving direct contributions from corporations and labor unions, while California candidates are not. PAC contributions are limited to \$5,000 (by multicandidate committees) at the federal level, while California has no limit on PAC contributions. These two factors increase the contribution incentives in California. On the other hand, California and the federal government regulate businesses relatively heavily. Organized interest groups thus have the financial ability and incentive to seek to affect legislation. In both jurisdictions strong incentives exist to support incumbents who control the destiny of regulatory legislation.

Table 4.7

## FINANCIAL SUMMARY OF FIVE SELECTED CALIFORNIA PACS

	California State Employees Association PAC		California Medical PAC		United for California		California Teachers Ass'n (Ass'n for Better Citizenship)		Calif. Real Estate PAC	
	1982	1983	1982	1983	1982	1983	1982	1983	1982	1983
Total Conts. Received	\$481,903	\$519,274	\$638,946	\$587,551	\$361,551	\$272,471	\$569,448	\$257,000	\$370,460	
--Under \$100	100%	100%	62%	57%	0%	0%	100%	100%	100%	
--\$100 or More	0%	0%	38%	43%	100%	100%	0%	0%	0%	
Total Payments and Conts. Made	\$553,308	\$330,985	\$887,648	\$357,271	\$561,352	\$121,060	\$472,275	\$249,974	\$267,310	
Expenditure to Entities Other than Cands. or Their Committees	16%	22%	18%	64%	14%	100%	9%	3%	40%	
Expenditure to Cands. or Committees	84%	78%	82%	36%	86%	0%	91%	97%	60%	

Source: All information came from Campaign Statements filed by the above PACs with the Los Angeles County Registrar.

Table 4.8

**PARTISAN-ORIENTED SOURCES OF  
CAMPAIGN MONEY:  
POLITICAL ACTION COMMITTEES, CORPORATIONS AND UNIONS**

Supporters of Democrats			
Source of Contribution	Total Given to All Candidates	Percentage Given to Democrats	No. of Candidates Receiving Money From this Source*
National United Workers PAC	\$369,325	100%	14/0/14
California Trial Lawyers PAC	\$353,154	90%	64/20/84
CA State Employees Ass'n	\$347,180	85%	68/31/99
Operating Engineers Union Local No. 3	\$317,540	98%	75/2/59
ABC/CA Teachers Ass'n	\$252,029	91%	78/8/86
California Labor Federation (COPE)	\$226,690	99%	63/1/64
United Auto Workers Region 6 PAC	\$173,300	100%	53/0/53
Campaign for Economic Democracy PAC (founded by Assemblyman Tom Hayden)	\$162,816	100%	5/0/5
California Teamsters Public Affairs Council	\$148,025	97%	76/5/81
Pace/CA School Employees Ass'n	\$123,547	97%	42/3/45
Laborers for Equality and Progress	\$116,500	100%	68/0/68
California Chiropractic PAC-State	\$106,365	87%	45/19/64

Supporters of Republicans

United for California	\$535,630	98%	25/3/28
California Farm Bureau	\$150,140	80%	41/17/58
Western Growers PAC	\$149,250	83%	45/19/64
Gun Owners of Calif. Campaign Committee	\$122,827	100%	16/0/16
Alliance for Representative Gov't (Los Angeles County Supervisors Deane Dana and Mike Antonovich)	\$110,000	96%	17/1/18

This table includes contribution sources who contributed at least \$100,000 to candidates for the Legislature during the 1981-1982 election cycle, gave to at least five different candidates and gave 80% or more of this money to candidates of one party.

\*Democrats/Republicans/Total

Source: California Commission on Campaign Financing data analysis

TABLE 4.9

COMPARISON OF PAC AND BUSINESS CONTRIBUTIONS TO CANDIDATES FOR THE U.S. HOUSE OF REPRESENTATIVES AND THE CALIFORNIA STATE LEGISLATURE: 1980, 1982 and 1984							
U.S. House of Representatives (in millions)				California State Legislature (in millions)			
	Total Contributions	Total PAC Contributions	Percent PAC	Total Contributions	Total PAC/Bus. Contributions	Percent PAC/Bus.	
1980 Election		\$125M	\$36M	29%	\$13.9M	\$9.1M	66%
1982 Election		\$184M	\$58M	32%	\$24.2M	\$11.6M	48%
1984 Election		\$203M	\$74M	36%	\$23.6M	\$12.9M	55%
In federal elections, all business contributions are given through PACs. In California, businesses contribute to candidates directly and through PACs. California figures thus include PAC and business contributions.							
Source: FEC Press Release, Dec. 2, 1983 (for 1981-1982 election); FEC Press Release, Mar. 7, 1982 (for 1979-1980 election); telephone conversation with Fred Eiland, Press Information Officer for the FEC (for 1984 election). FPPC Study, "Sources of Contributions to California State Legislative Candidates for the Nov. 4, 1980 General Election,"; FPPC General Elections Reports (for 1982 and 1984 elections)							



Table 4.10

COMPARISON OF PAC/BUSINESS CONTRIBUTIONS TO INCUMBENTS, CHALLENGERS AND OPEN SEAT CANDIDATES FOR THE U.S. HOUSE OF REPRESENTATIVES AND THE CALIFORNIA STATE ASSEMBLY: 1982		
	U.S. House of Representatives	California Assembly
Incumbents	67%	65%
Challengers	18%	8%
Open Seats	15%	28%
Source: California Commission on Campaign Financing data analysis		

California PAC-business-labor contributors arguably exert a proportionately stronger influence over California legislation than other contributor groups, and much of this is offered in support of incumbents. Reforms to moderate the influence of interest group contributions on the political process in California are thus appropriate. (See Chapter 7, "Negative Consequences.")

**1. The Pros and Cons of PACs or Interest Group Contributions**

PACs have become a controversial part of American political life. Supporters argue that PACs allow large groups of relatively powerless individuals to band together to enhance their influence toward common goals. PAC members gain a feeling of participation in the political process and can express their social concerns without having them filtered through the more established and bureaucratic mechanisms of the political parties.

PAC supporters argue that PACs contribute new money into the political system and thus increase the ability of candidates to communicate more effectively with the electorate. They claim that PAC money helps candidates to compete successfully against wealthy opponents. They contend that PAC contributions enable challengers to take on entrenched incumbents.

PAC supporters also claim that PAC contributions do not distort the legislative agenda. They argue that PACs merely support those candidates with whom they are already in philosophical agreement. They suggest that contributions only give PACs access to candidates or elected officials to discuss the merits of pending issues, but that politicians are ultimately responsible to the electorate and not to PACs. They also argue that the proliferation of PACs is desirable for it allows candidates to pick and choose between PAC contributors without becoming too dependent on any one.

The opponents of PACs contend that rapid PAC proliferation over the past decade has given PACs excessive influence over elections and legislation and that PACs distort the political agenda on behalf of special interests. They contend that the large percentage of PAC contributions has created the reality, or at least the appearance, of undue PAC influence and that public confidence in the state's political system is being lost. They argue that the access to political figures provided by PAC contributions is itself an important form of influence-purchasing.

PAC opponents also express concern that PACs are able to raise and spend money in ways which are beyond the capacity of other individuals and groups such as the poor, the young and the elderly. By focusing their resources on specific issues, PACs are able to create an imbalance in the legislative process and gain support which is disproportionate to the merits of their positions.

PAC opponents contend that coalitions of PACs and other organized groups wield too great an influence in the aggregate. The massing effect of interest groups against a particular measure (e.g., tax reform or environmental protection) overwhelms less powerful or poorly organized opponents, even if those opponents enjoy broad popular support. PACs have also undermined support for the political parties and have supplanted them as traditional funding sources.

PAC opponents suggest that PACs are typically controlled by a few individuals or lobbyists and that individual PAC members have relatively little influence over PAC contributions. They further argue that heavy PAC contributions create the impression that candidates are "for sale," thus negating any benefits that PACs might generate from enhanced individual participation in politics.

Finally, PAC opponents charge that PACs overwhelmingly support incumbents and thus decrease electoral competition. PACs give primarily to candidates they think will win, not to candidates with whom they philosophically agree. Because some PACs give to both Democrats and Republicans, and occasionally to both sides in a race where both candidates have a chance to win, it is apparent that they view their contributions as insurance policies to help obtain the favor of incumbents, not as expressions of ideological commitment.

The Commission believes that PACs are a legitimate vehicle by which individuals can participate in the political process. But it also believes that the disproportionate impact of PAC and other interest group contributions in California has at least created the appearance of undue influence over the legislative and electoral processes. California PACs, corporations and labor unions now contribute over 50% of all California legislative candidates' funding—a much higher proportion than PAC funding given to congressional candidates. The Commission does not believe that corporate and labor contributions should be prohibited, as at the federal level. But it believes that appropriate limits should be placed on the size of contributions to California candidates.

## ***2. The Commission's Model Law***

The Commission believes that five types of limitations are appropriate: (a) limits on the size of contributions by PACs, businesses and labor unions to candidates; (b) limits on total PAC contributions; (c) limits on the size of contributions to PACs; (d) aggregate limits on the dollar amount of contributions a candidate can receive from PACs; and (e) improved disclosure of PAC identities.

### ***a. Contribution Limits on PACs***

Federal law prohibits labor unions and corporations from contributing directly to candidates, but allows labor or corporate supported PACs to contribute up to \$5,000 per candidate. The Commission believes the federal approach has value but would modify it for California in several respects.

First, the Commission believes that corporations and labor unions should be able to contribute up to \$1,000 directly to candidates. Corporations and unions have a stake in the political process and should be allowed to contribute. The federal prohibitions have generated difficult administrative problems which could be avoided by allowing limited direct contributions. A \$1,000 contribution limit would curtail the potential for undue legislative influence by any one PAC.

Second, the Commission allows “small contributor PACs” to contribute up to \$5,000 per candidate. The Commission defines small contributor PACs as those receiving all their contributions from PAC members in amounts of \$50 or less.

### ***b. Limits on Total Contributions***

The Commission proposes that individual PACs should contribute no more than \$25,000 to all candidates in any two year period. Small contributor PACs could contribute up to a total of \$100,000.

In *Buckley v. Valeo*, the Supreme Court upheld a provision of federal law which limited total individual contributions to \$25,000 per election.<sup>52</sup> Without such a limit, the Court reasoned, contributors could evade the basic \$1,000 contribution limit. Dozens of \$1,000 contributions could be made to political committees which could then rechannel that money to one or two candidates. The Commission believes the same reasoning justifies a total yearly limit on corporate, labor, PAC and small contributor PAC contributions.

### ***c. \$1,000 Limit on Contributions to PACs***

The Commission believes a limit should be placed on the size of contributions to PACs. Although federal law limits contributions to PACs to \$5,000, the Commission recommends that individuals, corporations and labor unions be allowed to contribute no more than \$1,000 to any PAC per election. Without such a limit, contributors could make very large contributions to a number of PACs which could then all support an identical slate of candidates. The Supreme Court has justified such limits on contributions to PACs as necessary to preserve the integrity of the underlying contribution limits scheme.<sup>53</sup>

### ***d. \$50,000 and \$75,000 Aggregate Contribution Limits***

The Commission believes that aggregate contribution limits should be placed on the total amount of money a candidate can receive from non-individuals (e.g., PACs, corporations, labor unions, businesses and partnerships). Montana has adopted this approach.<sup>54</sup> It prevents lower house candidates from receiving more than \$600 and upper house candidates more than \$1,000 from PACs. Contra Costa County in California prohibits supervisorial candidates from receiving more than \$15,000 from PACs. Legislation proposing to limit aggregate PAC contributions to congressional candidates has been introduced in Congress but has not passed.<sup>55</sup>

The appearance of undue influence over legislation and elections is often caused by the “massing” of contributions from organized interest groups. Despite the \$5,000 limit on federal PAC contributions, federal PACs have steadily increased their influence over the past ten years. Many observers now believe that the bunching of many PAC contributions behind a specific set of issues poses a greater problem than individual PAC contributions.

In 1983, for example, a bill (A.B. 3808) was introduced in the California Assembly to weaken the local rent control laws passed by a number of communities. Nine separate organizations—including the Irvine Company, the California League of Savings Institutions, the California Real Estate Association, the California Apartment Association PAC, the California Mortgage Bankers Association, Associated Builders and Contractors, the California Housing Council, the California Building Industry PAC and the Building Industry Association PAC—all made substantial contributions to legislators during the pendency of this bill. Contributions from any one of these organizations might have attracted little attention. But in the aggregate these contributions presented a sizable force. (See further discussion in Chapter 7, “Negative Consequences.”)

The Commission therefore proposes that Assembly candidates be allowed to receive up to \$50,000 in non-individual contributions and Senate candidates up to \$75,000. These figures will provide ample room for interest groups to contribute to candidates, yet will place an aggregate cap on the extent to which such contributions create the reality or appearance of excessive candidate dependence on single-interest contributors.

### ***e. Improved Disclosure of PAC Identities***

Some California PACs adopt names which clearly disclose their interests or the interests of their supporters. These include such PACs as the California Trial Lawyers PAC, the United Auto Workers PAC or the Gun Owners of California Campaign Committee. Other PACs and interest groups, however, adopt names which fail to reveal the true identities of their major supporters. Examples include Action for Better Health (nurses), the Committee to Improve Our Nation (Glendale Federal Savings) and the Committee of Concerned Citizens (controlled by Assemblyman Tom Bane).

Federal regulations require federal PAC names to disclose the identities of principal sponsors. The Commission believes comparable legal provisions should be adopted in California. PAC names should disclose the identities of any individuals, entities or others by whom the organization is controlled. The Commission believes this will improve the operation of the state's current disclosure laws and will enhance public understanding of the true sources of campaign contributions in the state.

## **NOTES**

1. Sacramento Union, Sept. 20, 1983.
2. 9 COMMON CAUSE 44 (Mar./Apr. 1983).
3. The term "Political Action Committee" or "PAC" does not appear in the Federal Election Campaign Act. A PAC is any committee sponsored by a corporation, labor union or other group of persons which receives contributions or makes expenditures over a total of \$1,000 during a calendar year. 2 U.S.C.A. §§431(4), 441b(b) (West 1985). The definition of a PAC (or "committee") under California law is similar. A federal PAC that qualifies as a "multicandidate political committee" can contribute up to \$5,000 in the primary and \$5,000 in the general election to any federal candidate. See 2 U.S.C.A. §§441a(a)(2), 441a(a)(4), 431(1) (West 1985). California has no comparable definition of a multicandidate committee. In California, committees receiving or expending \$500 or more must register and file campaign statements. CAL. GOV'T CODE §82013 (West Supp. 1985).
4. UNITED STATES GOVERNMENT, POLITICAL ACTION COMMITTEES: THEIR EVOLUTION AND GROWTH AND THEIR IMPLICATIONS FOR THE POLITICAL SYSTEM, Report No. 81-246, at 56 (1981) (hereinafter cited as GOV'T REPORT No. 81-246); Federal Election Comm'n, *PAC Support of Incumbents Increases in '84 Elections*, Press Release, May 19, 1985.
5. GOV'T REPORT No. 81-246, *supra* note 4, at 83; FEC Press Release, *supra* note 4.
6. FPPC, THE CALIFORNIA PAC PHENOMENON (May 1980).
7. Unless otherwise indicated, California figures are drawn from published reports of the California Fair Political Practices Commission (FPPC).
8. Federal Election Comm'n, *FEC Releases Final Statistics on 1979-80 Congressional Races*, Press Release, Mar. 7, 1982; Federal Election Comm'n, *FEC Releases Final Report on 1981-82 Congressional Elections*, Press Release, Dec. 2, 1983; FEC Press Release, *supra* note 4; PACs & Lobbies, June 5, 1985, p. 3; see John Bibby, *Campaign Finance Reform: Expanding the Government's Role or the Parties' Role?*, 6 COMMONSENSE 1, 2 (1983).
9. Federal Election Comm'n, *FEC Releases Final Report on 1980 Presidential Primary Activity*, Press Release, Nov. 15, 1981. During the 1980 presidential primary, candidates received \$1.56 million from PACs and \$73.57 million from individuals. If public matching funds of \$30.86 million are added to the primary totals, then PAC contributions comprise only 1.5% of all the money received by presidential candidates. Figures for the 1984 presidential election are not yet available.
10. For some of the literature addressing the problems of PACs, see Edwin Epstein, *PACs and the Modern Political Process*, in THE IMPACT OF THE MODERN CORPORATION 399-496 (Betty Bock, et al., eds. 1984); LARRY J. SABATO, PAC POWER (1984); TWENTIETH CENTURY FUND TASK FORCE ON POLITICAL ACTION COMMITTEES, WHAT PRICE PACS? (1984); HERBERT E. ALEXANDER AND BRIAN A. HAGGERTY, PACS AND PARTIES: RELATIONSHIPS AND INTERRELATIONSHIPS (Citizens' Research Foundation 1984); LEAGUE OF WOMEN VOTERS, FACTS ON PACS: POLITICAL ACTION COMMITTEES & AMERICAN CAMPAIGN FINANCE (Pamphlet 1984); ELIZABETH DREW, POLITICS AND MONEY: THE NEW ROAD TO CORRUPTION (1983); CENTER FOR RESPONSIVE POLITICS, MONEY AND POLITICS: CAMPAIGN SPENDING OUT OF CONTROL (Pamphlet 1983); HERBERT E. ALEXANDER, THE CASE FOR PACS (Public Affairs Council Monograph 1983); COMMON CAUSE, PEOPLE AGAINST PACS (Pamphlet 1983); Gary C. Jacobson, Political Action Committees, Electoral Politics, and Congressional Ethics (unpublished manuscript prepared for the Project on Legislative and Representative Ethics of the Hastings Center, Apr. 1983); *Political Action Committees and Campaign Finance*, 22 Ariz. L. Rev. 351 (1980) (symposium).



11. A California Poll by the Mervin Field organization reported that 42% of Californians view PACs as a "bad thing," while 36% view them as a "good thing." The Field Institute, *California Opinion Index, Campaign Financing* (Feb. 1985). At the national level, a majority of Americans believe PACs have too much influence over the political process. See MONEY AND POLITICS 26 (briefing book for the Aspen Institute Conference on Campaign Finance, 1985).
12. For a history of the prohibition on corporate and labor contributions, see Edwin Epstein, *The Emergence of Political Action Committees*, in POLITICAL FINANCE 159-197 (Herbert E. Alexander ed. 1979); Edwin Epstein, *Corporations and Labor Unions in Electoral Politics*, 425 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 433-58 (1976); *United States v. UAW*, 352 U.S. 567 (1957).
13. *Federal Election Comm'n v. NEA*, 457 F. Supp. 1102 (D.D.C. 1978).
14. GOV'T REPORT NO. 81-246, *supra* note 4, at 34.
15. CONGRESSIONAL RESEARCH SERVICE, POLITICAL ACTION COMMITTEES: THEIR EVOLUTION AND GROWTH AND THEIR IMPLICATIONS FOR THE POLITICAL SYSTEM 35 (1981).
16. Multicandidate committees were defined as committees that had been registered with the FEC for at least six months, received contributions from more than fifty persons and made contributions to more than five federal candidates. 2 U.S.C.A. §441a(a)(4) (West 1985).
17. FEC Advisory Opinion No. 1975-23 (Dec. 3, 1975) ("Sun PAC").
18. 424 U.S. 1 (1976); see *Federal Election Comm'n v. NCPAC*, 105 S. Ct. 1459 (1985).
19. See also *First Nat'l Bank v. Bellotti*, 435 U.S. 765 (1978) (Supreme Court unwilling to limit corporate or PAC expenditures to "equalize" spending on a ballot measure question).
20. FEDERAL ELECTION COMM'N, FEC REPORTS ON FINANCIAL ACTIVITY 1979-1980: FINAL REPORT, PRESIDENTIAL PRE-NOMINATION CAMPAIGNS 1-5 (1981). Comparable information is not yet available for the 1984 presidential election.
21. Campaign Practices Reports, Feb. 25, 1985, p. 2; FEC Press Release (Mar. 7, 1982), *supra* note 8; FEC Press Release (Dec. 2, 1983), *supra* note 8; FEC Press Release, *supra* note 4. PACs contribute a larger percentage to House candidates than they do to Senate candidates. Compare figures to those cited in note 8, *supra*.
22. FEC Press Release (Dec. 2, 1983), *supra* note 8, at 2.
23. *Id.*
24. *Id.*
25. GOV'T REPORT NO. 81-246, *supra* note 4, at 83.
26. Federal Election Comm'n, *FEC Publishes Final 1981-82 PAC Study*, Press Release, Nov. 29, 1983, p. 2.
27. 2 U.S.C.A. §441b(b)(4) (West 1985).
28. FEC Press Release, *supra* note 26.
29. GOV'T REPORT NO. 81-246, *supra* note 4, at 56; FEC Press Release, *supra* note 26, at 2.
30. FEC Press Release, *id.*
31. FEC Press Release (Dec. 2, 1983), *supra* note 8, at 2.
32. DREW, *supra* note 10, at 78-79 (1983).
33. See, e.g., Diana M. Evans, *The Effects of PAC Contributions on Roll Call Voting* (unpublished manuscript prepared for delivery at the conference Electoral Reform in California: The Current Agenda, University of California, Davis, May 31, 1985 (citing further authorities)).
34. See GOV'T REPORT NO. 81-246, *supra* note 4, at 56, 83; FEC Press Release, *supra* note 26, at 2.
35. FEC Press Release (Dec. 2, 1983), *supra* note 8, at 2.
36. FEC Press Release, *supra* note 26, at 2.
37. FEC Press Release, *supra* note 26, at 3; GOV'T REPORT NO. 81-246, *supra* note 4, at 2.
38. FEC Press Release, *supra* note 26, at 2.
39. During the 1984 general election, for example, the National Rifle Association spent \$250,000 in Texas to help Republican Representative Phil Gramm win a Senate seat. Other PACs are independently spending increasing amounts of money on campaigns instead of contributing that money to the candidates directly. See George Lardner, Jr., *Have Cash, Will Spend—By Myself*, Washington Post National Weekly Edition, Nov. 12, 1984, p. 15. Ideological PACs also make more independent expenditures than any of the other types of PACs. (See Chapter 8, "Wealthy Candidates and Independent Expenditures.")
40. See generally David Adamany, *Political Parties in the 1980s*, in MONEY AND POLITICS IN THE UNITED STATES: FINANCING ELECTIONS IN THE 1980S 70-121 (Michael Malbin ed. 1984).
41. In 1980 the FPPC found that the growth of California PACs was comparable to the growth of federal PACs. But the FPPC also found that direct corporate and labor contributions to candidates in California had also risen, whereas such contributions are prohibited at the federal level. FPPC, *supra* note 6.
42. See GOV'T REPORT NO. 81-246, *supra* note 4, at 83; FEC Press Release, *supra* note 4, at 2.

43. The term "interest group" includes PACs (corporate, trade association, labor and ideological), corporations, businesses and labor unions.
44. Assembly Speaker Brown's contributions are deducted from the overall figures because he receives contributions as a caucus leader and not as an individual candidate. If his \$1.2 million is included, the average California Assemblymember would have received \$64,000 in PAC-corporate-labor contributions in the 1982 general election.
45. FEDERAL ELECTION COMM'n, REPORTS ON FINANCIAL ACTIVITY, 1981-1982, U.S. HOUSE AND SENATE CAMPAIGNS.
46. *Id.* at 14, 23.
47. Twenty-two corporate PACs made contributions of \$5,000 or more to Assembly candidates during the 1982 general election. One of them, Hughes Corporation, appeared on the list of top 25 California PACs and is thus included in the Commission's top 25 PAC survey.
48. The Commission has chosen to analyze a representative sampling of large PAC donors. Unlike the FEC at the national level, the California FPPC does not provide aggregate information on PAC contributions by specific categories. Thus, it is difficult to determine how rapidly corporate, labor or trade association PACs have grown in California, how much they contribute each year, or how they raise and disburse their funds.
49. Although negative option or reverse checkoffs have been declared invalid as coercive under federal law, *Federal Election Comm'n v. NEA*, 457 F. Supp. 1102 (D.D.C. 1978), they are still permitted under California law.
50. The median was chosen rather than the average because the median is not skewed by high or low contributors. For example, if five PACs contribute \$5,000 and one PAC contributes \$200,000, the median contribution is \$5,000 and the average contribution is \$37,500. The median figure in some instances paints a more accurate picture of PAC contributions than the average figure.
51. For a discussion of the relationships between PACs and political parties, see ALEXANDER AND HAGGERTY, *supra* note 10.
52. 424 U.S. 1, 38 (1976); see *Mott v. Federal Election Comm'n*, 494 F. Supp. 131 (D.D.C. 1980).
53. *California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. 182 (1982); *Mott*, 494 F. Supp. 131.
54. MONT. CODE ANN. §§13-37-101 to 13-37-308 (1983).
55. Obey-Leach Bill, H.R. 4428, 98th Cong., 1st Sess. (1983). A spirited debate has been conducted over the merits of an aggregate limit on PAC contributions. See, e.g., symposium articles, 22 *Ariz. L. Rev.*, *supra* note 10, at 603-674.





## CHAPTER 5

# **Partisan Sources of Campaign Money: Transfers, Legislative Caucus Contributions and Political Party Contributions**

*The big bucks to fund today's high-priced campaigns don't come from the parties; the parties don't have the power to attract them.... Assembly candidates... run to Speaker Willie Brown. In the state Senate, they go to David Roberti. Republicans go to the minority leaders of each house. From the leaderships' coffers, the money is filtered to the needy candidates.*

— Pat Keeble, *Contra Costa Times*<sup>1</sup>

**P**olitical organizations have traditionally played a major role in modern electoral politics. In the United States, the political parties formulate commonly held values or standards, articulate new ideas, promote party members as candidates for public office, collect money and services from party supporters, and focus support behind party candidates in critical races.<sup>2</sup> The parties' integration of money, campaign skills, organization and philosophy have helped make American democracy a potent and enduring force in the modern political world.<sup>3</sup>

In California, political parties were weakened during the Progressive Era of 1910 to 1920. Public suspicion of political bosses and machine systems led to state laws which rendered political parties incapable of strong organization and leadership.<sup>4</sup> In the last decade, however, partisan political organizations in California have begun to see a resurgence. Much of this growth has been nourished by money.

Ten years ago most campaign contributions in California were given by individuals, businesses and labor unions. In recent years, however, campaign costs have risen sharply. Candidates and elected officials have been unable to finance their campaigns from traditional sources. As a result, they have turned to a new source of money: partisan contributions from other legislators and legislative caucuses.

### **A. Democrats and Republicans Rely Equally on Partisan Sources of Money Although Their Techniques Differ**

Partisan contributions are made by elected officials, political individuals or organizations who act as “middlemen” or “brokers” for contributions. These middlemen collect campaign contributions from various sources and redistribute them to candidates. In California candidates increasingly depend on large campaign contributions from three partisan sources:

- transfers—campaign funds received by individual officeholders and given to other candidates;
- legislative caucus contributions—money collected by committees organized by members of one party in each house of the Legislature and distributed to candidates, and;
- political party contributions—money raised and distributed by the official California Democratic and Republican Parties.

Some observers argue there is a fourth source of partisan money in California—large PACs which consistently give the bulk of their contributions to members of one political party. For example, United for California, a business-oriented PAC, gives over 98% of its contributions to Republicans; certain labor unions give comparable percentages to Democrats. Although there is some merit in treating these entities as “partisan” contributors, they are more usefully discussed in the context of PACs. (See Chapter 4, “PACs.”)

Legislative candidates in California now receive almost 30% of their campaign funds from partisan sources. In 1984, for example, Democrats raised 27% of their campaign funds from partisan sources while Republicans raised 30%. Partisan sources have rapidly become an important source of campaign contributions in California today.

Democrats and Republicans raise comparable percentages of partisan money, but the two parties differ in their techniques. Democrats rely almost exclusively on transfers, while Republicans raise relatively equal amounts in transfers, caucus contributions and party contributions. (See Table 5.1.)

Although Democrats rely more on transfers while Republicans rely more on caucus or party contributions, the actual differences between the two parties' approaches are not great. Democrats traditionally organize committees, such as “1984 Assembly Democrats” or “Support Our Senate,” to receive and redistribute contributions. The FPPC defines contributions from these committees as “transfers” from Assembly Speaker Willie Brown or Senate President pro Tem David Roberti because Brown and Roberti control the respective committees.

Assembly Republicans also create a committee, the “Assembly Republican Political Action Committee” (ARPAC), to receive and redistribute funds. But ARPAC is not officially controlled by one individual Assembly member. ARPAC contributions are thus legally defined as “political committee” contributions from the Assembly Republicans' legislative caucus. As a practical matter, therefore, differences between the Democratic and Republican approaches turn on legal definitions of “control.”

### **B. Transfers Are the Fastest Growing Source of Campaign Money in California**

The transfer of funds from one legislator's campaign committee to another candidate's committee is the fastest growing source of funds for legislative campaigns. Between 1980 and 1982, transfers *doubled* as a percentage of total funds received by successful Assembly candi-

Table 5.1

PARTISAN SOURCES OF CAMPAIGN MONEY 1984 GENERAL ELECTION			
	Democrats	Republicans	Total
Total Contributions from All Sources	\$12,694,420	\$10,932,750	\$23,627,170
Transfers	3,009,506 (24%)	1,359,355 (12%)	4,368,861 (18%)
Legislative Caucuses*	124,359 (1%)	1,100,180 (10%)	1,224,539 (5%)
Parties	269,469 (2%)	863,054 (8%)	1,132,523 (5%)
Total Partisan Funds	3,403,334 (27%)	3,322,589 (30%)	6,725,923 (28%)
*This category also includes contributions from political clubs or committees and local candidates or officeholders, as listed under FPPC category, "Political Organizations."			
Source: California Commission on Campaign Financing data analysis of FPPC Report on the 1984 General Election			

dates—from 10% to 20%. During the same period winning State Senators increased their reliance on transfers from 4% to 25%.<sup>5</sup> Because California law does not limit the amount one candidate may give another, transfers may continue to grow in the future.

Legislative leaders, primarily Assembly Speaker Willie Brown and Senate President pro Tem David Roberti, decide who gets how much money. They frequently determine whether or not a given race is seriously contested. Brown alone transferred \$2.3 million to 41 candidates in 1982 and \$1.4 million to only 17 candidates in 1984 (\$84,000 per candidate on the average). Along with the money, legislative leaders will usually send an experienced campaign consultant to manage the campaign.

There is no requirement that a candidate consult the original contributor before transferring funds to another candidate. Some contributors are not concerned about the transfer of funds they have given; sophisticated contributors to legislative leaders often expect it. Others are undoubtedly upset that their money goes to candidates they do not like and who are running in distant parts of the state.

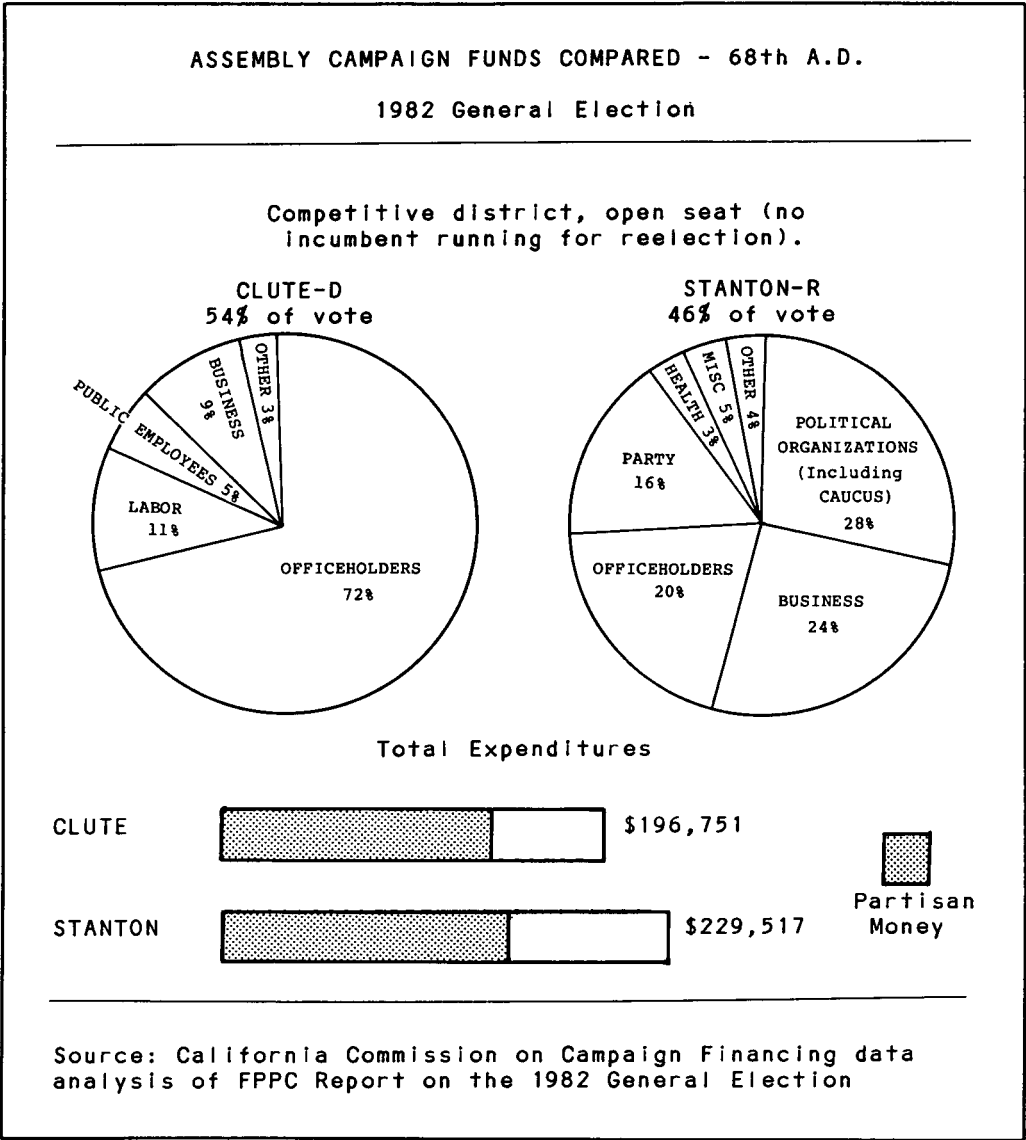
### 1. Origins of Transfers: Democrats Spark Spectacular Growth

As recently as 1978, transfers were a relatively minor source of campaign funds. But in 1980 Assembly Majority Leader Howard Berman found himself stalemated in his drive to topple Leo McCarthy as Speaker of the Assembly. Whoever emerged from the general election

with more Democratic Assembly allies would apparently win this coveted political prize. The bitter split in Democratic Assembly ranks produced two separate political organizations supporting Democratic candidates with money and technical advice: one allied with Berman and the other with McCarthy. The Berman and McCarthy camps raised and transferred stunningly large amounts of money. These transfers tipped the outcome of many Assembly races and left an indelible impression in the minds of many that transfers were an effective political weapon.

In one highly competitive 1980 general election race, for example, McCarthy Democrats gave Pat Johnston of Stockton 40% of his \$400,000 campaign treasury. He won by 35 votes. In another apparently non-competitive race, Democratic legislators allied with Berman gave Democratic Assembly candidate Robert Henry a large and sudden last-minute infusion of cash against incumbent Republican Bill Ivers of Pasadena. This “blitzkrieg” during the last five days of the campaign was unsuccessful, but it did make the race far closer than expected.

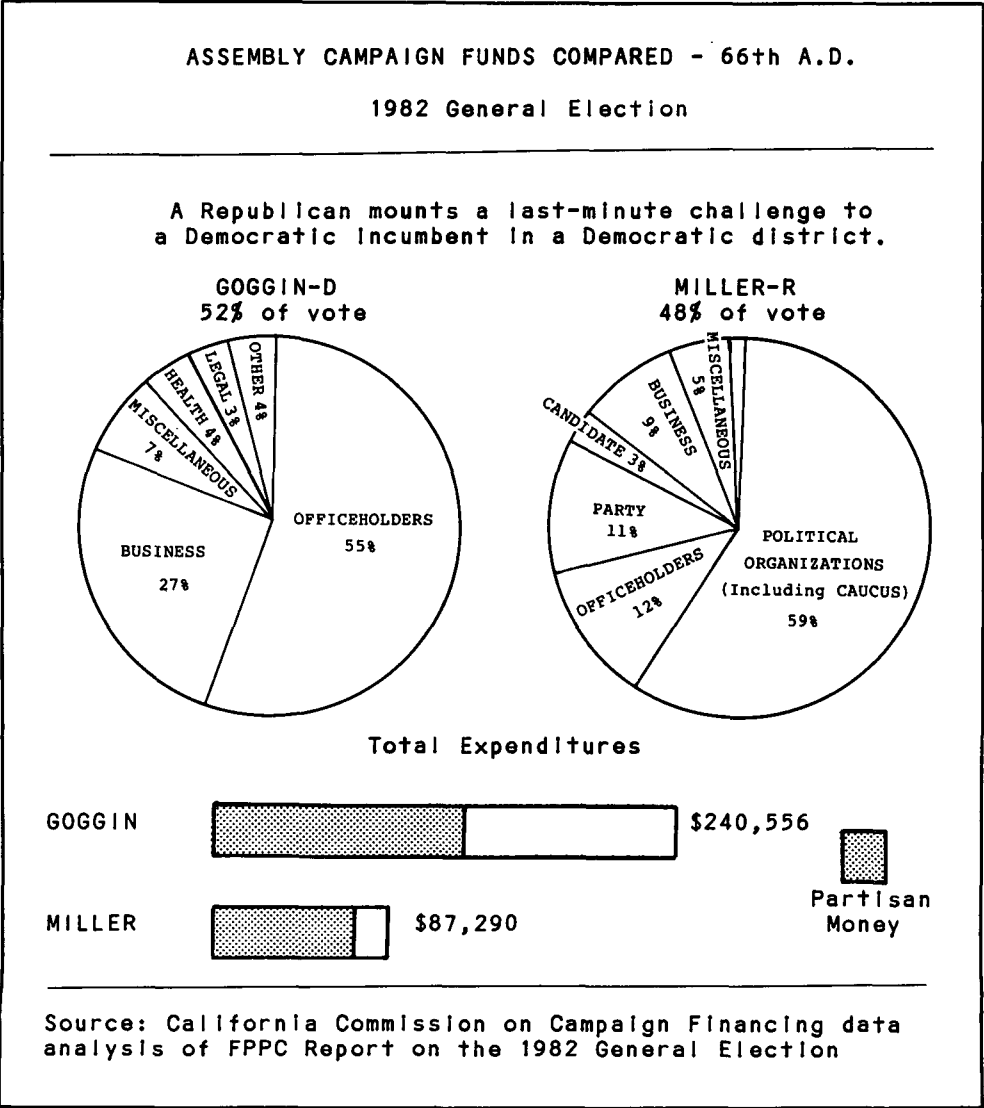
Table 5.2



By 1982 transfers had become the dominant source of funds for Democrats running in competitive open seat races. Dan Hauser (D-Eureka), for example, received 75% of his itemized \$213,000 campaign war chest from Democratic legislators, winning with 50.8% of the vote. Steve Clute of Riverside received 72% of his itemized \$193,000 in transfers, winning with 54% of the vote. (See Table 5.2.) Jack O'Connell of Santa Barbara received 71% of his itemized \$178,000 campaign treasury from Democratic legislators, winning with 50.6% of the vote. (See Table 5.6 below.) Three more Democrats won open seats with over 60% of their funds coming from legislators.

Transfers were also used to protect incumbents under attack, both in the general election and in the primary. In the general election, for example, Assemblyman Terry Goggin (D-San Bernardino) received 55% of his itemized \$239,000 war chest from fellow legislators and barely won with 51.6% of the vote. (See Table 5.3.) In the primary, Assemblyman Tom Bates (D-Oakland) received 43% of his itemized \$142,000 treasury from fellow legislators and won handily.

Table 5.3





Transfers again played a dominant role in financing many 1984 competitive campaigns. Dan Hauser, for example, received \$331,000 in cash from Speaker Willie Brown in the 1983-1984 period. He received an additional \$42,000 from other Democratic legislators—giving him a total of at least \$373,000 in transfers from Democratic legislators. Hauser eventually collected a total of \$627,000 in contributions for the primary and general elections, a record for his district.<sup>6</sup>

## **2. *Republicans Get into the Game***

In 1980 Republicans largely sat on the sidelines and watched their Democratic colleagues transfer campaign funds. But in 1982 Republicans got into the game. Assembly Minority Leader Bob Naylor transferred almost \$300,000 to Republican candidates, and major GOP candidates started to receive transfers as a substantial part of their campaign war chests.

Fellow Republicans gave Assemblyman Chuck Imbrecht (R-Ventura) \$170,000 (one-third of his total) in his narrow defeat for a State Senate seat. Republican strategists also attempted a “blitzkrieg,” giving Albert Miller 83% of his funds in an unsuccessful challenge to Democrat Goggin. (See Table 5.3.) Though Miller spent only \$87,000, he concentrated that spending in the final days of the campaign and came close to unseating Goggin.

Republican transfers were also heavy during the 1984 general election. In the Hauser-Walsh race, Republican Walsh received \$102,000 from Assembly Minority Leader Robert Naylor and other Republicans. Walsh collected a total of \$513,000 during his campaign.

## **3. *The Effects of Transfers on Elections***

Although transfers are a relatively new phenomenon on California’s political landscape, they have had a number of effects on the state’s electoral process. Some of these effects have been beneficial and some unfortunate.

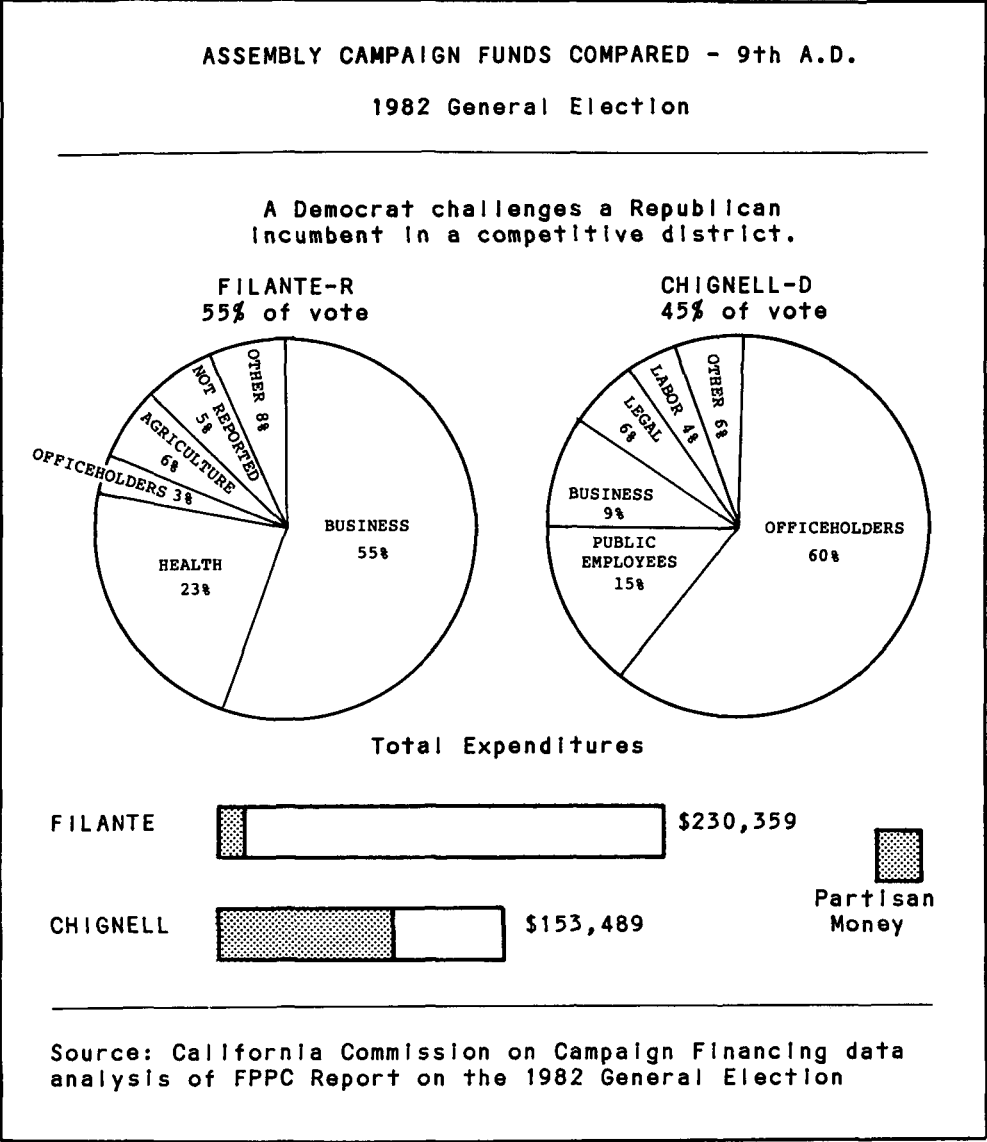
### **a. *Beneficial Effects***

The first beneficial effect of transfers has been to increase competition in selected races. Campaign costs have skyrocketed in the 1980, 1982 and 1984 elections. Candidates can no longer realistically hope to raise sufficient funds for competitive races from family, friends and local supporters. Individuals and organizations with specific interests in pending legislation are willing to make sizeable contributions, but these contributions flow to incumbents with power, not to political newcomers. Influential incumbents and their caucuses therefore collect money from special interests and redistribute it to other candidates in competitive races—both new candidates and incumbents—whose campaign treasuries are meager.

Transfer recipients are able to wage well-financed, highly competitive campaigns which otherwise might have been substantially uncontested. New candidates in particular have used transfers to compete more effectively against incumbents. Without this partisan funding, many newcomers could not match the fundraising power of incumbents. (For two strong 1982 challenges to incumbents, see Tables 5.4 and 5.5.)

Transfers have also increased competition by candidates who have traditionally had difficulty raising money. This has been true for candidates in poorer districts where little local campaign funding is available. It has also been somewhat true for women and minority candidates who have historically been underrepresented in the Legislature. Assemblywoman Gloria Molina (D-Los Angeles), for example, won a tough 1982 primary fight with a \$9,500 transfer from Assemblywoman Maxine Waters (D-Los Angeles) and smaller transfers from Democratic Assemblywomen Moore, Hughes and Tanner. The Waters transfer was Molina’s largest single contribution. Although Molina received only 8% of her total budget in transfers, this amount may have made the difference in her narrow margin of victory.

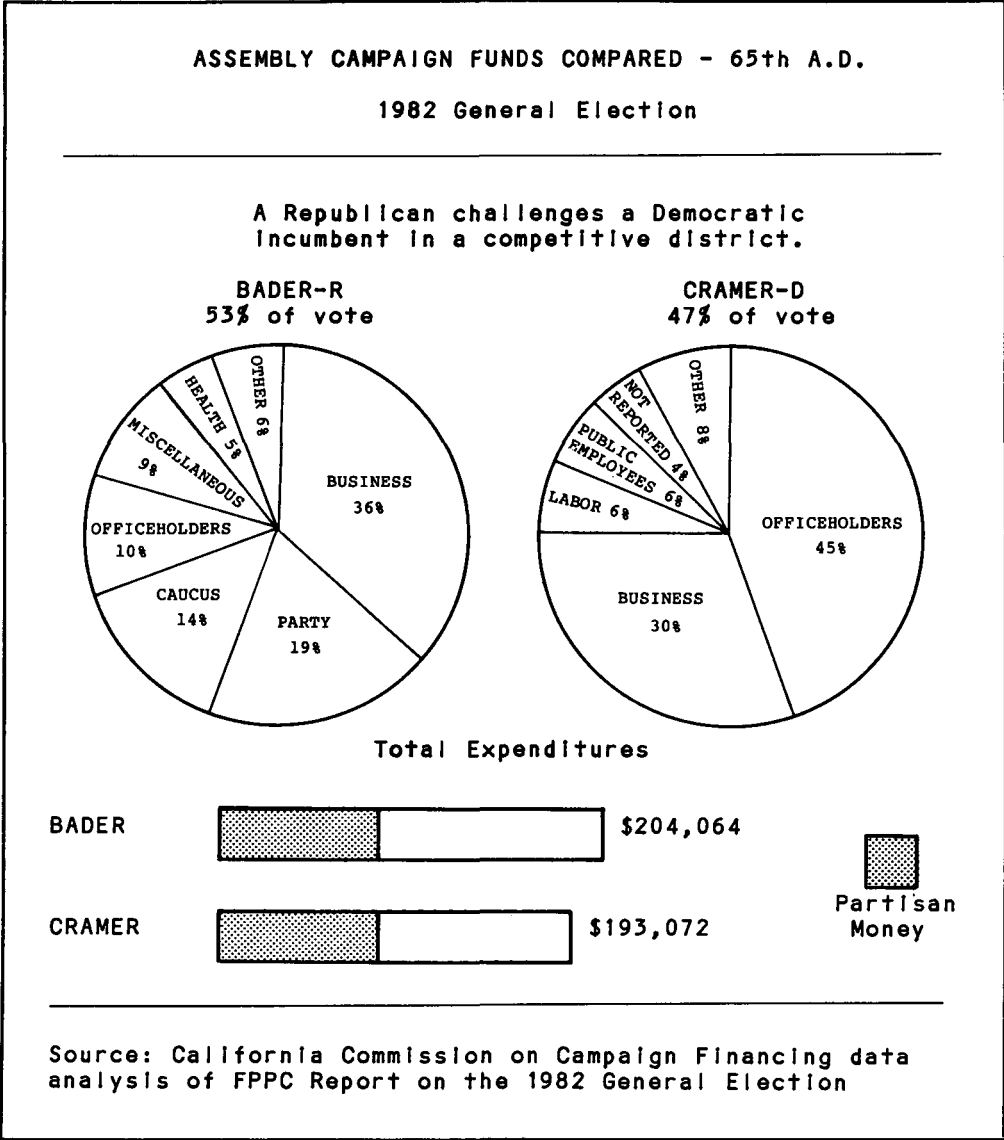
Table 5.4



In addition, transfers have increased competition in races where one candidate is personally wealthy and can vastly outspend his or her opponent. In the Firestone-O'Connell race, for example, Republican Brooks Firestone raised \$155,000 in personal and family money, spending a total of \$330,000. His Democratic opponent, Jack O'Connell, was able to raise only \$80,000, but he received an additional \$122,000 in transfers from Speaker Willie Brown. Despite being outspent, O'Connell won by a narrow 50.6% vote margin. Without the large transfer from Brown, O'Connell would not have been able to win the election. (See Table 5.6.)

A second beneficial effect of transfers has been to allow candidates to spend less time fundraising and more time campaigning. A large transfer also allows candidates to make planning and budgeting decisions more easily. Once a race is targeted by the legislative leadership for transfer money, the candidate's campaign manager knows sufficient funds will arrive to execute the campaign plan.

Table 5.5

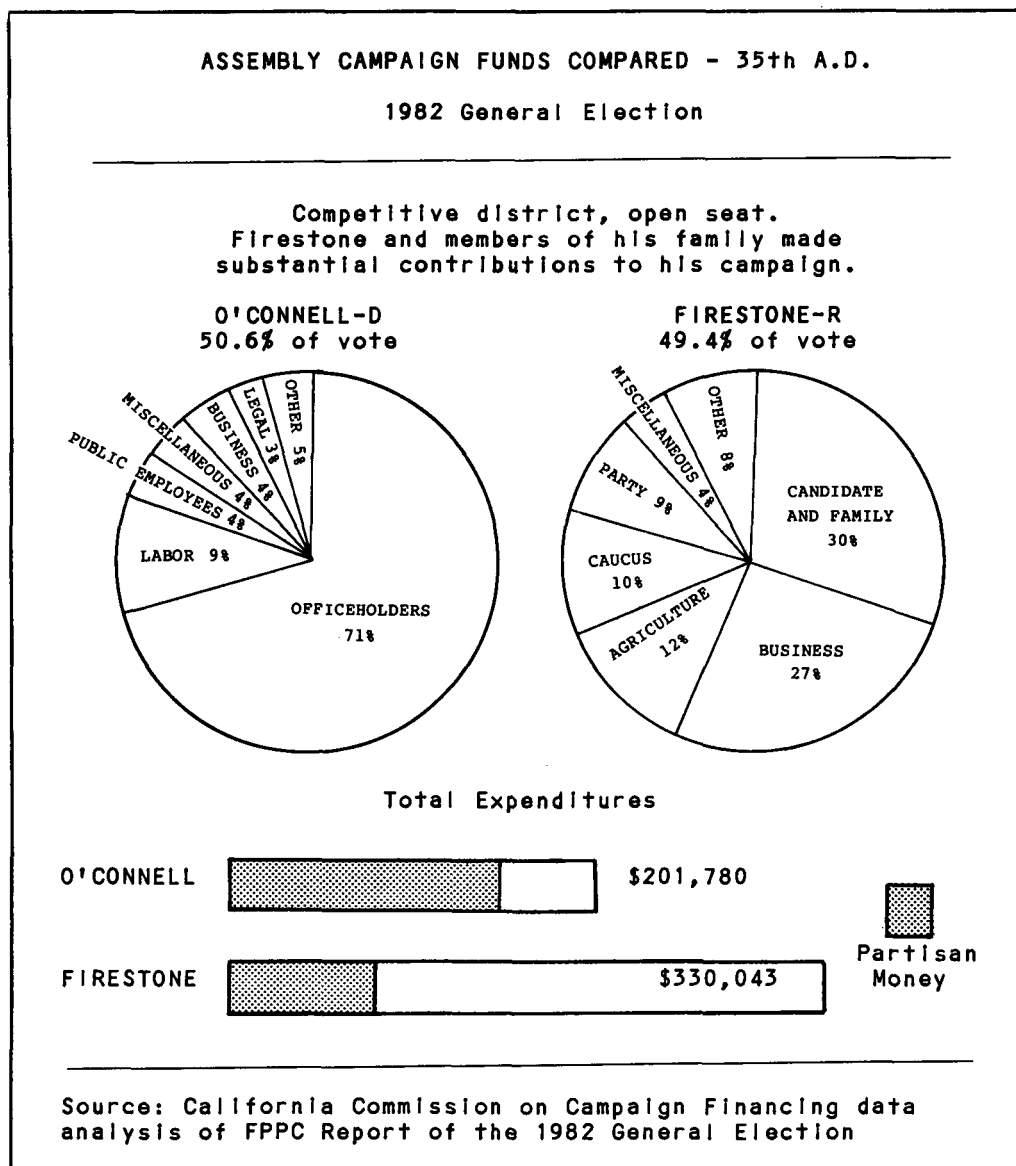


A third beneficial effect of transfers is arguably that they immunize transfer recipients from special interest influence. Because transfer money flows from the initial contributor to a few key legislative leaders, these leaders can act as a buffer between special interests and candidates. Transfer recipients may give less deference to special interest positions in formulating their campaign platforms. On the other hand, this beneficial effect may be offset by legislative *quid pro quos* delivered by the leadership to major contributors during and after the election.

**b. Detrimental Effects**

Transfers, on the other hand, have disrupted the electoral process in several respects. First and perhaps foremost, transfers inject a psychologically destabilizing element into campaigns. Candidates know that at any moment their opponents may suddenly receive as much as \$200,000 in last-minute money. This threat encourages candidates to stockpile large cash reserves. Transfers thus contribute to an “arms race” mentality between candidates.

Table 5.6



During the 1984 general election, for example, "Republicans, in a sudden blitz, capitalized on a surge in GOP voter registration in Orange County and targeted Sen. Paul Carpenter of Cypress, the Senate Democratic Caucus chairman, for ouster by Margaret Vineyard [the Republican candidate]."<sup>77</sup> Vineyard had raised only \$58,000 by October 20, 1984, but she was given at least \$193,000 in the next two weeks by Republicans and Republican-oriented political action committees. Vineyard ended up raising a total of \$259,000. Last-minute blitzes such as this create a pall of uncertainty over the fundraising process and spur many candidates to redouble their fundraising efforts.

Second, in some instances transfers may decrease competition in primary elections. Even though an incumbent may not have much cash on hand, a potential challenger may be reluctant to initiate a competitive battle where the incumbent has ready access to large transfers. In the general election, however, challengers and incumbents can each draw on partisan sources of money if legislative leaders target their races as winnable.

Third, transfers may weaken the bond candidates feel toward their districts. If the bulk of their money comes from out-of-district sources, candidates may give local issues and fundraising appeals a lower priority. Sacramento partisan strategists may pressure candidates to maximize their local fundraising, but in a few instances candidates have been funded almost totally by transfers. (See Chapter 3, "Who Pays?")

Finally, transfers tend to obscure the original source of campaign contributions. Typically a PAC might give money to a powerful incumbent with a relatively safe seat—for example, Assembly Majority Floor Leader Mike Roos (D-Los Angeles). Roos might transfer these funds to Assembly Speaker Willie Brown, who might then re-transfer the money to a needy Assembly candidate. That candidate and his opponent may have only the vaguest of notions as to the original source of the money. Several Republican candidates have attacked their opponents for taking so much money in transfers from Brown, but their attacks have had little apparent effect on the outcome of their elections. Transfers make it difficult to raise the original contributor's identity as a campaign issue.

There have been a few instances in which the original contributor's identity has become a campaign issue. In the 1982 general election, Republican candidate Charles Bader accused his Democratic opponent Assemblyman Jim Cramer of receiving transfer money from Speaker Willie Brown. Bader also accused Brown of receiving this money from the manufacturers of drug paraphernalia. Cramer lost the race, although the effectiveness of Bader's attack is difficult to measure.

#### **4. The Effects of Transfers on the Legislative Process**

Transfers are typically viewed as affecting elections, but they also have a serious impact on the legislative process. This impact is less visible, however, and warrants careful analysis.

The first and ultimately most troubling effect of transfers has been to heighten the appearance of corruption in the Legislature. Legislative leaders feel themselves under increasing pressure to raise and transfer larger and larger sums of money. They often do so by soliciting contributions from individuals and organizations who are affected by legislation and are willing to contribute money to influence its outcome.<sup>8</sup> As more and more money flows to legislative leaders for re-transfer to party candidates, the appearance of a *quid pro quo* exchange of contributions for influence increases. Legislative leaders acquire the image of modern-day political "bosses." Transfers thus damage the reputation of the California Legislature.

These characterizations, of course, must be taken with a grain of salt. Legislative leaders retain their posts at the pleasure of their colleagues. Democratic Assembly members, for example, place enormous pressure on the Assembly Speaker to raise money and he must respond to this pressure if he is to keep his leadership position. The Speaker is thus less responsible for the appearance of a *quid pro quo* between contributions and votes than is the fundraising dynamic itself—a dynamic which induces any political leader to raise larger and larger sums.

In April 1984, for example, Brown indicated he might not raise campaign funds to oppose the Gann Initiative (Proposition 24) on the June ballot because he feared "a misunderstanding with some of my membership who literally demand that every nickel I raise go to ensure that they get themselves reelected."<sup>9</sup> Political editor Martin Smith has commented, "[U]nder the present system, the Speaker has become more of a functionary, a political fund coordinator, and less of a true leader than in prior years."<sup>10</sup>

A second effect of transfers is that they have become an important although dubious criterion in the selection of legislative leaders. Senate Democrats, shocked at the 1980 upset election loss of veteran Al Rodda, replaced their President pro Tem James Mills with David Roberti. A key factor in this move was Roberti's promise to raise transfer money for fellow Democrats. Roberti delivered on his promise and transferred over \$700,000 in 1982. The lesson is clear. Fundraising success is a key qualification for leadership positions.



Top leadership posts also went to successful fundraisers on the Assembly side. During the 1982 election cycle (1981-1982), Majority Floor Leader Mike Roos raised \$642,000 while Assistant Speaker pro Tem Tom Bane (D-Van Nuys) raised \$410,000 (although Bane retained much of this money for his own war chest). Similar developments followed the 1984 election. Senate Democrats replaced Senator John Garamendi (D-Walnut Grove) as Democratic Floor Leader with Senator Barry Keene (D-Benicia) “who pledged to make the No. 2 party post more aggressively political in the election of Democrats”—an indirect promise to raise and transfer more campaign money.<sup>11</sup>

This growing reliance on transfers has thus elevated fundraising abilities over substantive talents as a criterion for the selection of legislative leaders. Legislators learn that advancement inside the Legislature depends more on their monetary skills than their ideas or organizational abilities. Conversely, the acquisition of leadership positions enables legislators to raise even more money. According to Carl Ingram and Jerry Gillam of the *Los Angeles Times*, “The posts of committee chairmen are highly prized.... Committee heads also are in a better position to solicit campaign contributions at election time from interests whose legislation comes before their various panels.”<sup>12</sup> Transfers thus heighten the pressure on all legislators to raise more and more money.

A third effect of transfers has been their influence in raising the costs of campaigns. Legislators are aware that their assignment to important committees and to leadership positions may depend on their ability to raise and transfer large sums of money. They are also aware that their election opponents can receive sudden last-minute influxes of transfer money from opposing political leaders. Even though very few legislators are defeated by such transfers, it only takes one or two instances to put the average legislator on edge. Incumbents thus stockpile funds for potential transfers—both to demonstrate the incumbent’s value to party leaders and to discourage or anticipate last-minute electoral attacks. Incumbents now build these war chests in both the election and off-election years. (See Chapter 6, “Off Year Fundraising,” and Chapter 7, “Negative Consequences.”) Transfers from stockpiled funds more than doubled between 1980 and 1982 and their growth shows little signs of slowing.

A fourth effect of transfers is their claimed effect on party discipline. Some—including many political scientists—argue that transfers are desirable because they help the party’s leaders maintain legislative coherence in the Senate and Assembly. Without the ability to distribute money, they argue, the party leader will lose his or her ability to “keep the troops in line” and to implement a legislative program.

This argument may be overstated. On the one hand, very few instances have been cited where the Assembly Speaker or the Senate President pro Tem have used the threat of withholding transfers to obtain an incumbent’s legislative vote. Legislative leaders have other potent weapons for inducing legislative discipline—such as the threat to reduce legislators’ office space, cut their staff or give them poor committee assignments. On critical votes affecting major pieces of legislation, leaders will often encourage legislators to strengthen their chances for reelection by voting in accordance with their constituents’ wishes. Legislative staffers contend that the sole criterion used in transferring money is its effectiveness in electing party members, not in coercing legislative discipline.

On the other hand, transfers may enhance legislative discipline to a minor extent. Candidates who win their elections with the assistance of large transfers from Assembly Speaker Brown arrive in Sacramento feeling indebted to him. The Speaker’s power is enhanced by having another party member in the Assembly and transfer recipients are probably committed to vote for the retention of Brown as Speaker. Nevertheless, other internal controls at the Speaker’s command appear to be a more significant form of influence. The need for party discipline seems a minor justification for transfers.



A fifth effect of transfers is quite the opposite of the fourth. Some argue that transfers enable individual legislators to resist the power of their leaders and allow members of one ideological faction to maintain their independence from the majority members of the caucus. By financially supporting fellow party members in close elections or by transferring money to like-minded newcomers, legislators win friends and allies in the Legislature. Senator H.L. Richardson (R-Arcadia), for example, has transferred money to build a conservative block of supporters in the Republican Assembly and Senate caucuses. And during the 1980 Berman-McCarthy Assembly Speakership struggle, transfers allowed Assemblyman Howard Berman and his supporters to gain the support of candidates who, when elected, would help them challenge the incumbent leadership. Transfers are therefore defended as giving dissident legislators the ability to challenge the ideological direction of their party—and, in some instances, to build alternative power bases to current legislative leaders.

Despite this, the use of transfers to build alternative power bases can exact a heavy price. Allowing competing or dissident legislators to transfer money to other candidates fractionalizes the political parties and undermines legislative leadership. Legislators spend excessive amounts of time in intramural political squabbling instead of devoting their energies to the business of legislating.

### **C. Legislative Caucus Contributions Aid Assembly Republicans**

California has four legislative caucuses: the Assembly Democratic Caucus, the Senate Democratic Caucus, the Assembly Republican Caucus and the Senate Republican Caucus. Each caucus contains all the members of one party from one house of the Legislature. Although all caucus members may vote during caucus meetings, most matters are delegated to a few key legislators.

Each caucus elects its own leaders. The caucus leaders occasionally recommend caucus positions on legislation and policy which are then approved by the caucus as a whole. Caucus leaders also distribute contributions received by the caucuses to party candidates. Most caucus members are generally content to delegate fundraising and disbursements of campaign money to caucus leaders.

In theory, there is a significant difference between transfers and caucus contributions. Transfers are controlled by a single individual. Caucus contributions are disbursed by the party leadership subject to review by the entire caucus membership. Transfers thus reflect the will of a single person, while caucus contributions reflect the will of a caucus majority.

In practice, however, the differences between transfers and caucus contributions are less than clear and often turn on fine legal distinctions. Assembly Speaker Brown signs the campaign disclosure statements on behalf of the Democratic Caucus and thus indicates he “controls” the committee. Its contributions are legally deemed “transfers” from Brown. Assembly Republicans, on the other hand, do not have a single legislator sign the disclosure statements for the Assembly Republican Political Action Committee (ARPAC). The FPPC assumes that ARPAC is not controlled by a single legislator. ARPAC’s contributions are thus deemed “political committee” contributions and not “transfers.”

Top Democratic and Republican staffers have privately indicated that there is no practical difference between ARPAC’s operation and that of Assembly Speaker Brown. Although Speaker Brown legally claims to control his campaign committee, in practice his decisions to disburse money are made collectively by top Democratic leaders and political aides. Similarly, ARPAC’s decisions are made collectively by top Republican leaders.

Republican candidates as a whole receive far more in caucus contributions than Democratic candidates. In 1984, for example, Democrats received 1% of their contributions from legislative caucuses while Republicans received 10%. (See Table 5.1.)

In the Assembly, Democrats funnel their “caucus” money through transfers because their committees are “controlled” by Speaker Brown. Republicans conduct most of their formal caucus activities directly through ARPAC. ARPAC holds at least one annual fundraiser in Sacramento and one outside Sacramento. It raises most of its funds in large contributions from individuals or groups with a specific interest in legislation. It also raises some funds in smaller amounts through direct mail solicitation. During an election the ARPAC staff, the Minority Leader and three or four other interested legislators decide who receives ARPAC funds. Other caucus members are not involved. The sole criterion for distribution of ARPAC funds is a determination whether a Republican candidate has a good chance to win.

In the Senate, legislative caucuses typically give candidates relatively small contributions. Senate President pro Tem David Roberti has his own campaign committee (“Friends of David Roberti”) which he uses to transfer money. He also controls the Senate caucus committee (“Support Our Senate”), and monies distributed by this committee are deemed transfers from Roberti. Senator Paul Carpenter (D-Cypress) controls the Senate Democratic Caucus which gave \$80,000 to Democrats in 1982. Although Carpenter’s contributions are deemed transfers, members tend to view them more as caucus contributions. Contributions on the Republican side flow through the Republican Caucus. In 1982 the Senate Republican Caucus divided \$65,150 among five candidates. In 1984 it divided \$358,500 among five candidates.

#### **D. Political Party Contributions: Republicans Outstrip Democrats**

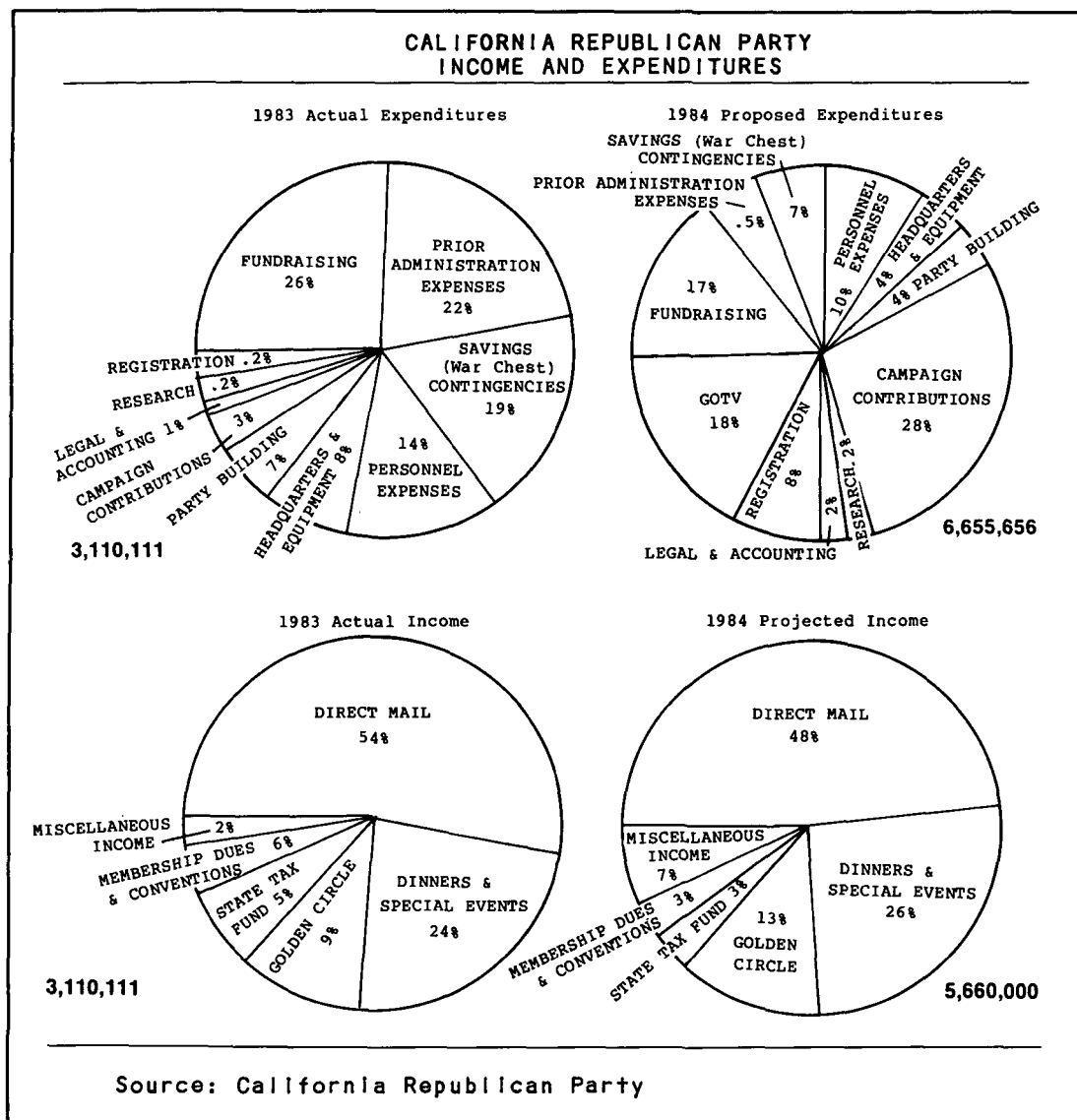
At the turn of the century, the Republican Party controlled California politics. The Republicans were under the influence of the Southern Pacific Railroad (called by some “The Octopus”). Progressive reformers led by Governor Hiram Johnson won control of the Republican Party and the state government in 1910. They designed measures to weaken the grip of political parties over candidates and issues. Laws requiring non-partisan local elections and civil service status for government jobs are still in effect today. Another measure (since repealed) allowed candidates for legislative and statewide offices to run in the primaries of both parties and on ballots that did not indicate party affiliations. Governor Johnson also proposed that all offices including Governor be non-partisan, but the voters rejected this idea in 1915.<sup>13</sup>

Republicans dominated state government for much of this century. Only in the late 1950s did Democrats win control of the Legislature and most state offices. Since then, Democrats have been the dominant legislative power. Those who desire access and influence with legislators in power have tended to favor Democrats with their contributions.

To counter this Democratic strength, the California Republican Party has begun to raise large sums of money for its legislative contenders. In 1982, for example, the Party gave \$1,171,000 to Republican candidates. Much of these funds were raised through a highly successful direct mail program. (See Table 5.7.) In contrast Democratic Party fundraising has been rather anemic. In 1982 its principal fundraising subcommittee was able to provide candidates with only \$85,200. Most of this went to Speaker Brown for redistribution. All Democratic Party committees gave a total of \$154,000 in 1982.

Republicans early on understood the value of searching for large numbers of Californians who would reliably donate small amounts to the Party. But finding such donors is expensive and time-consuming. The Republican Party therefore started its direct mail effort in 1972. As in other successful direct mail fundraising campaigns, the Republican Party plowed all its receipts during the first few years into additional “prospecting” mailings. Now the Party is reaping the rewards with a contribution list of approximately 400,000 people. “Lists of names are worth their weight in gold in politics,” affirmed Assembly Minority Leader Nolan.<sup>14</sup>

Table 5.7



Democrats acknowledge that they are far behind in direct mail fundraising. Former Party Executive Director Mike Gordon reports that the Democrats failed to develop lists of small donors until 1982. Since then they have increased their lists from 9,000 to 45,000 names and hope for further rapid growth. While the Democratic Party is financially too weak to make large contributions to legislative campaigns, it is now aggressively pursuing voter registration, absentee ballot and get-out-the-vote programs. Democrats are close to matching Republican efforts in these areas.

Developments in California closely parallel national trends. The national Republican Party organization outraised Democrats by a ratio of approximately four-to-one in 1984, but this gap was significantly smaller than in previous years. In 1984 "Democrats in general were able to spend dime-for-dime in the House races where it mattered the most, ending years of Republican dominance in the ability to marshal money and technical resources for strategic races," reported the *Wall Street Journal*.<sup>15</sup>

California parties today are nominally controlled by large, unwieldy state central committees. (See Table 5.8.) Party chairmen and key elected officials in Sacramento and Washington, D.C., however, make most day-to-day party decisions. The organizational structure for each party is prescribed by law in the California Elections Code and implemented by party by-laws.<sup>16</sup>

Table 5.8

COMPOSITION OF CALIFORNIA POLITICAL PARTY ORGANIZATIONS	
STATE CENTRAL COMMITTEES	
Democratic Party (1723 members)	Republican Party (1226 members)
One-third: elected officials, holdovers, nominees, and their appointments. (Officeholders, nominees and holdovers each get 2 or 3 appointments depending on their position.)	Elected officials, holdovers, nominees, and their appointments. (By-laws provide that each incumbent officeholder appoints 8 members; nominees appoint 3.)
One-third: appointed by county committee. (Two members for 1st 5,000 registered Democrats, one member for each additional 25,000.)	Chair of each county committee and appointments. (Each county central committee chair appoints 1-3 members, depending on size of county.)
One-third: elected at Assembly district caucuses. (Each caucus selects 5 members.)	
EXECUTIVE BOARDS	
Democratic Party (255 members)	Republican Party (100 members)
94 County central committee representatives	18 County chairmen
80 Assembly district representatives	14 Elected officials and their representatives and/or additional appointments
27 Co-chairs of standing committees	2 Republican National Committee members
18 Democratic National Committee members	10 Elected officers of State Central Committee
11 Caucus chairs	-- Balance appointed by Chairman
15 Constitutional officers, congressional representatives, State Senate representatives, Assembly representatives, and others (officers of State Central Committee, etc.)	
Source: California Commission on Campaign Financing analysis of California Elections Code, California Republican and Democratic Party By-laws, as well as telephone conversations with party officials	

The Republican organization is made up largely of elected officials, unsuccessful nominees and the appointees of both groups. The Republican Party is thus potentially controlled by Republican members of Congress and the State Assembly and Senate.

Democrats responded to grassroots pressure in the 1970s by opening their party to public participation. Today roughly one-third of the Democratic State Central Committee is composed of elected officials and their appointees; one-third are appointees of county central committees; and one-third are registered Democrats selected at-large in Assembly District caucuses which are open to members of the public.

On paper, the Democratic Party is less subject to control by elected officials than the Republican Party because many Democratic Party members are elected at the grassroots level. However, the Democratic State Central Committee meets only once a year and the Party's Executive Board meets only quarterly. As a practical matter these bodies cannot run the party. Their main responsibility is the selection of the party Chair and other party officials. Party operations are left in the hands of top officials.

Recently the California Committee for Party Renewal, a non-profit organization devoted to enhancing the strength of political parties in California, has successfully pursued lawsuits to invalidate certain legal restraints on party structure and operation. The lawsuits contend these restrictions violate the federal Constitution's guarantees of free speech and assembly. In April 1984 a federal district court accepted some of the Committee's arguments. It held that the First Amendment was violated by the state prohibition on party endorsements in primary races and by a state requirement that political parties adopt a particular form of internal organization.<sup>17</sup> In late 1984 the California Supreme Court, in a statutory interpretation of existing state law, held that California political parties also have the right to make endorsements in non-partisan races.<sup>18</sup>

Further appeals may be pursued but most legal observers believe the Committee for Party Renewal will ultimately prevail. Many party officials now support these efforts. Mike Gordon, former Executive Director of the California Democratic Party, says the Party has suffered from sitting out of non-partisan elections in California. However, Gordon believes that Democrats may not endorse candidates in partisan primaries even if the lawsuit prevails. Such endorsements would require a change in the Party's by-laws.

In California, a recent law allows state residents to donate money to their party through their income tax returns. Taxpayers can add up to \$25 to their tax bill (called a "tax add-on") and earmark it for a specific party. The tax add-on law specifies that three individuals from each party—the party chairman and the party's Assembly and Senate leaders—must jointly decide whether to distribute any tax add-on money to candidates or to use it for other purposes.

In 1983 when state tax return forms only listed political parties as recipients of tax add-on funds, Democrats received \$236,000 in donations while Republicans received \$140,000. In 1984 the parties received much smaller tax add-on funds, probably because taxpayers had four additional causes among which they could divide their voluntary contributions.

## **E. Summary and Conclusions: Reforms Are Needed to Address Problems Raised by Partisan Contributions**

[Campaign finance reform] will take some bullet-biting because the top political leaders—on whom the solution depends—are the biggest beneficiaries of the present system of campaign finance. Because they have enormous power to make government do what they want it to do, they also can extract millions of dollars out of the special interests who want something out of government.

— Vic Pollard, Stockton Record<sup>19</sup>

Democrats receive 27% of their campaign dollars from partisan sources, almost all of it from legislative transfers. Republicans receive 30% of their funds from partisan sources, their money being derived from transfers, legislative caucus contributions and contributions from



the Republican Party. (See Table 5.1.) Regardless of its source, however, partisan money plays a nearly identical campaign role. These contributions are often the largest single contribution a competitive candidate will receive. Partisan money increases competition in selected races. It enables newcomers to wage effective campaigns for open seats, it makes feasible serious challenges against incumbents, and it provides some help to women and minorities entering politics. On the other hand, transfers have heightened internal power struggles in the Legislature, caused legislators to pay increased attention to fundraising, damaged the Legislature's reputation and increased overall spending in some campaigns.

There are significant differences between the three forms of partisan money. Transfers, because they are controlled by one individual and thus highly visible, have received most of the public's attention. Caucus contributions, although close to transfers in operation and effect, perhaps have the advantage of somewhat greater democratic control. Political party contributions have the greatest potential for democratic control, although currently the Republican Party's contributions are distributed by its Chairman and the two Republican Minority Leaders. The Democratic Party is not yet able to make substantial legislative campaign contributions.

Many politicians have reacted to the growth in transfers with calls for limitation or outright ban. Even those who have adroitly employed transfers are unhappy with the current system. Speaker Brown wrote in 1983, "The obligation that I have as Speaker to assist members of my party at election time is one of the least attractive features of my job. The time that I must devote to fundraising detracts from my ability to do the things by which a Speaker should be judged."<sup>20</sup> The Speaker supported the Vasconcellos-Lockyer bill which would have banned transfers altogether.

Despite this apparent broad support, partisan considerations have blocked efforts to change the current system. Democrats have relied more heavily on transfers and used them more successfully than Republicans. In 1982 the largest Republican transfer to any candidate who won his or her election was only \$31,000, given to Ed Royce in his drive to capture an open State Senate seat. This represented only 11% of the total Royce raised. It has thus been Republican legislators who have primarily urged a ban on transfers.

Most Democrats have resisted the outright elimination of transfers without the compensation of partial public financing. Democrats believe they cannot compete equally with Republicans in raising individual contributions. Democrats often suggest that wealthier contributors favor Republicans while poorer constituents less able to give favor Democrats.

Democrats are unwilling to ban transfers unless new sources of campaign finance are provided and unless significant amounts of partisan money can still enter the system through the caucuses. This position was reflected in the Vasconcellos-Lockyer bill, drafted after months of delicate negotiations between Democratic and Republican legislative staffers. The bill banned transfers, but it allowed generous contributions from legislative caucuses and parties and provided partial public funding.

While Democrats generally supported this compromise bill, some legislators were reluctant to give up the advantages of the status quo. Assemblywoman Waters wished to retain her freedom to assist new women and minority candidates with transfers and commented, "It always seems the rules of the game are being changed just when I have them down pat and am ready to beat someone with them. I'm not so sure I want to change the rules now."<sup>21</sup>

A limit or ban on transfers alone might drive them "underground." During the 1980 Speakership battle, Berman and McCarthy each asked supporters to send large contributions directly to specific candidates. Such requests are not reported as transfers. The availability of this practice points out a weakness in attempts to restrict transfers outside the context of more comprehensive campaign finance reform.



### **The Commission's Model Law**

The Commission believes the disadvantages of transfers significantly outweigh their advantages, and its Model Law proposes to prohibit transfers altogether. (See Chapter 12, "Commission's Recommendations," and Appendix A, "Model Law.")

The Commission believes, however, that partisan contributions from the legislative caucuses and political parties have a legitimate role in California's political system. Caucus and party contributions can enable additional candidates to wage competitive races. Voters can gain greater exposure to the candidates and the campaign issues.

In some respects the ideal medium for the conveyance of partisan money is the political party. Political parties are broadly based, rely on millions of supporters and do not coalesce around single or "special" issues. In essence, political parties are similar to large, democratic PACs with long-established roles in electoral politics. In California, however, political parties are generally viewed as weak. Democrats perceive their party as incapable of providing strong political leadership — particularly during the cut and thrust of electoral politics. The Republican Party is better organized and raises more money. Yet its decisions to distribute money are heavily influenced by legislative leaders.

The Commission therefore believes that if partisan money is to play a role in California politics, it should flow through a *combination* of parties and legislative caucuses. The Commission's Model Law proposes that legislative candidates be allowed to receive a total of \$50,000 from a political party, a legislative caucus or a combination of both. Legislative leaders will thus retain a significant role in directing the flow of partisan money. Political parties will be encouraged to increase their fundraising efforts and generate greater grassroots participation.

Potential abuses may remain. Legislative caucuses, for example, will experience continued pressure to raise campaign contributions and thus subject themselves to potential special interest influence. On the other hand, the Commission's proposed contribution limits will prevent parties and caucuses from receiving contributions over \$5,000 from individuals, corporations, labor unions or small contributor PACs. The availability of limited public financing will make candidates less dependent on partisan contributions and will give political parties a more important role in the fundraising process.

## NOTES

1. Pat Keeble, *These Parties Aren't for Fun*, Contra Costa Times, Jan. 18, 1985.
2. See generally FRANK SORAUF, *PARTY POLITICS IN AMERICA* 1-22 (4th ed. 1980).
3. See, e.g., ELMER E. SCHATTSCHNEIDER, *PARTY GOVERNMENT* 1 (1942) ("The rise of political parties is indubitably one of the principal distinguishing marks of modern government. It should be stated flatly... that the political parties created democracy and that modern democracy is unthinkable save in terms of the parties.")
4. See JOSEPH P. HARRIS, *CALIFORNIA POLITICS* 47 (4th ed. 1967); DEAN CRESAP, *PARTY POLITICS IN THE GOLDEN STATE* 3-18 (1954).
5. Statistics reflect contributions of \$100 or more, which account for over 94% of all funds raised by candidates in 1984. Sources of contributions under \$100 are not reported by the FPPC and are thus not available for statistical analysis.
6. Paul Ingalls, *Parties Bankroll Expensive Battle for Assembly*, Santa Rosa Press Democrat, Oct. 31, 1984.
7. Jerry Gillam and Carl Ingram, *Blitz for Ballots, Massive 11th Hour Spending Marks Key Legislative Races*, Los Angeles Times, Nov. 2, 1984.
8. Dan Walters, *The Players and the Reformers*, Sacramento Union, May 11, 1984 ("the techniques of political gamesmanship such as massaging special interest groups for campaign money... have seen their greatest flowering under [Speaker] Brown").
9. William Endicott, *Gann Initiative Seeks to Curtail Power of Legislature's Majority*, Los Angeles Times, May 1, 1984.
10. Martin Smith, *Campaign Reform Still Far Off*, Gilroy Dispatch, June 8, 1984.
11. Carl Ingram, *Top Assembly, Senate Leaders Reelected*, Los Angeles Times, Dec. 4, 1984.
12. Carl Ingram and Jerry Gillam, *Speaker Brown Woos GOP, Ladles Out Chairmanships*, Los Angeles Times, Jan. 18, 1985.
13. WALTON BEAN, *CALIFORNIA: AN INTERPRETIVE HISTORY* (4th ed. 1982).
14. Jerry Gillam, *New GOP Assembly Chief Fires 6 Top Caucus Aides*, Los Angeles Times, Nov. 16, 1984.
15. Brooks Jackson, *Democrats Credit Wins to Fundraising*, Wall Street Journal, Nov. 12, 1984.
16. CAL. ELEC. CODE §§8660-8678 (West Supp. 1985) (Democratic Party) and Democratic Party By-laws; CAL. ELEC. CODE §§9160-9172 (West Supp. 1985) (Republican Party) and Republican Party By-laws.
17. San Francisco County Democratic Central Comm. v. March Fong Eu, No. 83-5599 (N.D. Cal. 1983), *stay granted*, No. 84-1851 (Apr. 24, 1984).
18. Unger v. Superior Court, 37 Cal. 3d 612 (1984).
19. Vic Pollard, *Campaign Financing: It's Thoroughly Institutionalized Corruption*, Stockton Record, Nov. 19, 1984.
20. Willie Brown, *Public Funds for Campaigns Can Aid Legislative Integrity*, Los Angeles Times, June 10, 1983.
21. William Endicott, *Sacramento Has Another Go at the Problem of Runaway Campaign Costs*, Los Angeles Times, May 6, 1984.



## CHAPTER 6

---

# **Off Year Fundraising: California's Secret Campaign Finance Problem**

*If California ever wakes up to the fact that its Legislature is being bought, sold and rented by the hour and gets serious about reform, one of the highest priorities should be to wipe out the completely unfair and corrupting practice of off year fundraising.*

— Dan Walters, Sacramento  
Union<sup>1</sup>

**W**hy did the average member of the California Assembly raise \$81,000 in private contributions during 1983, a year in which that member had no election, no campaign and no opponents?

Why do newly elected California legislators throw elaborate fundraising dinners in Sacramento that can net them up to \$50,000 in one evening, when they have just won their elections, have no campaign debts, have no foreseeable opponents and have 18 months before their next election?

Why did one State Senator schedule a \$5,000 per couple fundraiser only two months after being reelected to a four-year term when he had no election debts to pay off?

Why do the last two Fair Political Practices Commission Chairmen—one a Republican and the other a Democrat—both agree that off year fundraising must be limited or prohibited altogether?

Off year fundraising—fundraising that occurs during those years when legislators are not up for reelection—is California's secret campaign finance problem. It typically occurs outside public scrutiny, yet its corrosive effects on the legislative and electoral processes are severe and rapidly worsening. This is apparent when off year fundraising is contrasted with election year fundraising.

Contributions during an election year are given to *candidates*. Contributors often support a candidate for “philosophical” reasons—because they agree with the candidate’s views on an issue or range of issues or because they disagree with the views of the candidate’s opponent. Contributors give a candidate money with the understanding that it will be used to communicate the candidate’s views to the public during an election campaign; they participate in the campaign by supporting the candidate’s efforts to win the election.

By contrast, contributions during the off year are given almost exclusively to *incumbents*. Because no campaign is pending, these contributions are typically intended to obtain access and influence for the contributor. As Lynn Montgomery, Media Director for the FPPC, has said: “A lot of the off year spending is to influence legislation rather than elections.”<sup>2</sup>

Contributors who have a specific interest to promote or defend before the Legislature make contributions to obtain a particular lawmaker’s support—or at a minimum to gain access to his or her ear. In exchange legislators receive money which gives them “insurance” against electoral competition in the following year. By accumulating large “war chests” which they hope not to have to spend, legislators deter potential challengers from entering future races against them.

Off year fundraising therefore has two principal effects: it can lead to a particularly virulent corruption of the legislative process; and it can help incumbents deter challengers.

## **A. Off Year Fundraising Is Growing in Importance**

Fundraising by legislative officeholders in the off-election year, when legislative officeholders are not up for reelection, has escalated dramatically—rising over 150% in the last six years. In 1977 the 120 incumbent legislators raised \$5.7 million,<sup>3</sup> in 1983 all legislative incumbents raised \$14.3 million.<sup>4</sup>

In 1983 (an off-election year) all 80 Assembly incumbents raised a total of \$9.7 million. The typical (or median) Assembly member in 1983 raised \$81,000. Contributions ranged from a high of \$1,324,000 received by Speaker Willie Brown (D-San Francisco) to a low of \$21,000 raised by Assemblyman Robert Frazee (R-Carlsbad). (See Table 6.2 below.)

### **1. Partisan Patterns**

Democratic and Republican off year fundraising patterns are surprisingly different. Many political observers would assume that because Democrats in 1983 held the majority power in the Assembly they would raise more off year money. As a group, the Democrats did gather substantially more off year contributions than the Republicans (\$6 million to \$3.7 million). But comparing the median Democrat with the median Republican, the figures were reversed. The median Democratic Assemblymember in 1983 raised \$67,000 while the median Republican Assemblymember raised \$101,000. A few Democrats (such as Speaker Brown, Assembly Majority Leader Mike Roos and Assistant Speaker pro Tem Tom Bane) raised the bulk of all off year contributions. Because the Democratic leadership is able to raise such large sums of money to transfer to other Democrats, most Democratic legislators may not feel it necessary to make extraordinary efforts to match their Republican counterparts.

Republican legislators, on the other hand, may have worried more about the Speaker’s huge fund being used selectively against them and therefore felt they had to show substantial strength in the off year. Republicans also regained the Governor’s office in 1983 and, accordingly, Republican legislators were seen as more powerful than when the Democrats controlled both the Legislature and the Governor’s office.

These figures underscore the belief held by many legislators that it is far easier to raise off year money than election year campaign contributions. Legislators have much less competition for campaign money in the off year since most challengers have not yet made a decision to run for office. When less than half as many political figures are raising money, as is the case in the off year, contributors have additional resources to draw upon in making campaign contributions.

## **2. Who Contributes in the Off Year**

In 1983, according to FPPC data, PACs and business entities contributed 76% of all off year money in amounts of \$100 or more. Individuals supplied 22% while political parties and transfers accounted for the remaining 2%.<sup>5</sup>

The top off year PAC contributor in 1983, for example, was the California Trial Lawyers Association (CTLA) which gave \$237,000 to 70 legislative incumbents (47 Democrats and 23 Republicans). CTLA contributions ranged from \$68,000 to Speaker Brown to \$250 to each of seven legislators.<sup>6</sup>

The second largest off year contributor was the California State Employees Association (CSEA) which gave \$227,000 to 103 of the 120 legislators. Only nine Assemblymembers (all conservative Republicans) and eight Senators (four Democrats and four Republicans) failed to receive any CSEA money. CSEA contributed its highest amount (\$50,000) to Speaker Brown and its lowest amount (\$250) to Senator Jim Ellis (R-San Diego).<sup>7</sup>

## **B. There Is a Dangerous Relationship Between Off Year Contributions and Improper Legislative Influence**

The problem with off year campaign money is that it has very little to do with public policy. It's access money. It's money given to influence legislation rather than money given to influence election outcomes.

— Walter Zelman, Executive Director, California Common Cause<sup>8</sup>

Contributions given in an off-election year have a major impact on legislation. Such contributions come predominantly from statewide organizations and interest groups with a strong presence in Sacramento, and from Sacramento lobbyists and PACs that transact daily business with legislators. In 1983, for example, incumbent legislators collected \$14.3 million in off year money—of which \$10.3 million came from PACs and businesses. Since legislators can raise so much money in Sacramento, they have less incentive to approach their own constituents for funds. Off year fundraising thus skews legislators' attention away from local issues and directs it toward special interest concerns.

It is common knowledge in the State Capitol that fundraisers are often held shortly before key votes affecting substantial economic interests. Lobbyists complain that fundraisers are blatantly timed to coincide with votes on particular issues, usually a week or 10 days before a key hearing. Because so much time is spent on off year fundraising, less time is available for discussion of legislation. Even at bill deadline crunches, lobbyists grumble at the lack of access to legislators—often because legislators are spending full-time on the phone soliciting contributions.

A legislator raising funds might personally call a particular interest group appearing before his or her committee and ask for contributions prior to the committee hearing. No *quid pro quo* is specifically requested but lobbyists clearly understand that this is the case. As Walter Zelman, Executive Director of California Common Cause, has remarked, "It used to be the interest groups would try to influence candidates before an election. Now we have the incumbents going to the interest group saying, 'you have a bill before my committee, we're having a fund-raising dinner next month, how many tables would you like?'"<sup>9</sup> Because there are so many fundraisers during the off year, however, it is difficult to conclude that any one fundraiser was specifically scheduled before a particular vote. One lobbyist has stated that if he had bought just one ticket to every fundraiser in the off year, he would have spent \$65,000 and gone to over 200 events.<sup>10</sup>

The podiatrists' bill offers an example of the impact of off year money. In 1982, before the November general election, the podiatrists' PAC gave less than \$10,000 to legislative candidates. A bill pushed by the podiatrists, which would have allowed them to operate on ankles as well as feet, failed. Shortly thereafter in 1983, an off year, the podiatrists gave \$146,000 to state legislators. The bill passed.



Podiatrist contributions were given to Senate Republican Minority Leader Bill Campbell (\$14,500), Senate President pro Tem David Roberti (\$10,595), Assembly Speaker Willie Brown (\$7,500 plus \$20,000 immediately after the November 1982 election), Senate Caucus Chairman Paul Carpenter (\$18,250) and 49 other members.<sup>11</sup> Assemblywoman Jean Moorhead commented:

I think what the podiatrists learned is that if they went into a member's office and started talking about the merits of this bill, the member would put them on the mailing list for who to invite to their next fundraiser. That's well-known around here—that if somebody attends your fund-raiser and then the following week wants to come in and see you, then you're going to have them in.<sup>12</sup>

FPPC Chairman Dan Stanford concluded, "I don't think access should be on the auction block any more than votes should be."<sup>13</sup>

Another example involved the California State Employees Association. CSEA was the largest single contributor to legislators during the first six months of 1983, giving \$178,000 at the same time it was asking legislators to grant state employees pay and benefit increases. In the second half of 1983, when CSEA had won the pay increase, it contributed only \$49,000.

Chairman Stanford has concluded that there is "a direct and disheartening relationship between the amount of campaign contributions and the level of interest by the contributors in pending legislation."<sup>14</sup> Larry Lynch of the *Long Beach Press-Telegram* has commented: "[Non-election year] money usually goes to influence special interest bills winding their way through the Legislature in Sacramento. Frequently the investment pays off."<sup>15</sup>

In an off-election year, incumbents are less concerned about adverse press comment or public opinion questioning the connection between their vote and a particular campaign contribution. Incumbents have no opponents during this period to link their votes to money and any adverse press stories will be a year old by the time of the election. Moreover, only two campaign reports are filed in the off-election year, whereas six disclosure reports are filed at periodic dates in an election year. Thus there is less disclosure in the off year and less fear that a legislator's receipt of a contribution will be publicized at the time a vote is taken.

### **C. Off Year Fundraising Has an Alarming Impact on the Competitiveness of Elections**

The practice of off year fundraising has also diminished competition in specific electoral races. Incumbents are afraid that if they don't raise as much money in the off year as other legislators they will be regarded as vulnerable by potential opponents. Thus they attempt to scare off potential opponents with huge war chests as the election year approaches.

Assemblyman Tom Bane (D-Van Nuys) was once defeated in a race he thought he would easily win. Since then he has constantly attempted to ensure that he is prepared for any opponent, even though he has not had a serious challenger in years. In 1982, for example, Bane's Republican opponent raised only \$5,388 for the primary and general elections combined. Despite this, Bane raised over \$250,000 in off year 1983 and started the election year of 1984 with \$268,000 in cash. His 1984 Republican opponent had raised no money through May 19, 1984. By October 18, 1984, she had raised only \$14,709 for both the primary and general elections.

Perhaps the best example of a candidate scaring off an opponent involved Gray Davis, who planned to run for an open Assembly seat in 1982. In 1981 Davis, former Chief of Staff to Governor Brown, began raising enormous sums in the Democratic primary. He and Conway Collis, a former aide to Senator Alan Cranston, engaged in a fundraising war to intimidate the other into withdrawing from the race. The fundraising became so intense that Collis falsified his financial disclosures to make his fundraising appear more successful than it actually was. He overstated his receipts by \$150,000 and drew a \$12,500 FPPC fine. Collis told his campaign treasurer, "Gray Davis has \$300,000...he's got a good start. I've got to show Berman and all those guys that I can raise the money."<sup>16</sup> In March of 1982, Collis fell too far behind in the

fundraising battle and withdrew before he became an official candidate. Davis and Collis typify off year fundraising in many respects—except that nearly all off year money is raised by incumbents rather than challengers or candidates running for open seats.

In theory, off year fundraising should allow challengers to gather momentum for the election year. For this reason many political scientists oppose restrictions on off year fundraising. When the statistics are examined, however, it is clear that challengers in California almost never raise money in non-election years.

In 1981, according to FPPC reports, all eventual challengers to state legislative candidates raised less than 1% (\$53,000) of aggregate off year contributions. Of the 58 general election challengers to incumbents, only eight raised any funds in the off year. The rest raised nothing at all. Paul Chignell of Marin County, a Democratic challenger and loser, raised the most money, only \$16,000. In contrast, his opponent, Assemblyman Bill Filante, raised \$61,000. (Filante by himself raised more contributions in 1981 than all 1982 challengers to incumbents were able to raise in the 1981 off year.)

In 1984 Chignell challenged Filante again. Filante, in the 1983 off year, raised \$155,000 or two-and-a-half times the amount he raised in 1981. Chignell in 1983 raised only \$310. Chignell was defeated by a slightly greater margin in 1984 than in 1982.

Only eight challengers in 1983 raised any off year funds. Gene Tackett, a Kern County Supervisor running against Republican incumbent Don Rogers, raised the most, \$12,000. All eight challengers raised a total of \$46,000, even less than the \$53,000 raised in 1981 by the eight challengers who received off year contributions and far less than the \$81,000 raised by the average incumbent. Of the \$14.3 million raised in 1983, 0.3% was raised by challengers and 99.7% by incumbents. (See Table 6.1.)

Table 6.1

FUNDS RAISED IN 1983 BY 1984 CHALLENGERS				
Assembly Candidates				
Assembly District	Challenger	Amount	Incumbent	Amount
2	Walsh (R) Homan (R)	\$11,566 7,065	Hauser (D)	\$ 37,915
9	Chignell (D)	310	Filante (R)	154,537
33	Tackett (D)	11,724	Rogers (R)	87,929
34	O'Connor (D)	2,818	Wyman (R)	34,845
66	Eaves (D)	8,249	Gogglin (D)	81,392
72	Longshore (R)	3,929	Robinson (D)	211,907
Senate Candidates				
39	Finnegan (D)	21	Ellis (R)	21,622
	TOTAL	\$45,682	TOTAL	\$630,147

Source: FPPC Report on 1983 Non-Election Year Fundraising

None of these eight challengers received any money from the two largest contributors in off year 1983: the California Trial Lawyers Association and the California State Employees Association. However, all of their incumbent opponents received off year funds from CSEA and all but two received contributions from the Trial Lawyers.

### **D. Off Year Money Is Often Raised for a Variety of Non-Campaign Purposes**

Legislators seek off year money because it is available and because it helps incumbents deter potential challengers. But there are additional reasons why incumbent legislators, who have no opposition and expect none, continue to raise money in the off year.

Leadership positions or committee chairmanships are given in many cases to those legislators who demonstrate the greatest ability to raise funds. Legislators are encouraged to raise money and transfer it to their party's legislative caucus or legislative leader for redistribution to party candidates. Legislators engage in competitive battles with each other to show they are each the fundraising "king of the hill." David Roberti was elected President pro Tem of the Senate in 1981 after promising to raise large amounts of money to protect his Democratic colleagues. He ousted Senator Jim Mills, who had made clear his dislike of having to raise substantial funds for other legislators.

Some legislators incur off year expenses which are not reimbursed by the state. Many travel to their districts each weekend. Others travel to Washington to meet with federal officials. Legislators typically raise off year campaign funds to pay for these trips.

Moreover, some legislators supplement their staff salaries with campaign funds. One legislator, Senator Bill Campbell (R-Hacienda Heights), provided his top staff member with \$40,000 in campaign funds over and above the staff member's salary. Campbell also used campaign contributions to lend his campaign treasurer's business \$110,000. The Attorney General's office was asked by a reporter in December 1983 if the loan to the treasurer's business was legal under a new law which prohibited personal use of campaign funds. The office did not provide the reporter with an answer pursuant to a policy precluding the giving of legal advice to non-public officials.<sup>17</sup> After the story was published, most of the loan was repaid.

Some legislators raise large sums in the off year to repay election year debts. Most last-minute campaign debt is incurred by candidates who make loans to their own campaigns. A few candidates even mortgage their homes in a gamble that they will win and then be able to pay off such debts. If a candidate wins, he or she will receive contributions immediately after the election, even from those interests which opposed the candidate in the election. Successful candidates with debts typically schedule their fundraisers in late November and December.

Finally, some incumbents raise contributions in the off year by telling potential contributors that they may face tough campaigns in the next election year. Candidates may do this under false pretenses since few if any know if they will be facing a tough opponent, and some may decide not to run for reelection. In the 1984 election, 14 Assembly incumbents were unopposed, yet in 1983 these Assembly incumbents raised over \$1 million. In 1983 Assemblyman Bruce Young (D-Norwalk), Chairman of the Assembly Transportation Committee, raised \$190,000 primarily from special interests and then announced he was retiring from the Legislature. Young spent nearly all the money he collected in 1983, much of it on attorneys defending him on FPPC violations. Under current law legislators are not able to take campaign contributions with them for personal use upon retirement.<sup>18</sup>

Perhaps the ultimate off year campaign fundraiser was a scheduled trip to Hawaii to watch the Pro Bowl football game. Senator Bill Campbell wrote to potential contributors: "Because I have supported the needs of my fellow Republicans, I find myself in greater need of your financial support than perhaps any previous time." According to Campbell's chief aide, Jerry Haleva, Campbell had almost \$100,000 in the bank. Because of the possibility of unfore-

seen future events and anticipated heavy off year expenses, Campbell wanted to replenish his bank account to the \$200,000 level he normally maintained. Campbell's fundraiser was pegged at a cost of \$5,000 per couple, probably the highest amount ever charged by a legislator or legislative candidate. He was subsequently forced to cancel the event due to lack of sufficient interest by contributors.

A very few legislators avoid raising substantial sums in the off-election year. Ironically this in itself has become newsworthy. Senator Walter Stiern (D-Bakersfield), for example, was featured in a story on 1983 fundraising entitled, "Senator Stiern Finishes Last in Campaign Fundraising Frenzy." He told the *Bakersfield Californian*, "I just don't like to do it," and said that he doesn't intend to raise money until close to 1986, when he decides whether or not to seek reelection.<sup>19</sup> (Stiern announced in June 1985 that he would retire from the Legislature.)

### **E. Reforms Are Needed to Address the Problems of Off Year Fundraising**

One way we can increase competition is to prohibit legislators from amassing campaign war chests in non-election years, so that both challengers and incumbents can start off the election year Jan. 1 on an equal footing.

— Dan Stanford, FPPC Chairman<sup>20</sup>

There have been few legislative proposals to limit off year contributions. The reason is clear. Incumbent legislators increasingly rely on off year fundraising to give them a competitive advantage over future challengers. They are extremely reluctant to eliminate a practice that is of significant benefit to them.

In 1982, for example, the Fair Political Practices Commission sponsored a bill (S.B. 1541—Sieroty) to limit off year contributions to \$100 per individual and \$250 per non-individual so that "the off year orgy of fundraising would stop," according to former Chairman Tom Houston. Similar legislation was introduced in 1983 (S.B. 529—Petrus). Neither bill was passed out of the first committee, even though both bills received strong editorial support.

In July 1984 the Fair Political Practices Commission, with new Chairman Dan Stanford, announced it was sponsoring a comprehensive contribution limitation package (S.B. 2250—Craven). Its proposal would have prohibited lobbyists, their employers and PACs sponsored by their employers from making *any* contributions in the off year to elected officials whom they lobbied. Although in 1978 the California Supreme Court struck down a provision of the Political Reform Act which prohibited lobbyists from making contributions, the FPPC believed that its proposal would be upheld since it would have prohibited contributions only to those officials whom the lobbyists or their employers were lobbying.

The FPPC analysis of its bill stated:

It is intended to curtail those special interest contributions which have the most potential for or the greatest appearance of creating undue influence on incumbents, during periods when there is no general election campaign. This provision should reduce off year fundraising substantially.<sup>21</sup>

Legislative response to the FPPC bill was immediate. The off year restrictions were deleted from the bill at its first legislative hearing; it then passed the Senate before being killed in the Assembly.

Reflecting legislative antipathy to off year restrictions, the much debated 1984 Vasconcellos-Lockyer public financing bills (S.B. 87-A.B. 12) did not directly limit off year fundraising. In earlier versions the bills allowed off year contributions, but such contributions counted towards specified contribution limits. In the case of a State Senator, for example, individual contributions would have been limited to \$1,000 for the three-and-a-half year period (e.g., January 1, 1985—June 30, 1988) through the primary election. Another \$1,000 could be donated for the general election period of July 1—December 31.

The Ross Johnson Initiative (Proposition 40 on the November 1984 ballot) placed a \$1,000 limit on each fiscal year of fundraising: July 1—June 30. A State Senator would have been

allowed to raise \$1,000 each fiscal year from a contributor for a total of \$4,000 for the four-year period, in contrast to the Vasconcellos-Lockyer bill which would have allowed the Senator to gather only \$2,000 per contributor.

### **The Commission's Model Law**

The Commission's Model Law eliminates all off year contributions. (See Appendix A, "Model Law.") Some politicians suggest that a ban or limit on off year fundraising would cause a fundraising flurry in January and February at the beginning of the election year. They argue that an overall limitation per election would be as effective and more enforceable than a limitation in the off year. At present, however, there exists a constant fundraising blizzard from January to December of each year. Under the Commission's proposal, at least one year out of two would be free of fundraising pressures.

The Commission believes that off year limitations would be one of the most salutary reforms that could be enacted. Such a proposal would create a refreshingly different mood in Sacramento. It would give legislators an entire year to focus on legislation and not on contributions. In addition, challengers could start to raise funds at the same time as incumbents, allowing both a more equal chance to compete for available dollars.

A possible alternative approach would limit off year contributions to \$100 or less. If such a \$100 limitation had been in effect in 1983, Assembly incumbents would have raised \$2.3 million — \$7 million less than they actually raised, representing a 77% drop in all off year funds collected. The median Assemblymember would have raised \$23,000, or 29% of the amount actually raised in that year. (See Table 6.2.)

With a \$100 limitation the median Republican would have received \$29,000 in 1983, or 29% of what that Republican actually received. A \$100 off year limitation would have allowed the median Democrat to raise \$21,000 or 32% of what that Democrat actually received in 1983. The Speaker's total would have been reduced 91% from \$1,324,000 to \$123,000. If a \$100 limitation had been applied to each of the California State Employees Association's 1983 off year contributions, its total giving would have dropped from \$227,000 to a maximum of \$10,300.

A \$100 limitation would severely restrict off year fundraising. It would, however, still allow legislators to receive small amounts for legitimate off year expenditures such as travel to their districts. A \$100 limitation might be a reasonable alternative to a complete ban on off year fundraising where the Legislature is unable to provide additional reimbursements for travel and other legitimate expenses.



Table 6.2

OFF YEAR CONTRIBUTIONS: IMPACT OF LIMITATIONS  
ON ASSEMBLY INCUMBENTS IN 1983

A.D.*	Name	Total Contributions In 1983	Amount Left After Reducing Contributions to \$100	Percentage Reduced by Limitation
1	Statham, S. (R)	\$ 55,570	\$ 31,845	43%
2	Hauser, D. (D)	37,915	19,234	49%
3	Herger, W. (R)	79,806	41,512	48%
4	Hannigan, T. (D)	41,261	14,917	64%
5	Moorhead, J. (D)	32,050	6,700	79%
6	Connelly, L. (D)	44,728	14,466	68%
7	Waters, N. (D)	50,566	21,612	57%
8	Sebastiani, D. (R)	270,636	25,511	91%
9	Filante, W. (R)	154,537	64,820	58%
10	Isenberg, P. (D)	53,682	24,470	54%
11	Campbell, R. (D)	61,814	35,791	42%
12	Bates, T. (D)	58,281	33,336	43%
13	Harris, E. (D)	67,144	20,544	69%
14	Klehs, J. (D)	50,062	16,620	67%
15	Baker, W. (R)	108,972	51,084	53%
16	Agnos, A. (D)	35,588	8,396	76%
17	Brown, W. (D)	1,323,755	122,524	91%
18	McAllister, A. (D)	32,325	8,255	74%
19	Papan, L. (D)	101,996	26,536	74%
20	Naylor, R. (R)	421,775	57,523	86%
21	Sher, B. (D)	30,615	5,165	83%
22	Konnyu, E. (R)	134,638	50,024	63%
23	Vasconcellos, J. (D)	122,992	36,068	71%
24	Cortese, D. (D)	29,181	12,619	57%
25	Arelas, R. (D)	40,522	15,937	61%
26	Johnston, P. (D)	56,725	22,625	60%
27	Condit, G. (D)	47,025	21,340	55%
28	Farr, S. (D)	49,984	22,867	54%
29	Seastrand, E. (R)	120,381	58,600	51%
30	Costa, J. (D)	111,281	29,675	73%
31	Bronzan, B. (D)	72,652	21,125	71%
32	Jones, W. (R)	110,153	49,759	55%
33	Rogers, D. (R)	87,929	31,901	64%
34	Wyman, P. (R)	34,845	10,703	69%
35	O'Connell, J. (D)	40,190	20,590	49%
36	McClintock, T. (R)	123,225	42,890	65%
37	Wright, C. (R)	118,023	22,753	81%
38	LaFollette, M. (R)	103,174	25,272	76%
39	Katz, R. (D)	155,049	38,575	75%
40	Bane, T. (D)	252,747	38,043	85%

Continued on p. 124



Table 6.2 (continued)

OFF YEAR CONTRIBUTIONS: IMPACT OF LIMITATIONS ON ASSEMBLY INCUMBENTS IN 1983				
A.D.*	Name	Total Contributions In 1983	Amount Left After Reducing Contributions to \$100	Percentage Reduced by Limitation
41	Nolan, P. (R)	185,132	70,745	62%
42	Mountjoy, R. (R)	62,413	19,671	68%
43	Davis, G. (D)	434,223	56,148	87%
44	Hayden, T. (D)	349,137	26,513	92%
45	Margolin, B. (D)	92,673	23,348	75%
46	Roos, M. (D)	221,507	22,367	90%
47	Hughes, T. (D)	31,056	10,416	66%
48	Waters, M. (D)	137,085	39,036	72%
49	Moore, G. (D)	40,875	7,605	81%
50	Tucker, C. (D)	114,123	15,698	86%
51	Felando, G. (R)	145,310	18,830	87%
52	Hill, F. (R)	101,049	27,437	73%
53	Floyd, R. (D)	99,709	21,109	79%
54	Vicencia, F. (D)	82,107	12,050	85%
55	Alatorre, R. (D)	242,652	56,066	77%
56	Molina, G. (D)	72,289	26,522	63%
57	Eider, D. (D)	138,665	25,610	82%
58	Brown, D. (R)	125,659	38,199	70%
59	Calderon, C. (D)	77,519	18,898	76%
60	Tanner, S. (D)	115,665	56,328	51%
61	Leonard, W. (R)	79,390	21,740	73%
62	Lancaster, W. (R)	80,295	24,081	70%
63	Young, B. (D)	190,005	24,856	87%
64	Johnson, R. (R)	67,281	19,373	71%
65	Bader, C. (R)	83,988	24,038	71%
66	Goggin, T. (D)	81,392	7,096	91%
67	Lewis, J. (R)	76,928	22,873	70%
68	Clute, S. (D)	60,612	10,862	82%
69	Fritzelle, N. (R)	96,108	31,579	72%
70	Bergeson, M. (R)	260,082	30,452	76%
71	Allen, D. (R)	53,355	15,005	72%
72	Robinson, R. (D)	211,907	28,642	86%
73	Kelley, D. (R)	118,387	33,037	72%
74	Frazer, R. (R)	21,455	4,655	78%
75	Mojonier, J. (R)	81,024	23,234	71%
76	Bradley, W. (R)	39,602	21,550	46%
77	Stirling, L. (R)	94,561	42,711	55%
78	Killea, L. (D)	60,112	21,036	65%
79	Chacon, P. (D)	56,186	17,804	68%
80	Peace, S. (D)	67,272	16,573	75%
TOTALS		\$9,672,584	\$2,256,020	77%

\*Assembly District

Source: California Commission on Campaign Financing data analysis

## NOTES

1. Dan Walters, *Incumbents' Green Advantage*, Sacramento Union, May 23, 1984.
2. Morgan Cartwright, *Big Bucks Flowing to District Senate Race*, Tahoe Tribune, Feb. 15, 1984.
3. FPPC, *Another Fundraising Record Set*, Press Release, Feb. 23, 1982.
4. FPPC, *1983 Fundraising Tops \$16 Million*, Press Release, Mar. 21, 1984, p. 1.
5. FPPC, 1983 NON-ELECTION YEAR FUNDRAISING, at C-4 (May 1984).
6. *Id.* at B-427-428.
7. *Id.* at B-428-431.
8. Peter Aleshire, *'83 Record Year for Fundraising, but Eastbay War Chests Modest*, Oakland Tribune, Apr. 1, 1984.
9. *Id.*
10. Dan Walters, *Lobbyists Charge 'Shakedown'*, Sacramento Union, Jan. 2, 1984.
11. FPPC, *supra* note 5, at B-433-434.
12. Larry Liebert, *Podiatrists 'Pay to Play'*, San Francisco Chronicle, Sept. 30, 1983.
13. *Id.*
14. William Endicott, *State Legislators Raise \$7 Million in First Half of '83*, Los Angeles Times, Sept. 2, 1983.
15. Larry Lynch, *Big Bucks Cascade into Political Coffers in Non-Vote Years*, Long Beach Press-Telegram, Dec. 11, 1984.
16. FPPC, *Conway Collis Fined for Campaign Disclosure Violations*, Press Release and Attached Stipulation, June 5, 1984.
17. Lynch, *supra* note 15.
18. CAL. ELEC. CODE §§12400-12407 (West Supp. 1985).
19. Bruce Scheidt, *Sen. Stiern Finishes Last in Campaign Fund-Raising Frenzy*, Bakersfield Californian, Mar. 23, 1984.
20. *Gifts to State Legislators Averaged \$1.2 million a Month—in Off Year*, Los Angeles Times, Feb. 25, 1984.
21. Barbara Milman, Memorandum to FPPC Commissioners: *FPPC Campaign Finance Reform Legislative Proposal*, June 28, 1984, at 4-5.



## CHAPTER 7

# Negative Consequences on Legislation, Elections and Public Confidence

*[T]here is the blatant and never-ending quest for money. Legislators... are traders in the money market, arbitrators between special interests. A look through campaign-contribution lists makes it obvious that the passage or defeat of a bill frequently is tied directly to a bidding war and little else.*

— William Endicott, *Los Angeles Times*<sup>1</sup>

*In a purely political sense, California's Capitol has come to resemble 14th Century Europe. . . . The manifestations of that situation are many: dirtier and more expensive campaigns, . . . shakedowns of special interest lobbies for campaign funds, the creation of a corps of mercenary-like professional politicians who sell or rent their services to the highest bidder.*

— Dan Walters, *Sacramento Union*<sup>2</sup>

*Everything has a price.*

— Assemblyman Elihu Harris<sup>3</sup>

**C**alifornians pay a heavy price for their campaign finance system. Sharply rising campaign costs are pressuring legislators to seek large contributions from interest groups with an economic stake in pending legislation. Major contributors are using money to purchase influence, not to support the state's political system. Local governmental decisions

are reversed in Sacramento at the behest of large contributors. Lawmakers are devoting more time to fundraising and less to state concerns. Key issues are slighted. State taxpayers are forced to shoulder higher costs.

The state's electoral processes have also been affected. High campaign costs are deterring qualified candidates from running. Incumbents are increasing their fundraising advantages over challengers. Transfers and partisan contributions continue to grow. Political parties remain weak. Competition for elective office in many cases is diminished. Public confidence in state government is eroding.

California's campaign finance system has thus caused a wide range of negative effects on legislation, elections and public confidence in state government.

## **A. The Legislative Process Is Being Impaired**

California's escalating campaign costs have directly impaired the integrity and effectiveness of state governmental institutions in a number of major respects:

### **1. Increased Appearance of Corruption**

In the California Legislature, the voice of the people is being increasingly ignored amid an unprecedented scramble for campaign money. Powerful special interests bankrolling the election of our representatives have attained such a position of privilege that even some lawmakers fear that the Legislature is becoming a kept house.

— Gale Cook and James Finefrock, San Francisco Examiner<sup>4</sup>

In recent years, newspaper stories have recounted a number of incidents suggesting a connection between campaign contributions and specific legislative outcomes.<sup>5</sup> Such allegations are neither clear cut nor easy to prove. But these news stories have had one important effect: they have heightened the *appearance* of undue contributor influence over California's legislative process.

In the landmark campaign finance decision of *Buckley v. Valeo*, the Supreme Court warned that "avoidance of the appearance of improper influence 'is...critical...if confidence in the system of representative government is not to be eroded to a disastrous extent.'"<sup>6</sup> The urgency of this warning is illustrated in a number of current examples reported in the California press:

#### **a. Podiatrists**

In 1983, an off-election year, the California Podiatry Association PAC contributed \$145,720 to California legislators and finally won a seven-year battle giving podiatrists the legal right to operate on the ankle. The details of this story offer, in one reporter's view, "a classic example of how money, injected in heavy doses, can influence legislative battles."<sup>7</sup>

Prior to 1983, California podiatrists were legally allowed to operate on the foot but did not have the legal right to operate on the ankle, although they are trained to do both. New surgical techniques, together with an increase in jogging and sports-related injuries, made ankle operations an increasingly important and profitable area of medical practice. Podiatrists therefore lobbied the Legislature (unsuccessfully) for seven years to obtain this right. The podiatrists were opposed by the California Medical Association (CMA), representing doctors throughout the state. The CMA consistently ranked among the largest contributors to legislators during this period (giving almost \$2 million between early 1975 and late 1982). By contrast, podiatrists contributed little money to legislators between 1975 and 1982.

After the defeat of their 1982 bill, podiatrists were advised by a Sacramento lobbyist to change their tactics. In late 1982 California Podiatry Association leaders met with Assembly Speaker Willie Brown. Sources "intimately familiar with the bill and its backstage dealings" reported that Brown agreed to help the podiatrists pass their bill.<sup>8</sup> On November 5, 1982, just after the general election, the podiatrists' PAC made a \$20,000 contribution to Brown who assigned a top aide to help push the bill through the Legislature.

Beginning with the \$20,000 contribution to Brown, the podiatrists contributed over \$100,000 to state legislators in less than six months and contributed a total of \$145,720 during 1983. Approximately 75% of these contributions went to Senate and Assembly Health Committee members and to legislative leaders. The bill passed in mid-1983 and gave podiatrists the right to operate on ankles.

Members of the Assembly supporting the podiatrists received \$52,150 in campaign contributions. Those opposing the podiatrists received only \$1,350 during the same period. Dan Walters concluded that “the money overwhelmingly went to those who had just voted for the podiatrists’ bill or were on the verge of doing so.” On the Senate side every member of the Senate Health and Welfare Committee who voted for the bill received at least one substantial campaign contribution from the podiatrists. “In several cases, the contributions were delivered just as the vote was taken.”<sup>9</sup>

Explanations differ over the impact of the podiatrists’ contributions. Dr. Robert Johns, former director of the California Podiatry Association, contended that the podiatrists’ money only gave them access to legislators to plead their cause. “I think we got the attention of the Legislature and they wouldn’t pay attention to us before.”<sup>10</sup> Orthopedists saw the matter differently. One commented, “I think they [the podiatrists] bought the bill, but you can’t prove that.”<sup>11</sup>

Dan Stanford, Chairman of the California Fair Political Practices Commission, concluded the podiatrists’ contributions were “attention getting” and not “vote buying,” but he warned:

[W]e’re seeing a trend toward increased campaign contributions by those with a direct financial interest in pending legislation.... We’re talking about legislation that constitutes millions of dollars in potential income for a special interest group and \$100,000 [in campaign contributions] is almost minimal.<sup>12</sup>

Speaker Brown denied the money was responsible for the podiatrists’ victory but acknowledged that “[i]t is certainly easier for me to grant an audience to someone who knows me by my first name, who I see at a Willie Brown fundraiser, or who helped me when I needed a life jacket than someone I don’t know or worse, who supported an opponent.”<sup>13</sup>

Dr. Tilden H. Sokoloff, President of the California Podiatry Association, concluded: “If you want to really get something accomplished in the legislative arena you have to get the attention of the legislators. There is only one way to get the attention of legislators in a turf fight—financially. The political process is one that requires dollars, large amounts of dollars for campaigns.”<sup>14</sup>

Other explanations exist. Some contend that the California Medical Association had used its campaign contributions to block the podiatrists’ legislation and that the podiatrist contributions were necessary to “create a level playing field.” Others contend that legislators voted against the doctors to encourage them to increase their contributions the following year.

Whichever explanations are valid, the podiatrists’ contributions clearly created at least the appearance of a *quid pro quo* exchange of money for votes. As State Treasurer Jesse Unruh has said, campaign contributions are “put there for a purpose. If that money was not wisely and well spent on behalf of the special interests, it would damn well stop in a hurry.”<sup>15</sup> Public suspicion of monetary influence can taint the governmental process.

### **b. Fireworks**

In 1984 and 1985 the scandal involving W. Patrick Moriarty overshadowed all other cases of alleged legislative corruption. The scandal touched several state legislators and was potentially “big enough to shock Californians into seeing their political system in a new light.”<sup>16</sup>

Moriarty’s primary business was the manufacture and sale of so-called “safe-and-sane” fireworks to the general public. Fireworks have caused fires and injuries, and many local governments ban their sale and use. The success of the fireworks industry is thus closely linked to government policies.



During the 1981-1982 legislative session Moriarty promoted a bill to remove from local governments the power to ban the sale and use of fireworks. Despite vigorous opposition from fire chiefs and other local officials, the Assembly approved the bill by a 42-31 vote (41 votes needed). In August of 1982, on the last day of the two-year session, the Senate passed the bill by a 21-16 vote (21 votes needed).<sup>17</sup> The Legislature's final adoption of the bill received substantial press attention. After the "ensuing uproar," Governor Brown vetoed the bill.<sup>18</sup>

Moriarty reported giving legislators \$17,100 in campaign contributions during this period.<sup>19</sup> But later investigations revealed that this was merely the tip of the iceberg. Close business associates and relatives of Moriarty, especially John E. Murphy and Richard Raymond Keith, reportedly gave 124 California officeholders and candidates, including both state-wide and local officials, more than \$590,000.<sup>20</sup> Legislators received over \$129,000 in contributions from the "Moriarty forces" around the time the fireworks bill was pending.<sup>21</sup> Assembly Speaker Willie Brown (D-San Francisco) received the most, \$23,000. Others receiving \$5,000 or more included former Speaker Leo McCarthy (D-San Francisco), \$10,000, State Senator Art Torres (D-Los Angeles), \$9,500, Assemblyman Bruce Young (D-Norwalk), \$7,500, Assembly Minority Leader Carol Hallett (R-San Luis Obispo), \$5,000, Assemblymen Richard Alatorre and Gray Davis (both D-Los Angeles), \$5,000 each, and Senator Ed Royce (R-Garden Grove), \$5,000. Forty-one of the 63 legislators who voted for the bill received Moriarty campaign money.<sup>22</sup>

Some of these contributions were given by others at Moriarty's request. "When a person like Pat asks you for a favor, you don't turn him down," one Moriarty associate said.<sup>23</sup> Most of the contributions, however, were Moriarty's money. Associates and relatives acted as intermediaries in conveying Moriarty's money to politicians.

Moriarty apparently had a long-standing practice of giving money through others because, in his words, "you can't buy the state of California and still have them vote (for) your issues." Moriarty continued this practice even though the 1974 Political Reform Act made such "laundering" illegal. "When the law came into effect, we didn't change anything, reported John Murphy. "It was as if he [Moriarty] thought he was above the law."<sup>24</sup> Five Moriarty associates now confirm the existence of a laundering scheme which may "be the biggest case of its kind in California history."<sup>25</sup> "[A]t least \$260,000 was 'laundered' to 60 lawmakers and candidates, according to former Moriarty associates and public records."<sup>26</sup>

Did politicians receiving these contributions know they were illegal? Suspicions might have been aroused when Richard Keith started making \$63,000 in contributions "shortly after he filed for bankruptcy."<sup>27</sup> Assembly Speaker Brown's \$23,000 contribution came from Keith's Card Construction Company, which listed a vacant lot in Irvine as its address.<sup>28</sup> Former Moriarty aides claim that "[i]n many cases...the recipients were aware that the money was actually coming from Moriarty." John Murphy said that "he specifically told some politicians that Moriarty was their real benefactor." However, politicians interviewed by the press to date have generally denied knowledge that the money they received was laundered.<sup>29</sup>

Key legislators played important roles in promoting Moriarty's pro-fireworks bill. Assembly Majority Floor Leader Mike Roos (D-Los Angeles) and Assemblyman Bruce Young "were instrumental in [its] 1981 Assembly passage. "Without their lobbying and votes, the bill... would have failed."<sup>30</sup> Subsequent investigation revealed that Moriarty's links with these legislators went far beyond campaign contributions.

Moriarty arranged two bank loans for Roos totaling \$60,000 in 1981.<sup>31</sup> The interest rate charged was 7 1/2% at a time when the prime rate was over 17%.<sup>32</sup> Roos invested in a condominium project Moriarty was building in Baldwin Hills the same year. The following year Roos sold his interest in the project back to Moriarty at an undisclosed profit, even though few of the condominium units had been sold. The Assemblyman's father, Walter Roos, invested \$100,000 in the California Commerce Club, a new Moriarty poker club in the City of Commerce.<sup>33</sup>

Moriarty also had strong ties with Young who had “carried the [fireworks] bill on the Assembly floor [and] vigorously lobbied his colleagues for support.”<sup>34</sup> Moriarty’s business links to Young reportedly dated back to 1978 when Young invested in the Bank of Irvine which was co-founded by Moriarty.<sup>35</sup> Young also invested \$50,000 in Moriarty’s Baldwin Hills condominium project and wrote a letter supporting the project without mentioning his personal interest, apparently to aid Moriarty in securing a bank loan. Questioned by reporters about the condominium, Young retorted, “I’m losing money on that deal.”<sup>36</sup> However payments by Moriarty to Young have been explained as “repayments” of Young’s investment. These “repayments” included household furnishings variously valued at \$5,800 to \$20,000 and a payment of \$18,000 to Young’s former wife as part of her divorce settlement.<sup>37</sup>

Assembly Speaker pro Tem Frank Vicencia (D-Bellflower) also had business ties to Moriarty. Vicencia held a two-thirds interest in an insurance company which landed a contract with Moriarty’s California Commerce Club, a now-controversial poker parlor.<sup>38</sup> Other legislators were hired to work for Moriarty-connected firms. Assemblyman Young received at least \$6,500 and use of a leased vehicle for 2 1/2 years for consulting services. In three different 1984 interviews, Moriarty associate Keith gave three different explanations of the work that Young had supposedly performed.<sup>39</sup>

Senator Dan Boatwright (D-Concord) was reportedly hired by R.E. Wolfe Enterprises, a firm headed by a long-time Moriarty business associate and half-owned by Moriarty. Boatwright was paid more than \$14,000 to help the firm win a landfill contract in San Bernardino County. The San Bernardino County Grand Jury reported that Wolfe’s bid would cost the County \$5 million more than a rival proposal.<sup>40</sup>

On one occasion Moriarty reportedly hired a lawmaker’s spouse. Sylvia Cunningham, wife of Los Angeles City Councilman David Cunningham, was paid \$30,000 as a saleswoman on the Baldwin Hills condominium project. Only one of the 64 units was sold during this period.<sup>41</sup>

Moriarty also provided vacation facilities to legislators. Young enjoyed free use of Moriarty condominiums in Palm Springs, Hawaii and Utah.<sup>42</sup> Boatwright used the Hawaii condominium in 1982. He paid \$900 for this use eight months later.<sup>43</sup>

In a series of sensational interviews given reporters in January 1985, Moriarty’s closest associate Richard Keith reported that “he helped arrange prostitutes for legislators...on Moriarty’s behalf.” Keith said, “I believe the total money Pat Moriarty and his associates spent on hookers between 1978 or 1979 and the present was between \$600,000 and \$750,000.” Keith said he had personally delivered between \$300,000 and \$400,00 of this. He said he had “direct knowledge” that prostitutes were provided to “at least ten people in state politics.”<sup>44</sup>

The Orange County Grand Jury began an investigation of Moriarty’s fireworks lobbying activity in January 1984 and the U.S. Attorney joined the investigation in March of that year. In May 1984, State Senator H.L. Richardson (R-Arcadia) stated that Moriarty had requested his assistance in squelching the Orange County investigation, particularly with regards to providing prostitutes to legislators. Moriarty and associates had given \$11,000 in contributions to a Richardson-controlled political action committee and Moriarty’s firm had given a Richardson company \$38,000 in business. But Richardson promptly reported the conversation to the Orange County District Attorney.<sup>45</sup>

Young announced that he would not be a candidate for reelection in 1984. Moriarty went on trial on 18 counts related to the California Commerce Club bribery case in March, 1985. On the fifth day of testimony, Moriarty agreed to a plea bargain. He pleaded guilty to charges which involved providing politicians with free vacation housing and lucrative investments, making payments to officials and their relatives, and bribing other officials to obtain a City of Commerce poker club license. Moriarty faces up to 35 years imprisonment but sentencing has

been delayed to allow the judge to assess Moriarty's cooperation with prosecutors. "Moriarty will be called upon to provide investigators with details of private meetings and information from personal files that were unavailable to his former associates."<sup>46</sup>

The Moriarty case has received generous attention from the press and the Sacramento political community. Further indictments are widely expected. The investigation has heightened the appearance of widespread corruption at high governmental levels.

### **c. Truckers**

Because heavy trucks are a major cause of road damage, state law limits loaded truck weights to 80,000 pounds. Truckers who violate this limit are subject to prosecution, which district attorneys see as a way to recoup money spent repairing potholes. By 1983 dozens of truckers were being prosecuted or on the verge of being prosecuted for violation of the 80,000-pound limit.

Assemblyman Bruce Young co-authored a 1983 bill which in effect provided amnesty for truckers who had violated the weight limit. The bill made the records of private weighmasters, such as those at dumps and food processing plants, inadmissible in criminal and civil proceedings. Young received \$10,000 from "Concerned Americans for Responsible Government," the trucker's PAC. The PAC contributed a total of \$57,300 to legislators in 1983.

Governor Deukmejian received at least \$30,975 in campaign contributions from truckers named in pending lawsuits. Some of them reportedly pressed him to sign the bill. District attorneys and the Attorney General's office also pressured him to veto the bill. The Governor allowed it to become law without his signature, explaining that he was deferring to the Legislature.<sup>47</sup>

### **d. Farm Workers**

Governor Edmund G. Brown, Jr., became a loyal ally of the farm workers long before his tenure as Governor. In 1975 he won passage of the Agricultural Labor Relations Act which gave collective bargaining rights to farm workers for the first time. Later in his administration he vetoed several bills sponsored by major agribusiness concerns designed to limit provisions of the 1975 Act.

When Brown ran for the U.S. Senate in 1982, growers contributed nearly \$1 million to the Deukmejian for Governor campaign. A story circulating within the Agricultural Labor Relations Board (ALRB) is that the growers told Deukmejian after the election, "We made you Governor. Destroy the ALRB and we'll make you king."<sup>48</sup>

Because Cesar Chavez and his United Farm Workers Union anticipated the loss of a friend in the Governor's office, the union became active in state legislative campaigns as never before. *Los Angeles Times* reporter Doug Foster concluded, "Chavez's formidable entry into campaign financing (handing \$250,000 in a single chunk to Assembly Speaker Willie Brown) is an attempt to cushion the blow from Gov. Edmund G. Brown, Jr.'s departure from office."<sup>49</sup> Richard Ross, Speaker Brown's top election strategist, acknowledged the effect of the UFW money. "Listen, the UFW does it better than anyone else, not only with money but with people too.... The money is of course very significant."<sup>50</sup> United Farm Workers' contributions were described as "a protective blanket in the Legislature."<sup>51</sup>

In all, the union contributed more than \$750,000 to 1982 legislative campaigns, making new friends and solidifying old ones.<sup>52</sup> By contributing money to Speaker Brown and allowing him to transfer the money to Assembly candidates, the UFW made it difficult for Republicans to raise UFW contributions as a campaign issue against rural Democrats.<sup>53</sup>

The effects of these contributions were immediate. Bills which had previously passed the Legislature were suddenly defeated in both Senate and Assembly committees.<sup>54</sup> Dan Walters reported, "Assembly Speaker Willie Brown has protected his rural Democrats from having to

choose between [growers and the UFW]. He has buried the farmers' bills to change the state farm labor law in committee, thus precluding a floor vote that would put the rural Democrats to the test."<sup>55</sup>

The Legislature has not supported the United Farm Workers position on all issues. The Senate, for example, voted to confirm Governor Deukmejian's appointment of David Stirling as ALRB General Counsel over the UFW's vehement objections. Nevertheless, the Farm Workers are seen as holding "a veto over a lot of decisions," according to Senate Minority Leader Jim Nielsen.<sup>56</sup> Former Assembly Minority Leader Bob Naylor said, "The barrels of UFW money Speaker Brown collected in the last election are having the desired effect."<sup>57</sup>

## **2. Press Commentary on the Appearance of Corruption**

These and other examples described below have provoked strong reactions by government officials, newspaper reporters and political observers. The California press is filled with criticisms of what reporters and others view to be a thinly disguised pattern of corruption in the state's legislative process. A limited sampling of recent comments illustrates the prevailing mood:

Anyone with the slightest familiarity with legislative politics knows that votes on legislation are being bought, sold and rented on a wholesale basis.

— Dan Walters, Sacramento Bee<sup>58</sup>

[T]he huge amounts of money being spent on state legislative campaigns have tended to blur the distinction between right and wrong—and between bills that are passed on merit alone and bills that are tied to campaign contributions and other favors.

— William Endicott, Los Angeles Times<sup>59</sup>

There is a direct and disheartening relationship between the amount of campaign contributions and the level of interest by the contributors in pending legislation.

— Dan Stanford, Chairman, Fair Political Practices Commission<sup>60</sup>

The message to the public is that almost all these bills being voted on involve campaign contributions by someone who has a lot of financial gain at stake....[O]ne has to question whether or not these bills are being voted on their merit. The levels of money that are flowing in from the special interest groups at some point become a perversion of the democratic process.

— Jim Shultz, Common Cause<sup>61</sup>

Three-quarters of the legislators answering an Examiner survey believe campaign contributions influence the course of legislation in Sacramento....Although lawmakers deny that such donations buy votes, the monied interests have recorded remarkably high legislative batting averages.

— Gale Cook and James Finefrock, San Francisco Examiner<sup>62</sup>

In the first six months of this year, legislators collected nearly \$7 million in campaign contributions and 1983, mind you, is not an election year. And what were all these donors doing? Buying access is the polite way to put it, but it is hard not to conclude they were buying votes as well.

— Bruce Winters, Van Nuys Daily News<sup>63</sup>

[A]s people scramble for money for campaigns, they have to know in the back of their minds what a vote means in terms of money coming to them or not coming to them in the long run.

— Mike Gage, Retired Assemblyman<sup>64</sup>

[T]horoughly institutionalized corruption...permeates the current system of politics and government in this state because of the skyrocketing costs of political campaigns.

— Vic Pollard, Gannett News Service<sup>65</sup>



[T]he inevitable result, having to solicit huge sums of money from a lobbyist who has many interests before the Legislature, is that you must consciously or unconsciously surrender a lot of your independence. We've gotten ourselves trapped in a whirlpool.

— Leo McCarthy, Lieutenant Governor<sup>66</sup>

In terms of your own special interests, you should know that things do not necessarily move on merit alone in the California Legislature, or in any government body.

— Willie Brown, Assembly Speaker<sup>67</sup>

I have been the State Capitol correspondent for the Herald for almost four years. In that time I have come to believe that...the influence of money on decisions made in Sacramento has institutionalized corruption here. Even men and women whom I personally believe to be honest, hard-working and dedicated public servants are tainted by the pervasive role of money in California politics and government. Money talks too much in California politics. It is not a novel observation. It is nevertheless the principal lesson of four years of work.

— Joe Quintana, Los Angeles Herald Examiner<sup>68</sup>

### **3. Growth of Contributor Coalitions**

The appearance of a link between contributions and legislative votes is enhanced by the growth of contributor coalitions. Groups active in state politics often find it in their mutual interest to support or oppose a particular piece of legislation together. A single organization acting alone might lack the clout to move or block a bill. But when many organizations all make contributions behind the same issue, their effectiveness is multiplied. Environmental matters, coastal zoning issues, tax questions and other issues have attracted coalitions of supporters or opponents. These contributions from many different groups all supporting one side of a legislative question increase the appearance of monetary pressure.

Rent control is a recent example. A controversial bill (A.B. 3808), considered during the 1983-1984 legislative session, would have substantially weakened the strong rent control laws of Berkeley and Santa Monica. California Common Cause charged that several groups supporting the bill significantly increased their contributions to state legislators during the first 4 1/2 months of 1984 when A.B. 3808 was actively considered. (See Table 7.1.) Nine organizations gave a total of \$304,000 to legislators during this period, as compared with \$220,000 during all of 1983.

Common Cause Executive Director Walter Zelman noted that these nine groups together spent an additional \$488,000 on lobbying during the first three months of 1984. Zelman quipped, "We would never suggest that the housing industry is trying to buy the state Legislature. But perhaps they'd like to rent it for a few days."<sup>69</sup>

A.B. 3808 passed the Assembly on a 46-28 vote in May 1984, even though California's voters had rejected a similar measure in 1980 by nearly a 2-to-1 margin. The bill eventually died in Senate committee. Housing industry representatives remained hopeful, and Assemblyman Costa (D-Fresno) has introduced a similar bill in the 1985 legislative session (A.B. 483).

"Most of the [apartment] owners have realized that they don't have much to win anymore in the courts....Investors are shifting their focus from an attack on rent control in the courts to an attempt to undermine it in the Legislature," observed Howell Tumlin, Santa Monica Rent Control Board Administrator.<sup>70</sup> Zelman added, "one side in this debate has had far fewer resources with which to make its case."<sup>71</sup>

### **4. Local Decisions Overruled**

Campaign contributors are increasingly asking the Legislature to overturn city or county governmental decisions. Property zoning disputes, for example, which are normally resolved at the local level, are now being addressed in Sacramento. The Legislature has begun to function like a legislative court of appeals, reversing local zoning ordinances when a request is

Table 7.1

CAMPAIGN CONTRIBUTIONS BY MAJOR SUPPORTERS OF ASSEMBLY BILL TO WEAKEN RENT CONTROL (A.B. 3808)		
Organization	Contributions to State Legislators 1983	Contributions to State Legislators 1/1/84 - 5/19/84
Irvine Company	\$ 88,900	\$102,150
Calif. League of Savings Institutions	42,800	58,400
Calif. Real Estate Ass'n	29,472	56,001
Calif. Apartment Ass'n PAC	2,750	38,300
Calif. Mortgage Bankers Ass'n	16,700	22,300
Associated Builders and Contractors	1,250	9,250
Calif. Housing Council	10,600	8,050
Calif. Building Industry PAC	1,100	6,500
Building Industry Ass'n	26,400	2,825
TOTAL	\$219,972	\$303,776
Source: California Common Cause		

accompanied by a substantial contribution of money. Contributions have been described by an advisor to a local landowner group as a “potential requirement” for passage of a bill overturning a local zoning decision.<sup>72</sup> Several examples illustrate this trend:

**a. Trash Plants**

A private company proposed to build a \$120 million plant to convert trash into electricity in the San Diego County community of San Marcos. A citizens group opposed the plan and circulated an initiative to block construction. Dan Walters reported that the trash plant company “traipsed to Sacramento...in the time-dishonored pattern of development interests who run into local opposition” and “arranged for the introduction of a bill by Assemblyman Johan Klehs, whose Northern California district is about 500 miles away from San Marcos....”<sup>73</sup> The bill would have invalidated the initiative in advance of its adoption. The Klehs bill (A.B. 828) moved rapidly through committee with “all the earmarks of a measure that has achieved clearance at the highest levels of the legislative leadership.” Walters concluded:



Transferring the decision to the Legislature creates an innately unfair contest. Legislators from elsewhere in the state don't give a tinker's damn whether that plant is built. Nor are they responsible to the voters who must live with the plant's effects, whether beneficial or malodorous. They are likely to be swayed by other matters: friendships with lobbyists, the prospect of campaign contributions, leadership pressure, etc. It is not a level playing field. The monied interests know that and that's why they take their fight to Sacramento rather than taking their chances at the local level.<sup>74</sup>

The bill passed the Assembly in May 1985, and was referred to the Senate Elections Committee.

### **b. Condominium Conversions**

In late 1982 the San Francisco Board of Supervisors considered an ordinance to slow the pace of most condominium conversions in the city and to preclude the conversion of apartment complexes with more than 25 units. The ordinance was so narrowly drafted that only real estate developer Richard Traweek (who planned to convert a 720-unit San Francisco apartment complex) and one other owner were blocked from converting their properties. Traweek stood to make a \$100 million profit from the conversion, and claimed the San Franciscans involved were trying to prevent his less expensive units from undercutting prices in the condominium market. He hired Assembly Speaker Willie Brown as his attorney to help him fight the ordinance and reportedly paid Brown \$50,000 in legal fees. Despite Brown's efforts, the ordinance was adopted.

Traweek then turned his attention to the State Legislature, seeking legislation which would overrule the San Francisco ordinance. He contributed at least \$22,722 to legislators in 1982. Between January and May of 1983, while his bill was pending, Traweek spent over \$50,000 on dinners, presents and lobbying fees. Although Traweek's bill passed the Senate, it died in an Assembly committee.

After Traweek's defeat, he "[shed] his former status as a closed-mouth political insider" and became "eager to tell all in his new combative role as the self-described 'folk hero of the real estate industry,'" according to Claire Spiegel of the *Los Angeles Times*.<sup>75</sup> Traweek filed a multimillion dollar antitrust suit against the city of San Francisco, alleging that city officials and real estate developers conspired to pass the ordinance specifically to block his plans.

Speaker Brown subsequently disqualified himself from voting on the bill as a result of a ruling by the Fair Political Practices Commission. The FPPC concluded that Brown had a conflict of interest because a year earlier Traweek's company had given Brown a \$1,000 gift certificate to a men's clothing store (deemed as personal income and thus subject to the conflict of interest law). Brown had also received \$16,000 in campaign contributions from Traweek. Those contributions were not the basis for the FPPC ruling since campaign contributions are not subject to the conflict of interest law.

Traweek said of the Legislature, "Those people are bought. They're bought for a dinner." He admitted to having courted legislators. "[T]hat's the way the game is played....The system wasn't made by me. I was certainly invited to participate."<sup>76</sup>

### **c. Agricultural Preserves**

California lands which are declared state agricultural preserves are environmentally protected and not available for development. Presenting Inc., a large San Diego development firm, contributed more than \$20,000 to legislators who supported a bill to remove certain land in Jamul, California, from agricultural preserve status. Presenting hoped to develop this land with a large 389-unit housing project worth \$40 million to the company.

Most of Presenting's contributions (\$15,000) were given to 15 legislators two months after the bill had passed. Assemblyman Richard Robinson (D-Garden Grove), the sponsor of the bill, received \$1,500 from Presenting. Other recipients included Senator William Craven (R-Oceanside), who supported the bill's passage in legislative committees and on the Senate floor (\$1,000), Senate President pro Tem David Roberti (D-Los Angeles) (\$2,000), the Senate

Democratic Caucus, chaired by Senator Paul Carpenter (D-Cypress) (\$2,000), Senate Minority Leader Jim Nielsen (R-Woodland) (\$1,500), and Senator John Doolittle (R-Citrus Heights) (\$1,500).

One of the leaders of the Honey Springs Homeowners Association, an organization opposing the bill, said his group believes that Presenting bought the bill. The president of Presenting said, however, that the contributions were not promised to legislators beforehand but were distributed after passage of the bill to those who had supported the firm's position. Senator Craven denied that money influenced his vote.<sup>77</sup>

#### **d. Coastal Zone Protection**

Much coastal land in California is environmentally protected from extensive development and is therefore of reduced commercial value to its owners. Property owners in northern San Diego County supported a bill introduced by Senator William Craven (R-Oceanside) that would have removed a large parcel of land (4,000 acres) from state coastal zone protection. Among internal documents obtained by the *San Diego Union* was a proposal by a Carlsbad planning consultant who coordinated the campaign for the bill. He described a plan in which property owners would spend \$425,000, including up to \$150,000 in legislative campaign contributions, to win passage of the bill. The \$450,000 amount was described as a "potential requirement."<sup>78</sup>

The planning consultant also wrote a letter to property owners underscoring the potential value of the legislation:

Remember [the] benefit to your property would increase at least \$10,000—\$15,000 (per acre) should SB 1808 be successful. I await your response. Please let me know if you will support our collective effort. I know you will because you can't afford not to.<sup>79</sup>

S.B. 1808 failed to pass the Senate Natural Resources and Wildlife Committee after the *San Diego Union* made these documents public.

Reviewing the Carlsbad documents, Dan Walters of the *Sacramento Union* concluded, "contributions to legislators are considered to be an integral part of any effort to secure passage of legislation.... We are tolerating a Legislature that allows itself to be sold, or at least rented, to the highest bidder."<sup>80</sup>

#### **e. Municipal Annexation**

Real estate developer Jay Self wanted to build a new shopping center on property adjacent to the city of Riverside. If the property were annexed to the city, the owner would be entitled to sewer hookups and inexpensive city utilities.<sup>81</sup> Annexation would also give the city additional tax revenue from the shopping center. Self filed an application with the Local Agency Formation Commission (LAFCO) requesting permission for the city to annex the land.<sup>82</sup> LAFCO and the city are both required to approve annexation requests.

Adjacent to the proposed shopping center lies the Riverside International Raceway. Owners of the Raceway also asked LAFCO for city sewer service. LAFCO agreed, conditioning the proposed annexation on a sewer hookup for the Raceway. The city disliked this condition and went to court to argue that LAFCO lacked the authority to impose it.

Meanwhile Self hired two former members of the Legislature as his lobbyists to seek a bill overriding the LAFCO decision which linked the annexation to a sewer hookup for the raceway. In August of 1984, during the closing days of the legislative session, language barring such linkage was amended into a non-controversial bill. The Legislature gave final approval to the bill on August 29, 1984, and it was signed by the Governor on September 28, 1984.

From late August through early November, Self was responsible for at least \$68,000 in contributions to 16 legislators, ranging in amounts from \$250 to \$20,000. During the month of October alone, Self was responsible for contributions totaling \$10,000 or more to five key

legislators.<sup>83</sup> Three days after the Governor signed the bill, Self gave \$1,250 to the campaign to pass the Governor's reapportionment initiative.

Most of these contributions went to the legislators in the best position to assure passage of the bill. Senate President pro Tem David Roberti received \$20,000. Assembly Speaker Willie Brown received \$10,000. Senator Milton Marks (R-San Francisco), the chair of the Senate Local Government Committee, received \$10,000. The Senate Local Government Committee was the only committee to hear the bill in its final form.

Senator Barry Keene (D-Eureka), a member of the Local Government Committee, "played a key role in developing the language used in the final form of the bill." Keene received \$10,000. Keene described the money as "an impressive contribution," but said he was not surprised to receive it. Keene commented, "Often on issues of this sort, where there is a clear winner and a clear loser, the winner expresses gratitude in the form of campaign support."<sup>84</sup>

Assemblyman Steve Clute (D-Riverside) was also an important supporter of the bill, since legislators tend to defer to the area legislator on local matters. Clute, the narrow winner of a tough reelection campaign, received a total of \$10,000 from four of Self's companies. Clute said, "It's a lot of money, but it's unfortunate that campaigns cost a lot of money."<sup>85</sup>

One of Self's lobbyists admitted, "It doesn't hurt if you do have clients who are known in Sacramento as someone who remembers his friends."<sup>86</sup> An editorial in the *Santa Rosa Press Democrat* observed, "For the developer, now able to proceed with his shopping center, \$54,750 qualifies as a minor expense. For the lawmakers, the donations are large enough to be useful. Only one loser emerges from these all too familiar affairs: public confidence in the honesty of the State Legislature."<sup>87</sup>

### 5. Public Safety Questions Raised

Whether or not podiatrists should be able to operate on the ankle or fireworks should be sold in the state raise legitimate questions of public safety. But when large contributions precede or follow votes on such questions the public may never know whether the Legislature made its decision on the merits of the question or in response to monetary pressures.

A recent example involves the sale of raw milk in the state. For decades, most milk produced in the United States has been pasteurized to prevent a variety of diseases from being passed from cows to humans. The most serious of these is *salmonella dublin*, a rare disease which is relatively unthreatening to healthy adults but very serious in young children or adults whose resistance has already been lowered by another disease. In 1983 *salmonella dublin* was responsible for about 30 fatalities in California.

California's Alta-Dena Certified Dairy has long maintained that raw milk is healthier than pasteurized milk and that pasteurization diminishes the quality of milk. Alta-Dena is the largest producer-dairy in the nation and has pioneered rigorous sanitation techniques. Alta-Dena produces 88% of the raw (unpasteurized) milk sold in California.

Some experts, however, continue to associate raw milk closely with cases of *salmonella dublin*. "The irony is that [seriously ill people] drink raw milk because they believe it will help them to be healthy again," says Dr. Joshua Fierer, an infectious disease specialist at U.C. San Diego.<sup>88</sup> In 1967 Alta-Dena lobbyists successfully opposed legislation in Sacramento which would have required that all milk sold in California be pasteurized. The state was limited to ordering recalls of raw milk from supermarket shelves when disease organisms were discovered. In 1977 Alta-Dena lobbyists were successful in winning passage of legislation which switched authority over milk recalls from epidemiologists in the Department of Health Services to the Food and Agriculture Department, "an agency that the dairy regards as friendlier to its cause."<sup>89</sup>

Nevertheless, state officials have ordered 17 recalls of raw milk from 1977 to present. "[Raw milk drinkers] are acting in ignorance and I believe we have a responsibility to protect them against that risk," said disease specialist Fierer.<sup>90</sup> Publicity surrounding the recalls has

reduced raw milk sales. Alta-Dena's raw milk sales are today half of what they were in 1977, while total dairy sales have increased steadily. Only 10% of Alta-Dena's milk is sold unpasteurized.

In 1983, S.B. 565 was introduced by State Senator William Campbell (R-City of Industry). This bill would have created a new state commission of seven people, four of whom would be proposed by the raw milk industry. Milk could only be recalled if a majority of this commission asked a court to issue an injunction.

Despite the strenuous objections of the State Health Services Department, S.B. 565 passed the Senate on a 26-10 vote in June of 1983. It also passed the Assembly toward the end of the 1984 session on a 43-32 vote. Shortly after a major article in the *Los Angeles Times* described the controversy, Governor Deukmejian vetoed the bill.<sup>91</sup>

Campaign contributions smoothed the way for Alta-Dena's legislative success. In 1983, an off-election year, almost half the members of the Legislature received contributions from Alta-Dena. Total contributions per legislator ranged from \$200 to \$3,500. The typical contribution was \$500. Alta-Dena's contributions for 1983 were \$32,000.

Although these were not large amounts by Sacramento standards, one state health official commented, "It's nothing dramatic, but if there are no contributions on the other side to counteract Alta-Dena, then it's more than enough."<sup>92</sup> Joe Gonsalves, the dairy's full-time lobbyist in Sacramento, said "this is an issue where legislators can't go wrong by supporting the dairy. The only people who care are those who drink raw milk; the pasteurized milk drinkers don't even know the issue exists."<sup>93</sup> "In the memory of those involved, the Alta-Dena case marks the first time that a major food company has dared to challenge government claims that its products are contaminated with disease-causing organisms and, moreover, to succeed in fighting the government to a standstill," wrote Robert Jones of the *Los Angeles Times*.<sup>94</sup>

## 6. Increased Tax Rates

California's current system of campaign financing is also extremely costly to the state's taxpayers. The horse racing industry, for example, won a \$20 million tax break in 1980 after it donated over \$1 million to legislators over a five-year period. Doctors received a \$40 million fee increase for treating injured workers in 1981 after the California Medical Association contributed nearly \$600,000 to 1980 legislative races. Beer wholesalers made contributions for many years to protect a three-decade-old regulation prohibiting wholesale beer discounts which would have saved consumers over \$100 million a year.<sup>95</sup>

Legislators dependent on economically interested parties to provide critical campaign funds frequently appear to reward large contributors with major tax breaks. Candy in California, for example, is classified as a "food" and exempted from state sales tax. "The net result of years of special interest fiddling with the tax codes is that the state loses about \$9 billion per year in revenue," one Sacramento journalist has concluded.<sup>96</sup>

The most widely discussed example of a costly tax break linked to campaign contributions is California's failure to adopt an oil severance tax. California is the fourth largest oil producing state, and the only oil producing state which does not tax the "severance" of oil from the ground. The severance tax has long been utilized by other states as an equitable means for compensating state residents for depletion of non-renewable energy resources.

Proponents of an oil severance tax cite a Legislative Analyst's finding that taxes on the oil industry are the lowest in the country, and that passage of a severance tax would only bring California's oil tax rate up to the average. Proponents also cite a Rand Corporation study concluding that the world oil market determines oil prices and that oil companies would thus be unable to pass costs of increased taxes on to consumers.<sup>97</sup> Opponents dispute these points and assert that imposition of an oil severance tax would cost California up to 16,000 jobs and lead to the abandonment of marginal oil wells.<sup>98</sup> Proponents reply that oil companies received a windfall in property tax savings from the passage of Proposition 13 and need no further help.



Attempts to impose an oil severance tax in California have met with vigorous opposition from the oil industry. Proposition 13 requires any measure raising taxes to pass by a two-thirds vote in each house of the Legislature. In a June 1982 Assembly floor vote, a bill to impose an oil severance tax received only a 51% vote (41 to 26) and failed.

Oil companies have consistently made large donations to legislators and state parties in California. From 1979 through 1982 the oil industry contributed a total of \$2.5 million to California candidates and parties. These donations increased sharply during the period the oil severance tax was under legislative consideration. California Common Cause reported that "contributions from the 26 oil industry contributors to legislative candidates and party groups were 110% higher in the 1982 elections than they had been in the 1980 elections."<sup>99</sup> Legislators opposing the tax received an average of four times as much in oil industry contributions as did those supporting the tax. Every legislator voting against the tax received oil industry money, ranging from \$500 to \$14,000.

In the 1983-1984 legislative session, oil severance tax proponents tried a new strategy. Assemblyman Tom Bates (D-Oakland) authored a bill (A.B. 3) which coupled the severance tax to a reduction in personal income tax rates, yielding no net tax increase. The bill thus needed only a majority vote for passage. In January 1984 the bill was passed by the Assembly on a 41-28 vote. Several months later, however, it died in the Senate Revenue and Taxation Committee.<sup>100</sup>

Oil industry contributions had again risen to meet the new threat. During an 18-month period in 1981-1982, twenty-six industry contributors gave legislators \$167,000. But during the 12 months of 1983, an off-election year, just ten industry contributors gave legislators \$215,000. The 1983 figures increased by at least 29% during a shorter time period.<sup>101</sup>

If California adopted an oil severance tax, it would net the state an additional \$400 million in annual revenues.<sup>102</sup> Since oil companies would be able to deduct about half of this amount from federal taxes, their success in resisting the severance tax yields them approximately \$200 million a year in additional revenues. Oil companies must donate only a small fraction of this sum in campaign contributions to win this \$200 million return on their investment.

### **7. Growing Pressure on Contributors**

Rising campaign costs have also significantly increased the pressures placed on contributors to donate funds. Even experienced Sacramento lobbyists are complaining. One lobbyist was invited to 201 fundraising events in the first 11 months of 1983, a non-election year. One seat to each of these fundraising events would have cost a total of over \$65,000, and lobbyists are often expected to buy a table for ten.

Contributors use words like "extortion" and "shakedown" to describe the strong-arm tactics used by legislators to solicit money. One Sacramento journalist has concluded, "California's system of financing legislative campaigns has evolved into what one top-drawer lobbyist calls 'an abysmally corrupt shakedown' with the fate of bills affecting monied interests tied directly to the level of contributions. ...' Ninety percent of the money that changes hands changes hands because of some kind of shakedown."<sup>103</sup> The appearance of a *quid pro quo* is thus generated both by contributors who press money into candidates' hands and by candidates who coerce money from unwilling contributors.

### **8. Key Issues Slighted**

When large contributors are aligned on both sides of legislative issues, relatively minor questions — such as whether podiatrists who already operate on the foot should also be allowed to operate on the ankle — command a disproportionate amount of the Legislature's attention. The legislative agenda is often set by contributors who use gifts of money to capture legislators' attention. Less frequently is it set by legislators anticipating pressing state needs. "In a sense, the Legislature is no longer the active body in the process of setting public policy but the reactive body, preoccupied with its own internal feuding..."<sup>104</sup>

### **9. Excessive Time Spent Fundraising**

Legislators complain that they must spend an increasing percentage of their time raising money. *Los Angeles Times* Sacramento Bureau Chief William Endicott has observed, "Raising funds for reelection has become such a full-time job that some legislators no longer have much time to legislate."<sup>105</sup> Fundraising events are frequently conducted in Sacramento and less often in legislators' districts. Fundraisers are held during legislative sessions, before critical votes, immediately after elections, and throughout non-election years. Lobbyists complain that legislators are too busy working on their fundraisers to discuss pending legislation. During a legislative committee hearing one legislator commented, "I've been sitting here for two hours this morning trying hard to listen to testimony. But all I ended up doing was making lists of people who might put down \$1,000 for a table at my next fundraiser."<sup>106</sup>

### **10. Altered Leadership Criteria**

Committee assignments and legislative leadership posts often go to legislators who commit themselves to substantial fundraising activities on behalf of their caucus members. These key assignments, in turn, enhance legislators' fundraising potential. As a result, committee assignments may be bestowed for their fundraising potential and not their capacity to shape and control sophisticated legislation. Reporters for the *San Francisco Examiner* have concluded, "The lure of huge campaign contributions has caused a scramble for seats on the so-called 'juice' committees that deal with such issues as liquor, horse racing, banking and insurance. Membership on the Assembly's Finance, Insurance and Commerce Committee, for example, can mean an extra \$24,000 in donations per election."<sup>107</sup>

### **11. Legislative Ineffectiveness**

The Legislature is often unable to act at all when large contributors are aligned on both sides of an issue. Indeed, legislators sometimes prefer to keep such an issue alive because contributors keep pouring in campaign funds. Foreign and domestic corporations in 1984, for example, split over a proposal to modify the state's "unitary" method of calculating taxes on multinational corporations. "Everybody's trying to make money off [the unitary tax revision bill] without its passing," one legislator observed.<sup>108</sup> No action was taken and the issue remains current in 1985.

A preoccupation with fundraising leaves the Legislature less able to address fundamental state needs. The committee system was designed to allow legislators to become expert on specific aspects of California government, to anticipate problems before crises and to develop long-range solutions. The current campaign financing system, however, causes committee assignments to be offered as an award for fundraising success. Problems are frequently ignored until they reach a crisis. Efforts to develop long-range policies are slighted. The current system of campaign finance is a key element in this causal chain.

## **B. Electoral Competition Is Being Distorted**

California's campaign finance system has also changed the nature of state legislative elections. Escalating campaign costs discourage qualified new candidates from running. Those who do run spend more time raising money than meeting voters or debating issues. Partisan money from Sacramento sources has altered the outcome in several general election races. Serious competition in primaries is a rarity. Political parties continue to play a minor role.

Incumbency and reapportionment, of course, are also powerful factors which have decreased the competitiveness of elections. Incumbents use state-subsidized newsletters to build name identification. District offices and staff nurture community support. Newspaper and broadcast coverage keeps the incumbent in the public's eye. Voters tend to support known incumbents over lesser-known challengers.



Reapportionment has reduced competition by carving the state into many one-party districts. Even candidates spending enormous sums in safe Democratic or Republican districts have a negligible chance of dislodging the incumbent in the general election.

Money is nonetheless a necessary competitive ingredient in many races. The process by which California candidates raise and spend that money has altered legislative electoral competition in many important respects:

### **1. High Campaign Costs as Barriers to Competition**

Certainly when the 'entry fee' gets to, say, \$150,000, you can't continually raise that from within your district every two years. You have to start depending on larger contributions from special interests, which run the gamut—labor unions, business, professions and so forth.... There seemed to be no end in sight as to how much money one was going to have to continually raise.

— Victor Calvo, Retired Legislator<sup>109</sup>

The high costs of modern legislative campaigns erect serious barriers to competition by qualified candidates. Without money, candidates cannot pay for the advertising necessary to publicize their views. Journalists and potential contributors refuse to take impoverished candidates seriously. Peter Clarke and Susan Evans have concluded in their study of campaign news coverage: "[T]he challenger who has money—and is perceived as a viable threat to the incumbent—gets coverage. The almost complete neglect of those challengers who do not run well-heeled campaigns is sobering."<sup>110</sup> High campaign costs thus shrink the pool of qualified candidates in legislative races.

Fifteen years ago many legislative candidates could turn to family and friends for money to wage competitive campaigns. Today, candidates caught in a monetary arms race may spend \$300,000 to \$400,000 or more in the general election alone. Very few candidates can raise such sums from family and friends. They are forced to turn to statewide interest groups and legislative leaders for most of their campaign funding. (See Chapter 3, "Who Pays?")

Candidates and legislators often find asking for money a distasteful chore. Some candidates avoid taking positions on issues that might offend potential contributors. Highly qualified individuals may decide not to run at all. Even successful candidates tire of the fundraising spiral. Former Assemblywoman Leona Egeland said she decided not to seek reelection in 1980 because "I saw that I was going to have to raise between \$150,000 and \$200,000 in order to even be in the running.... You see [in campaign reports] who contributes to whom, and when you're the candidate, you start contacting all these places and begging for money."<sup>111</sup>

In some cases the contest to raise money can supplant the contest to win votes. The early maneuvering between Gray Davis (former Chief of Staff for Governor Brown) and Conway Collis (former deputy to U.S. Senator Cranston and an experienced fundraiser) for a 43rd Assembly District open seat is a classic example. In the Fall of 1981 Davis raised over \$400,000. Collis had actually raised only about \$150,000 but feared that public disclosure of his comparative fundraising weakness would eliminate his chance to win the seat. Collis therefore filed inaccurate disclosure reports claiming to have raised almost \$300,000. By early March of 1982 Davis had increased his total funds to well over \$600,000 and Collis realized he could not successfully compete. Voters never got to choose between the two. Collis dropped out of the Assembly race and instead ran successfully for the State Board of Equalization. The FPPC later fined Collis for overstating his receipts.

### **2. Excessive Time Fundraising**

California politicians think about campaign money when they get up in the morning, they think about it all day and they think about it at night.

— Assemblyman Art Agnos (D-San Francisco)<sup>112</sup>

Campaign literature and advertising is essential for candidates to communicate with voters. Talking with individual voters is increasingly viewed as unnecessary. Candidates can win elections without canvassing door-to-door, without hosting coffee klatches, and without greeting voters at shopping centers and local events. Successful candidates who still engage in these activities first secure adequate funding for media and advertising.

Candidates need money to run successfully for public office. They need certain committee assignments to enhance their ability to raise money. They need money to pay off campaign debts. And they need money for war chests to deter potential future competitors. Fundraising solicitations, calls, letters and visits can occupy much of a candidate's time. Candidates in competitive districts who balk at continual fundraising schedules leave politics. Lieutenant Governor (and former Assembly Speaker) Leo McCarthy has said, "If good people...feel that 80% of their time has to be devoted to fundraising, they'll get out. The field will be left to those who love the personal ecstasy of holding power..."<sup>113</sup>

### ***3. Incumbent Fundraising Advantage***

Individuals and interest groups make contributions to gain favorable legislative treatment and access to decision makers. A losing candidate represents an investment with no return. Since incumbents almost always start their campaigns with vastly superior name recognition, and since incumbents as a group can boast a reelection rate of over 95% during the last ten years, they are the most attractive to investor/contributors. Indeed, incumbents are *increasing* the fundraising gap between themselves and typical challengers.

In the 1976 general election, the median Assembly incumbent spent \$25,000, while the median challenger spent \$9,000, a differential ratio of 3-to-1. This ratio increased to 5-to-1 in 1978, 8-to-1 in 1980, 9-to-1 in 1982 and 14-to-1 in 1984. While incumbents' median expenditures have jumped from \$25,000 to \$115,400, a nearly five-fold increase, challengers' median expenditures have decreased (from \$9,400 in 1976 to \$8,500 in 1984). (See Table 1.6, Chapter 1.)

Even greater disparities exist in primary elections. Incumbents' median primary expenditures rose from \$94,000 in 1982 to \$122,000 in 1984. Non-incumbents, on the other hand, spent practically nothing in the 1984 primary—a median of \$1,165, the lowest figure for non-incumbents since the FPPC began compiling these figures.

Figures for the State Senate, with only twenty incumbents up for reelection, demonstrate the same trend. Median expenditures for Senate incumbents were \$205,000 in the 1984 primary election. Median expenditures for non-incumbents dropped to \$899.

This disparity in fundraising is both a cause and a symptom of incumbents' power. Incumbents can generally raise more money. By spending that money, incumbents increase their visibility and their fundraising ability. Yet the impact of fundraising imbalances in suppressing competition can be overstated. Two additional factors are responsible for an effective lack of competition in roughly two-thirds of the legislative districts in the state.

First, some districts are relatively balanced between Democratic and Republican voters but have incumbents who are so well-known and respected that their reelection is a virtual certainty. Only when these incumbents decline to run for reelection do their districts become competitive and candidates of both parties have a chance to win the seat. Until this happens campaign spending disparities in these districts are not critical. Incumbents will prevail even in the face of higher spending opponents.

A second factor diminishing competition is the strength of party affiliations in certain districts. Perhaps two-thirds the districts in the state lean strongly toward the candidates of one political party or the other. In most cases demographic factors make the districts strongly Democratic or Republican. In other instances reapportionment has made certain districts relatively invulnerable to competition. (See Chapter 2, "Causes of High Costs.") The reapportionment process encourages the majority party to redistrict the maximum number of registered voters of the opposing party into the fewest number of districts. Most minority-

controlled districts thus become impregnable fortresses of minority strength. Even greater spending by a majority party candidate in these districts is generally futile. On the other hand, registered voters of the majority party are distributed into as many districts as possible where they will make up a comfortable majority.<sup>114</sup> These districts are strongly predisposed to support the majority party candidate.

There are limits to what can be accomplished through reapportionment, and some districts will remain marginal. Additionally, some districts undergo substantial change during the ten-year interval between each reapportionment. Competition can be intense in such districts, and fundraising advantages can be critical. While a last-minute spending blitz might threaten many incumbents, "safe" district incumbents have a great advantage which does not depend on superior fundraising power.

#### **4. Incumbent War Chests**

Many incumbents raise and maintain large war chests even though they represent safe districts. Some raise this money because even "safe" incumbents have been defeated by surprise spending blitzes. (The unexpected defeat of veteran Senator Al Rodda changed the fundraising patterns of many senators overnight; see discussion in Chapter 2, "Causes of High Costs.") Others build war chests to dissuade potential challengers from running against them. War chests are thus built for tactical as well as psychological considerations.

A notable example is Assemblyman Tom Bane (D-Van Nuys) who lost a 1964 election he was expected to win. In 1974 Bane returned to public life, winning a heavily Democratic Assembly seat with 67% of the vote. He vowed never again to be surprised by a strong opponent. Although he has been reelected with winning percentages of 66%, 65%, 72% and 67% between 1976 and 1984, Bane still raised \$1,176,000 in campaign funds from January 1981 through December 1984. While Bane transferred some of this to fellow Democrats and used other funds for expenses, he closed out this period with a surplus of \$206,000. Bane's surplus is a clear warning to potential challengers that he will never be caught unprepared. Challengers may have great difficulty persuading contributors to part with money in the face of such awesome war chests.<sup>115</sup>

#### **5. Incumbent Immunity to Primary Competition**

In districts where one party is dominant, the general election result is a foregone conclusion. Challengers can only compete successfully in the party primary. Yet serious primary challenges to incumbents are quite rare. Statewide interest groups which provide the bulk of campaign funding in California see little advantage and great risk in helping primary candidates challenge incumbents. Incumbents' war chests are especially effective in discouraging potential primary opponents. In extreme cases, transfer money is made available from legislative colleagues to help needy incumbents.

While 100 legislative incumbents are up for renomination every election year, few encounter serious primary challenges without unusual circumstances. Assemblyman Jack Fenton (D-Montebello), for example, was caught in an extraordinary party leadership struggle in 1980 and was defeated by Howard Berman-backed Marty Martinez. Assemblyman Terry Goggin (D-San Bernardino) was tainted with scandal when he was overturned by Gerald Eaves in 1984.

Some incumbents have faced serious primary challenges without extenuating circumstances, but examples are rare. Assemblyman Mike Cullen (D-Long Beach) was defeated by Dave Elder in June 1978, for example, even though spending was moderate (each spent about \$30,000). Assemblyman Nolan Frizzelle (R-Fountain Valley) narrowly survived a stiff primary challenge from Irvine City Councilman David Sills in 1982. Sills' status as a local government official gave him some of the same advantages Frizzelle enjoyed as an incumbent, thus helping to level the playing field. Both candidates spent substantial amounts, but Frizzelle's sup-

port in transfers from Republican legislative colleagues and his ability to outspend Sills may have made the difference. The unwillingness of traditional funding sources to contribute to primary challengers has foreclosed competition in most cases.

### **6. Increased Spending Disparities in Open Seat Primaries**

Open seat primaries give newcomers an opportunity to break into legislative politics. Although incumbents dominate contested primaries, open seat party primaries are still accessible to candidates with moderate funding. In the 1982 Assembly primaries, for example, several candidates won contested nominations spending remarkably little. Assemblyman Bill Bradley (R-Escondido) spent just \$36,000 and won a nomination with 38% of the vote. Assemblyman Dan Hauser (D-Eureka) spent only \$32,000 and defeated Scott Keene (brother of State Senator Barry Keene) who spent \$57,000. Other open seat primary candidates waged contested campaigns for less than \$100,000. (See Table 7.2.)

There is disturbing evidence, however, to suggest that open seat party primaries are also becoming dominated by candidates with greater access to money. In some 1982 primaries, spending levels were high enough to deter candidates from running. Assemblyman Tom Hayden (D-Santa Monica) spent a record \$750,000 in the 1982 primary while his opponent Steve Saltzman spent \$303,000. In another hotly contested race Assemblyman Burt Margolin (D-West Los Angeles) spent \$248,000 while his principal opponent Community College Trustee Wallace Albertson spent \$274,000. Candidates without large sums of campaign cash have little chance of competing in such open primaries.

The Ferguson-Carpenter battle illustrates the increasing effect money is having on open primary races. Early in 1984, an overwhelmingly Republican Orange County Assembly seat became open when the incumbent decided to run for the Senate. The winner of the primary was sure to be the next district representative. Former Assemblyman Ron Cordova and local elected official Ruthelyn Plummer raised significant funds and waged active campaigns. But Assembly Republicans in Sacramento were fighting over the Assembly Minority Leader post and that conflict spilled over into the Orange County campaign. Supporters of Minority Leader Bob Naylor backed a third candidate, Ken Carpenter, while supporters of challenger Pat Nolan backed a fourth, Gil Ferguson. Sacramento money poured into these two candidates' campaign coffers. Ferguson spent \$256,000 and upset Carpenter 39% to 32%, even though Carpenter had spent \$363,000.

Of Ferguson's total expenditures, 56% came from Sacramento legislators allied with Nolan and PACs under their control. Carpenter also received substantial help from Republican lawmakers. Local candidates Cordova and Plummer raised far less money because they were dependent primarily on local sources. If this trend continues, access to the Legislature through the primaries will be blocked to all but those with major financial support.

### **7. Impact of Partisan Contributions on Competitive General Elections: Some Pros and Cons**

Incumbents have built-in advantages that have insulated them from competition in both primaries and the vast majority of general elections. Nevertheless, general election races are seriously contested far more often than party primaries. The difference is partisan money—transfers, legislative caucus contributions and party contributions. Without this Sacramento money a high level of competition would not exist in many races. (See Chapter 5, "Partisan Sources.")

Partisan strategists in Sacramento with substantial amounts of money at their disposal are less likely to be dissuaded by an opponent's large war chest. They consider criteria other than fundraising skills in deciding which candidates to back. They look at party registration, the district's voting history, the opponent's record and changing demographic trends. (For example, an emerging minority community might be significant.) If the strategists believe

Table 7.2

NEWCOMERS

1982 Candidates for Party Nominations in  
Selected Assembly Districts

Assembly District	Candidate	Primary Expenditures	Primary Vote	Assembly District	Candidate	Primary Expenditures	Primary Vote
2	Keene (D)	\$ 57,282	47	56	Molina (D)*	175,343	52
	Hauser (D)*	32,264	53		Polanco (D)	123,640	48
	Partain (R)	28,569	37	59	Calderon (D)*	149,583	52
	Homan (R)	12,718	34		Manibog (D)	72,150	14
14	Klehs (D)*	94,373**	59		Duffy (D)	48,856	21
	Jarvis (D)	30,854	36		Davis (D)	23,556	11
25	Estruth (D)	149,938	14	68	Clute (D)*	80,070	42
	Arelas (D)*	135,360	54		Corsini (D)	53,443	19
	Infelise (D)	56,530	8		Tobin (D)	26,999	19
	McCarthy (D)	48,074	20		Arredondo (D)	20,049	16
31	Bronzan (D)*	79,559	72		Stanton (R)	62,810	39
	McKittick (D)	26,947	28		Field (R)	54,542	33
	Slinkard (R)	37,829	54		Burgess (R)	13,721	12
	Lung (R)	23,635	46		Starling (R)	5,588	12
32	Jones (R)*	177,918	64	69	Frizzelle (R-inc.)*	169,151	54
	Rubey (R)	45,921	34		Sillis (R)	123,041**	46
33	Means (D)	35,381	64	75	Kane (R)	87,692	29
	Tyler (D)	5,369	36		MoJonner (R)*	82,542	36
35	Firestone (R)	177,094	78		Bilbray (R)	34,582	35
	Kilbourne (R)	3,290	22	76	Bradley (R)*	36,174	38
36	Kato (R)	102,442	31		Danelli (R)	27,746	25
	McClintock (R)*	101,939	69	80	Bittner (R)	18,497	27
44	Hayden (D)*	750,432	51		Peace (D)*	101,989	36
	Salzman (D)	302,779	45		Sanga (D)	37,118	21
45	Albertson (D)	273,728	34		Lassman (D)	25,540	11
	Margolin (D)*	247,612	55		Griffith (D)	24,548	19
	Ulrich (D)	42,004	4		Harris (D)	15,040	11
52	Hill (R)*	70,258	35		Myres (R)	44,102	24
	Stone (R)	58,052	30		Perry (R)	43,350	35
	Robinson (R)	25,879	15		Ross (R)	16,440	15
					Green (R)	11,648**	11

\*Final Assembly seat winners in the general election

\*\*Figures include contributions received as local officials and carried over into Assembly campaigns.

Source: FPPC Report on 1982 Primary Election  
and Secretary of State Statement of Vote for  
the 1982 Primary Election



they have a chance to win the district, they can provide their candidate with enough expertise and money to make the race competitive. A number of incumbents must face stiff competition every election year as a result of this process, and some are defeated. Large amounts of campaign cash go a long way towards negating the incumbency advantage. Incumbents cast hundreds of legislative votes each year creating a record that can be picked over carefully for potential campaign issues.

The 1982 Assembly race between Democratic incumbent Jim Cramer and Republican challenger Charles Bader illustrates the use of partisan money. Cramer and Bader had contested a San Bernardino seat in 1980 when it was left open by the appointment of Democrat Bill McVittie to a judgeship. San Bernardino County District Attorney Cramer had defeated former Pomona Mayor Bader by a 49% to 47% margin. The closeness of the contest encouraged both parties to make the seat a priority in 1982.

Each candidate spent approximately \$200,000 and received nearly half of this money from out-of-district partisan sources. This time Bader was victorious, overturning Cramer by a 53% to 47% vote. A subsequent reapportionment turned the 65th Assembly District into a safe Republican seat. Partisan money was significant both in defending and ousting an incumbent.

Partisan money plays an even more important role in generating competition for open seats. With no incumbent in the race, open seats give each party its best opportunity to pick up seats. Once a new incumbent is installed, the opposing party may have little chance of mounting an upset in later elections.

The Firestone-O'Connell race is an example. In 1982 incumbent Assemblyman Gary Hart (D-Santa Barbara) vacated his seat to run for the Senate. Hart's personal popularity had helped him hold his seat for four terms. But voter registration was marginal for both parties and Republicans came up with a powerful and wealthy candidate in Brooks Firestone. Most political observers thought Firestone's election was a certainty.

Democrats nominated Jack O'Connell, a one-time teacher who had worked as an aide to the local state senator. O'Connell had few sources of funds and his ability to raise money was further hampered by the widespread consensus that he faced defeat. However, Assembly Democratic strategists in Sacramento decided that O'Connell might have a chance. They provided almost three-quarters of O'Connell's \$200,000 campaign budget, enabling him to wage a vigorous campaign. Although Firestone still outspent O'Connell by well over \$100,000, voters elected O'Connell by a narrow margin. Two years later Republicans used partisan money to finance a stiff challenge to incumbent O'Connell from Santa Barbara County Sheriff John Carpenter. This time O'Connell scored an impressive 61% victory. Partisan money had clearly enabled O'Connell to reach voters with a message they found attractive.

### **8. *Non-Campaign Spending***

Accumulation of large war chests by candidates in safe districts may seem odd in many instances. Serious challenges are rare and incumbents can win reelection spending very little. Nevertheless these safe incumbents consistently raise substantial sums of money. Where does this money go?

Some is spent on goods and services which are not intended to win votes: travel, meals, entertainment, clothing, additional office staff, non-governmental mailings and further fundraising. Some of these expenditures can be justified as campaign related. In other instances the justification is thin; sometimes war chests are treated as personal "perks" of legislative office. Higher legislative salaries might ease the pressure on candidates to raise campaign contributions for quasi-personal purposes.

### **9. *Minor Role for Political Parties***

Under California law, political parties are charged with the responsibility of conducting campaigns on behalf of their candidates. But throughout this century, California parties have



been too weak to carry out this mandate. Instead candidates often take responsibility for their own campaigns. They hire campaign managers, rent campaign headquarters, develop campaign strategies and work with legislative strategists. As a result California campaigns are *ad hoc* operations. Typically they are set up at election time and dismantled within a week after the election.

Recent years have seen a mild resurgence by the political parties. The Republican Party has strengthened its fundraising through direct mail solicitations and is able to contribute to selected candidates. The Democratic Party is developing its solicitation techniques but is still unable to contribute much to its candidates. In recent elections both parties have conducted major voter registration campaigns, absentee ballot programs and get-out-the-vote drives. Republican Party political experts work alongside legislative partisan strategists in encouraging candidates to run and guiding them with expert technical advice. But the Democratic Party has no comparable experts; political chores are handled by consultants hired by the Democratic legislative caucus. (See Chapter 5, "Partisan Sources.")

Despite these nascent activities, the parties remain weak. Massive fundraising by candidates and legislative caucuses has dwarfed party efforts. Without money to distribute, the parties experience difficulty in developing and implementing statewide political programs. Candidates solicit money directly from large contributors and bypass the party apparatus altogether. The relatively weak party role in legislative campaigns gives candidates substantial independence.

## **C. Public Confidence in Government Is Diminished**

Public opinion polls indicate low public confidence in state government. Only a small percentage of the population rates state officeholders highly for honesty and ethical standards. Former FPPC Commissioner Mickey Ziffren has commented, "The voters... envision Sacramento as a distant sinful island surrounded by a green sea of money."<sup>116</sup>

In 1981 Mervin Field's California Poll found that California residents ranked their State Legislature 23rd out of 34 national, state and local institutions on a public confidence index. On a scale in which a confidence index of 100 indicated an even balance of positive and negative views, the California State Legislature received a rating of 70, placing it between the telephone company and the CIA.<sup>117</sup>

In 1985 another Field Poll asked California voters whether they felt state legislators were obligated to their contributors and if so whether this created unfairness toward constituents. Seventy-four percent answered that "state legislators are either very or somewhat obligated to their campaign contributors," and of this group 46% believed this resulted in "unfairness" to the average citizen.<sup>118</sup> These opinion polls are reinforced by national surveys: (See Appendix H, "Public Opinion Polls.")

Polls do not address the specific causes of low public confidence in California's state government. There are many tributaries that feed the stream of public doubt. But there seems little question that Californians' confidence in state government is low, and that the widely discussed influence of money on legislation has contributed significantly to that doubt. Massive campaign expenditures, large private donations, legislative bills linked to large contributions—all these are contributing to a crisis of public confidence in California's governmental institutions.

## NOTES

1. William Endicott, *Legislature Beats the Deadlines, but There's an Acrid Aftertaste*, Los Angeles Times, Sept. 9, 1984.
2. Dan Walters, *A Constant State of Warfare*, Sacramento Union, May 7, 1984.
3. Quoted in Dan Walters, *Constituency? What Constituency?*, Sacramento Magazine, Feb. 1984.
4. Gale Cook and James Finebrock, 'Juice Committees': *Where the Big Bucks Flow*, San Francisco Examiner, Feb. 3, 1982.
5. Buckley v. Valeo, 424 U.S. 1, 27 (1976).
6. Several multi-part newspaper series have detailed the linkage between votes and contributions. See, e.g., Larry Lynch, *Big Bucks Cascade into Political Coffers in Non-Vote Years*, Long Beach Press-Telegram, Dec. 11-13, 1984 (three-part series); Dan Walters, *Money and the Legislature*, Sacramento Union, Jan. 2-5, 1984 (four-part series); Gale Cook and James Finebrock, *In Whose Interest?* San Francisco Examiner, Feb. 1-5, 1982 (five-part series). The Richmond Times-Dispatch conducted a detailed computer analysis of campaign contributions and subsequent votes in Virginia and found that "79 percent of the legislators receiving money voted the way the special interests would want them to vote. By contrast, only 59 percent of those not getting money voted the way the special interests would have wanted." Ray McAllister and Mike Grim, *Money and Votes*, Richmond Times-Dispatch, Nov. 18-21, and Dec. 6, 1984 (five-part series).
7. Dan Walters, *Doctors' Fight Is Lesson in Political Influence*, Sacramento Union, Jan. 2, 1984.
8. *Id.*
9. *Id.*
10. *Id.*
11. Paul Jacobs, *How California Podiatrists Won 'Battle of the Ankle'*, Los Angeles Times, Sept. 9, 1983.
12. Quoted in Larry Liebert, *Podiatrists 'Pay to Play'*, San Francisco Chronicle, Sept. 30, 1983.
13. Jacobs, *supra* note 11.
14. Liebert, *supra* note 12.
15. Quoted in Steve Capps, *Money Talked—But They Didn't Listen*, San Francisco Examiner, Feb. 1, 1982.
16. Dan Walters, *A Scandal May Wake Up State*, Sacramento Bee, Jan. 24, 1985.
17. George Frank and Tracy Wood, *Former Aides Say Moriarty Laundered Political Gifts*, Los Angeles Times, Jan. 20, 1985.
18. Dan Walters, *The Moriarty Affair*, California Journal, Mar. 1985.
19. Frank and Wood, *supra* note 17.
20. Bill Farr, *Moriarty Pleads Guilty, Will Testify on Bribery*, Los Angeles Times, Mar. 13, 1985.
21. Frank and Wood, *supra* note 17.
22. *Id.*
23. Tracy Wood and George Frank, *Fireworks Tycoon Spent Half a Million Dollars to Influence Laws*, Los Angeles Times, Dec. 6, 1983.
24. Frank and Wood, *supra* note 17.
25. *Id.*
26. Farr, *supra* note 20.
27. Wood and Frank, *supra* note 23.
28. Bill Farr and George Frank, *Key Figure in Moriarty Probe Indicted*, Los Angeles Times, Dec. 14, 1984.
29. Frank and Wood, *supra* note 17.
30. Wood and Frank, *supra* note 23.
31. *Id.*
32. William Overend, *Moriarty and 3 Officials of City of Commerce Indicted*, Los Angeles Times, Nov. 9, 1984.
33. Wood and Frank, *supra* note 23. Former Assemblyman William Bagley also invested in the condominium project.
34. Tracy Wood and George Frank, *Probers Trying to Unravel Young's Ties to Moriarty*, Los Angeles Times, Sept. 26, 1984.
35. *Id.*
36. *Id.*
37. *Id.*
38. William Overend, *Moriarty Defense Lawyer Withdraws*, Los Angeles Times, Feb. 2, 1985.
39. Wood and Frank, *supra* note 34.
40. Walters, *supra* note 18.

41. George Frank and Tracy Wood, *Magnate Linked to Many Officials*, Los Angeles Times, Apr. 30, 1985.
42. Wood and Frank, *supra* note 34.
43. Walters, *supra* note 18.
44. George Frank, *Probe Figure Ties Top Officials, Prostitutes*, Los Angeles Times, Jan. 12, 1985; Tracy Wood and George Frank, *Ex-Aides Tie Moriarty to Political Sex Parties*, Los Angeles Times, Jan. 21, 1985.
45. Tracy Wood and George Frank, *Fireworks Maker Sought to Halt Probe, Senator Says*, Los Angeles Times, May 11, 1984.
46. William Overend, *Moriarty Surrenders in Commerce Fraud Case*, Los Angeles Times, Nov. 10, 1984; Farr, *supra* note 20.
47. Dan Walters, *Prosecutors Overloaded*, Sacramento Bee, Mar. 22, 1985; Claire Cooper, *Bill Would Repeal Trucker Weight Amnesty*, Sacramento Bee, Feb. 22, 1984.
48. Douglas Shuit, *Farm Labor Board's Lawyer Finds Hot Seat Challenging*, Los Angeles Times, Feb. 5, 1984.
49. Doug Foster, *Is Cesar Chavez Losing His Stuff?*, Los Angeles Times, Dec. 10, 1982.
50. *Id.*
51. Dan Walters, *Water and Labor Intertwined*, Sacramento Union, Dec. 16, 1983.
52. Martin Smith, *Control by Campaign Dollars*, Sacramento Bee, Nov. 29, 1983.
53. Dan Walters, *Climax Near on Farm Labor*, Sacramento Union, Jan. 16, 1984.
54. Ann Bancroft, *Growers' Bills Beaten in Legislature*, San Francisco Chronicle, Jan. 12, 1984.
55. Dan Walters, *The Democrats' Rural Rebels*, Sacramento Union, Jan. 25, 1984.
56. William Endicott, *Is Chavez Losing Clout in the State?*, Los Angeles Times, Jan. 29, 1984.
57. Dan Walters, *supra* note 53.
58. Dan Walters, *Reforms Die, Ills Remain*, Sacramento Bee, Nov. 9, 1984.
59. William Endicott, *Money, Jobs Make Legislature Seem Ripe for Scandal*, Los Angeles Times, Mar. 22, 1985.
60. *Quoted in* Joe Quintana, *\$1 Million a Month for Lawmakers' War Chests*, Los Angeles Herald Examiner, Sept. 2, 1983.
61. *Quoted in* Joe Quintana, *id.*
62. Gale Cook and James Finefrock, *In Whose Interest?* San Francisco Examiner, Feb. 1-5, 1982 (five-part series).
63. Bruce Winters, *A Political Auction in Sacramento*, Van Nuys Daily News, Sept. 11, 1983.
64. *Quoted in* Cook and Finefrock, *supra* note 4.
65. Vic Pollard, *Campaign Financing: It's Thoroughly Institutionalized Corruption*, Stockton Record, Nov. 19, 1984.
66. *Quoted in* Dan Walters, *Special-Interest Money Plays a Critical Role*, Sacramento Union, Jan. 3, 1984.
67. *Quoted in* Gale Cook and James Finefrock, *When Lobbyists Put Green in Assembly Fields*, San Francisco Examiner, Feb. 2, 1982 (Aug. 18, 1981 address to gathering of chiropractors who subsequently gave Speaker Brown a check for \$3,500).
68. Joe Quintana, *Money Talks, and Far Too Loudly...*, Los Angeles Herald Examiner, Nov. 19, 1984.
69. CALIFORNIA COMMON CAUSE, *DAVID AND GOLIATH: 1984, CALIFORNIA RENTERS V. THE CALIFORNIA HOUSING INDUSTRY* (June 25, 1984).
70. Alan Citron, *Board Bailed Out Legal Foundation*, Los Angeles Times, Mar. 7, 1985.
71. Jerry Gillam, *Public-Interest Lobby Cries Foul on Rent Bill*, Los Angeles Times, June 26, 1984.
72. Daniel Carson and Dan Weikel, *Lobby Planned for Coastal Zoning Change*, San Diego Union, Mar. 31, 1984.
73. Dan Walters, *Measure Tilts Playing Field*, Sacramento Bee, Mar. 14, 1985.
74. *Id.*
75. Claire Spiegel, *Suit by Ex-Insider Promises to Create S. F. Political Storm*, Los Angeles Times, June 25, 1984.
76. *Id.*
77. *See* *Presenting Spent Plenty in Lobbying*, El Cajon Daily Californian, Feb. 8, 1984; *Money Buys the Votes*, El Cajon Daily Californian, Feb. 11, 1984.
78. Carson and Weikel, *supra* note 72.
79. *Id.*
80. Dan Walters, *The Best that Money Can Buy*, Sacramento Union, Apr. 4, 1984.
81. Richard Zeiger, *Canyon Springs Developer Gives \$54,750 to Legislators After Passage of Key Bill*, Riverside Press-Enterprise, Jan. 5, 1985; Douglas Shuit, *Bills Speeded in Bids to Limit Local Controls*, Los Angeles Times, Aug. 14, 1984; Dan Walters, *A Postscript to Legislation*, Sacramento Bee, Jan. 14, 1985.

82. Local Agency Formation Commissions exist in each California county. They are comprised of county supervisors, city officials, and members of the general public, all of whom serve by appointment. These commissions meet to consider proposed incorporations of new cities and annexations of land into existing cities.
83. Initial press accounts fixed the total contributions at \$54,740. Subsequently, additional contributions (some made by companies controlled by Self) were discovered.
84. Zeiger, *supra* note 81.
85. Richard Zeiger, *Self Gave Last-Minute Cash to Clute*, Riverside Press-Enterprise, Jan. 24, 1985.
86. Zeiger, *supra* note 81.
87. *A Legislative Fairy Tale*, Santa Rosa Press Democrat, Jan. 17, 1985.
88. Robert Jones, *Raw Milk: A Holy War over Health*, Los Angeles Times, Aug. 31, 1984.
89. *Id.*
90. *Id.*
91. Robert Jones, *Governor Vetoes Raw Milk Measure*, Los Angeles Times, Sept. 29, 1984.
92. Jones, *supra* note 88.
93. *Id.*
94. *Id.*
95. Gale Cook and James Finefrock, *In Sacramento, Money Talks Louder than Voters*, San Francisco Examiner, Feb. 1, 1982.
96. Dan Walters, *Ending the Special Tax Breaks*, Sacramento Union, Dec. 19, 1983.
97. Assemblyman Tom Bates, "Information on A.B. 3—Oil Severance Tax/Income Tax Relief" (unpublished memorandum on file with the Commission).
98. Don Rogers, *A California Severance Tax Would Kill the Oil Industry*, Los Angeles Times, Apr. 23, 1984.
99. CALIFORNIA COMMON CAUSE, NEW COMMON CAUSE REPORT STUDIES OIL INDUSTRY CAMPAIGN CONTRIBUTIONS AND VOTE ON OIL SEVERANCE TAX PROPOSALS (Dec. 14, 1982).
100. Douglas Shuit, *Tax on Oil Firms Returns to Limbo*, Los Angeles Times, May 3, 1984.
101. CALIFORNIA COMMON CAUSE, EDITORIAL BACKGROUNDER—A CALIFORNIA OIL SEVERANCE TAX (Mar. 12, 1984).
102. Daniel Carson, *Oil, Farm Interests Help Fill Deukmejian Re-election War Chest*, San Diego Union, Mar. 24, 1984. Estimates of the revenue the state would realize from an oil severance tax range from \$400 million to \$600 million per year.
103. Dan Walters, *Lobbyists Charge 'Shakedown,'* Sacramento Union, Jan. 2, 1984.
104. Dan Walters, *Cal Initiatives: Fun and Profit*, Sacramento Bee, Oct. 14, 1984.
105. Endicott, *supra* note 1.
106. CALIFORNIA COMMON CAUSE, TWENTY WHO GAVE \$16 MILLION: A STUDY OF MONEY AND POLITICS IN CALIFORNIA 1975-1982 (1983).
107. Cook and Finefrock, *supra* note 95.
108. Dan Walters, *Unitary Tax Bill the Juiciest One*, Sacramento Bee, Aug. 30, 1984.
109. Capps, *supra* note 15.
110. PETER CLARKE AND SUSAN EVANS, COVERING CAMPAIGNS 47 (1983).
111. Capps, *supra* note 15.
112. *Quoted in* Dan Walters, *supra* note 103.
113. Dan Walters, *They're Fund-Raisers First, Law-Makers Second*, Sacramento Union, Jan. 5, 1984.
114. Party strategists are constrained by the constitutional requirement that each district be contiguous and equal in population. The State Constitution (CAL. CONST. art. XXI, §1) also requires legislators to respect "[t]he geographical integrity of any city, county,...or of any geographical region...to the extent possible" in reapportioning districts. These requirements are commonly ignored, however, and district lines are often drawn to include the incumbent's residence, or to incorporate neighborhoods which the incumbent believes are politically useful to have in his or her district.
115. In 1984 a California Congressman may have pioneered a new refinement of the war chest deterrence strategy. Peter Stark (D-Hayward) reported that he had arranged a \$150,000 line of credit with the Bank of America. These funds would be available should competition emerge during his reelection campaign. Paul Houston, *Dollars Give Incumbents Decisive Edge in Politics*, Los Angeles Times, Feb. 19, 1985.
116. Mickey Ziffren, Remarks Before the Citizens' Research Foundation Conference on Campaign Financing, University of Southern California, Los Angeles, May 3, 1985.
117. The Field Institute, *California Opinion Index, Confidence in Institutions* (Oct. 1981).
118. The Field Institute, *California Opinion Index, Campaign Financing* (Feb. 1985).



## CHAPTER 8

# **Wealthy Candidates and Independent Expenditures: Potential Problems That Have Not Yet Appeared in California**

*[W]ealthy candidates would have a tremendous advantage. We could have a Legislature composed of athletes, television newscasters, movie stars and the very wealthy. This might be an interesting mix, but it would not be very representative of the state.*

— Assembly Speaker Willie Brown<sup>1</sup>

*The actual effect of independent expenditures by independent committees is to totally upend the intent of the... [federal campaign finance law]: that the two candidates would run against each other on an equal basis...*

— Elizabeth Drew, Political Commentator<sup>2</sup>

**S**ignificant spending by wealthy candidates and independent expenditure committees has not been a major factor in most California elections. Yet candidates and public officials view such spending as a major threat, particularly if contribution limits and expenditure ceilings are adopted. Many candidates fear that wealthy candidates will buy their way into office or that independent expenditure committees will distort campaigns with mas-



sive barrages of one-sided spending. The average candidate constrained by campaign finance limitations, it is said, may be helpless against free-spending wealthy candidates or independent expenditure committees.

Some of these concerns are not new. A Jay (or Nelson) Rockefeller, a John F. Kennedy, or even a Tom Hayden can draw on formidable personal finances not available to the average candidate. Yet in recent years attention has focused on wealthy candidates and independent expenditure organizations, in part because Supreme Court rulings have exempted them from some of the campaign finance restrictions adopted by the federal government and a number of states. In *Buckley v. Valeo*, the Supreme Court ruled that wealthy candidates cannot be barred from contributing as much money as they like to their own campaigns and that spending by wealthy candidates and independent expenditure committees cannot be limited.<sup>3</sup>

Supreme Court decisions thus pose basic questions of fairness: Should some candidates be subject to contribution and expenditure limits when their wealthy opponents can raise and spend unlimited amounts of their own money? Should candidates' contributions or expenditures be restricted when independent organizations can spend large and unrestricted sums against them? Campaign finance reforms for California must anticipate and address these problems.

### **A. Wealthy Candidates Have Had Minimal Impact in the State**

Very few candidates for the California Legislature have substantially funded their own campaigns. In 1982, for example, only two candidates for 20 State Senate seats and 12 candidates for 80 Assembly seats spent more than \$20,000 of their own money on their campaigns.<sup>4</sup> (See Table 8.1.) Only two candidates (Brooks Firestone and Tom Hayden) spent \$100,000 or more from personal or family sources. Figures for the 1984 elections are similar.

In California as in other states, higher office has occasionally attracted wealthy individuals who have largely financed their own campaigns. Norton Simon spent his own money to challenge incumbent U.S. Senator George Murphy in the 1970 Republican primary. William Matson Roth spent large amounts of his money in the 1974 primary for Governor, competing with such prominent Democrats as Secretary of State Jerry Brown, San Francisco Mayor Joe Alioto, Congressman Jerome Waldie and Assembly Speaker Bob Moretti. Maureen O'Connor drew on her husband's business fortune ("Jack in the Box" restaurants) in running for Mayor of San Diego in 1983 against Roger Hedgecock. All three wealthy candidates lost their bids.

Candidates for the State Legislature, however, have rarely reached deep into their own pockets for campaign cash. In 1982 Tom Hayden sparked headlines across the country when he and his wife, actress Jane Fonda, poured \$1.3 million into his successful bid for an open Assembly seat. His spending set a nationwide record for legislative races.

Brooks Firestone, a successful vintner and a member of the Firestone tire family, spent over \$150,000 of his personal and family funds in a losing drive for an open Assembly seat. This amount was less than a third of his total spending.

In special and regular elections in 1979 and 1980, real estate sales magnate Ollie Speraw gave his campaign \$93,100 of his own money in a bid for a State Senate seat. His personal money comprised 15% of the total \$634,600 received by his campaign. Speraw won the seat in 1979 and kept it in 1980.

#### **1. Disincentives for Wealthy Candidates**

Despite these few examples, there are several reasons why wealthy individuals generally decline to spend large sums of their own money on state legislative campaigns. First, many wealthy individuals may not view a seat in the State Legislature as particularly attractive. A legislative seat has far less visibility and glamour than the offices of Governor, U.S. Senator, U.S. Representative or Mayor. Senate or Assembly seats are also relatively low-paid positions. Base salaries are only \$33,732 a year plus expenses and perks.

Table 8.1

## CONTRIBUTIONS BY CANDIDATES (AND THE FAMILIES OF CANDIDATES) TO THEIR OWN CAMPAIGNS

1982 California Legislative Races						
Dist.	Name	Won/ Lost	Status	Candidate	Family	Pri./ Gen./ Both
State Senate						
2	Bill Maher	L	Chal.	\$73,461	\$1,350	Both
18	Gary Hart	W	Open	25,310	1,050	Gen.
State Assembly						
5	Peggy Grenz	L	Chal.	\$30,000	\$1,450	Gen.
6	William Green	L	Open	92,854	0	Both
8	Don Sebastiani	W	Inc.	29,000	0	Pri.
10	Ingrid Azvedo	L	Open	0	32,433	Both
11	Robert Campbell	W	Inc.	30,465	564	Pri.
31	Bruce Bronzan	W	Open	50,000	600	Gen.
32	William Jones	W	Open	30,000	440	Pri.
35	Brooks Firestone	L	Open	71,455	83,500	Both
36	Harriet Henson	L	Open	39,192	1,352	Both
38	Marian LaFollette	W	Inc.	54,500	140	Gen.
44	Tom Hayden	W	Open	30,659	1,288,384	Both
45	Burt Margolin	W	Open	32,500	10,200	Pri.
51	Gerald Felando	W	Inc.	25,000	1,425	Pri.
1984 California Legislative Races						
State Senate						
3	Lia Belli	L	Chal.	\$157,269	\$352,223	Both
11	Becky Morgan	W	Open	70,000	6,400	Pri.
17	Stephen Magyar	L	Chal.	28,005	0	Gen.
State Assembly						
8	Mary Jadiker	L	Chal.	79,134	0	Pri.
8	Don Sebastiani	W	Inc.	80,150	9,414	Pri.
34	Cindy O'Connor	L	Chal.	42,341	0	Both
38	Linda Nelson	L	Chal.	4,000	37,540	Pri.
44	Tom Hayden	W	Inc.	120,500	26,843	Gen.
63	Dianne Xitco	L	Open	99,976	500	Both
66	Gerald Eaves	W	Open	26,590	0	Pri.
70	Gil Ferguson	W	Open	76,050	0	Both

**Notes:**

1. Only contributions totaling \$20,000 or more to candidates who received their party nomination are included.
2. "Status" includes incumbent, challenger or candidate for an open seat.
3. "Pri./Gen./Both" describes contributions made predominantly, but not necessarily exclusively, in the primary election period, the general election period, or in both.

Source: FPPC Reports on 1982 and 1984 Primary and General Elections

Second, wealthy incumbents or local government officials attempting to step up to the Legislature can often avoid contributing to their own campaigns. Contributors will give them campaign cash to gain access or influence regardless of the candidate's personal wealth. Contributors understand candidates' need for money, are used to giving contributions and are likely to set funds aside for this purpose. Wealthy incumbents can also draw on legislative caucus funds which exist primarily to assist incumbents in their reelection. (See Chapter 5, "Partisan Sources.") Incumbents thus rarely feel the need to contribute funds to their own political campaigns.

Third, candidates and consultants fear a voter backlash against wealthy candidates attempting to "buy" an election. They keep personal spending low to defuse this potentially negative issue. Some polls suggest, however, that this is a false concern. A 1985 Field Poll found that 61% of the voters feel that candidates spending their own money are more committed to their campaigns, take less from special interests and are a good influence on politics. Only 21% feel that such candidates are a bad influence.<sup>5</sup> What other polls suggest, however, is that the public resents grossly disproportionate spending by wealthy candidates. As focus groups conducted nationwide by the Public Agenda Foundation found, "When a wealthy candidate far outspends another, voters feel that the fairness of the contest has been violated...."<sup>6</sup> Given these views, some wealthy candidates will play it safe and keep the expenditure of their own funds to a minimum.

## ***2. Incentives for Wealthy Candidates***

Some incentives do exist for candidates to spend their own money on campaigns. But these incentives tend to affect wealthy challengers or newcomers, not incumbents. Wealthy incumbents can draw on funding sources other than their own. Challengers or political newcomers, on the other hand, must often turn to their own resources for substantial campaign funding. Friends, relatives, neighbors and business associates may not want to give them funds unless they first contribute to their own campaigns.

Some wealthy individuals may feel awkward asking others for money. Many potential contributors do not distinguish between wealthy candidates and their campaigns. Contributors sometimes believe it is inappropriate for a wealthy candidate to request money. Former Vice President Nelson Rockefeller once observed, "It's very difficult for a Rockefeller to raise money for a campaign. The reaction of most people is, 'Why should we give money to a Rockefeller?'"<sup>7</sup>

Some candidates see other advantages in financing their own campaigns. "Because of my fortunate personal circumstances, I don't have to go hat in hand to any particular groups. I value that independence," says Assemblyman Tom Hayden (D-Santa Monica), California's best-known wealthy candidate.<sup>8</sup> Veteran campaign consultant Joe Cerrell comments, "Hayden has basically written off the major special interests.... There are very few people that he has difficulty looking straight in the eye and saying, 'Go to hell.' It's enviable."<sup>9</sup>

Incentives for wealthy candidates to give to their own campaigns are intensified by the need to prevail in a hard-fought campaign. As election day approaches, a candidate whose election is in doubt may approach near panic at the thought of a loss. A decision not to spend the money on "one more mailer" can haunt the candidate for life if the race ends in narrow defeat. Former State Senator Peter Behr advises, "You have to resist the temptation to contribute money to yourself at the last minute of the campaign. When your manager or friend tells you that if he could have just a few thousand more in the last week of the campaign, and that would win the election, you've just got to say no."<sup>10</sup> For a wealthy candidate, the temptation to say "yes" is difficult to resist.

In sum, incentives exist for newcomers to contribute to their own campaigns, but California has generally seen very few wealthy candidates for the Legislature. If campaign finance limitations are implemented in California, however, wealthy candidates may be perceived as gaining a potential advantage.

## **B. Independent Expenditures Have Yet to Play a Major Role in the State**

Independent expenditures are made by any person or organization other than the candidate's authorized campaign committee without consultation or coordination with the candidate's committee. There are generally three independent expenditure sources: ideological groups, business organizations and individuals who strongly support or oppose a particular candidate. Although independent expenditures have attracted attention at the federal level, they have not affected California's legislative campaigns to any significant degree.

California law currently does not limit contributions to candidates nor prohibit direct corporate or labor union contributions. Because direct contributions to candidates are easier and more efficient, large contributors have no incentive to spend money independently. The growth of independent expenditures at the national level, however, is often attributed to ten years of federal campaign finance limitations. The federal experience is thus instructive for California.

### **1. The Federal Experience**

Independent spending on federal and presidential campaigns has increased steadily. Approximately \$16 million was independently spent in 1980, eight times the 1976 level.<sup>11</sup> Nearly \$22 million was independently spent in 1984.<sup>12</sup> Although these increases are significant, there are several reasons why they do not necessarily portend an increase of independent spending in California.

First, independent expenditure committees spend a significant portion of their revenues on fundraising and promotion and not for or against targeted candidates. Independent expenditure committees commonly raise their funds through direct mail solicitations from small contributors. These activities are costly and may take years before they become profitable. Relatively little contributor money may actually find its way into campaigns.

In 1982, for example, the National Conservative Political Action Committee (NCPAC) reported spending \$525,000 against U.S. Senator Ted Kennedy in his senatorial reelection bid. Of this \$525,000, only 2.7% (\$14,000) was directly spent on media opposing Senator Kennedy's candidacy. Over 72% (\$378,390) was spent raising additional money through direct mail solicitations. Many of these fundraising solicitations were mailed in 1981, a full year before the election. Many were also sent to individuals living outside the state of Massachusetts.<sup>13</sup>

During the 1984 presidential election, NCPAC reported spending \$10.1 million to support President Reagan's reelection campaign. Research by Michael Malbin showed that 85% of NCPAC's money was spent on printing and other direct mail fundraising activities, while only eight percent was actually spent on advertising supporting President Reagan. The *Washington Post* concluded that NCPAC "apparently spent most of the money on millions of NCPAC fundraising letters using Reagan's name."<sup>14</sup>

National conservative independent expenditure groups also announced ambitious plans in 1982 to raise money opposing Tom Hayden's bid for a California State Assembly seat. But much of the money raised was used to build conservative mailing lists. Very little money was actually spent against Hayden during the campaign.

A second reason why national independent spending figures are not easily translatable to California is that most of this spending has come from only two committees—NCPAC and Fund for a Conservative Majority. Their focus has been on national and not state campaigns. Herbert Alexander of the Citizens' Research Foundation has said, "Take away the spending of these two groups and the amount of independent committee expenditures in 1984 would be negligible."<sup>15</sup> The formation of comparably well-financed independent expenditure committees in California would be difficult.

Third, House candidates (who offer the closest analogy to state legislative candidates) have drawn a relatively small proportion of independent spending. In 1980, 87% of independent expenditures supported presidential candidates; Ronald Reagan alone benefited from \$12 mil-



lion of independent spending (although a significant portion of this may have been diverted into fundraising appeals).<sup>16</sup> By contrast, only 13% of independent expenditures supported congressional candidates.<sup>17</sup> Large independent expenditures at the federal level are attracted in part by the higher visibility of presidential campaigns. Moreover, contributions during the general election to presidential candidates accepting public financing are prohibited. This prohibition encourages private contributors wishing to support presidential candidates to channel their money through independent expenditure committees. Significantly smaller independent expenditures on congressional races suggests that the pressures encouraging national independent expenditures are not translatable to state legislative campaigns.

Fourth, in many instances candidates potentially benefiting from independent advertising expenditures have asked committees to stay away. Candidates are often concerned that the negative character of independently purchased media spots will backfire against them, even though they do not control the committees and have no input into the content of the ads. In 1982, 80% of independent campaign advertising was negative.<sup>18</sup> When NCPAC announced plans to spend \$2 million opposing Walter Mondale in the 1984 New Hampshire presidential primary, Mondale rival Senator John Glenn (D-Ohio) denounced NCPAC as “thoroughly disreputable.” He stated, “I hope all candidates will join me in telling NCPAC to leave the Democratic Party alone.”<sup>19</sup>

Fifth, independent advertising has had mixed results. In 1980, four of the five U.S. Senators targeted by NCPAC were defeated. In 1982, however, eight of ten Senate candidates targeted by NCPAC for defeat won their reelections. Independent spending in California may not seem promising in light of its recent spotty performance.

Finally, independent spending rarely occurs below the presidential and senatorial levels. Independent spending for or against House candidates actually decreased by nearly \$300,000 from 1982 to 1984. Total independent spending in 1984 was only 0.6% (\$1.4 million) of the \$218 million spent by all House candidates.<sup>20</sup> In 1983 national Republican leaders flirted with the establishment of “semi-official” independent spending committees. They spent an estimated \$185,000 in a special U.S. Senate election in Washington State, but dropped the idea in 1984.<sup>21</sup>

There are exceptions to these trends. Some congressional candidates have been beneficiaries of independent spending by organized trade associations. In Maryland the Realtors PAC bought at least \$49,000 of television time supporting Helen Bentley’s successful drive to unseat Rep. Clarence Long. The American Medical Association’s PAC spent \$85,000 on cable television ads for five other candidates.<sup>22</sup>

One individual has also conducted an independent expenditure campaign. In 1984 a wealthy Californian spent over \$1 million on advertising attacking veteran Illinois Senator Charles Percy. Michael Goland spent this money on “mailings, billboards and hard-hitting commercials depicting Percy as a chameleon who changed colors to match the political landscape.”<sup>23</sup> Percy was prevented by federal contribution limits from accepting contributions larger than \$1,000 from individuals. Percy lost the race by 89,000 votes out of 5 million cast. Although this kind of independent spending is rare and unlikely to occur at the state level, incumbents often cite such examples as barriers to campaign finance reform.

The character of this spending may also be changing. In 1982 most independent spending on House races was negative—\$929,000 in negative spending compared to \$734,000 in positive spending. In 1984 negative spending against House candidates dropped to \$154,000, while positive spending increased to \$1,231,000.<sup>24</sup>

## **2. Other States’ Experience**

In states with expenditure limitations, independent spending has not emerged as a problem. In the 1981 New Jersey gubernatorial election, for example, only 18 instances of independent spending were reported. None of the expenditures was significant. Although nearly \$10 million was spent on New Jersey gubernatorial contests in the primary and general elections, the largest independent expenditure was \$14,600.<sup>25</sup>

### **3. *Implications for California***

In 1982 a few California organizations contributed large amounts to individual candidates. United Farm Workers gave \$250,000 to Assembly Speaker Willie Brown. United for California gave a total of \$535,630 to conservative candidates; its largest contribution to a candidate was \$50,000. If contribution limits are adopted in California, organizations such as these may disperse their contributions more broadly and in smaller amounts. Alternatively, they may resort to independent expenditures. If they do, their independent expenditures may undermine the efficacy of campaign finance reforms in the state.

#### **a. *The Unlikelihood of Independent Expenditures***

This Commission nonetheless believes that an increase in independent expenditures is unlikely in state legislative campaigns. Unlike presidential, senatorial or gubernatorial races, state legislative races rarely attract great public attention. Independent expenditure committees are unlikely to coalesce around relatively minor races.

Independent expenditure committees are also difficult to organize. Few organizations have the ability to create, produce and distribute sophisticated advertising or direct mail. This is particularly true in smaller legislative campaigns. Perhaps for this reason independent expenditures have been virtually non-existent in California campaigns.

Even if independent expenditure committees do grow in California, they may be less threatening than many might suppose. Independent committees are often quite inefficient. They spend the bulk of their money on fundraising appeals and often have little left for campaigns.

Independent expenditures also frequently misfire. A poorly phrased negative advertising campaign may generate unanticipated sympathy from voters who dislike interference from outsiders. Candidates may ask independent organizations to stay out of their races for fear of such an unanticipated backlash.

Independent expenditures are often benign. Clubs, businesses, corporations, labor unions and other organizations and individuals have long advocated the election or defeat of candidates for office in newsletters and other forms of communication. The impact of these communications has been minimal and generally unnoticed.

Independent expenditures also differ from contributions in an important respect. Independent expenditures may be hard-hitting or one-sided; but they are visible, they contribute to public debate and they are subject to rebuttal. By contrast, monetary contributions are often invisible, they state no ideas, they raise no issues and they are silent on the merits of particular candidates. At their worst, contributions can suggest improper *quid pro quo* arrangements. Independent expenditures do not create the same potential for "corruption" as do contributions of money.

#### **b. *The Potential Problems***

Despite these reasons why independent expenditures may not appear in California, it is always possible that certain future legislative campaigns may provoke strong passions. If contributors are restrained from making large contributions, they may funnel their money into independent expenditures. If that happens California may confront a rash of new problems.

Independent expenditure campaigns may be reckless or dirty, particularly where they are not directed by a candidate who can be held accountable. Independent campaigns tend to focus debate on narrow and emotional issues. Independent spenders may concentrate on the wrong issues or misrepresent their own candidate's positions.

Considerable voter confusion may result from the activities of two or more parallel committees. A candidate's committee and an independent expenditure committee may both buy billboards or radio spots. Yet their messages may be contradictory. Both committees may solicit the same potential contributors, causing resentment and ill will.



Independent expenditure committees may not be truly “independent.” Elizabeth Drew has concluded, “There are all manner of ways in which people running ‘independent’ campaigns can run them in tandem with the candidates, and there are all manner of ways in which—without the candidate or his top aides necessarily getting involved—the independent committees and the campaigns can, and do, collude.”<sup>26</sup>

In extreme cases, independent expenditures can lead to consumer fraud on contributors. In 1976 two California businessmen created three independent expenditure committees which they themselves controlled. They set up telephone boiler room operations to solicit contributions to be spent on behalf of Ronald Reagan, Gerald Ford and senatorial candidate S.I. Hayakawa. They raised more than \$170,000. They pocketed about half and paid the remainder for operational costs. So little was spent on behalf of candidates that the Reagan and Ford campaigns never knew the committees existed, while Hayakawa went to court to try to shut them down.<sup>27</sup> Although similar cases have not come to light, future scams could seriously damage legitimate campaign fundraising.

### C. Limited Reforms Are Appropriate

The potential emergence of wealthy candidates and independent expenditure committees has cast a shadow over campaign finance reform efforts. Incumbents in particular are reluctant to adopt legislation which would limit their own contributions or expenditures. They fear that wealthy candidates or independent expenditure committees could compete against them without restraint.

Supreme Court decisions have compounded this apparent problem. In *Buckley v. Valeo*,<sup>28</sup> the Supreme Court ruled that candidates could not be limited in the amounts of money they contributed to their own campaigns or spent on their own behalf. However the Court did uphold personal spending limits on presidential candidates accepting public financing. To receive public money, presidential candidates must agree to spend no more than \$50,000 of their own money on their campaigns.<sup>29</sup> Since adoption of the presidential campaign finance system in the early 1970s, only one candidate (John Connally) has refused public funds. Because of public financing, personal wealth appears to have played a small role in presidential campaigns.<sup>30</sup>

In *Buckley* and the recent *Federal Election Commission v. NCPAC* decision, the Supreme Court has ruled that independent expenditures have no potential for corruption and cannot be limited.<sup>31</sup> However the Supreme Court left untouched another federal provision which places limits of \$5,000 on contributions to all political committees, including independent expenditure committees. A lower court case, *Mott v. Federal Election Commission*, specifically upheld this section against attack by an individual who wanted to contribute more than \$5,000 to an independent expenditure committee.<sup>32</sup>

Wealthy candidates are thus taken seriously by legislators. Assemblyman Ross Johnson (R-La Habra) qualified an initiative which became Proposition 40 on the November 1984 California ballot. It included a provision which gave dollar-for-dollar public matching funds to any candidate whose opponent spent his or her own money on a campaign. The initiative was defeated.

Campaign reform advocates have considered several strategies to solve the wealthy candidate and independent expenditure problems. Each solution attempts to improve the position of the candidate bound by contribution or expenditure limitations.

One approach gives extra public funds to candidates whose opponents reject and exceed voluntary spending limits. For example, a dollar in public funds might be given to a candidate for every dollar by which the candidate's opponent exceeds the expenditure ceilings. This approach is the simplest and most effective way to discourage opponents from rejecting expenditure limits and spending large amounts of their own money. However it potentially increases the costs of public financing.

A second approach suspends contribution limits for candidates whose opponents refuse expenditure ceilings and for candidates in races where independent expenditure committees spend more than \$50,000. (A modification of this approach would allow all candidates to raise an additional \$35,000 in “seed money” free of any limitations.) Such an approach would allow candidates to match large contributions of personal funds by wealthy opponents and to counter independent expenditures. However, removal of contribution limits could be confusing to contributors. Two sets of limits would co-exist in one campaign. Removal of contribution limits would also reopen the door to large potentially corrupting contributions.

A third approach suspends expenditure ceilings for all candidates in races where wealthy opponents and independent committees are spending freely. Candidates could spend as much additional private money as they like, so long as they raise it in amounts that comply with contribution limits.

### **The Commission’s Model Law**

The Commission proposes a combination of the second and third approaches. (See Chapter 12, “Commission’s Recommendations.”) In races where a wealthy opposing candidate (or any opposing candidate) exceeds expenditure limitations, or where independent expenditure committees spend over \$50,000 for or against any candidate, candidates are freed from the expenditure limits and may raise an additional \$35,000 in amounts exempted from the contribution limits. While expenditure limits are a pivotal part of the Commission’s proposed Model Law (see Appendix A), the Commission feels that suspending expenditure limits in such instances is fair and practical. Allowing candidates an additional seed money window will permit them to respond to their opponents’ or independent committees’ expenditures.

The Commission’s proposed Model Law also contains other provisions which counter the influence of independent expenditure committees. Mass mailings by independent expenditure committees must be clearly identified as neither approved nor authorized by any candidate. Contributions to independent expenditure committees are limited. Expenditures which reproduce, broadcast or distribute materials which have been drafted, printed, prepared or previously broadcast by a legislative candidate are to be attributed to the candidate and counted toward his or her expenditure ceiling.

While these provisions will not eliminate independent expenditures, they will require independent expenditure committees to be clearly identified. Most importantly, these provisions will enable candidates opposed by independent expenditure committees or wealthy candidates to compete fairly in California legislative races.

## NOTES

1. Willie Brown, *Public Funds for Campaigns Can Aid Legislative Integrity*, Los Angeles Times, June 10, 1983.
2. ELIZABETH DREW, POLITICS AND MONEY 134 (1983).
3. Buckley v. Valeo, 424 U.S. 1 (1976); see Federal Election Comm'n v. National Conservative Political Action Comm., 105 S. Ct. 1459 (1985).
4. Statistics otherwise unattributed are derived from published reports of the California Fair Political Practices Commission.
5. The Field Institute, *California Opinion Index, Campaign Financing* (Feb. 1985).
6. PUBLIC AGENDA FOUNDATION, MONEY AND POLITICS (Briefing Book for the Aspen Institute Conference on Campaign Finance, Jan. 24-26, 1985).
7. Quoted in HERBERT E. ALEXANDER, FINANCING POLITICS 21 (1980).
8. Alan Citron, *Hayden Vows to Cut Campaign Spending*, Los Angeles Times, Mar. 11, 1984.
9. Mary Curtis and Herbert Sample, *Hayden, Davis Rate High in Fund Raising*, Los Angeles Times, Feb. 19, 1984.
10. John D.R. Clark, *Financing Local Elections*, San Francisco Chronicle, Aug. 11, 1984.
11. Michael Malbin, *What Should Be Done About Independent Campaign Expenditures?*, Regulation, Jan./Feb. 1982; John P. Reiman, *Making Campaign Finance Law Enforceable: Closing the Independent Expenditure Loophole*, 15 J. LAW REFORM 363 (Winter 1982).
12. Telephone interview with the Federal Election Commission Press Office (Mar. 29, 1985).
13. *Escape from Accountability: An Examination of Independent Expenditure PACs*, People for the American Way, Sept. 1982, p. 9.
14. Thomas Edsall, *NCPAC in Red by \$4.2 Million*, Washington Post National Weekly Edition, July 15, 1985.
15. Telephone interview with Herbert Alexander (Apr. 9, 1985).
16. Drew, *supra* note 2, at 142.
17. Malbin, *supra* note 11, at 41.
18. *NCPAC Spent More Independently in 1982*, Campaign Practices Reports, Oct. 24, 1983.
19. *\$2-Million Ad Blitz Will Attack Mondale*, Los Angeles Times, Feb. 16, 1984.
20. Telephone interview with the Federal Election Commission Public Records Division (Apr. 10, 1985).
21. *GOP-Linked Committee Draws Criticism*, PACs & Lobbies, Nov. 16, 1983.
22. George Lardner, Jr., *Have Cash, Will Spend—By Myself*, Washington Post National Weekly Edition, Nov. 12, 1984.
23. Claire Spiegel, *Man Who Helped Topple Sen. Percy Won't Say Why*, Los Angeles Times, Dec. 5, 1984.
24. Telephone interview, *supra* note 12.
25. NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION, NEW JERSEY PUBLIC FINANCING: 1981 GUBERNATORIAL ELECTIONS (June 1982).
26. Drew, *supra* note 2, at 136.
27. Susan Littwin, *How Two L.A. Fundraisers Profited from a Loophole in the Federal Election Laws*, California Journal, June 1977.
28. Buckley v. Valeo, 424 U.S. 1 (1976).
29. Federal Election Campaign Act, 26 U.S.C.A. §9035(a) (West Supp. 1985) (Internal Revenue Code).
30. Alexander, *supra* note 5.
31. Federal Election Comm'n v. National Conservative Political Action Comm., 105 S. Ct. 1459 (1985).
32. Mott v. Federal Election Comm'n, 494 F. Supp. 131 (D.D.C. 1980).

**PART II**

**The History of  
Campaign Finance Reform:  
Goals, Limits and Alternatives**



## CHAPTER 9

# California: A Century of Campaign Finance Reform

**A**fter more than one hundred years, California's efforts at campaign finance reform have come full circle. In 1878 the state's first campaign finance law sought to prevent supporters from extorting money from candidates. Today newspaper stories accuse candidates of extorting money from supporters.

In 1893 the State Legislature banned transfers and limited expenditures. Today candidates transfer money without limit and expenditure ceilings are again debated in the State Capitol.

In 1974 California adopted the most "progressive" disclosure law in the country. Today these disclosures reveal California's campaign finance problems to be more serious than at any time in California history.

### **A. California Attempts Its First Campaign Finance Reforms: 1849 to 1907**

California's concern over money affecting legislation dates back to the formation of the state. The original 1849 Constitution (art. XI, §18) provided that the "privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties all undue influences therein from power, bribery, tumult or other improper practices."

In 1878 the Legislature passed its first campaign finance law. Affecting only San Francisco, the law prohibited political organizations from demanding payments or "assessments" from candidates in exchange for their support.<sup>1</sup> The purpose of the law was to prevent powerful political organizations from "extorting" money from candidates—an interesting reversal of what is commonly perceived to be the practice today.

Between 1890 and 1893 the movement to regulate the use of money in California elections gained significant momentum. In 1893 the State Legislature passed a law modeled on the British Corrupt and Illegal Practices Act.<sup>2</sup> Known as the Purity of Elections Act, it included several innovative provisions which had no precedent in the United States.<sup>3</sup>

First, the 1893 law established expenditure ceilings for political campaigns based on a percentage of the salary for the office. A candidate for a two-year term could not spend more than 10% of his annual salary on his election campaign. A candidate for a four-year term could



spend no more than 20%. Were this law in effect today, it would limit expenditures by Assembly and Senate candidates to \$3,373 and \$6,746, respectively.

Second, the 1893 law prohibited transfers—the contribution of campaign funds received by one candidate and given to another. It also strictly limited the purposes for which campaign money could be spent. Candidates could not, for example, use campaign contributions to entertain potential contributors. Violations of these strictures subjected candidates to criminal prosecution.

Third, the Purity of Elections Act prohibited independent expenditures. It declared to be void any third-person expenditures not authorized by the candidate or his committee.

Finally, the law required candidates to appoint a committee of five to receive and expend all campaign funds, file itemized sworn statements following the election and compile a list of all individuals making contributions and receiving expenditures. Candidates failing to comply would forfeit their office. Because candidates did not have to list the *amounts* contributed by named donors, however, the extent of a particular individual's involvement with a candidate could not be determined. This significant omission weakened the disclosure provisions of the law.

California's Purity of Elections Act was one of the most stringent and innovative measures in the nation for regulating political money in campaigns. But only three years after it was passed, the State Supreme Court drastically truncated the law by ruling that the statute did not pertain to primary elections. In the court's view political parties were "a law unto themselves" and the state could not regulate their conduct in primary elections.<sup>4</sup> The Legislature attempted to remedy the situation by passing a Purity of Primary Elections Act in 1897.<sup>5</sup> However, the California Supreme Court declared the law unconstitutional a year later on the technical ground that the title inadequately described the statute and that a special oath required of voters was unlawful.<sup>6</sup>

Two 1901 supreme court decisions provided the *coup de grace* to the Purity of Elections Act. George H. Clark, the mayor-elect of Sacramento, was charged with failing to file both a sworn affidavit accompanying his statement of contributions and expenditures and a complete list of expense vouchers. The court in one ruling held that the affidavit requirement created an unconstitutional oath of office.<sup>7</sup> In another decision the court ruled that a \$22 discrepancy in Clark's vouchers was too trivial to invalidate his election.<sup>8</sup>

Although these two cases turned on relatively minor points of law, they discouraged the filing of other enforcement actions and practically undid the effect of the Purity of Elections Act. Ironically, the winning court arguments were made by Hiram W. Johnson, a lawyer who later earned a national reputation as a political reformer and whose name became synonymous with progressivism in California after he was elected Governor in 1910.

## **B. Indifference to Reform Grows: 1907 to 1922**

The rather unhappy life of the Purity of Elections Act came to an end in 1907 when the Legislature repealed it and passed a new law to regulate the conduct of campaigns.<sup>9</sup> The 1907 measure undermined the goals of the 1893 statute even further. Although expenditure ceilings, lists of lawful expenses and disclosure statements were retained, centralized responsibility for campaign finances was dropped. Candidates were no longer required to appoint committees or agents through whom all money was to be channeled. Penal provisions were weakened by the elimination of the threat of forfeiture of office. A misdemeanor became the stiffest penalty prescribed. Primary elections were still not covered.

This weak revision of the Purity of Elections Act was the last major campaign finance measure enacted by the Southern Pacific Railroad-dominated Legislature. The Progressives swept to power in 1910 with the election of Hiram Johnson as Governor. During the next ten years, the Progressives enacted a wide-ranging series of political reform measures, many of whose effects remain part of California's political system. They allowed candidates to cross-

file and run in both parties' primary elections, added the initiative, referendum and recall provisions, abolished partisanship in local elections, adopted county home rule and extended civil service throughout the state.

The reformers' efforts to foster direct citizen participation in government weakened the state's political parties as effective organizations in electing candidates and formulating public policy. While the Progressives sought to arm the people to protect themselves, their laws had unintended consequences. Cross-filing allowed well-financed incumbents to win both parties' primaries and thus run unopposed in the general election.

Campaign expenditures in primary elections were not regulated again until the Progressives passed the weak Direct Primary Act of 1913.<sup>10</sup> The law required candidates—but not their committees—to file campaign statements for their primary election campaigns. Since primary election campaign funds were spent by campaign committees rather than individual candidates, the bulk of contributions and expenditures were left unreported and hidden from public view.<sup>11</sup>

The 1907 and 1913 Acts were codified in the 1938 California Elections Code.<sup>12</sup> In 1949 the Legislature eliminated the expenditure ceilings which had been in effect since 1893. No case seeking to enforce these limits had been brought in over 50 years and by 1949 the limits had become ridiculously low.<sup>13</sup> In 1953 an Assembly subcommittee concluded that California's election law was "so defective that it is worthless as an instrument for achieving fair and honest elections in this state."<sup>14</sup> One study reported that one-third of losing candidates had failed to file the required disclosure statements.<sup>15</sup>

### **C. Artie Samish Uses Contributions to Influence the Legislature: 1923 to 1949**

Following the Progressive era the power vacuum caused by weakened political parties was filled by lobbyists—notably Artie Samish, whose power became so great that he was able to claim without exaggeration that he was the "secret boss" of California politics.<sup>16</sup> Samish started as a page boy in 1920 and quickly saw that some legislators could be persuaded more easily with campaign contributions than with rhetoric. Rather than marshalling arguments before legislative committees, he sought to control the committees themselves by bankrolling legislators' campaigns and then putting the legislators in key committee positions. While most California lobbyists represented one or two clients, Samish represented a gamut of interests including liquor, beer, horse racing, motor carrier, theatrical, tobacco, railroad, banking, manufacturing and various gambling concerns. For years, few outside the State Capitol were aware of Samish's activities and power.

Samish exerted power because he gave candidates campaign funds, entered directly into the management of their campaigns and mobilized support for them from his clients. State salaries were inadequate and paid at inconvenient intervals, so Samish gave legislators cash and paid their living expenses. He also maintained headquarters at the Senator Hotel where he provided legislators with food and drink. Samish boasted, "I'm the governor of the legislature. To hell with the governor of the state."<sup>17</sup> Governor Earl Warren later admitted that "on matters that affect his clients, Artie unquestionably has more power than the governor."<sup>18</sup>

In 1938, legislators, prodded by demands from political leaders of both parties, investigated Samish's activities and issued a report decrying the worst lobbying abuses. The Philbrick Report, as it came to be known, indicated that between 1935 and 1938 Samish had received almost half a million dollars for his labors.<sup>19</sup> Although the Philbrick Report described Samish as a one-man Tammany Hall, the investigators discovered to their dismay that Samish's operations were legal. No indictments materialized.

Samish came to widespread public attention in August 1949 with the publication of articles in *Collier's* and the *Reader's Digest*. Written by Lester Velie, the articles called Samish "The Secret Boss of California." A photograph accompanying one of the articles, for which

Samish had brazenly posed, showed Samish manipulating a dummy named "Mr. Legislature." Velie stated that Samish had been instrumental in selecting most of the Assembly Speakers during the previous decade and, as a result, had controlled those Assembly committee chairmanships in which he was interested. During one campaign for the State Assembly Speakership, Samish was reported to have awarded the post to Sam L. Collins of Orange County as a consolation prize after deciding not to support him for Attorney General.

The downfall of Samish began in 1949 with Velie's articles. Samish's name was removed permanently from the lobbyists' roster and he was banned "forever" from appearing before the Legislature.<sup>20</sup> Although never convicted of a crime for his lobbying, he later spent time in prison for income tax evasion. He was never again a major force in California politics.

#### **D. The Legislature Passes Weak Laws Which Are Unenforced or Declared Unconstitutional: 1949 to 1970**

Following publication of the Velie articles, Governor Earl Warren called the Legislature into special session and induced it to pass the 1949 Collier Act. The law required lobbyists to register and to report expenditures of funds during legislative sessions, but it gave administrative power to a legislative committee rather than to an independent agency.<sup>21</sup>

The 1950s and 1960s saw little campaign finance legislation or enforcement activity. In 1955 the Legislature enacted a campaign finance bill to establish separate filing requirements for primary and general elections and to extend reporting requirements to campaign committees.<sup>22</sup> Progress was slow during the 1950s and 1960s because of general indifference to, and the ineffectiveness of, existing campaign reporting statutes. This politically lax environment provided the impetus for the second major wave of reform that later followed in the 1970s.

The 1960s saw the rise to power of Jesse Unruh, a Southern California Assemblyman who understood the importance of money in politics. As Speaker of the Assembly from 1961-1969, Unruh strengthened the position of Speaker and increased lobbyists' contributions directly to individual legislators. He developed and nurtured loyalty to the Speaker by reminding legislators that he was the person directing the contributions to them.

In 1969 Unruh authored and guided through the Legislature a sweeping conflict of interest disclosure bill. Every public official and candidate for state and local office was required to disclose any investments of over \$10,000 in real estate or businesses anywhere in California, including investments by immediate family members.<sup>23</sup> The Unruh disclosure law was declared unconstitutional by the California Supreme Court in March, 1970. The court held that the law was an "overbroad intrusion into the right of individual privacy" and an invalid restriction on "the right to seek or hold public office or employment."<sup>24</sup>

#### **E. The Legislature Is Forced to Renew Its Interest in Reform: 1971 to 1974**

By 1970 there was little actual disclosure of campaign contributions in California. While the existing campaign law on its face seemed to require complete disclosure, its purposes were undermined by the failure of enforcement agencies to take it seriously.

Pre-election disclosure statements by candidates were also meaningless. The law only required candidates to file one pre-election contribution statement twenty-five days before the election. Since candidates received most of their money in the last few weeks of the campaign, these statements generally contained little or no meaningful information. A 1958 Attorney General's opinion concluded that contributions of \$500 or less did not need to be disclosed before the election.<sup>25</sup> Contributors giving over \$500 were disclosed by name only. Contributors' addresses, occupations and employers were not revealed and the true identity of the contributor was often impossible to trace. In some instances contributions were listed from "Mr. Anonymous" or by cashier check number. Candidates were not required to disclose their expenditures before the election.

The Secretary of State's office merely filed campaign disclosure statements without examining them for anything other than a signature at the bottom of the first page. Voters thus had virtually no useful information on candidates' receipts and expenditures to help them cast their ballots.

The lack of enforcement of disclosure laws ended in 1971. Edmund G. Brown, Jr., the new Secretary of State, insisted that his staff examine all campaign statements to determine whether they complied with the disclosure laws. In 1972, over the strenuous objections of key legislators, he redesigned the campaign disclosure forms to make them easier to read. Brown also filed a major lawsuit against three oil companies and charged them with failure to disclose their contributions to the opponents of a 1970 ballot measure campaign. The California Supreme Court unanimously upheld Brown's right to enforce the disclosure laws.<sup>26</sup>

In 1971 the California Legislature began to consider various aspects of reform legislation. Most of its attention centered on campaign disclosure. Bills were extensively debated but none were enacted. After the Legislature rejected disclosure proposals in early 1973, several organizations drafted a tough initiative ("The Political Reform Act of 1974") which proposed to strengthen campaign reporting significantly, impose expenditure limitations for statewide races, regulate conflicts of interest, require reporting by lobbyists and establish a non-partisan commission to enforce and interpret the law. By August of 1973 this measure was circulated as a proposed ballot measure. Only then did the Legislature act. It passed the Waxman-Dymally Campaign Disclosure Act, a comprehensive campaign disclosure bill, and the Moscone Governmental Conflict of Interest Act, a measure requiring both disclosure of assets and disqualification for conflicts.<sup>27</sup> Many of these bills' provisions were taken directly from the proposed initiative.

Despite the last-minute passage of the Waxman-Dymally and Moscone laws, the Political Reform Act initiative appeared as Proposition 9 on the June 1974 ballot and easily passed by a 70% popular vote.<sup>28</sup> Some of its proponents assumed that it would only be the first step. They believed the required disclosures would so shock the public that it would demand tougher measures such as public financing and limitations on contributions and expenditures.

Other supporters of the measure believed only in disclosure and thought its "sunshine" would disinfect the process and shame candidates into receiving and spending less money. They also were confident that special interests would reduce their financial contributions to lawmakers in response to public scrutiny.

None of the assumptions proved to be correct. The required disclosures shocked many but not sufficiently to induce the Legislature to adopt additional reforms. The disclosures also did not reduce large contributions or discourage candidates from making large campaign expenditures. Contributions and expenditures rose sharply after 1974 and continue to rise today.

## **F. New Campaign Reform Proposals Are Considered: 1975 to 1984**

Once the Political Reform Act was adopted, attention shifted to the harder questions of contribution limits, expenditure ceilings and public financing. In 1975 legislation introduced in the State Senate provided for public financing of legislative campaigns. The measure (S.B. 442) was strongly backed by Senators Beilenson (D-Los Angeles) and Gregorio (D-San Mateo), but was defeated on the Senate floor after Common Cause opposed it for not also including public financing of primary elections.

The defeat of this bill foreshadowed a temporary decline in efforts for campaign reform. Then, in 1982, Assembly Speaker Willie Brown announced his support for comprehensive campaign reform which called for public financing of legislative races. The Assembly passed a far-reaching reform measure (A.B. 3178) by Assemblyman Richard Alatorre (D-Los Angeles) but it died after receiving only one vote in its first Senate committee hearing.



### **1. *The Vasconcellos-Lockyer Bills***

Following that hearing, the legislative leadership of both parties in both houses instructed their staffs to develop a comprehensive bipartisan approach to the campaign finance problem. The resulting bills were introduced by Assemblyman John Vasconcellos (D-San Jose) as A.B. 12 and by Senator Bill Lockyer (D-Alameda) as S.B. 87. The bills contained contribution limits, expenditure ceilings for primary and general elections and partial public financing financed by a tax checkoff.

Both bills were strongly backed by the Democratic leadership and by individual Republican members. After they passed their first floor votes in 1983, A.B. 12 and S.B. 87 were sent to a conference committee in late 1983 for testimony and compromise acceptable to all participants.

### **2. *The Houston-Post Initiative***

After the Legislature adjourned its 1983 session, Tom Houston, former Chairman of the Fair Political Practices Commission, in collaboration with A. Alan Post, the respected former Legislative Analyst, drafted and began to circulate two initiatives.<sup>29</sup> The first was a comprehensive initiative including expenditure limitations, public financing and contribution limitations. The second was a scaled-down alternative version containing only contribution limitations. Houston and Post withdrew their initiatives when they were unable to raise enough money to pay for professional petition signature gatherers.

### **3. *The Ross Johnson Limitations Initiative—Proposition 40***

In 1983 Ross Johnson, a conservative Republican Assemblyman from Orange County, introduced a bill (A.B. 1751) which would have limited contributions and expenditures and provided public matching funds. When a Senate committee voted against his bill, Johnson vowed to amend the campaign finance system through the initiative process. He borrowed money from constituents, personally contributed \$58,000 from the sale of his house and lent the initiative campaign \$100,000 from his Assembly campaign funds. He hired F.G. Kimball & Company, Inc., a signature gathering specialist, to acquire the necessary signatures.

In May 1984 Johnson startled California's political world by submitting 500,000 signatures to the Secretary of State to qualify his initiative. The Johnson measure became Proposition 40 on the November 1984 ballot. (See Appendix F, "Analysis of Prop. 40.")

Proposition 40 would have limited contributions from individuals, political action committees and political parties to \$1,000 each. Corporations and labor unions would have been barred from making any contributions. Candidates would have been permitted to collect funds for only one office and prohibited from using any surplus funds collected before the initiative went into effect for future campaigns. The initiative would also have created a \$1 million public fund to give matching funds to the opponents of candidates using personal wealth in their campaigns.<sup>30</sup>

### **4. *Response to Proposition 40***

In August 1984 the Fair Political Practices Commission issued a 400-page report on the Johnson Initiative. It concluded that if the initiative had been in effect in 1982, it would have reduced legislative contributions by 64% (from \$40 million to less than \$15 million). The report predicted the initiative would significantly favor incumbents and harm challengers.<sup>31</sup>

In the last week of the legislative session the Democratic legislative leadership renewed its interest in the quiescent Vasconcellos-Lockyer bills. The Legislature amended the Lockyer bill (S.B. 87) to make it compatible with the Johnson measure and provided that it would become effective only if Proposition 40 were adopted by the public. S.B. 87 was sent to the Governor's office by a bare majority with little Republican support. Governor Deukmejian vetoed it. The Governor cited three reasons: taxpayers' funds should not be used to finance legislative cam-

paigns, the linkage of S.B. 87 to the passage of Proposition 40 had not been adequately disclosed to the public and legislative committees had not sufficiently reviewed the merits of such a sweeping proposal.

### **5. The Proposition 40 Defeat**

Proposition 40 lost overwhelmingly with only 34% of the voters favoring it. The reasons given for its loss were varied. Some political observers felt the public financing aspect of the measure was the prime factor. Opponents of Proposition 40 had emphasized this element in their campaign. They spent over \$1 million on billboards and television ads arguing that taxpayers' funds should not be spent on campaigns. This claim was somewhat deceptive since public financing was a relatively insignificant aspect of the measure.

Public financing was not, however, the sole reason for Proposition 40's defeat. Indeed, many supporters of public financing, such as Common Cause and the McClatchy papers, strongly opposed Proposition 40. A careful analysis suggests there were additional reasons for the measure's loss.

Proposition 40 was almost completely unknown to most voters. Less than a week before the election, over 50% of the public had neither heard of it nor knew anything about it.<sup>32</sup> California voters regularly reject propositions they do not understand. There was no campaign for Proposition 40, and no money was spent to explain its provisions to the voters. The measure's author appeared to be its only supporter. Assemblyman Johnson obtained little organizational support and few endorsements from his legislative colleagues.

The vast majority of newspapers editorialized against Proposition 40, including the *Los Angeles Times*, the *Sacramento Bee* and the *San Jose Mercury News*. Some newspapers published voter guides which opposed it. Organizations spanning the political spectrum opposed the measure, including Common Cause, the state Chamber of Commerce, the California Taxpayers Association and labor organizations. Political leaders of both parties, including Governor George Deukmejian and Assembly Speaker Willie Brown, also opposed Proposition 40. Slate mailers for both the Democratic and Republican Party organizations urged a "no" vote.

## **G. California Law Today: Disclosure and a Limited Number of Other Requirements Are Imposed on Political Campaigns**

Unlike many other states which limit contributions, restrict expenditures or supply candidates with limited public financing, California today is primarily a disclosure state. Candidates, committees and major contributors must publicly disclose their contributions and expenditures. Although California does not limit contributions to or expenditures by state candidates, it has adopted several laws which affect the flow of money to candidates and campaigns.

### **1. Disclosure and the Political Reform Act of 1974**

The Political Reform Act of 1974 remains in effect today. Now basically a disclosure law, it requires state and local campaigns to list all contributions and expenditures of \$100 or more. Contributors must be identified by name, address, occupation and employer, and the exact amount of the contribution must be listed. Disclosure statements must be filed six times in an election year and twice in an off-election year. The law also has extensive provisions prohibiting cash and anonymous contributions and requiring disclosure of late contributions (a contribution of \$1,000 or more made in the last days before the election), independent expenditures and the contributions of major donors (who give \$10,000 or more in a calendar year).<sup>33</sup>

The measure's enforcement and administrative mechanisms are equally important. By law, campaign statements must be closely examined by the officials who are designated to receive them. About half of the legislative candidates' statements are audited by the Franchise



Tax Board's staff. This audit includes a review of all campaign records maintained by the candidate's treasurer. Candidates and committees can be fined for late filings, or taken to court or administrative hearing for more serious violations.

The Fair Political Practices Commission has generated over \$300,000 in administrative fines over its nine-year existence. Some of the larger actions include a \$36,000 fine assessed against Senator Bill Greene (D-Los Angeles) for failure to list large contributions and expenditures, a \$25,000 fine against the Republican State Central Committee for failure to disclose nearly \$400,000 in campaign contributions and a \$25,000 fine against the United Farm Workers for failure to file campaign statements detailing nearly \$700,000 worth of contributions.<sup>34</sup>

Some parts of the 1974 Political Reform Act were declared unconstitutional. The California Supreme Court, relying on the U.S. Supreme Court decision in *Buckley v. Valeo*,<sup>35</sup> invalidated provisions limiting expenditures by statewide candidates and ballot measure committees and prohibiting lobbyists from making or arranging contributions to state candidates.<sup>36</sup>

Most observers believe that the campaign disclosure provisions of the Political Reform Act have worked well. Almost all candidates and committees file their campaign disclosure statements on time and few have been charged with deliberately hiding sources of money. But for many political observers disclosure is not enough. Daniel Lowenstein noted after his term as the first Chairman of the FPPC in 1979:

While the disclosure objectives of the Act have been substantially accomplished, the underlying problems—particularly in the area of campaign finance—have gotten even worse in the last several years. Disclosure has served both to ameliorate some of the worst symptoms of the campaign financing illness and to refine greatly our diagnosis, but there is no cure in sight.<sup>37</sup>

## **2. Bribery, Personal Use of Funds, Lobbying and Conflicts of Interest**

California's basic bribery law is contained in the California Constitution (art. IV, §15) which states: "A person who seeks to influence the vote or action of a member of the Legislature in the member's legislative capacity by bribery, promise of reward, intimidation, or other dishonest means, or a member of the Legislature so influenced, is guilty of a felony." A Penal Code section clarifies the definition of bribery and provides for a prison sentence for up to four years upon conviction.<sup>38</sup> No member of the Legislature in recent history has been charged with a violation of this section of the Constitution.

In 1981 the Legislature reluctantly enacted a law which restricted the use of campaign money. This law prohibits candidates from spending campaign contributions for anything other than political or governmental purposes and thus prohibits the personal use of campaign money. The law also prevents government officials from taking campaign money with them when they leave office. Campaign money must be returned to contributors, given to charity, kept for future campaigns or transferred to other candidates or ballot measure committees.<sup>39</sup>

The 1974 Political Reform Act also prohibits lobbyists from making gifts of more than \$10 a month to any official they lobby.<sup>40</sup> At one time lobbyists were prohibited from making any campaign contributions to state officials, but this restriction was declared unconstitutional by the California Supreme Court in 1979.<sup>41</sup> The Political Reform Act also requires lobbyists and lobbyists' employers to file quarterly disclosure statements listing expenditures made in lobbying either the Legislature or state agencies.<sup>42</sup>

The conflict of interest provisions of the Political Reform Act require state and local officials to file annual disclosure statements listing all gifts, real property located in the official's jurisdiction, investments in companies doing business within the official's jurisdiction and income from sources located in the official's jurisdiction.<sup>43</sup> The disclosure provisions were drafted narrowly to conform with an earlier court ruling which struck down the Unruh Act. The Act prohibits these officials from making decisions which could affect their personal economic interests.<sup>44</sup> In 1982 the Legislature strengthened the conflict of interest provisions by

prohibiting non-elected officials from participating in any decisions affecting those campaign contributors who had given them \$250 or more.<sup>45</sup> The Legislature passed this provision only after being assured that it would not apply to legislators.

### **3. *Libel, Code of Ethics and Mail Disclosures***

In June 1984 California voters approved a proposed constitutional amendment which would strip elected officials of their office if a court found that they had made libelous campaign statements which contributed to their election.<sup>46</sup> This proposal was dubbed "Tell a Lie, Lose Your Office" by its author Assemblyman Art Agnos (D-San Francisco). The constitutional amendment was designed to curtail "dirty" campaign tactics. This provision has not yet been reviewed by the courts.

Another provision passed by the California Legislature in 1983 contains a code of ethics which candidates may voluntarily sign at the time they file for office.<sup>47</sup> There is no information on how many candidates in the 1984 election signed this pledge. The Secretary of State's office reports that legislative candidates file these statements with county clerks who may or may not forward them to Sacramento. The office of Senator Boatwright (D-Contra Costa), the legislator who carried the proposal, also did not know how many candidates had signed the pledge but noted that Boatwright's general election opponent had not signed it.

Campaigns which send out more than 200 pieces of mail are required by the Political Reform Act to identify the sender on the outside and inside of the mailing.<sup>48</sup> Although this provision has not been challenged in the courts, a similar provision in the Elections Code which required all campaign literature to be so identified was invalidated by the California courts.<sup>49</sup>

### **4. *Political Parties***

Under the Elections Code, political parties are prohibited from making endorsements in the primary election.<sup>50</sup> A recent federal district court opinion has declared this section unconstitutional following a challenge by the Committee for Party Renewal.<sup>51</sup> This decision has been appealed to the federal court of appeals where a decision is pending.

### **5. *Ballot Measure Committees***

Ballot measure committees are required to file extensive disclosure reports and must maintain in trust all money collected for that particular ballot measure. Committees must spend their campaign money on the ballot measure for which it was raised and cannot transfer it to candidates or other ballot measure campaigns.<sup>52</sup>

### **6. *Tax Add-Ons and Deductions***

In 1982 the California Legislature became the 20th state to permit taxpayers to use their tax returns as a means of financing campaigns or political parties. The measure, sponsored by Senator Robert Presley (D-Riverside), allows taxpayers to add on to their tax bills an amount ranging from \$1 to \$25 for a designated political party.<sup>53</sup> Approximately 1% of California taxpayers filing returns have earmarked contributions for the political parties—a response rate comparable to that in other states.

California also permits deductions on state tax returns for political contributions up to \$100 per person or \$200 a married couple.<sup>54</sup> This law has been in effect several years and costs the state treasury about \$2 million annually.

## NOTES

1. The Act was entitled, "An act to prohibit 'Piece Clubs' and to prevent extortion from candidates for public office," Cal. Stats. 1877-1878, ch. 191, p. 236. This law was partly superseded by the 1893 Purity of Elections Act, Cal. Stats. 1893, ch. 16, p. 12, but not expressly repealed until adoption of the 1939 Elections Code, Cal. Stats. 1939, ch. 26, p. 49, at 317.
2. 46 & 47 Vict., ch. 51 (1883).
3. Cal. Stats. 1893, ch. 16, p. 12.
4. *People v. Cavanaugh*, 112 Cal. 674 (1896).
5. Cal. Stats. 1897, ch. 106, p. 115. This act limited primary election expenditures and required candidates to file statements of contributions and expenditures. Failure to do so would result in forfeiture of the nomination.
6. *Spier v. Baker*, 120 Cal. 370 (1898).
7. *Bradley v. Clark*, 133 Cal. 196 (1901).
8. *Land v. Clark*, 132 Cal. 673 (1901).
9. Cal. Stats. 1907, ch. 350, p. 671, §8.
10. Cal. Stats. 1913, ch. 690, p. 1379.
11. *See generally*, Comment, *Campaign Contributions and Expenditures in California*, 41 CALIF. L. REV. 300 (1953).
12. *See* CAL. ELEC. CODE §§4500-4949 (1938).
13. *See* Cal. Stats. 1949, ch. 192, p. 425; WINSTON W. CROUCH AND DEAN F. MCHENRY, CALIFORNIA GOVERNMENT: POLITICS AND ADMINISTRATION 65 (1949).
14. Comment, *supra* note 11, at 306; *see also* Assembly Daily Journal 539-41 (Jan. 14, 1953); CROUCH AND MCHENRY, *supra* note 13, at 63.
15. Comment, *supra* note 11, at 306 n.60.
16. For background on Artie Samish, *see* ARTIE SAMISH AND BOB THOMAS, THE SECRET BOSS OF CALIFORNIA: THE LIFE AND HIGH TIMES OF ART SAMISH (Crown 1971); HERBERT R. PHILBRICK, LEGISLATIVE INVESTIGATIVE REPORT (1939); *Hearings Held by Assembly Committee on Governmental Efficiency and Economy on Investigation of Arthur H. Samish* (1949); Lester Velie, *The Secret Boss of California*, Collier's, Aug. 13 and Aug. 20, 1949; 95 Cong. Rec. 11815 (Aug. 16, 1949); Lester Velie, *Boss of California*, Reader's Digest, Nov. 1949, p. 103; Earl Behrens, *Artie Samish Inquiry Flops*, San Francisco Chronicle, Nov. 10, 1949; Stan Delaplane, *Samish Unagitated by Bar*, San Francisco Chronicle, Dec. 22, 1949.
17. *Quoted in* DAVID FARRELLY AND IVAN HINDERAKER, POLITICS IN CALIFORNIA: A BOOK OF READINGS 42 (1951).
18. *Quoted in* Lester Velie, *Boss of California*, Reader's Digest, Nov. 1949, p. 103, 104-05. One industry-client reportedly gave Samish a \$97,000 political fund which he was "very liberal" in spending and for which he was not required to provide an accounting. Comment, *California's New Lobby Control Act*, 38 CALIF. L. REV. 478, 482 n.17 (1950).
19. HERBERT R. PHILBRICK, LEGISLATIVE INVESTIGATIVE REPORT (California State Printing Office, 1939).
20. S. Con. Res. 11, Cal. Stats. Extra Sess. 1949, ch. 33, p. 248.
21. Cal. Stats. Extra Sess. 1949, ch. 4, p. 4 (*repealed* June 4, 1974).
22. Cal. Stats. 1955, ch. 1640, p. 2953.
23. CAL. GOV'T CODE §§3600-3704 (1969).
24. *Carmel-by-the-Sea v. Young*, 2 Cal. 3d 259, 266 (1970) (requiring a San Diego official to disclose property interests in San Francisco, for example, was an excessive invasion of privacy).
25. 32 Op. Att'y Gen. 88 (1958).
26. *Brown v. Superior Court*, 5 Cal. 3d 509 (1971).
27. CAL. ELEC. CODE §§11500-11622 (Waxman-Dymally Campaign Disclosure Act) (*repealed* 1981), and CAL. GOV'T CODE §§3600-3802 (Moscone Governmental Conflict of Interest Act) (*repealed* 1981).
28. SECRETARY OF STATE, STATEMENT OF VOTE, PRIMARY ELECTION, June 4, 1974, at 40.
29. Houston, while chairman of the Fair Political Practices Commission, had been an outspoken proponent of contribution limitations, in both the election year and the off year. In 1982, under Houston's Chairmanship, the FPPC sponsored three pieces of legislation: one bill limited campaign contributions in any election to \$500 an individual and \$1,500 a PAC, another limited off year contributions to \$100 an individual and \$250 a PAC, and a third bill prohibited money from being solicited or received in any state building including the Capitol. The first two bills were quickly killed in their first committee hearing. The third bill, after being substantially watered down only to prohibit contributions being received in any state building, was enacted by the Legislature.

30. TEXT OF PROPOSED LAW — PROPOSITION 40, CALIFORNIA BALLOT PAMPHLET, 1984 GENERAL ELECTION 59, 108-110.
31. FPPC, PROPOSITION 40: THE JOHNSON CAMPAIGN FINANCE INITIATIVE (Aug. 27, 1984).
32. Mark S. Warnick, *Awareness of Initiatives Up, but the Jury's Still Out*, Los Angeles Herald Examiner, Nov. 3, 1984.
33. CAL. GOV'T CODE §§84100-84307 (West 1976 & Supp. 1985).
34. For other examples of enforcement actions of the FPPC, see FPPC, CALIFORNIA'S FAIR POLITICAL PRACTICES COMMISSION: THE FIRST FOUR YEARS (Feb. 1979) and FPPC, CALIFORNIA'S FAIR POLITICAL PRACTICES COMMISSION: ACTIVITIES & ACCOMPLISHMENTS, 1979-1982 (Feb. 1983).
35. 424 U.S. 1 (1976).
36. Citizens for Jobs and Energy v. FPPC, 16 Cal. 3d 671 (1976); FPPC v. Superior Court, 25 Cal. 3d 33 (1979).
37. Daniel Lowenstein, *Forecast from Lowenstein: Campaign-Finance Scandals Ahead*, California Journal, Mar. 1979, at 103.
38. CAL. PENAL CODE §86 (West Supp. 1985).
39. CAL. ELEC. CODE §§12400-12407 (West Supp. 1985).
40. CAL. GOV'T CODE §§86203 (West 1976).
41. CAL. GOV'T CODE §86202 (West 1976), declared unconstitutional by FPPC v. Superior Court, 25 Cal. 3d 33 (1979), and *repealed* 1984.
42. CAL. GOV'T CODE §§86107-86109 (West Supp. 1985).
43. CAL. GOV'T CODE §§87200-87208 (West 1976 & Supp. 1985).
44. CAL. GOV'T CODE §§87100-87103.5 (West 1976 & Supp. 1985).
45. CAL. GOV'T CODE §§84308 (West Supp. 1985).
46. CAL. CONST. art. VII, §10.
47. CAL. ELEC. CODE §§12520-12526 (West Supp. 1985).
48. CAL. GOV'T CODE §§84305 (West Supp. 1985).
49. CAL. ELEC. CODE §29410 (West 1977), declared unconstitutional by Schuster v. Municipal Court, 109 Cal. App. 3d 887 (1980), *renumbered and amended*, 1983.
50. CAL. ELEC. CODE §11702 (West 1976).
51. San Francisco County Democratic Central Comm. v. March Fong Eu, No. 83-5599 (N.D. Cal. 1983), *stay granted*, No. 84-1851 (Apr. 24, 1984).
52. CAL. ELEC. CODE §29795 (West 1977).
53. CAL. REV. & TAX. CODE §18720 (West Supp. 1985).
54. CAL. REV. & TAX. CODE §17245 (West Supp. 1985).



## CHAPTER 10

# Campaign Finance Laws in Other States: The Laboratories of Reform

*[T]o introduce public funds into the campaign-finance mix, the experiment ought to begin at exactly the opposite end of the ballot from the Presidential race... at the level of the state legislature, where candidates today typically have no alternative but to go to special-interest groups for whatever money they need.*

— David Broder, *Political Columnist*<sup>1</sup>

**A**lthough California has frequently been called the leading state in campaign reform legislation, this reputation is now vastly diminished. California adopted a landmark contribution disclosure law in 1974. (See Chapter 9, “California History.”) Since then, many other states have adopted campaign finance laws which easily surpass California’s in imagination and breadth.

Supreme Court Justice Louis Brandeis once called the states “the laboratories of reform.” The wide array of campaign finance approaches taken by other states is indeed dazzling. A close study of these experiences offers a rich source of data against which proposed California legislation can be compared.

### **A. Other States Have Experimented with a Wide Variety of Reform Measures**

California is now in a minority of states which limit neither campaign contributions nor expenditures. In contrast to California’s disclosure-only regulations, over 70% of the other states either prohibit certain contributions (from corporations, labor unions or regulated industries), limit the amounts of contributions or impose expenditure ceilings in exchange for voluntarily accepted partial public financing. (See Table 10.2 at end of chapter for citations to campaign finance laws of other states.)



Controls on contributions are the most widespread reform. Thirty-five out of 49 of the other states limit or prohibit contributions in some manner. (See Table 10.3 at end of chapter.) For example:

- Almost one-half of the states (23) limit the size of contributions by individuals, with limitations ranging from \$250 to \$5,000.
- Twenty-two states prohibit corporate contributions. Another 13 limit the size of corporate contributions.
- Nine states prohibit labor contributions. Another 17 limit the size of labor contributions.
- Seventeen states limit PAC contributions.
- One state (Montana) places an aggregate limit on the total amount of money a candidate can receive from all PACs combined.
- Seventeen states limit or prohibit transfers of campaign funds from one legislative candidate to another.
- One state (Wisconsin) limits the amount of money a candidate can receive in aggregate from the political parties and legislative caucuses.
- Two states (Minnesota and Texas) limit off-election year contributions.

A number of states have also adopted various forms of public financing, some in combination with expenditure ceilings. For example:

- Eleven states offer limited public financing funded by the government. One municipality (the city of Seattle) also provides public financing for local campaigns. Six states—including California—allow taxpayers to add to their taxes money for candidates or political parties.
- Seven states make direct payments to state candidates.
- Ten states make payments directly to the political parties.
- Four states allow taxpayers to claim a tax credit (directly reducing taxes) for political contributions.

Some states—Maryland, Oregon and Oklahoma—have abandoned their public financing reforms. Others, such as Minnesota and New Jersey, have substantially altered or expanded their laws to make them more effective and acceptable to candidates. The city of Seattle, the only municipality to enact a public financing law, allowed it to lapse but then reinstated and strengthened it two years later.

The benefits of studying other states' campaign finance laws are threefold. First, the states have experimented with a significant variety of reforms. Their collective experience is a rich source of alternative approaches for California. Second, some state reforms have been in effect for a number of years. Research is available to assess their impact on state elections. Third, some states have amended their laws as they have gained experience. These amendments may enable California to avoid other states' mistakes.

Despite the value of other states' experience, two notes of caution must be introduced in drawing parallels to California. First, California has the largest legislative districts of any state and the average cost of its elections per legislative seat far outstrips that of all other states. (See Chapter 1, "Skyrocketing Costs.") The *San Francisco Examiner* in 1982 found that legislative candidates in California spent twice as much as the combined total of candidates in four other states for which expenditure data was available—New Jersey, Florida, Michigan and Ohio. In Ohio, which has half the population of California, legislative candidates spent \$3.5 million in 1980, only 10% of the \$35.8 million spent by California's legislative candidates.<sup>2</sup>

A second reason why other states' experiences must be analogized to California with care is that they often have not compiled sufficient data to make detailed comparisons possible. Only 20 states publish any summaries of their disclosure statements.<sup>3</sup> No state provides as

extensive reporting summaries and analyses as does the California Fair Political Practices Commission which has produced voluminous and insightful data since 1976. Alaska, Michigan, Minnesota, New Jersey, Washington and Wisconsin are exceptions in releasing comprehensive data on their state elections.

The New York State Board of Elections, for example, does not prepare any summary of legislative expenditures or contributions. Until July 1984 it could not even state what the contribution limits were for each legislative race since the limits varied depending on the number of voters in each district. Similarly, Virginia's State Board of Elections does not publish summaries nor even allow non-registered voters (such as out-of-state campaign finance researchers) to examine campaign statements.<sup>4</sup>

An incident in Pennsylvania provides a further example of the frustrations researchers face when attempting to examine state records. Pennsylvania Common Cause wanted to determine how much money strip mining operations had contributed to the 1982 campaign of Governor Richard Thornburgh. After months of examining the raw campaign statements, Common Cause was unable to come to any conclusion because the Thornburgh campaign committee failed to itemize occupations for half his contributors. The state agency in charge of the disclosure report did not ask the campaign committee for the missing data because it lacked resources for follow-up activities. Pennsylvania's campaign unit is managed by one employee who shares a clerk with another department.<sup>5</sup>

Data from other states is often incomplete. Furthermore, existing campaign reports and laws are not structured in a uniform manner. For this reason Stanley Foster Reed, editor and publisher of *Campaigns & Elections*, has called for a Uniform Campaign Finance Code applicable to all states regulating campaign contributions and expenditures.<sup>6</sup>

Despite the lack of comprehensive data and uniform codes, sufficient information exists from other states to extract useful lessons for California. Like California, other states are witnessing explosive increases in campaign spending. Political experts in these states are also decrying the rapidly increasing costs of running for office. Spending by candidates for the Washington State Legislature, for example, has increased from \$1.6 million in 1974 to \$5.6 million in 1982, an increase of more than 350%. Spending for legislative races in Washington doubled between 1978 and 1982, just as it did in California.<sup>7</sup> Legislative expenditures in Minnesota doubled between 1976 and 1980, although the total \$4.4 million spent was small compared to California.<sup>8</sup>

## **B. Contribution Controls Are the Most Prevalent Type of Reform**

Thirty-five states have adopted some form of contribution limitations or prohibitions. (See Table 10.3 at end of chapter for a summary of other states' contribution limitations.) No state exactly parallels the federal law, which limits individual contributions to \$1,000 and PAC contributions to \$5,000 while prohibiting corporate and labor union contributions altogether. Vermont, with a population of 500,000, comes the closest. Individuals are limited to contributions of \$1,000 per candidate per election, and corporations, labor unions and PACs are limited to \$5,000 per candidate per election. But for Vermont these limitations are so high they have no impact on legislative races. Deputy Secretary of State of Vermont Paul Gillies indicates that the most expensive legislative races in his state cost no more than \$5,000. Gillies predicts that the Legislature may attempt to reduce the maximum amount that can be contributed to \$250.<sup>9</sup>

### **1. Limitations on Individual Contributions**

Twenty-three states limit the amount of individual contributions to legislative candidates. Ten of the states limit individual contributions to \$1,000 per candidate. The lowest limitation for contributions to legislative candidates is \$250 (South Dakota) and the highest is \$5,000 (New Hampshire).

Seven states permit contributions of over \$1,000 while eight states restrict contributions to under \$1,000. Several states distinguish between contributions to candidates running for the upper and lower houses of the Legislature. Contributions to candidates for the Assembly or House are about half the contributions to candidates for the Senate. Although no pattern emerges to indicate that more populous states have higher limitations, the most typical contribution limit is \$1,000.

Most of the states allow contributors to donate up to the limits in both the primary and general elections. A few states impose limitations for the calendar year. Two states have a contribution limitation for the whole election period covering both the primary and general elections—a two-year period for lower house candidates and a four-year period for upper house candidates.

Massachusetts is the only state which has a separate contribution limit for minors. While persons 18 years or over can make contributions of up to \$1,000 per candidate, minors are limited to \$25 per candidate. In Hawaii, contributions by minors are attributed to their parents. In Oklahoma, contributions by all family members are aggregated together to comply with a single contribution limit.

## ***2. Limitations on Total Individual Contributions***

Federal law prohibits an individual from giving more than \$25,000 in contributions to all candidates running for federal office and to all PACs supporting federal candidates. The purpose of this restriction is to prevent wealthy individuals from exerting excessive influence over a large number of candidates and to prohibit these individuals from channeling their money through PACs. Six states follow the federal example and limit total contributions by an individual to all state candidates. Total limits range from a high of \$150,000 per calendar year in New York to a low of \$2,500 per election in Maryland.

## ***3. Prohibitions and Limitations on Corporate Contributions***

The states tend to limit or prohibit corporate contributions to a greater degree than individual contributions. Thirty-five states restrict corporate contributions. Twenty-two flatly prohibit corporations from making contributions to legislative candidates. Thirteen others impose some form of limitations.

Seven of the 13 states which limit corporate contributions impose the same limitations on corporations as they do on individuals. Two states, Maine and Vermont, allow corporations to make larger contributions than individuals. Alternatively, Indiana and New York limit the total amount one corporation can give to all candidates to \$2,000 and \$5,000, respectively.

Only three states limit corporate contributions but do not limit individual contributions. Alabama imposes a \$500 limitation on corporations, Indiana a \$2,000 aggregate limit to all candidates and Mississippi a \$1,000 limit. (Other states prohibit corporate money but do not limit individual giving.)

## ***4. Prohibitions and Limitations on Labor Union Contributions***

Contributions by labor unions are prohibited in nine states and limited in 17 others. Several states which prohibit corporate contributions do not prohibit labor unions from making contributions to a legislative candidate.

In most of the states which prohibit corporate contributions but not union contributions—Michigan, Minnesota, Ohio, West Virginia and Wisconsin—labor may be a sufficiently potent political force to persuade legislators to retain labor union contributions (although some of these states do limit union money). It is unclear why other states such as Iowa, Montana, Oklahoma and Tennessee prohibit corporate contributions and permit labor contributions.

Two states, Kentucky and Massachusetts, limit contributions by individuals to legislative candidates and prohibit contributions by corporations but allow unlimited labor and PAC contributions. These exceptions allow contributors to bypass the contribution limits. William

Sullivan, Deputy Director of the Massachusetts Office of Campaign and Political Finance, points out that Massachusetts contributors do not feel bound by the state's limitations. If contributors have given their limit, they can contribute to labor unions or PACs which can re-transmit that money to candidates.<sup>10</sup>

### **5. Limitations on PAC Contributions**

About a third of the states (17) limit contributions by PACs to legislative candidates. Almost half of the states which limit individual contributions also impose the same limit on contributions by PACs. Six other states permit larger contributions from PACs than from individuals. Most of the states which permit larger PAC contributions than individual contributions also allow larger corporate and labor union contributions.

Connecticut is unique in that it permits corporate PACs to make contributions which are twice as large as labor contributions. Jeff Garfield, Executive Director of the Connecticut State Elections Enforcement Commission, explains that labor unions agreed to this disparity in exchange for permission to raise money from union members through a reverse checkoff mechanism. A union member's dues are automatically sent to the union's political treasury unless the member objects. Corporate PACs must raise their money through an affirmative designation by the corporate employee.<sup>11</sup>

### **6. Limitations on Political Money**

Seventeen states limit contributions of political money. Most of these states impose the same PAC contribution limits on party donations and transfers of contributions from one candidate to another. However, Connecticut and Michigan ban transfers altogether, and Massachusetts limits transfers to \$100. On the other hand, Connecticut and Massachusetts permit unlimited legislative caucus contributions and unlimited party contributions. The Connecticut law is strict about transfers, notes Garfield, because "contributors should know that their money will be used only for the election of the candidate that is given the money."<sup>12</sup>

Hawaii prohibits transfers but allows legislative candidates to buy two tickets to other candidates' fundraisers. Political parties in Hawaii are allowed to make contributions, but through a quirk in the law their contribution limits are actually less than the limits for individuals.

Seventeen states which limit contributions permit unlimited party contributions to legislative candidates. Wisconsin formally recognizes the legislative caucuses (which it calls "legislative campaign committees") as entities which may contribute the same amount as political parties (up to 20% of the expenditure limits).

### **7. Limitations on Off-Election Year Contributions**

Only Minnesota limits off-election year contributions made to legislative candidates. Minnesota imposes a \$300 off year limitation on senatorial candidates and a \$150 off year limitation on candidates for the House.

Mary Ann McCoy, Executive Director of the Minnesota Ethical Practices Board, reports that there are very few questions or comments about off year limitations. These limitations have been in effect for several years and candidates are used to them.<sup>13</sup> Every two years the Minnesota Board issues a report listing total off year contributions to legislative candidates. In 1983 legislators received off year contributions of \$560,000—up from \$449,000 in 1981 and \$336,000 in 1979. This 67% increase between 1979 and 1983 was still less than California's 100% off year increase during the same period.

The Minnesota off year report also indicates that very few candidates receive the maximum contribution of \$150 or \$300. In 1983 only 48% of the \$560,000 was received in contributions over \$50. The highest total amount received by any legislator was \$17,000. The vast majority of individual Minnesota legislators received a total ranging between \$1,000 and



\$7,000 in off year money.<sup>14</sup> By contrast, the average individual Assemblymember in California raised \$81,000 in 1983 off year money and California legislators raised a total of \$14.3 million. (See Chapter 6, "Off Year Fundraising.")

Texas prohibits contributions to legislators, state officeholders or political committees supporting these officials during, and thirty days before, the regular legislative session.<sup>15</sup> The regular legislative session in Texas runs for 120 days in odd-numbered years. According to Gregory Pollock of the Secretary of State's office, there have been no attempts to repeal or amend this law except possibly to extend it to special sessions of the Legislature.<sup>16</sup>

## **C. Eleven States and One City Provide for Partial Public Financing of Elections**

In all, 11 different states currently provide various forms of public financing for legislative and statewide campaigns or political parties. In addition, six other states including California allow taxpayers to "add-on" to their taxes by designating funds to candidates or a specific political party. Through 1981, the latest year in which figures have been totaled, \$25 million in public money has been distributed to candidates and political parties by the states.<sup>17</sup>

Three states — Maryland, Oklahoma and Oregon — have repealed their public financing laws or allowed them to become dormant. Maryland repealed its provisions after its tax surcharge failed to generate enough revenue to fund the program. Oregon allowed its law to sunset in 1981, in part because state legislators became upset that they were not able to control money going to county party organizations. Oklahoma's law is still on the books but has not been implemented because an Attorney General's opinion ruled that several sections were unconstitutional. The city of Seattle adopted a public financing program for its municipal elections in 1978, allowed it to die through the sunset process in 1982, and reinstated it in November 1984 after the election of a new city council.

Of the states currently making expenditures to candidates or political parties, only three — Hawaii, Minnesota and Wisconsin — give public funds directly to legislative candidates. These three states also partially fund candidates running for Governor and other state offices. Four other states — Massachusetts, Michigan, Montana and New Jersey — provide money directly to gubernatorial candidates. Except for Montana, all of the states that pay funds directly to legislative or gubernatorial candidates also impose expenditure limitations on the candidates who accept the public funds. Professor Ruth Jones of Arizona State University has noted:

Those who prefer to fund individual candidates argue that the weaknesses in the current system are at the level of individual candidate competition and access to funds. To encourage more qualified candidates to run for office and to enable them to compete seriously, candidates must have a source of funding that is free of the entrenched networks of parties or special interests. Hence, the public funds represent a source of neutral money available to all candidates for a designated office regardless of personal friendships, organizational ties or political apprenticeships.<sup>18</sup>

Some states disburse public funds to political parties and not candidates. Professor Jones has observed:

Those who champion institutional responsibility and accountability favor allocating public funds to the political parties. Their position is based on the assumption that one of the weaknesses of the current political system is the inability of the political parties to successfully compete with the financial influence of special interest groups or wealthy, independent candidates. If the parties are to regain a prominent role in the electoral process and provide leadership and institutional accountability, supplemental funds must be provided to assure a secure financial base from which the parties can successfully compete.<sup>19</sup>

### **1. Partial Public Financing of Legislative Elections**

The public financing systems in Minnesota and Wisconsin have been extensively studied. Both states have adopted comprehensive expenditure limitations and public financing for

legislative and statewide candidates. The third state which offers public financing in legislative and statewide elections—Hawaii—has not been the subject of many studies since Hawaiian candidates have made little use of the program.

**a. Wisconsin's Public Financing System**

Wisconsin has strong progressive traditions and a moralistic political culture. It has generally been dominated by one party, the Democrats. It has a fairly high voter turnout and ranks 13th in the nation with 53% of its eligible adults voting.<sup>20</sup>

Wisconsin imposes expenditure limitations for both the primary and the general elections if the candidate agrees to accept public financing. Public financing, however, is only available in the general election. In 1978 the Wisconsin Attorney General issued an opinion upholding the constitutionality of this provision.<sup>21</sup> (California's Lockyer-Vasconcellos bill, S.B. 87, which was vetoed by Governor Deukmejian in 1984, also imposed expenditure limitations in both the primary and the general elections, with public financing only available in the general.)

If a Wisconsin State Senate candidate agrees to the expenditure limitations, the candidate is limited to \$18,425 in the primary and \$18,425 in the general election, with a combined limit of \$29,500. State Assembly candidates are limited to \$9,225 in the primary and \$9,225 in the general, with a combined limit of \$14,750.<sup>22</sup> In order to receive public financing in the general election, candidates must receive at least 6% of the total vote in the primary, have an opponent in the general election agree to expenditure limitations and raise at least 10% of their money in contributions under \$100. Once candidates have met the qualifications, they are eligible to receive 45% of their spending limitations in public money, but any non-individual money they raise is deducted from the public funds.<sup>23</sup>

In 1978, 51 legislative candidates agreed to accept public financing. This increased to 89 in 1980 and 129 in 1982.<sup>24</sup> Of the 105 contested legislative races in 1982, both candidates in the general election accepted public money in 41 districts, and one of the candidates accepted it in another 46 contests. In only 18 of the elections did both candidates turn down the money. The 1982 acceptance rate of 61% was a significant increase over the 1978 and 1980 figures.<sup>25</sup>

A study of the 1980 election found that more Democrats than Republicans agreed to the expenditure limitations and public financing, as did a higher percentage of challengers than incumbents.<sup>26</sup> One-third of the candidates in 1980 acknowledged that public financing played an important role in their running for office. The study also noted that the number of candidates seeking office or competing in contested elections has not increased since the public financing provisions were put in place. In fact, the number of candidates running from 1972 through 1980 has declined. The report stressed that reapportionment was an important factor in this decline.<sup>27</sup>

In 1980 Wisconsin legislative candidates received 20% of their funds in public financing, 24% of their funds from political action committees, 8% of their funds from political parties and 47% of their funds from individuals.<sup>28</sup> In contrast, California legislative candidates in 1980 received 14% of their funds from individuals and about 66% of their funds from political action committees and businesses.<sup>29</sup>

Between 1976 and 1982 PAC contributions in Wisconsin dropped from 34% to 20% while the percentage of public money to candidates rose from 8% in 1978 to 25% in 1982.<sup>30</sup> In a 1984 paper written for the Midwest Political Science Association, Elizabeth G. King and David F. Wegge concluded that the Wisconsin public financing law "appears to be having the intended effect and that impact appears to be greater with each election."<sup>31</sup>

**b. Minnesota's Public Financing Law**

Minnesota was one of the first states to enact an expenditure limitation and public financing law. Passed in 1974, the measure was declared unconstitutional for legislative candidates in December of 1977 but was revised in 1978.<sup>32</sup> Thus, the statute has been in effect for the 1978 through 1984 elections.



Unlike Wisconsin, Minnesota's expenditure limitations only apply to the general election. Candidates for Governor, other statewide offices and the Legislature are eligible for the program. Although candidates must indicate early in the year whether or not they wish to accept public money, they do not receive direct public funds until two weeks after the general election. Only those candidates who get 10% or more of the votes in the general election are eligible for public funding. However, public money designated to the parties is distributed after the primary to successful candidates who are running in the November election.<sup>33</sup> Candidates do not receive money based on any match of private funds collected. Rather, they are provided money based on an amount in the party's account divided by the number of candidates eligible to receive funds.

In 1982 the average candidate for the State Senate in Minnesota received \$4,238, about 25% of the average expenditure made by a senatorial candidate. The average lower house candidate received public money amounting to 23% of the \$9,087 average expenditure.<sup>34</sup> In Minnesota the amount a legislative candidate receives in direct public money is dependent upon taxpayers' participation within the candidate's own district.

In 1982, 90% of the candidates agreed to the expenditure limits and accepted public money, a substantial increase from the 66% acceptance rate in 1978. The large increase was directly attributable to the much higher campaign spending level which doubled from 1980 to 1982. Republican candidate acceptance of the program increased substantially in 1982.<sup>35</sup>

Professor Ruth Jones surveyed candidates who ran in 1978 to determine the impact of public financing on the elections. Among the candidates who responded, an overwhelming number (72%) felt that the public financing provisions encouraged more candidates to run for office. A similar percentage (71%) believed that the public financing law reduced the influence of large contributors and 67% believed that the expenditure ceilings did not limit the effectiveness of their campaigns.

A smaller but still significantly large number of candidates felt that the law increased the number of small individual contributors (56%), reduced the influence of special interests (55%) and increased competition (50%). Finally, most candidates agreed that the public financing provisions strengthened rather than weakened the political parties.

Candidates experienced the most difficulty with the law's low expenditure ceilings (which were significantly raised for the 1982 elections). Of those candidates who declined public funding in 1978, 63% cited low expenditure limits as the reason. The Jones study found that the public financing provisions were more significant for legislative losers than for legislative winners in influencing their decisions to run. Most of the winners were incumbents who typically do not need the availability of public financing to encourage them to run for reelection. Only 7% of the Minnesota legislative candidates wanted to abolish the public financing provisions.<sup>36</sup>

A higher percentage of candidates have participated in Minnesota's public financing-expenditure limitations program than in Wisconsin's. Professors King and Wegge attribute this difference to four factors:

- Minnesota does not require candidates to raise a minimum amount in contributions to be eligible for public money. Wisconsin requires candidates to raise a threshold sum.
- Minnesota candidates can receive both PAC contributions and public financing. In Wisconsin each dollar of PAC or non-individual contributions lowers the available public money by an equal amount.
- Minnesota provides public money to candidates who have no opponents. Wisconsin gives no money to candidates who are unopposed.
- Minnesota's expenditure levels are more realistic than Wisconsin's.<sup>37</sup>

### ***c. Hawaii***

The third state to provide public funds to legislative candidates is Hawaii. There has been little analysis of the Hawaiian system since it provides so little money to candidates. Legislative candidates may receive a maximum of \$50 per election. In 1980 only 18 of the 400 eligible candidates received public financing and Hawaii distributed less than \$1,000 of the \$186,000 available in the fund.<sup>38</sup>

However, Hawaii also allows contributors to take tax deductions for contributions only if the candidate receiving the contribution agrees to be bound by the expenditure limitations. Contributors may take up to \$500 in total deductions but no more than \$100 per candidate. According to Jack Gonzales, Executive Director of the Hawaii Campaign Spending Commission, about half the Hawaii legislative candidates accept the expenditure limitations because they want their contributors to qualify for the tax deductions. The tax deductions are far more important to candidates than the small amount of public money they might receive. In fact, the candidates deliberately refuse the public money, even though they abide by the expenditure limitations, because acceptance of public money automatically triggers an expensive audit of the candidate's campaign records.<sup>39</sup>

## ***2. State Disbursements for Statewide Races***

Four states give money directly to candidates for statewide office: Montana, Michigan, New Jersey and Massachusetts. Although this Commission's report does not cover statewide contests, the experiences of other states in implementing their statewide public financing programs offer useful guidance.

### ***a. Montana's Curtailed System of Public Financing***

Candidate financing in Montana was sharply reduced after the state switched from a tax checkoff to a tax add-on system. Taxpayer support dropped substantially once taxpayers had to pay for the program by increasing their own tax liability. In 1980, however, candidates for Governor and Lieutenant Governor received \$61,561 in public money, approximately 12% of all the campaign funds received by these candidates. This money played an important role in the fundraising strategies of the gubernatorial candidates.<sup>40</sup> Montana makes payments to candidates without requiring candidates to accept expenditure limitations.

### ***b. Michigan's Gubernatorial Public Financing***

In contrast to Montana, Michigan provides substantial public funds to its gubernatorial candidates both in the primary and general election. In the 1978 primary election, for example, four Democratic primary candidates received a total of \$1,277,000. In the 1978 general election, the Republican and Democratic nominees each received \$750,000, 75% of the allowed expenditure ceiling of \$1 million.<sup>41</sup>

In order for a candidate to qualify for public money in Michigan, the candidate must agree to accept expenditure limitations. Once the candidate raises \$50,000 in under-\$100 amounts for the primary election, the state matches each under-\$100 contribution two-to-one up to \$660,000 if the candidate faces an opponent for the nomination. Major party candidates in the general election are automatically given \$750,000 in public money if they agree to the \$1 million expenditure limitation.

John Turnquist, Deputy Director of the Michigan Campaign Finance Reporting Section in the Secretary of State's office, concludes that public financing attracts additional "non-establishment" candidates in the primary, encourages small contributions, and diminishes the influence of PACs.<sup>42</sup> Professor Jones also found that "many observers felt the special-interest involvement in the Governor's race decreased markedly."<sup>43</sup>

### ***c. New Jersey's Gubernatorial System***

New Jersey has provided the nation's first experience with large-scale public funding of gubernatorial campaigns. In 1977 it allocated more than \$2 million in public funds to the two major party gubernatorial candidates in the general election. The law was amended in 1980 to provide funding for gubernatorial primary candidates. In 1981, 16 candidates received more than \$6.2 million in public funding in the primary and the two general election candidates received approximately \$1.2 million each. The public financing provisions contributed to the large number of candidates running in the 1981 primary, although the lack of an incumbent running for reelection was also a factor. In both the primary and general elections, there is a two-for-one match above the qualifying threshold of \$50,000. The state imposes a contribution limit of \$800 per election on individuals, political committees, parties, corporations and unions. However, only contributions from individuals are eligible for matching public money.

To provide evidence of breadth of support, qualifying money must be raised in a specified percentage of counties throughout the state. This requirement, similar to that used in the presidential primary qualifying program, presented no real difficulties for any of the major gubernatorial candidates. Candidates could receive a maximum of \$600,000 in public matching funds for the 1981 primary and \$1.2 million for the general.

In 1981 New Jersey gubernatorial candidates using public funds were limited to total primary expenditures of about \$1 million and to general election expenditures of about \$2 million. Gubernatorial candidates are limited to \$25,000 in personal funds per campaign.

The New Jersey program has been the topic of extensive studies by the state's Election Law Enforcement Commission. After each gubernatorial election, this agency, which is in charge of administering the program, has recommended the elimination of the expenditure ceilings. The Commission stated, "[A]s it did in 1978, the Commission again finds expenditure limits to be unnecessary, and undesirable so long as the gubernatorial election process includes limits on contributions, limits on loans, limits on a candidate's personal funds, and limits on the amount of public funds available to any candidate."<sup>44</sup>

### ***d. Massachusetts' Matching Funds Law***

Massachusetts' program has received little attention because its tax add-on method for raising funds has only generated small amounts of money. The law gives candidates a one-to-one match of public money for contributions of \$250 or less after candidates have met the appropriate qualifying thresholds. In the 1978 primary, gubernatorial candidates first had to raise \$75,000 to qualify for a maximum of \$250,000 in public funds. Candidates for other statewide offices had to raise up to \$37,500 to be eligible for a maximum of \$125,000. For the general election, the thresholds were \$125,000 for gubernatorial candidates to receive \$250,000. Theoretically, candidates could receive significant sums from the state's add-on fund. In fact, less than \$500,000 was allocated to all candidates during the 1982 elections because taxpayers were reluctant to support this fund with additional tax money.

## ***3. Seattle's Public Financing Ordinance***

Seattle is the only municipality in the country to have passed and implemented a system of expenditure limitations and partial public financing. The city council in 1978 enacted a comprehensive ordinance which was used in the 1979 and 1981 elections. Because of the slumping economy, however, the council allowed the law to lapse in 1982 and the 1983 elections were conducted under the old system. In late 1984 the city council reinstated the law. Public financing and expenditure limitations will be back in place for the 1987 election.

The Seattle Office of Election Administration issued an extensive study of the elections held in 1979, 1981 and 1983. For the elections held in 1979 and 1981, when the package of reforms was in effect, the study found:

- The number of contributions to candidates in closely contested city council campaigns increased.
- The average contribution to these candidates decreased while the number of individual contributors to their campaigns increased.
- The numerical and financial participation of individuals and groups making large contributions decreased.<sup>45</sup>

The study also found that candidates were clearly motivated to seek small contributions because public funds were only available to match contributions of \$50 or less. After the law was repealed, however, a different pattern emerged. During the 1983 election the number of contributions to candidates decreased, the size of the average contribution increased and the number of large contributions rose. The Seattle study concluded that Seattle's public financing ordinance had played a major role in improving the pattern of campaign giving.<sup>46</sup>

#### **4. Public Financing of Parties**

Six states allocate public funds and four states allocate add-on funds directly to political parties. In some states the state parties spend all the money themselves; in others the parties distribute some of the funds to candidates. The parties use the money for organizational and office activities. Money given to the parties has had a substantial impact. In Idaho, one party official concluded: "It has simplified fundraising and given us a cushion."<sup>47</sup>

Each of these public financing programs allows new or minor parties to qualify for funds. In states like Idaho, North Carolina, Rhode Island and Utah, minority parties have received support, albeit minimal, from the public funding program.

One administrative question that has arisen is determining which units of the party should receive funds. In five states—Idaho, Iowa, Maine, North Carolina, Rhode Island—the state central committees receive the public funds. In another two states—Kentucky and Utah—the funds are divided between the state central committees and the county committees in the proportion which the checkoff is used in individual counties. This provides an effective motivation for county party leaders to encourage their partisan backers to use the checkoff to generate additional funding for the county organization.

Some state party leaders have resisted allocating funds directly to the county party units, both because this practice reduces the amount of money available to the state committee, and because the state committees do not like to increase the financial autonomy and independence of county party units. County party officials welcome the infusion of funds and often argue that this money has converted their paper entities into viable organizations.

Under a former Oregon law, public financing flowed to the parties at the county level. Incumbent legislators received little or none of the funds and were thus unable to control the county parties. There is some evidence that this upset key legislators, fostered opposition to the public funding program and played a major role in the failure of the Oregon Legislature to continue the program after its 1981 sunset review.

Several states have considered public financing for both political candidates and political parties. Oklahoma is the only state, however, that has enacted this approach. Under the Oklahoma program, 10% of the public funds would be allocated equally to the state central committees of all bonafide political parties in the state, and the rest would be allocated, according to a set formula, to the candidates for constitutional offices in the general election. Major sections of this law were invalidated by the Oklahoma Attorney General, however, and thus there is no record how this dual approach might actually work.<sup>48</sup>



## **D. A Number of States Use the Tax System to Encourage Political Contributions**

### **1. Tax Checkoffs**

Using the federal system as a model, eleven states now have programs which raise money through an income tax checkoff system. A tax checkoff permits taxpayers to decide whether to allow the state to use one or two dollars of tax money already paid to the state for political parties or candidates. A tax checkoff does not increase the tax liability of the taxpayer. Money from the general fund is transferred to the appropriate political fund for later distribution.

Taxpayers in states such as Wisconsin, Hawaii, Iowa and Idaho check off one dollar (two dollars on a joint return), whereas taxpayers in other states such as Kentucky, Michigan and Minnesota can designate two dollars (or four dollars for a joint return). When states have gone from a one dollar checkoff to two dollars, there has not been any significant decrease in taxpayer participation in the programs. In general, tax checkoff systems have provided a relatively consistent amount of funding. Professor Jones concludes that tax checkoff programs have provided enough money to support each state's funding program.<sup>49</sup> Others note, however, that checkoffs limit the scope and potential effectiveness of public financing programs, and believe the funding should be directly appropriated from the state treasury.<sup>50</sup>

The percentage of taxpayers using the checkoff varies widely from state to state. New Jersey has consistently had the highest percentage of taxpayers who earmark tax money for the campaign financing fund. The percentage has ranged from a low of 38% in 1976, the first year of the program, to 42% in 1980. Each year over \$1.5 million is transferred to the campaign fund. North Carolina has the lowest percentage of taxpayers contributing to the fund. About 8% of the state's taxpayers designate over \$200,000 to the fund each year.

States that use a checkoff system average a 22% participation rate, while the federal rate is 27%. These percentages are based on the number of returns filed, not the number of taxpayers. The checkoff rate is higher when taxpayers have to indicate a "yes" or "no" on their forms, rather than just a "yes."<sup>51</sup>

### **2. Tax Add-Ons**

A second technique for raising money uses voluntary contributions "added on" to an individual's state income tax return. Under this arrangement no funds are diverted from state revenues to finance elections, and the only "public money" allocated is the amount that taxpayers voluntarily contribute. Thus the state's role is to provide the collection mechanism for voluntary add-on contributions and to oversee the disbursement of funds according to state law.

Six states have this mechanism. Although the amount of the contribution varies from one dollar in Alabama, Maine, Massachusetts and Montana to as much as \$25 in California, none of the add-on programs have provided enough money to have a significant impact. One of the reasons Maryland dropped its program was the low rate of participation. In Montana, when the law was changed from a checkoff to an add-on, the number of taxpayers participating in the program dropped dramatically. The participation rate for add-on states averages about 1%, far less than the 22% participation average for the checkoff states. Maine has the lowest rate of 0.5%.

### **3. Tax Credits for Contributions**

A few states follow the example of the federal government and give tax breaks to taxpayers who make campaign contributions. (See also discussion of tax credits in Appendix B, "Alternative Proposal.") Federal law offers a 50% tax credit for up to \$100 contributions by a single individual and \$200 contributions by a married couple. A person who makes an \$80 contribution to a state or federal candidate, for example, will be able to reduce his or her taxes

Table 10.1

FEDERAL AND STATE TAX CREDIT AND DEDUCTION PARTICIPATION								
	No. of Returns	Returns Taking Credit	% Taking Credit	Returns Taking Deduction	% Taking Deduction	Average Credit	Average Deduction	Cost to Fed./State
Federal (1982)	79,349,842	5,243,629	6.6%			\$51.45		269,783,000
(1981)	79,011,548	5,207,442	6.6%			\$50.31		261,965,000
California (1982)	10,721,424			283,285	2.7%		\$97	2,100,000
(1981)	10,661,919			257,463	2.4%		\$88	2,000,000
District of Columbia (1983)	313,893	28,324	9.0%			\$41.68		1,180,504
(1982)	311,711	29,201	9.3%			\$40.62		1,186,000
Hawaii (1982)	422,535			7,534	1.8%		\$130	107,738
Minnesota (1982)	1,703,021	111,013	6.5%	18,896	1.1%	\$41.65	\$68	4,790,064
Oregon (1982)	1,079,299	44,881	4.2%			\$29.80		1,337,289
		Persons Receiving Refund	% Receiving Refund			Average Refund		Cost to State
Alaska	460,837	10,951	2.4%			\$86.66		949,010

Source: California Commission on Campaign Financing data analysis

Source: California Commission on Campaign Financing data analysis



by \$40. According to IRS records, 6.6% of federal tax returns claim political tax credits. The average credit claimed was \$51.45 and the total tax cost to the federal government was \$270 million.<sup>52</sup> (See Table 10.1.)

Four states and the District of Columbia provide for tax credits, but one state allows credits of only one dollar and another state allows a credit of only five dollars. Minnesota and the District of Columbia each allow taxpayers to reduce their state taxes by 50% for contributions up to \$100, while Oregon permits a tax credit for contributions up to \$50. In Minnesota and the District of Columbia, contributors can actually make cost-free contributions of up to \$100. They receive a 50% state tax credit and a 50% federal tax credit on the same contribution. Their \$100 is refunded completely on the following year's federal and state returns. In Minnesota state tax credits are only available to contributors who give to candidates who have agreed to abide by expenditure limitations. Taxpayers in Minnesota take advantage of the tax credit at about the same rate as federal taxpayers. Approximately 6.5% of Minnesota's taxpayers use the credit for an average of \$41.65 per return. (See Table 10.1.) Oregon, on the other hand, prohibits a double tax credit on both federal and state returns. It allows taxpayers only to receive a maximum 50% tax reduction.

#### **4. Tax Deductions for Contributions**

Six states including California allow a tax deduction for contributions. Tax deductions are significantly different from tax credits since they reduce adjusted income rather than directly cutting taxes. In California the maximum tax benefit for a \$100 contribution is \$11. Hawaii, like Minnesota, only permits deductions by contributors who give to candidates accepting expenditure limitations.

#### **5. Refunds from the State of Alaska**

Alaska has the most unique system for encouraging small contributions. It offers state taxpayers a 100% refund on contributions up to \$100. Alaskan contributors also receive a 50% federal tax credit. A \$100 contribution to an Alaskan candidate therefore nets the contributor a total of \$150: \$50 from a federal tax credit, and \$100 in a refund from the state. Alaska used to give contributors a 100% tax credit before it repealed its income tax altogether. Taxes were not necessary because of the billions of dollars in oil revenues. The State Legislature then substituted the refund program to encourage small contributions. According to State Representative Michael Miller, candidates actively promote this advantage to small donors. Miller says the law is so popular that it will not be repealed.<sup>53</sup>

### **E. Summary and Conclusions: Contribution Limits, Expenditure Ceilings and Partial Public Financing Have Accomplished Many of Their Goals in Other States**

Reform activity in the states has been as varied as Justice Brandeis predicted. The following conclusions can be drawn from studies of state campaign finance laws:

#### **1. Contribution Limitations**

Most of the states follow the federal lead in limiting contributions by individuals, PACS, corporations and labor unions. A number of them also prohibit contributions from corporations and unions. None of the states that limit contributions has repealed these limits although some have raised them substantially.

Data on the effectiveness of these limits is not easily obtained since state contribution limits are not as controversial as those at the federal level and research is scarce. Political scientists tend to concentrate their research on either the federal elections or one or two particular states and have not conducted an overall study of limitations at the state level. This Commission has conducted an informal survey of officials from states with contribution lim-

its. Most responding officials indicate that contribution limitations by themselves have not significantly slowed the growth of campaign costs. Contribution limits when combined with expenditure ceilings and public financing, however, have kept campaign costs in check.

## ***2. Expenditure Limitations and Partial Public Financing***

Although fewer states publicly finance their elections than limit contributions to campaigns, enough data exists to support certain conclusions. The most important conclusion is that expenditure ceilings must be realistic or candidates will refuse to be bound by them. In Hawaii, Minnesota and Wisconsin, most candidates declined to accept public financing and expenditure limitations when the limits were set below what candidates need to run a sufficient campaign. On the other hand, when Minnesota increased its expenditure limitations between 1980 and 1982, many more candidates agreed to the maximum expenditures and accepted public financing.

In Hawaii with a small public financing reward of \$50, candidates have not agreed to expenditure limitations in exchange for public money. Many Hawaiian candidates nevertheless accepted expenditure limitations since acceptance qualified their contributors for tax deductions on their contributions.

The reward of public financing must be great enough to encourage candidates to accept limits on expenditures. At the same time, expenditure limitations must not be so small as to cause the candidate to believe that a credible campaign cannot be waged. Tax credits available to contributors can act as a significant incentive for candidates to accept expenditure ceilings.

## ***3. Tax Incentives***

The experience of the states with tax checkoffs and add-ons demonstrates clearly that few taxpayers are willing to add to their tax liabilities. States with tax add-ons report that their rate of taxpayer participation is very small, generally around 1%. States with tax checkoffs where taxpayers do not add to their tax liabilities report a higher participation rate. In all states with the tax checkoff, sufficient money has been raised to fund their public financing programs.

A few states have used tax credits or deductions to encourage small contributors to participate in campaigns. A consistent pattern has emerged in both the federal system and those states that permit tax credits. Approximately 6% of state and federal taxpayers claim credits for political contributions given in the past year. In each instance the tax credit is at least 50% of the contribution, and in Minnesota and the District of Columbia a contributor can actually make a free (or 100%) contribution by claiming a credit on both local and federal tax returns. Linking tax breaks to expenditure ceilings has encouraged candidates to accept spending limits in the two states that have tried it, Minnesota and Hawaii.

Table 10.2

## CAMPAIGN FINANCE LAWS IN OTHER STATES

Alabama	Ala. Code §10-2A-70.1 (Supp. 1984), §40-18-146(6) (Supp. 1984)
Alaska	Alaska Stat. §15.13.070 (1982), §43.20.013 (1983), §43.20.031 (Supp. 1984)
Arizona	Ariz. Rev. Stat. Ann. §43-1059 (1980)
Arkansas	Ark. Stat. Ann. §§3-1109 to 3-1118 (1976 & Supp. 1983), §84-2016.5 (1980)
Connecticut	Conn. Gen. Stat. Ann. §§9-333 to 9-348 (West 1958 & Supp. 1985)
Delaware	Del. Code Ann. tit. 15 §§8001-8013 (1981)
Dist. of Columbia	D.C. Code Ann. §47-1806.5 (1981 & Supp. 1984)
Florida	Fla. Stat. Ann. §§106.011-106.29 (West 1982 & Supp. 1984)
Hawaii	Hawaii Rev. Stat. §§11-191 to 11-229 (Supp. 1984), §§235-7(g), 235-102.5 (Supp. 1984)
Idaho	Idaho Code §34-2503 (1981), §63-3088 (Supp. 1984), §63-3024 (Supp. 1984)
Indiana	Ind. Code Ann. §§3-4-1-1 to 3-4-1-22, 3-4-3-1 to 3-4-3-8 (Burns 1982 & Supp. 1984)
Iowa	Iowa Code Ann. §§56.18, 56.19 (West Supp. 1984-1985)
Kansas	Kan. Stat. Ann. §§25-4101 to 25-4179 (1981)
Kentucky	Ky. Rev. Stat. §§121.015 to 121-990 (1982 & Supp. 1984), §§141.071, 141.072 (Supp. 1984)
Maine	Me. Rev. Stat. Ann. tit. 21 §§1391-1402 (1964 & Supp. 1984-1985), tit. 36 §5283 (1964)
Maryland	Md. Elec. Code Ann. §§31-1 to 31-12 (1983 & Supp. 1984)

---

Massachusetts	Mass. Ann. Laws ch. 55 §§1-42, ch. 55A §§1-12 (Michie/Law Co-op 1978 & Supp 1985), ch. 10 §43 (Michie/Law Co-op 1980), ch. 62 §6C (Michie/Law Co-op Supp. 1985)
Michigan	Mich. Comp. Laws §§169.201-169.282 (West Supp. 1984-1985)
Minnesota	Minn. Stat. Ann. §§10A.01-10A.34 (West 1977 & Supp. 1985), §§210A.01-210A.44 (West Supp. 1985), §290.06 subd. 11 (West Supp. 1985), §290.21 (West 1962 & Supp. 1985)
Mississippi	Miss. Code Ann. §97-13-15 (Supp. 1984)
Montana	Mont. Code Ann. §§13-37-101 to 13-37-30E (1983)
New Jersey	N.J. Stat. Ann. §§19:44A (West Supp. 1984-1985)
New Hampshire	N.H. Rev. Stat. Ann. §§664:1 to 664:22 (Supp. 1983)
New York	N.Y. Elec. Law §§14-100 to 14-128 (McKinney 1978 & Supp. 1984-1985)
North Carolina	N.C. Gen. Stat. §§163-269, 163-270 (1982), §§163-278.6 to 163-278.45 (1982 & Supp. 1983), §105-159.1 (Supp. 1983)
Oklahoma	Okla. Stat. Ann. tit. 26 §§15-101 to 15-112, 18-103 (West Supp. 1984-1985)
Oregon	Or. Rev. Stat. §316.102 (1983)
South Dakota	S.D. Codified Laws §§12-25-1 to 12-25-34 (1982 & Supp. 1984)
Texas	Tex Elec. Code Ann. §§14.01-14.15 (Vernon Supp. 1985)
Vermont	Vt. Stat. Ann. tit. 17 §§2801-2832 (1982)
West Virginia	W. Va. Code §§3-8-1 to 3-8-13 (1979 & Supp. 1984)
Wisconsin	Wis. Stat. Ann. §§11.001-11.67 (West Supp. 1984-1985)
Wyoming	Wyo. Stat. §§22-25-101 to 22-25-115 (1977 & Supp. 1984)

---

Source: California Commission on Campaign Financing

Table 10.3

## STATE-BY-STATE SUMMARY OF CONTRIBUTION LIMITATIONS TO LEGISLATIVE CAMPAIGNS

	Individual Contributions (a)	Corporate Contributions (b)	Labor Union Contributions (c)	PAC Contributions (d)	Party Contributions (e)	Transfers (f)
Alabama	No limit	\$500/candidate	No limit	No limit	No limit	No limit
Alaska	\$1,000/year	Same as (a)	Same as (a)	Same as (a)	No limit	Same as (a)
Arizona	No limit	Prohibited	Prohibited	No limit	No limit	No limit
Arkansas	\$1,500/cand.	Same as (a)	Same as (a)	Same as (a)	\$2,500/cand.	Same as (a)
Connecticut	Sen.: \$500/ cand. Rep.: \$250/ cand. \$15,000 agg. to all cand.	Prohibited	Prohibited	Labor PACs: same as (a)/ cand., \$50,000 agg. to all cand. Corp. PACs: 2 x (a)/cand., \$100,000 agg. to all cand.	No limit	Prohibited
Delaware	\$500/cand.	Same as (a)	Same as (a)	Same as (a)	Same as (a)	Same as (a)
Florida	\$1,000/cand.	Same as (a)	Same as (a)	Same as (a)	No limit	No limit
Georgia	No limit	Public util- ities pro- hibited	No limit	No limit	No limit	No limit
Hawaii	\$2,000/cand.	Same as (a)	Same as (a)	Same as (a)	30% of the expenditure limitation for Sen.; 40% for Rep.	Two fund- raising tickets/ candidate
Indiana	No limit	Aggregate of \$2,000 to all non-statewide candidates	Same as (b)	No limit	No limit	No limit
Iowa	No limit	Prohibited	No limit	No limit	No limit	No limit
Kansas	\$750/cand.	Same as (a)	Same as (a)	Same as (a)	No limit	Same as (a)
Kentucky	\$3,000/cand.	Prohibited	No limit	No limit	No limit	No limit
Maine	\$1,000/cand. \$25,000 agg. to all cand./ calendar year	\$5,000/cand.	Same as (b)	Same as (b)	Same as (b)	Same as (b)
Maryland	\$1,000/cand. \$2,500 agg. to all cand.	Same as (a)	Same as (a)	No limit	No limit	No limit
Massachusetts	\$1,000/cand./ yr. Minors: \$25/yr.	Prohibited	No limit	No limit	No limit	\$100/cand. \$1,500 agg. to all cand.
Michigan	Sen.: \$450/ cand. Rep.: \$250/ cand.	Prohibited	Sen.: \$4,500/ cand. Rep.: \$2,500/ cand.	Same as (c)	Same as (c)	Prohibited
Minnesota	Sen.: \$1,500/ cand./elec. yr. (\$300/ cand. off year) Rep.: \$750/ cand./elec. yr. (\$150/cand. off year)	Prohibited	Same as (a)	Same as (a)	Sen.: \$7,500/ cand./elec. yr. (\$1,500 off year) Rep.: \$3,750/cand./ elec. yr. (\$750 off year)	Same as (a)
Mississippi	No limit	\$1000/cand./ yr.	No limit	No limit	No limit	No limit

Table 10.3

## STATE-BY-STATE SUMMARY OF CONTRIBUTION LIMITATIONS TO LEGISLATIVE CAMPAIGNS

	Individual Contributions (a)	Corporate Contributions (b)	Labor Union Contributions (c)	PAC Contributions (d)	Party Contributions (e)	Transfers (f)
Montana	Sen.: \$400/ cand. Rep.: \$250/cand. (prim. & gen. elec. combined)	Prohibited	Sen.: \$600/ cand. In agg. from all committees Rep.: \$300/ cand. In agg. from all committees	Same as (c)	Same as (c)	Same as (c)
New Hampshire	\$5,000/cand.	Prohibited	Prohibited	No limit	No limit	No limit
New Jersey	No limit	Specified corps.--e.g., casino, bank, insurance-- prohibited	No limit	No limit	No limit	No limit
New York	Sen.: \$4,000, plus, depends on size of district. Rep.: \$2,500, plus, depends on size of district. \$150,000 agg. to all cand./cal. yr.	\$5,000 agg./ cal. yr.	Same as (a)	Same as (a)	No limit	Same as (a)
No. Carolina	\$4,000/cand.	Prohibited	Prohibited	Same as (a)	No limit	Same as (a)
No. Dakota	No limit	Prohibited	No limit	No limit	No limit	No limit
Ohio	No limit	Prohibited	No limit	No limit	No limit	No limit
Oklahoma	\$1,000/cand./ Immediate family	Prohibited	Same as (a)	Same as (a)	Same as (a)	Same as (a)
Pennsylvania	No limit	Prohibited	Prohibited	No limit	No limit	No limit
So. Dakota	\$250/cal. yr.	Prohibited	Prohibited	No limit	No limit	No limit
Tennessee	No limit	Prohibited	Prohibited	No limit	No limit	No limit
Texas	No limit	No contributions during legislative session			No limit	No limit
Vermont	\$1,000/cand.	Prohibited	Prohibited	No limit	No limit	No limit
Vermont	\$1,000/cand.	\$5,000/cand.	Same as (b)	Same as (b)	No limit	Same as (b)
West Virginia	\$1,000/cand.	Prohibited	Same as (a)	Same as (a)	Same as (a)	Same as (a)
Wisconsin	Sen.: \$1,000/ prim. and gen. elec. combined. As.: \$500 prim. and gen. elec. combined. \$10,000 agg./yr. to all cand.	Prohibited	Same as (a) but no cand. may accept more than 45% of exp. limits from all commit- tees, other than political party committees	Same as (c)	No cand. may accept more than 65% of exp. limits from all com- mittees, in- cluding political party committees	Same as (c)
Wyoming	\$1,000/cand./ gen. elec. yr. and yr. pre- ceding. \$25,000 agg. to all cand.	Prohibited	Prohibited	No limit	No limit	No limit

Unless otherwise noted, contribution limitations are per election.



## NOTES

1. David Broder, *Assessing Campaign Reform: Lessons for the Future*, in CAMPAIGN MONEY: REFORM AND REALITY IN THE STATES (Herbert Alexander ed. 1976).
2. *California Leads the Nation in State Campaign Costs*, San Francisco Examiner, Feb. 1, 1982.
3. COUNCIL ON GOVERNMENTAL ETHICS LAWS, THE BLUE BOOK OF CAMPAIGN FINANCE, ETHICS AND LOBBYING REFORM LAWS 10 (1984-85 ed.).
4. Telephone interview with Ed Zuckerman, Editor of *PACS & Lobbies* (Jan. 8, 1985).
5. *Probers of Campaign Funding Frustrated by Inadequate State Laws on Disclosure*, Wall Street Journal, Sept. 19, 1984.
6. Stanley Foster Reed, *A Call for a Uniform Elections Code*, Campaigns & Elections 4 (Fall 1984).
7. WASHINGTON PUBLIC DISCLOSURE COMMISSION, THE INCREASED COST OF LEGISLATIVE CAMPAIGNS: 1974 TO 1982, at 1 (Feb. 1984).
8. Ruth Jones, *Financing State Elections*, in MONEY AND POLITICS IN THE UNITED STATES (Michael Malbin ed. 1984).
9. Interview with Paul Gillies, Vermont Deputy Secretary of State, in Seattle, Washington (Dec. 4, 1984).
10. Interview with William Sullivan, Deputy Director of the Massachusetts Office of Campaign and Political Finance, in Seattle, Washington (Dec. 4, 1984).
11. Interview with Jeffrey Garfield, Executive Director of the Connecticut State Elections Enforcement Commission, in Seattle, Washington (Dec. 3, 1984).
12. *Id.*
13. Interview with Mary Ann McCoy, Executive Director of the Minnesota Ethical Practices Board, in Seattle, Washington (Dec. 5, 1984).
14. MINNESOTA ETHICAL PRACTICES BOARD, CAMPAIGN FINANCE SUMMARY—1983: STATE OFFICEHOLDERS (Apr. 1984).
15. TEX. ELEC. CODE ANN. art. 14.03(b) (Vernon Supp. 1985).
16. Interview with Gregory Pollock, Administrative Technician for the Texas Secretary of State's Office, in Seattle, Washington (Dec. 5, 1984).
17. Compiled from totals listed in HERBERT E. ALEXANDER AND JENNIFER W. FRUTIG, PUBLIC FINANCING OF STATE ELECTIONS (1982).
18. Ruth Jones, Public Financing in the States: A Decade of Experience 7-8 (July 23, 1984) (unpublished manuscript prepared for the California Commission on Campaign Financing).
19. *Id.*
20. Elizabeth King and David Wegge, The Rules are Never Neutral: Public Funds in Minnesota and Wisconsin Legislative Elections 2 (unpublished manuscript prepared for delivery at the 1984 Annual Meeting of the Midwest Political Science Association, Chicago, Illinois, Apr. 12-14, 1984).
21. 67 Wis. Op. Att'y Gen. 321 (1978).
22. King and Wegge, *supra* note 20, Table 2.
23. WIS. STAT. ANN. §11.50 (West Supp. 1984-85).
24. King and Wegge, *supra* note 20, at 66.
25. WISCONSIN STATE ELECTIONS BOARD, BIENNIAL REPORT, VOLUME 1—PERFORMANCE REPORT 2-7 (June 1983).
26. *See* Jones, *supra* note 8, at 202.
27. King and Wegge, *supra* note 20, at 9.
28. Jones, Patterns of Campaign Finance in the Public Funding States 2 (unpublished manuscript prepared for delivery at the Midwest Political Science Association Meeting, Milwaukee, Wisconsin, Apr. 28-May 1, 1982).
29. FPPC, SOURCES OF CONTRIBUTIONS TO CALIFORNIA STATE LEGISLATIVE CANDIDATES FOR THE NOV. 4, 1980 GENERAL ELECTION 1 (Aug. 6, 1981).
30. King and Wegge, *supra* note 20, at 13.
31. *Id.*
32. Jones, Public Campaign Finance: The Minnesota Experience 7 (unpublished manuscript prepared for delivery at the Annual Meeting of the Western Political Science Association, Denver, Colorado, Mar. 26-28, 1981).
33. MINN. STAT. ANN. §§10A, 30 (West 1977 & Supp. 1985).
34. King and Wegge, *supra* note 20, at 7.
35. *Id.*
36. Jones, *supra* note 32, at 17-23.
37. King and Wegge, *supra* note 20, at 7.

38. Jones, *supra* note 28, at 8.
39. Interview with Jack Gonzales, Executive Director of the Hawaii Campaign Spending Commission, in Seattle, Washington (Dec. 4, 1984).
40. Jones, *supra* note 32, at 7.
41. *Id.* at 11.
42. Interview with John Turnquist, Deputy Director of the Michigan Campaign Finance Reporting Section, Secretary of State's Office, in Seattle, Washington (Dec. 2, 1984).
43. Jones, *supra* note 32, at 12.
44. NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION, NEW JERSEY PUBLIC FINANCING: 1981 GUBERNATORIAL ELECTIONS, CONCLUSIONS AND RECOMMENDATIONS 25 (June 1982).
45. OFFICE OF ELECTION ADMINISTRATION, CITY OF SEATTLE, AN ANALYSIS OF CAMPAIGN CONTRIBUTIONS IN CLOSELY CONTESTED SEATTLE CITY CAMPAIGNS, 1975-1983, at 2 (June 5, 1984).
46. *Id.* at 6.
47. Jones, *supra* note 32, at 21.
48. 11 Okl. Op. Att'y Gen. 290 (1979); see *Democratic Party v. Estep*, Okl. 652 P. 2d 271 (1982).
49. Jones, *supra* note 18, at 3.
50. Robert S. Peck and Barbara McDowell, *Dollar Democracy: An Analysis of Public Financing of State Politics*, 15 URB. LAW. 921 (Fall 1983).
51. *Id.* at 929.
52. INTERNAL REVENUE SERVICE, STATISTICS OF INCOME—1982, INDIVIDUAL INCOME TAX RETURNS 80 (1984).
53. Interview with Alaska State Representative Michael Miller, in Seattle, Washington (Dec. 4, 1984).



## CHAPTER 11

# **The Federal Experience: Contribution Limits, Expenditure Ceilings and Partial Public Financing**

*The F[ederal] E[lection] C[ampaign] A[ct]  
Amendments of 1974 probably represented the most  
sweeping set of campaign finance law changes ever  
adopted in the United States, if not in the world.*

— Michael Malbin<sup>1</sup>

**F**ederal concern over campaign contributions dates back more than 80 years. During the 1904 presidential election, Alton B. Parker, President Roosevelt's Democratic opponent, warned that the "greatest moral question which now confronts us is, shall the trusts and corporations be prevented from contributing money to control or aid in controlling elections."<sup>2</sup> Roosevelt shared Parker's concern. In his 1905 State of the Union Address, Roosevelt asked Congress to prohibit all corporate campaign contributions in federal elections.<sup>3</sup> Congress did so in 1907.<sup>4</sup>

In 1925 the Federal Corrupt Practices Act codified in one place most of the federal campaign finance law.<sup>5</sup> It required House and Senate candidates to disclose receipts and expenditures and it limited spending by "interstate committees." The Act was, however, frequently circumvented.<sup>6</sup> In 1940 the Hatch Act amendments placed a limit of \$5,000 on contributions by persons or organizations to candidates or political committees.<sup>7</sup> The Smith-Connally Act of 1943 temporarily prohibited union contributions to federal candidates during the war,<sup>8</sup> and the Taft-Hartley Act of 1947 made this prohibition permanent.<sup>9</sup> The Federal Election Campaign Act of 1971 expanded the disclosure and reporting requirements for federal candidates, limited media advertising expenditures, limited candidates' contributions to their own campaigns and attempted to control independent expenditures.<sup>10</sup> The Revenue Act of 1971 concurrently

gave taxpayers deductions of up to \$100 for political contributions (later repealed), offered 50% tax credits for contributions up to \$25 (later increased to \$50) and created a dollar checkoff provision to finance presidential campaigns.<sup>11</sup> The 1971 law was amended, however, before the checkoff funds were ever disbursed.

By 1974, Watergate and its accompanying disclosures prodded Congress into enacting a comprehensive set of campaign finance reforms. Public concern had mounted when the press disclosed that one individual had contributed over \$2 million to President Nixon's 1972 reelection campaign, that 82 individuals had each given \$100,000 or more to candidates in the 1972 elections, and that a number of ambassadorships had been awarded to large contributors.<sup>12</sup> A House committee concluded:

The unchecked rise in campaign expenditures, coupled with the absence of limitations on contributions and expenditures, has increased the dependence of candidates on special interest groups and large contributors. Under the present law the impression persists that a candidate can buy an election by simply spending large sums in a campaign.<sup>13</sup>

Responding to this growing concern, Congress adopted the Federal Election Campaign Act of 1974.<sup>14</sup>

The 1974 Act created two systems of campaign finance—private financing for House and Senate campaigns through private contributions, and partial public financing for presidential elections through a tax checkoff system. Although the Supreme Court invalidated portions of the 1974 Act two years later,<sup>15</sup> the federal law has given the country ten years of experience on the effectiveness of contribution limits, expenditure ceilings and public financing.<sup>16</sup> This experience is instructive for California.

## **A. Contribution Limits Have Met with Partial Success in Congressional Elections**

The 1974 Act placed dollar limitations on the size of contributions to all federal candidates. It also sought to limit overall expenditures in congressional races,<sup>17</sup> but the Act's expenditure ceilings (which were not accompanied by limited public financing) were invalidated by the Supreme Court in *Buckley v. Valeo*.<sup>18</sup> The Senate had passed a bill approving public financing for congressional campaigns, with the Senate Report concluding:

Contribution and expenditure limits...would check excessive influence of great wealth...[but] cannot be effectively and fairly implemented without a comprehensive system of public campaign financing.<sup>19</sup>

However, the Senate's bill was rejected by the House.<sup>20</sup> Congressional candidates today can therefore raise and spend unlimited amounts of money—so long as they receive their contributions in amounts under the federal limits.

### **1. The Limits**

The 1974 Act allowed individuals to contribute no more than \$1,000 to each federal candidate per election. A person can give \$1,000 to a congressional candidate in the primary election and again in the general election—for a total of \$2,000. An individual's spouse and children can make equivalent contributions.<sup>21</sup>

The Act also allowed individuals to contribute up to \$5,000 to each PAC, \$20,000 a year to political parties, and an aggregate maximum of \$25,000 to all federal candidates and committees supporting federal candidates during each calendar year.<sup>22</sup> These contribution limits were designed to reduce actual or apparent corruption of candidates or officeholders by massive contributions.

Ordinary PACs were also limited to contributions of \$1,000 to each federal candidate per election.<sup>23</sup> Special "multicandidate committee" PACs—defined as committees registered with the Federal Election Commission (FEC) for at least six months, receiving contributions from at least 50 individuals and making contributions to at least five federal candidates—could

contribute up to \$5,000 per candidate per election, allowing such PACs to give \$10,000 per candidate in the primary and general elections combined. These special PACs could make an unlimited number of contributions, unlike individuals who could only give a maximum of \$25,000 a year.<sup>24</sup> Most PACs today are multicandidate committee PACs.

National, state and local political party committees were treated as multicandidate committees and allowed to make up to \$5,000 in direct contributions to federal candidates.<sup>25</sup> National and state political party committees were also allowed to make additional “coordinated expenditures” on behalf of federal candidates, but were not allowed to contribute the coordinated expenditure money directly to candidates. Political parties could spend at least \$10,000 in coordinated expenditures on House candidates and \$20,000 or two cents per eligible voter, whichever was greater, on Senate candidates.<sup>26</sup>

## 2. The Effects of Contribution Limitations

The congressional contribution limits were designed to reduce the influence of large contributors and PACs over candidates, as well as the appearance of a *quid pro quo* exchange of money for influence. In this respect the limitations have been partially successful. The days of the single \$2 million contribution are long gone.

In other respects, however, the contribution limits have failed to ameliorate many of the most pressing campaign finance problems.<sup>27</sup> House and Senate campaign expenditures have continued to rise dramatically. In 1982 House and Senate candidates spent over \$342 million on their campaigns, a 43% increase over 1980, a 72% increase over 1978 and a 400% increase over 1972.<sup>28</sup> In 1984 House and Senate expenditures rose again to a record \$374 million.<sup>29</sup> Members of Congress spent more and more time raising money and charges of corruption seemed prevalent. Former Congressman Alvin O’Konsky charged, for example, that lawmakers “are bought, sold, signed, sealed and delivered by contributors before election, making them immobile to act on anything.”<sup>30</sup>

Although individual large contributors have diminished in importance, solicitors (or “bundlers”) of contributions have begun to emerge. A bundler is a middleman who collects individual contributions from donors, puts them into a single bundle and delivers them to a candidate or organization. Bundlers are not required to file reports with the FEC and their collection of contributions is not subject to the \$1,000 federal contribution limit. One private bundler for Republican organizations has estimated that he would transmit \$8 million from various client organizations to federal candidates in 1984.<sup>31</sup>

PACs have proliferated in numbers and influence. PACs increased from 608 in 1974 to 4,009 in 1984, and House and Senate candidates have increased their reliance on PAC contributions from 14% in 1972 to 23% in 1982.<sup>32</sup> During the two-year period between January 1, 1983 and December 31, 1984 PAC contributions to congressional candidates totaled \$105 million, a 29% increase over the 1981-1982 cycle and a 91% increase over the 1978-1980 cycle.<sup>33</sup>

The congressional contribution limits have failed to restrain — and have perhaps even encouraged — the growth of independent expenditure committees. The National Conservative Political Action Committee (NCPAC) alone spent \$10.1 million during the 1981-1982 congressional elections, although much of it went for overhead and fundraising expenses.<sup>34</sup> Wealthy candidates continue to fund their campaigns out of personal fortunes. In 1982 Mark Dayton spent \$6.7 million of his own money on his unsuccessful Minnesota senatorial campaign.<sup>35</sup>

The federal contribution limits, therefore, have lessened the appearance of a *quid pro quo* between members of Congress and wealthy individual contributors. At the same time, election expenditures have continued to rise, candidates spend more time fundraising, money continues to flood into campaigns, PACs are growing in influence and bundlers and independent expenditure committees are increasing in importance.<sup>36</sup> Contribution limits have not reduced overall candidate demand for money or overall campaign expenditures.



## **B. Expenditure Limits and Public Financing for Presidential Elections Have Met with Considerable Success**

The 1974 Federal Election Campaign Act created a separate system of campaign financing for presidential candidates. The \$1,000 individual and \$5,000 PAC contribution limits were applied to presidential candidates as well as congressional candidates. But presidential candidates who voluntarily accepted expenditure ceilings also qualified for receipt of limited public financing. This approach has now been tested in the 1976, 1980 and 1984 presidential elections.

### **1. Partial Public Financing**

The 1974 Act created the Presidential Election Campaign Fund. Presidential candidates accepting expenditure ceilings can receive public matching grants from the Fund for individual contributions up to \$250 in the primary election. PAC contributions are not matched. The 1974 Act provides partial public financing for primary campaigns and complete public financing for general election campaigns. Primary candidates seeking their party's nomination must first become eligible for public matching funds by raising a certain threshold amount in private individual contributions. The first \$250 of each contribution is then matched with public funds on a one-to-one basis. Once a presidential candidate receives his or her party's nomination for the general election, however, he or she receives full public financing and is not allowed to receive any private contributions unless the Fund is insufficient to provide the full entitlement.

The Fund is financed by a voluntary income tax checkoff provision. Taxpayers indicate on their tax returns whether they want the government to deposit one dollar (for an individual return) or two dollars (for a joint return) into the Fund from general tax revenues. The tax checkoff does not increase the taxpayer's liability or reduce his or her tax refund.

Since its inception, the tax checkoff program has generated \$32 to \$39 million each year. The Fund therefore consistently accumulates between \$120 to \$160 million in the four years between elections. In the 1976 and 1980 elections total payouts from the Fund amounted to \$70.8 million and \$100.6 million, respectively, allowing a carryover surplus towards the next election.

Payouts to presidential candidates are tied to the cost of living index. The one and two dollar checkoff amounts are fixed, however, and the number of participating taxpayers over the past ten years has remained fairly constant. Future elections may see shortages in funds although this has not yet happened. If the Presidential Election Campaign Fund falls short, candidates may raise otherwise prohibited private contributions for the general election.<sup>37</sup>

### **2. Expenditure Ceilings**

Presidential candidates who elect to receive public financing must agree to limit their expenditures to certain preset amounts. The combined spending limit for all primary campaigns was set at \$10.9 million per candidate for the 1976 election<sup>38</sup> and adjusted upward to \$20.2 million per candidate in 1984 to keep pace with inflation.<sup>39</sup> Expenditures in any one state are also limited by formula. In 1984 a candidate in the California primary could spend no more than \$5 million.<sup>40</sup>

In 1976 eligible major party candidates were entitled to \$21.8 million each to conduct their general election campaigns.<sup>41</sup> Adjustments for inflation have increased these amounts to \$40.4 million in 1984.<sup>42</sup> To be eligible for these funds the candidate must pledge to incur no expenses in excess of the public funds received and to accept no private contributions.

### **3. The Effects of Expenditure Ceilings and Partial Public Financing**

Presidential expenditure ceilings and public financing offer the longest sustained experiment with a comprehensive campaign finance system in this nation's history. The presidential system provides considerable information concerning the effectiveness of such a campaign finance solution.

**a. *Expenditure Ceilings and Partial Public Financing Have Kept Campaign Costs Under Control***

The Supreme Court has described political money as tantamount to political speech because money allows candidates to communicate their views to the public.<sup>43</sup> Escalating campaign costs, however, force candidates to seek money from contributors who may seek a *quid pro quo*. Expenditure ceilings are thus designed to limit candidates' demand for money—a demand which can corrupt the legislative and electoral processes, force candidates to spend excessive time fundraising and give incumbents a significant advantage over challengers.

As a practical matter, airtight expenditure ceilings are difficult to design. Creative candidates may find ways to squeeze around them. Independent expenditure committees can legally make expenditures on a candidate's behalf so long as the candidate does not control them. Despite this, evidence from 1976 and 1980 suggests that presidential expenditure ceilings have effectively restrained overall election costs.

In 1972, before enactment of the Presidential Campaign Fund Act, primary and general election presidential campaign expenditures totaled \$137 million. In 1976 the newly enacted expenditure ceilings and partial public financing held candidate expenditures to \$116 million.<sup>44</sup> In 1980 expenditures rose to \$187 million.<sup>45</sup> When adjusted for inflation, however, 1980 spending was the equivalent of only \$95 million in 1972 dollars—or 31% less than the amount spent on the 1972 election eight years earlier.<sup>46</sup> Even when independent expenditures of \$14 million are added to the 1980 total, adjusted 1980 presidential spending was still less than in 1972. Independent expenditures accounted for only 7% of the total \$201 million spent during the 1980 presidential campaign.<sup>47</sup>

A comparison of presidential with congressional campaign spending demonstrates the degree to which the 1974 Act has held campaign costs down. While inflation increased consumer costs 97% between 1972 and 1980, congressional election campaign costs increased 250% during the same period (to \$239 million).<sup>48</sup> By contrast, presidential campaign costs rose only 36% (from \$137 million to \$187 million). This comparative decline in presidential campaign expenditures is even more remarkable when one considers the large number of candidates in the 1980 presidential elections—Anderson, Brown, Bush, Carter, Kennedy and Reagan all ran major campaigns.

Presidential expenditure ceilings have not deterred presidential candidates from accepting public matching funds. In the 1976, 1980 and 1984 elections, every major candidate except former Treasury Secretary John Connally (R-Texas) voluntarily limited his or her expenditures in return for partial public financing.

**b. *The Presidential Financing System Has Decreased Reliance on “Big Money” and Hence the Possibility of Corruption***

In 1972 three contributors, W. Clement Stone, Richard Mellon Scaife and Stewart R. Mott, gave a total of \$4 million to the campaigns of Richard Nixon and George McGovern. Twenty-one corporations were charged with illegally contributing \$968,000 to presidential campaigns. Richard Nixon received a large majority of the illegal contributions (\$842,500) but George McGovern and Hubert Humphrey also received illegal corporate contributions.<sup>49</sup>

The 1974 Act outlawed individual contributions over \$1,000 and PAC contributions over \$5,000. Active enforcement of the 1974 Act has clearly reduced the influence of the single large contributor.

Some critics argue, however, that the 1974 Act has merely replaced wealthy large contributors with new power brokers—bundlers who solicit \$1,000 contributions and forward them to candidates in a large package, and PACs which are tied to corporations and labor unions. Critics also argue that independent expenditure committees circumvent some of the purposes of contribution limitations by being able to spend large sums on behalf of candidates without legal limits.<sup>50</sup>

While there is some merit to these contentions, it is also clear that the presidential financing system has significantly reduced the amount and influence of private contributions. In 1972, for example, primary and general election presidential campaign costs of \$137 million were paid for exclusively by private contributions. In 1976, following enactment of expenditure ceilings and public financing, only \$46 million in private money was used, while public financing provided the remaining \$68 million.<sup>51</sup> In 1980 private contributions totaled \$76 million while public financing provided \$102 million.<sup>52</sup> Significantly less private money entered the presidential campaigns in 1976 and 1980 than in 1972.

While the total dollar amounts of private contributions have declined since 1974, the number of individual private contributors to presidential campaigns has increased — from 12 million contributors in 1972 to 17 million in 1980. Additionally, 41 million persons participated in the 1980 federal income tax checkoff program.<sup>53</sup> Because the average size of contributions has declined, each contribution is less likely to be corrupting.

PAC contributions are significantly less important to presidential candidates than to congressional candidates. In 1980, for example, PACs contributed only 1.2% of all presidential primary candidates' receipts while individuals contributed 65% and public financing supplied 33%.<sup>54</sup> PAC contributions are low primarily because they do not qualify for public matching funds. Only individual contributions of up to \$250 are matched with public money. The unavailability of matching funds discourages presidential candidates from soliciting PAC contributions. By contrast, congressional candidates who do not qualify for public matching funds receive about 32% of their contributions from PACs. And in California, where PAC, corporate and labor union contributions are unlimited, legislative candidates receive over 50% of their contributions from these sources.

Although independent expenditures have increased in presidential campaigns, they may not be as corrupting as direct contributions. Independent expenditures cannot legally be coordinated with candidates. It is therefore difficult or impossible to build *quid pro quo* relationships between candidates and independent expenditure groups.

### ***c. Public Financing Is Not a Significant Drain on the Treasury***

The total cost of publicly financing the presidential primary and general elections in 1980 was \$102 million, approximately 0.005% (5 one-thousandths of one percent) of all federal expenditures during the preceding four-year period.<sup>55</sup> This is less than R.J. Reynolds spent advertising cigarettes during the same year. The costs of privately financing all congressional campaigns during the same period totaled \$241 million.<sup>56</sup> Adding complete public financing of congressional elections to existing presidential election financing would have caused a 0.02% increase in the annual federal budget during the 1977-1980 period.

### ***d. The Presidential Election Campaign Act Does Not Favor Incumbents***

Some critics argue that expenditure ceilings and public financing favor incumbents and hurt challengers. If expenditure ceilings are set too low, challengers cannot overcome incumbents' natural advantages; if ceilings are set too high, challengers cannot outspend incumbents and are still disadvantaged.

The first two presidential elections held under the 1974 Act, however, tend to refute this argument. Jimmy Carter defeated incumbent Gerald Ford in 1976, and Ronald Reagan defeated incumbent Jimmy Carter in 1980. In each case incumbents were defeated despite the existence of expenditure ceilings and public financing.

Public financing, particularly in primary campaigns, may significantly increase electoral competition. In 1984, for example, Democratic presidential candidates Walter Mondale, Gary Hart, Jesse Jackson, Alan Cranston, John Glenn, Ernest Hollings, George McGovern, Reuben Askew and Lyndon LaRouche were all able to promote their candidacies with public matching funds for private contributions. Without this money the primary races would have been less competitive.

**e. *Independent and “Soft Money” Expenditures Have Not Negated the Goals of Expenditure Ceilings***

Although presidential candidates have decreased their spending since 1974, expenditures by independent organizations have increased. “Soft money” expenditures by the parties on voter registration, get-out-the-vote drives and party-building activities have also risen. Critics argue these trends negate the effectiveness of expenditure ceilings and demonstrate that the flow of money cannot be curtailed.

However, expenditure ceilings have been successful even though they have not completely stopped the rise in overall campaign spending. By reducing the pressure on candidates to raise money, expenditure ceilings have lessened the appearance of corruption in the governmental process. When expenditure limits are set high enough, challengers are able to compete effectively with incumbents—as all the presidential elections thus far demonstrate.

**f. *Public Support for the Income Tax Checkoff Program to Finance the Presidential Election Campaign Fund Has Remained Relatively Constant***

Internal Revenue Service figures show that public participation levels in the federal income tax checkoff program have remained fairly constant between 1974 and 1982. The IRS generally reports a 25% to 30% participation rate, with \$30 to \$40 million raised each year—thus giving the Presidential Election Campaign Fund between \$120 to \$160 million between elections.<sup>57</sup> In actuality, the IRS figures probably understate the participation rate in the tax checkoff program. Independent estimates indicate taxpayer participation may be as high as 38%.<sup>58</sup>

In sum, federal laws have offered the opportunity to compare two different systems of campaign finance. In congressional elections with contribution limits only, the influence of the single large contributor has decreased; but overall expenditures have risen, PACs have increased in influence and candidates spend more and more time raising money. In presidential elections with expenditure ceilings and partial public matching funds, expenditures have risen modestly, PACs have exercised minimal influence and challengers have been able to conduct more competitive campaigns.

---

## NOTES

1. MICHAEL MALBIN, *MONEY AND POLITICS IN THE UNITED STATES: FINANCING ELECTIONS IN THE 1980s*, at 7 (1984).
2. *Contributions to Political Committees in Presidential and Other Campaigns: Hearings Before the House Comm. on the Election of the President*, 59th Cong., 1st Sess. 56 (1906).
3. STATE OF THE UNION ADDRESS, 9 CONG. REC. 96 (1905).
4. Act of Jan. 26, 1907, ch. 420, 34 Stat. 864 (1907) (current version at 2 U.S.C.A. §441b (West 1985)). In *Athens Lumber Co. v. Federal Election Comm'n*, 718 F.2d 363 (11th Cir. 1983), a federal appellate court ruled that the corporate prohibition was constitutional.
5. Ch. 368, tit. III, 43 Stat. 1070 (1925).
6. The law was inapplicable to candidates' political committees and to presidential and vice-presidential candidates. Candidates evaded spending limits by setting up multiple committees.
7. Act of July 19, 1940, ch. 640, §13(a), 54 Stat. 770 (1940). These limits were relatively insignificant because political committees could proliferate without limitation. See Louise Overacker, *American Government and Politics: Presidential Campaign Funds, 1944*, 39 Am. Pol. Sci. Rev. 899, 901-05 (1945).
8. Also known as the War Labor Disputes Act, ch. 144, §9, 57 Stat. 167 (1943) (current version at 2 U.S.C.A. §441b (West 1985)).
9. Also known as the Labor Management Relations Act, ch. 120, tit. III, §304, 61 Stat. 159 (1947), see relevant part of current version at 2 U.S.C.A. §441b (West 1985); *United States v. CIO*, 335 U.S. 106 (1948) (reviewing history of federal regulations).
10. Pub. L. No. 92-225, 86 Stat. 3 (codified at 2 U.S.C.A. §§431-434 (West 1985)). The limitations on media expenditures and independent spending were invalidated by the *Buckley* decision and subsequently repealed.



11. Pub. L. No. 92-178.
12. HERBERT E. ALEXANDER, *FINANCING POLITICS: MONEY, ELECTIONS, AND POLITICAL REFORM* 51-58 (2d ed. 1980).
13. H.R. REP. NO. 1239, 93d Cong., 2d Sess. 3 (1974).
14. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974) (codified as amended at 2 U.S.C.A. §§431-455 (West 1985)). The Presidential Election Campaign Fund Act of 1971, Pub. L. No. 92-178, and the Presidential Primary Matching Payment Account Act of 1974, Pub. L. No. 93-443, created partial public financing for presidential primaries and full public financing for the general election. See 26 U.S.C.A. §§9001-9013 (West Supp. 1985) (Internal Revenue Code).
15. *Buckley v. Valeo*, 424 U.S. 1 (1976).
16. Much has been written on the Federal Election Campaign Act of 1974. See, e.g., JOHN F. KENNEDY SCHOOL OF GOVERNMENT CAMPAIGN FINANCE STUDY GROUP TO THE COMMITTEE ON RULES AND ADMINISTRATION OF THE U.S. SENATE, *FINANCING PRESIDENTIAL CAMPAIGNS* (Jan. 1982); MALBIN, *supra* note 1; HERBERT E. ALEXANDER, *FINANCING THE 1980 ELECTION* (1983); *Political Action Committees and Campaign Finance*, 22 ARIZ. L. REV. 351 (1980) (symposium).
17. The Act limited the expenditures of each candidate for the House and Senate, 18 U.S.C. §608(c) (Supp. IV 1974) (*repealed* 1976); limited the amounts congressional candidates could spend from their own funds, *id.* at §608(e) (*repealed* 1976); and limited the independent expenditures that could be made on behalf of congressional candidates, *id.* at §608(e) (*repealed* 1976).
18. 424 U.S. 1 (1976).
19. S. REP. NO. 689, 93d Cong., 2d Sess. 4-15, *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 5587, 5590-96.
20. 120 CONG. REC. 27, 495-96 (1974); H.R. REP. NO. 1438, 93d Cong., 2d Sess. 109-10, *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 5618, 5685-86 (conference report).
21. 2 U.S.C.A. §441a(a)(1)(A) (West 1985).
22. 2 U.S.C.A. §441a(a) (West 1985). A person's contributions to a federal candidate in the non-election year count as contributions in the election year. A contributor is actually limited to \$25,000 in contributions to federal candidates over a two-year cycle. However, a contributor can give \$25,000 to candidates in one year, and \$25,000 to parties and committees in the second year—for a total of \$50,000 over a two-year period.
23. 2 U.S.C.A. §441a(a)(1)(A) (West 1985).
24. 2 U.S.C.A. §441a(a)(2)(A), (a)(4), (a)(6) (West 1985).
25. 2 U.S.C.A. §441a(a)(5) (West 1985).
26. 2 U.S.C.A. §441a(d) (West 1985).
27. See generally, ELIZABETH DREW, *POLITICS AND MONEY: THE NEW ROAD TO CORRUPTION* (1983).
28. John Bibby, *Campaign Finance Reform: Expanding the Government's Role or the Parties' Role?*, 6 COMMONSENSE 1, 2 (1983).
29. Campaign Practices Reports, May 20, 1985, p. 2.
30. U.S. News and World Report, Jan. 9, 1984, p. 41.
31. Michael Wines, *'Bundlers' Aid Campaigns in Evading Spending Laws*, Los Angeles Times, Oct. 1, 1984.
32. Bibby, *supra* note 28.
33. Federal Election Comm'n, Press Release, May 19, 1985, p. 1.
34. Federal Election Comm'n, Press Release, Nov. 29, 1983, p. 4.
35. Bibby, *supra* note 28, at 2.
36. Jesse Helms and James Hunt raised over \$20 million in contributions despite the federal limits during their 1984 campaigns in North Carolina for the U.S. Senate. David Rogers, *Bitter Battle*, Wall Street Journal, Oct. 18, 1984.
37. HERBERT E. ALEXANDER, *WHITE PAPER ON PUBLIC FUNDING OF POLITICAL CAMPAIGNS* 7 (1984).
38. Alexander, *supra* note 12, at 94.
39. Federal Election Comm'n, Federal Election Comm'n Record, Apr. 1984, p. 8.
40. The 1974 Act established primary spending limits of either \$200,000, or 16 cents multiplied by the voting age population of the state, whichever was greater. Adjustments for inflation raised these figures to \$404,000 and 32.3 cents, respectively, in 1984. Based on a voting age population of 17,278,944, California's 1984 spending limits were \$5.6 million.
41. Alexander, *supra* note 12, at 94.
42. Federal Election Comm'n, Federal Election Comm'n Record, Oct. 1984, p. 8.
43. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court equated money with political speech. It ruled that contributions could be limited to prevent the appearance of corruption in the legislative process, but that expenditures could not be limited solely out of a desire to cap overall campaign spending.
44. Alexander, *supra* note 12, at 103.

45. Primary expenditures of \$124 million were reported by the FEC. FEDERAL ELECTION COMM'N, FEC REPORTS ON FINANCIAL ACTIVITY 1979-1980: FINAL REPORT, PRESIDENTIAL PRE-NOMINATION CAMPAIGNS, at 1 (1981). Federal funds of \$62.8 million financed the three candidates' general election campaigns. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 267 (1984).
46. Adjustment for inflation uses the *Consumer Price Index for All Items*, see U.S. CENSUS BUREAU, *supra* note 45, at 493.
47. U.S. CENSUS BUREAU, *supra* note 45, at 267.
48. The 1972-80 expenditures figures appear in Bibby, *supra* note 28. Congressional campaign expenditures continued to outpace inflation in 1982, increasing 400% based on 1972 levels, while costs generally increased only 131%. U.S. CENSUS BUREAU, *supra* note 45, at 493.
49. Alexander, *supra* note 12, at 23-77.
50. The Supreme Court has recently held that expenditures by independent organizations on behalf of or against candidates receiving public matching funds cannot be limited without violating the First Amendment. Federal Election Comm'n v. National Conservative Political Action Comm., 105 S. Ct. 1459 (1985).
51. U.S. CENSUS BUREAU, *supra* note 45, at 267.
52. Presidential primary data on 16 candidates from FEDERAL ELECTION COMM'N, *supra* note 45, at 1-5. General election data from U.S. CENSUS BUREAU, *supra* note 45, at 267.
53. ALEXANDER, *supra* note 37.
54. FEDERAL ELECTION COMM'N, *supra* note 45, at 1-5. The remaining 18.8% of candidates' funds came primarily from loans and personal funds.
55. Total federal expenditures equaled \$1.7 trillion. U.S. CENSUS BUREAU, *supra* note 45, at 319.
56. FEDERAL ELECTION COMM'N, FEC REPORTS ON FINANCIAL ACTIVITY 1979-80, FINAL REPORT, U.S. SENATE AND HOUSE CAMPAIGNS 131-132 (1982).
57. ALEXANDER, *supra* note 37.
58. Several factors indicate that IRS estimates of taxpayer participation in the checkoff program should be increased: (1) the IRS currently discounts returns filed by parties who have no tax liability, even if they indicate participation in the program; (2) the IRS does not count "late" returns, even though a taxpayer may indicate support of the presidential fund; and (3) the IRS assumes that taxpayers who indicate nothing at all are actually voting "No." See Kim Quaile Hill, *Taxpayer Support of the Presidential Election Campaign Fund*, 62 SOC. SCI. Q. 768 (1981). Hill estimates that actual taxpayer participation in and support of the checkoff program ranges from 3% to 9% higher than IRS figures, and may have reached 38% in 1977. Participation in the tax checkoff program is also correlated with income. In 1977, 33% of eligible taxpayers earning less than \$5,000 participated in the program, while 40% of taxpayers earning over \$20,000 participated. Conversely, active rejection rates varied from 47% for low income taxpayers to 34% for taxpayers earning \$50,000 or more.





# **PART III**

## **The Commission's Recommendations**



## CHAPTER 12

---

# **The Commission's Model Campaign Finance Law: A Proposal for California**

*This is a farewell column. I have been the State Capitol correspondent for the Herald for almost four years. In that time I have come to believe that campaign reform is the single most important need in state government....I sincerely believe that the influence of money on decisions made in Sacramento has institutionalized corruption here. Even men and women whom I personally believe to be honest, hard-working and dedicated public servants are tainted by the pervasive role of money in California politics and government. Money talks too much in California politics. It is not a novel observation. It is nevertheless the principal lesson of four years of work.*

— Joe Quintana, Los Angeles  
Herald Examiner<sup>1</sup>

**T**he Commission has extensively studied California's legislative campaign finance problems. It has met with political leaders, legislative staff, campaign consultants, contributors, journalists and academic experts. It has reviewed the reforms implemented in federal campaigns and in other states. It has analyzed the constitutional, political and public opinion constraints that define the parameters of acceptable reforms.

Based on these studies, the Commission recommends a comprehensive package of three reforms for California:

- Voluntary expenditure ceilings on the total amount a candidate can spend in the primary and general elections;
- Contribution limits on the amount of money contributors can give to candidates; and
- Limited public matching funds for candidates who voluntarily agree to limit their expenditures.

The Commission's basic recommendation is fully drafted as a Model Law in Appendix A. Appendices D and E present hypothetical scenarios describing how candidates raise money today and how they might raise it under the Model Law.

The Commission has also considered an alternative reform proposal. Like the Commission's basic recommendation, the alternative proposal contains contribution limits and voluntary expenditure ceilings. Instead of limited public matching funds, however, it offers two new incentives for candidates to limit their expenditures:

- Candidates accepting expenditure ceilings will qualify their in-district contributors for 100% tax credits on small contributions up to \$100; and
- Candidates themselves will qualify for large variable contributions from political parties and/or legislative caucuses in amounts up to one-half of the prescribed expenditure ceilings.

This alternative proposal appeals to some members of the Commission as being more practical than the main proposal. The alternative proposal is summarized and fully drafted as a possible statute in Appendix B.

## **A. The Commission Recommends a Comprehensive Approach to California's Campaign Finance Problems**

California's changing patterns of campaign financing have created major imbalances in the state's political systems. In non-competitive districts, often too little money is spent to inform voters of current issues or the incumbent's performance. In competitive districts, on the other hand, spending is often excessive. High spending deters qualified newcomers from entering politics, forces candidates to solicit money from organized statewide interests and draws legislators into apparent *quid pro quo* exchanges of contributions for votes. Candidates spend more time raising money and less time formulating policy. Partisan political battles are intensifying. Public confidence is diminishing. (See Part I, "Campaign Finance Today in California: Problems, Causes and Consequences.")

California urgently needs comprehensive campaign finance reform. Without comprehensive measures California's problems will continue to worsen. The federal government and many other states have experimented with a variety of campaign finance reforms. (See Part II, "The History of Campaign Finance Reform: California, Other States and Federal.") California can draw on these experiences in fashioning solutions appropriate to its problems.

Campaign finance proposals for California must be assessed according to their ability to maximize the following policy objectives:

- To decrease the public perception that legislative votes are unduly influenced by large contributors with financial or other interests in pending legislation;
- To decrease the time candidates and legislators spend on fundraising;
- To increase meaningful competition between candidates for legislative office;
- To increase the time candidates and legislators spend on important state issues;
- To increase the flow of campaign information to the voters;
- To offer all individuals and interest groups regardless of wealth a fair and equal opportunity to participate in the state's electoral and legislative processes; and
- To restore and enhance public trust in the state's legislative institutions.

These goals are, of course, more easily stated than achieved. Individual reforms do not promote all goals equally. Some work in opposition to each other. Others may create more problems than they solve.

Limits on the size of contributions, for example, reduce the appearance of trade-offs between large contributors and legislators. But they also encourage candidates to spend more time raising money, make it more difficult for challengers to compete with incumbents and diminish candidates' ability to communicate with the electorate. (See Appendix F, "Analysis of Prop. 40.") Expenditure ceilings by themselves cannot legally be imposed under Supreme Court rulings. (See Chapter 14, "Constitutional Analysis.") Public matching funds by themselves would probably increase campaign expenditures without encouraging candidates to restrain their fundraising efforts or decrease their dependence on large contributors. A combination of public financing and contribution limits without expenditure ceilings would only reduce the *appearance* of *quid pro quo* arrangements between contributors and legislators. It would not curtail the arms race fundraising mentality which encourages legislators to enter *quid pro quo* arrangements in the first place.<sup>2</sup>

*For these and other reasons, the Commission recommends a combination of reforms, including voluntary expenditure ceilings, contribution limitations and limited public matching funds for candidates who limit their expenditures.* Each reform mitigates the potential disadvantages of the other components. Expenditure ceilings will cap the escalating demand for campaign funding, reduce the pressure on legislators to exchange contributions for votes, and counteract the fundraising arms race mentality; they will also ameliorate the tendency of low contribution limits to require candidates to spend excessive time fundraising. Contribution limits will lessen the influence of large contributors; they will also encourage candidates to diversify their sources of funding under a system of expenditure limits and will encourage candidates to seek out smaller contributions which are matched by higher ratios of public funds. Limited public matching funds will provide a clean source of campaign financing to enable new candidates to compete more effectively with incumbents; they will also encourage candidates to accept voluntary expenditure limitations.

## **B. Expenditure Ceilings Are Necessary to Limit the Fundraising Arms Race**

The Commission agrees with most political observers and a clear majority of the public that too much money is spent in some legislative races. So long as candidates can win elections by spending increasing sums of money, they will continue to participate in an escalating arms race in which they all seek to raise as much money as possible. An unlimited demand for political money opens the door to influence-peddling by interest groups, requires candidates to spend excessive time fundraising, detracts from the discussion of important state issues, deters newcomers from seeking legislative office and undermines the representativeness of the Legislature.

Expenditure ceilings directly address the critical campaign finance problem facing the state: the escalating and potentially unlimited demand for political money. A cap on expenditures will stabilize campaigns, diminish the fear of last-minute blitzes and surprise spending attacks, reduce access by special interest contributors, ease the fundraising advantages of incumbents over challengers, decrease the time devoted to fundraising and abate the political fundraising wars. Five states currently place expenditure ceilings on candidates accepting limited public financing.

The Commission thus proposes that legislative candidates in California be required to accept expenditure ceilings if they wish to qualify for receipt of limited public matching funds. For Assembly candidates, the Commission proposes a \$150,000 expenditure ceiling in the primary election and \$225,000 in a general, special or special runoff election. Candidates for



the Senate may spend a maximum of \$250,000 in the primary election and \$350,000 in a general, special or special runoff election. Candidates who agree to the limits and whose opponents turn down the package of expenditure limitations and limited matching funds will be permitted to exceed the expenditure limits if their opponents spend in excess of the limits.

These expenditure limitations would have had a significant impact on a number of expensive campaigns conducted by legislative candidates in the 1980s. However, most candidates spent well under these limits or would do so if assured that their opponents' spending would also be limited. State Senator Gary Hart (D-Santa Barbara) has commented that the \$568,000 he spent on his successful 1982 campaign was *twice* the amount he needed to inform the voters of his positions. He felt he was forced to spend this amount to stay ahead of his opponent who spent \$494,000.

Members of the public support expenditure ceilings. A February 1985 Field Poll reported that 81% of Californians believed that "[t]here should be upper limits put on the amount of money that political campaigns can raise and spend in an election."<sup>3</sup>

### ***1. Arguments Against Expenditure Limitations***

Opponents of expenditure limitations make two principal arguments. First, they contend that expenditure ceilings hurt challengers and help incumbents. Challengers need either to outspend incumbents to overcome their superior name recognition or at least to spend large sums of money to establish their own political identities. Expenditure ceilings might prevent challengers from accomplishing either goal. Opponents of expenditure ceilings point to studies by Professor Gary Jacobson of the University of California, San Diego, which suggest that challengers benefit more from increased spending than incumbents. The more money an incumbent is forced to spend in response to a vigorous challenge, the greater the chance that the incumbent will be defeated. Jacobson writes that "[S]pending limits, if they have any effect at all on competition, can only work to the detriment of challengers."<sup>4</sup>

Those who rebut these arguments contend that expenditure ceilings can actually help challengers, but only where those ceilings are high enough to allow relatively generous challenger spending. They argue that incumbents significantly enhance their inherent advantages by raising far more money than challengers. In 1984, for example, incumbent members of the California Assembly *outspent challengers 14-to-1 in the general election and won 100% of their races*. Without expenditure ceilings few challengers will be able to compete with incumbents on financially equal terms.

The Commission acknowledges that low expenditure ceilings prevent challengers from reaching the threshold of public visibility. It believes, however, that sufficiently high expenditure ceilings will allow challengers to wage competitive campaigns and communicate their positions to the public. Expenditure ceilings eliminate prohibitively expensive campaign struggles which waste candidates' money, place extreme pressures on contributors and force candidates into alliances which create the appearance of undue contributor influence.

Professor Jacobson has indicated that expenditure ceilings will not suppress competition if they are high enough to allow challengers to establish name and issue recognition. In this connection, Professor Jacobson believes the Commission's proposed expenditure ceilings for State Senate and Assembly races "make sense" and are "more than enough" to allow for vigorous competitive challenges: "Based on my research on congressional campaigns, limitations that high should not hurt any challenger."<sup>5</sup>

Another argument against expenditure ceilings is that they raise difficult enforcement problems. During the last weeks of the 1977 New Jersey gubernatorial election, for example, the New Jersey Election Enforcement Commission was asked to decide whether spending by the state's Republican Party should be counted toward the Republican candidate's expenditure ceilings. Critics argue that expenditure ceilings will allow similar last-minute interpretive

questions to interfere with campaigns and encourage politically motivated litigation. Critics also argue that expenditure ceilings are ineffective—that candidates will circumvent them and independent expenditure committees will ignore them.<sup>6</sup>

Questions of interpretation may arise under any system of regulation. But the Commission believes that qualified administrative agencies such as the Fair Political Practices Commission can keep these questions to a minimum and resolve them efficiently. If expenditure ceilings are sufficiently high, candidates will be able to compete comfortably within defined parameters. Candidates will not be forced to stretch expenditure limits through questionable techniques.

## **2. Comparisons with Other Jurisdictions**

Expenditure ceilings in presidential campaigns have clearly been successful in limiting overall campaign spending. When adjusted for inflation, spending by presidential candidates in 1980 was 31% less than spending before ceilings were adopted in 1972. "Soft money" expenditures exempted from expenditure ceilings have increased, but they have not undermined the major purposes of expenditure ceilings. Campaign expenditures have been restrained and candidates have been relieved from the pressures to trade legislative votes for contributions. (See Chapter 11, "Federal Experience.")

Expenditure ceilings have also worked well in other states. Hawaii, Michigan, Minnesota, New Jersey and Wisconsin have all adopted expenditure limitations for some races. No state which has implemented expenditure ceilings has repealed them. Some have encouraged more candidates to accept ceilings by raising the permitted expenditures. After Minnesota substantially raised its expenditure limitations, the percentage of candidates agreeing to limit expenditures increased dramatically. A majority of legislative candidates answering a Minnesota survey reported that expenditure ceilings did not limit the effectiveness of their campaigns. (See Chapter 10, "Laws of Other States.")

## **C. Contribution Limits Are Necessary to Mitigate the Real or Apparent Influence of Large Contributors**

Contribution limits reduce the amount of money contributors can give to candidates. The Commission believes that contribution limits will lessen the impact of money on the legislative process, reduce the appearance of a corrupting link between contributions and pending legislation, diminish the influence of large contributors or interest groups, encourage candidates to seek a wider variety of fundraising sources and slow the rising costs of campaigns.

The major benefit of contribution limits is to improve the integrity of the legislative process. A reduction in the size of contributions will enable legislators to solicit contributions without subjecting themselves to the charge that they favor large donors. Limits will improve public confidence in the legislative process by diminishing the apparent role that money plays in legislative decisions. The Commission's seed money exemption from contribution limits will still allow challengers to receive large contributions at the critical start of their campaigns.

Limits on contributions will also benefit the electoral process. Candidates currently rely on large contributions from interest groups and partisan sources. Limitations will encourage candidates to seek more contributions from smaller contributors and to engage in additional grassroots campaigning.

The Commission thus recommends that a basic \$1,000 limit be placed on all individual, corporate, labor and other contributions. Small contributor PACs which receive all their member donations in amounts of \$50 or less would be allowed to make larger contributions up to \$5,000. Assembly candidates could receive a maximum of \$50,000 and Senate candidates a maximum of \$75,000 from all non-individual (PAC, corporate, labor) contributors combined.

Parties and/or caucuses could contribute up to \$50,000 per candidate. Each candidate could raise up to \$35,000 in seed money contributions of any size to start their campaigns. Transfers and off year fundraising would be prohibited.

### **1. Arguments Against Contribution Limitations**

Opponents argue that contribution limits will devastate challengers by impairing their ability to raise money from a few large sources. They argue that challengers need large contributors to challenge incumbents who have the superior fundraising power. Large donors also help challengers gain credibility. Interest groups are often reluctant to contribute to challengers and tend to give at least token amounts to nearly all incumbents. Only a few contributors, such as United for California for Republican candidates and the Assembly Speaker for Democratic candidates, will fund challengers with large contributions. Contribution limits will curtail these contributions and reduce competition from challengers.

Opponents also argue that contribution limits require candidates to spend more time fundraising. Candidates already spend a high percentage of their time raising money. If contributions are limited, candidates will spend less time legislating or engaging in dialogue with the voters.

The Commission believes these arguments against contribution limitations have merit but only for contribution limitation proposals unaccompanied by other reforms. Challengers can be hurt by contribution limits unless alternative sources of money exist and overall expenditures are limited. (See Appendix F, "Analysis of Prop. 40.") For this reason, the Commission's Model Law contains expenditure ceilings and limited matching funds. In addition, the Commission's proposal allows a candidate to raise the first \$35,000 in unlimited contributions.

### **2. Comparisons with Other Jurisdictions**

The federal government and most states limit contributions to candidates. Federal law prohibits individuals from contributing more than \$1,000 per candidate per election. PACs are limited to \$5,000 per election. (See Chapter 11, "Federal Experience.")

Twenty-three states limit individual contributions to candidates. Limitations on individual contributions range from \$250 to \$5,000. Many states (17) also limit PAC contributions. Minnesota and Texas limit off year contributions.

## **D. Limited Matching Funds Are Necessary to Ease Fundraising Pressures and to Encourage Acceptance of Expenditure Ceilings**

The Commission believes limited public matching funds are a necessary complement to its contribution limit and expenditure ceiling proposals. Matching funds are necessary to:

- Encourage candidates to accept expenditure ceilings;
- Provide an alternative source of funding as a substitute for special interest contributions;
- Encourage new candidates to compete in elections;
- Allow candidates to spend more time addressing state issues; and
- Provide California with cleaner elections at a modest cost.

*Limited public financing is the only technique approved by the Supreme Court to date for obtaining expenditure ceilings.* Candidates accepting public financing can be required to limit their expenditures. The Court may also allow expenditure ceilings to be imposed as a condition for receipt of other candidate benefits, such as tax credits or variable contribution limits, but these conditions have not been tested. (See Appendix B, "Alternative Proposal.") *The Commission therefore believes that limited matching funds are the safest and surest way to encourage candidates to accept expenditure ceilings.*

Limited matching funds will also enable candidates to run competitive campaigns without excessive reliance on contributors with a stake in pending legislation. Candidates—particularly challengers—need to spend significant amounts to educate and persuade the

public to vote for them. Few challengers can succeed without spending at least \$100,000 in the primary and \$175,000 in the general election. Candidates currently seek the bulk of their money from statewide interest groups or contributors. (See Chapter 7, "Negative Consequences.") Limited matching funds will enable candidates to wage competitive campaigns without appearing to enter improper *quid pro quo* arrangements with influential contributors.

Matching funds will also counter the recent tendency for candidates to seek large contributions from interest groups and to downgrade small individual contributions from their own districts. *In 1982, for example, small contributions (under \$100) to the average candidate dropped to 6% of total receipts. Individuals only contributed 13% of the average candidate's budget.* Higher matching ratios for in-district individual contributions can encourage candidates to raise money from their own constituents.

Matching funds will enable newcomers to raise the necessary financing to challenge incumbents. Incumbents currently outspend challengers by significant ratios and win most of their races. Without personal wealth or the visibility of incumbency, newcomers have great difficulty breaking into politics. Matching funds will ease challengers' fundraising burdens and increase competition in a number of races.

Many candidates now spend 50% or more of their campaign time raising money. Their campaigns are conducted by campaign consultants using paid media. Matching funds will also enable candidates to spend more time meeting voters and debating issues.

The Commission's proposal provides limited matching funds for both the primary and general elections. Candidates would be able to receive up to one-half their expenditure limitation in matching funds for both elections. Candidates would receive a 3-to-1 match for contributions of \$250 or less and a 5-to-1 match for in-district contributions of \$250 or less. Candidates would be free to spend the money as they chose on any campaign-related goods or services. Expenditures would be disclosed on detailed reporting forms.

### **1. Arguments Against Public Matching Funds**

Opponents generally make five arguments against limited public matching funds: (1) public money will be wasted on frivolous candidates or incumbents who have no serious opponents; (2) matching funds in both the primary and general elections will increase the costs of campaigns by encouraging candidates to raise and spend more money; (3) taxpayers do not want to subsidize candidates they oppose; (4) matching funds will allow the government to interfere in the electoral process by arbitrarily restricting the use of funds or by creating unnecessary paperwork; and (5) public opinion polls indicate resistance to public financing.

The Commission has carefully considered these arguments. It nevertheless believes the advantages of matching funds decisively outweigh any potential disadvantages.

Opponents first argue that matching funds are wasteful. Public money will be spent on frivolous candidates or incumbents who could raise sufficient funding without it. Providing matching funds in both the primary and the general election will increase the number of undeserving candidates receiving public money.

To ensure that public money will not be available to frivolous candidates, however, the Commission's Model Law provides that candidates who cannot raise \$20,000 (for Assembly contenders) or \$30,000 (for Senate aspirants) in amounts of \$1,000 or less will be ineligible for limited matching funds. In addition, candidates will not qualify for matching funds if they face opponents who either have not qualified for public money or have failed to raise or spend at least \$35,000. These restrictions will withhold matching funds from a wide range of candidates who are not serious or who do not face serious competition.

The Commission also believes it is essential to make limited matching funds available in the primary as well as the general election. Confining matching funds to the general election



only would tend to protect incumbents against competition. In heavily Democratic or Republican “safe districts,” the outcome of a general election is often a foregone conclusion. Serious competition to the incumbent is possible only in the primary. Limited matching funds in the primary are necessary to encourage new candidates to enter politics.

A second argument made by opponents of matching funds is that even limited matching funds will cause overall campaign expenditures to increase. Candidates will intensify their fundraising efforts to receive as much public money as possible. Candidates who now spend little on campaigns may be tempted to raise and spend more.

Although some candidates may raise and spend more money under a matching funds system, increased spending by some candidates — particularly challengers — will benefit voters. In many races too little money is spent. Voters are left ignorant of the issues and candidates. Limited matching funds will help candidates increase public awareness of campaign issues. Expenditure ceilings imposed on candidates accepting matching funds will keep overall spending in check.

A third argument against matching funds is that taxpayers should not be asked to support candidates they oppose. This argument, however, is overbroad. All state programs may be opposed by at least a few taxpayers, yet these taxpayers cannot veto such programs or withdraw their funds. Moreover, the Commission’s Model Law proposes to raise matching fund revenues through a voluntary checkoff system. Taxpayers who want public tax money to support candidates will simply check the appropriate box on their tax returns. If they do not wish to support the program, they can refuse to participate. The checkoff approach has been successfully used at the federal level and in other states for over ten years. Other systems — such as taxpayer designation of a particular candidate or party — would be too difficult to administer.

A fourth argument against a matching funds system is that it creates the potential for bureaucratic interference. Opponents express concern that the government might restrict candidates’ use of money or dictate how they must spend it. Opponents fear that administrative opinions and regulations will interfere with the day-to-day conduct of campaigns. They predict costly and time-consuming paperwork to process matching fund requests.

Minimal regulations, however, are necessary even under a limited matching funds system, although most campaign finance regulations are typically confined to expenditure ceilings and contribution limitations. Public administration of matching funds systems has worked relatively efficiently at the federal level and in other states. California’s Fair Political Practices Commission has established a solid reputation as a non-partisan regulatory and enforcement body. The FPPC already compiles the kind of information needed under the Model Law. A modest increase in the FPPC’s budget would enable it to respond quickly to any problems that might arise. The FPPC will be able to draw upon the experience of the Federal Election Commission and other state commissions which have enforced similar laws for the past ten years.

The fifth argument against a limited matching funds system rests on the perception that the public opposes it. Opponents cite public opinion polls indicating resistance to public financing. Opponents also cite the defeat of Proposition 40 in the 1984 election, a defeat which was attributed by some to the initiative’s small public financing component.

Although opinion polls indicate public opposition to public financing when proposed as a single remedy, polls also indicate public support for limited public financing when included in a comprehensive package. A recent University of Southern California/Common Cause poll found that 63% of the public favors a complete package of reforms, including contribution limits, expenditure ceilings and limited public financing. A 1985 Field Poll found that although California voters opposed “total” public funding of political campaigns by a three-to-one

margin (72% to 26%), a clear majority (60% to 35%) agreed that "there should be some minimum level of public funding of political campaigns." (See Appendix H, "Public Opinion Polls.")

Taken as a whole, therefore, the Commission believes that the Model Law will advance all the goals thought desirable for California. Expenditure limits will cap overall demand for political money, restrain the arms race in fundraising and enable challengers to compete fairly with incumbents. Contribution limits will curb excessive influence from large contributors. Limited matching funds will encourage candidates to accept expenditure ceilings, increase small in-district contributions and inject a new measure of competition into critical legislative races.

## **2. Comparisons with Other Jurisdictions**

Public financing of elections has been adopted and implemented in a number of states and in presidential elections. (See Chapter 10, "Laws of Other States," and Chapter 11, "Federal Experience.") No state which has implemented a public financing system has repealed it. Two states, Minnesota and Wisconsin, provide large amounts of public money to legislative candidates and candidate acceptance of this system has grown with each election cycle. Four states, New Jersey, Michigan, Minnesota and Wisconsin, give public money directly to gubernatorial candidates. Nearly all candidates in these states accept the public grants.

All of these states fund their programs with tax checkoffs similar to the federal system, and they have always raised sufficient money to fund their programs. Studies of public financing in other jurisdictions report that large contributions have decreased, small contributions have increased, and candidates are less subject to special interest influence.

## **3. Costs of the Commission's Proposal**

Estimated costs of a limited matching funds program for the State Legislature have varied widely. The FPPC estimated that the Vasconcellos-Lockyer bill, enacted by the Legislature but vetoed by Governor George Deukmejian in 1984, would have cost \$18 million per two-year election cycle for the general election alone. (See Chapter 9, "California History.") The FPPC calculated that if every major party candidate running for the Assembly and the Senate received the maximum amount of matching funds available, the cost could climb to \$31.5 million. It noted, however, that this "theoretical cost" would "probably never be incurred."<sup>7</sup>

The cost of the Commission's Model Law is considerably less. The Commission's Model Law is able to reduce the cost of a matching funds system by adopting a unique provision which withholds money from candidates who lack competitive opponents. Opponents are not deemed "competitive" until they have either themselves qualified for matching funds or raised or spent at least \$35,000. (See Chapter 13, "Detailed Analysis of Model Law.")

Applying the Commission's Model Law retrospectively to three prior California elections suggests the range of possible costs. Assuming that candidates would only receive matching funds if they had a competitive opponent, and assuming those candidates would then receive the *maximum* matching funds available (an unrealistic assumption which overstates actual costs), then the Commission's limited matching funds proposal would have cost \$13.0 million in the 1980 election, \$15.7 million in the 1982 election and \$8.0 million in the 1984 election—or an average of \$6.1 million a year.

The Commission, however, proposes to eliminate the current California state income tax deduction for political contributions, thereby saving the state approximately \$2 million a year. It also proposes to supplement the FPPC's budget with an additional \$500,000 for enforcement of the Commission's Model Law. Applying this net reduction of \$1.5 million to the basic annual cost of the Commission's proposal, *the entire package will cost the state an average of only \$4.6 million a year.* (See Table 12.1 and Chapter 13, "Detailed Analysis of Model Law.")



This \$4.6 million average annual cost is far less than any other matching funds proposal which the Legislature has seriously considered. Despite this, and unlike other proposals, the Commission's Model Law offers limited matching funds in primary elections as well — a necessity if competition is to be encouraged in “safe” districts where new candidates can realistically enter politics only through the primaries. The projected costs of the Model Law are also quite modest. By comparison, California now spends \$6.5 million a year on advertising and marketing just to promote tourism and business expansion in the state.<sup>8</sup>

The Commission's Model Law can generate enormous tax savings for taxpayers. One experienced observer has calculated that “the state loses about \$9 billion per year in revenue” as a result of special interest exemptions placed in the state tax code.<sup>9</sup> Limited matching funds can thus be an extremely cost-efficient investment if they decrease legislators' reliance on special interest contributors and increase public respect for the state's political institutions. (See Chapter 7, “Negative Consequences.”)

## **E. The Prospects for Reform Are Open**

You're damn right I'm for campaign reform. I want to get out of spending all my time begging and bowing and scraping and laughing at jokes that I've heard 1,300 times.

— Assembly Speaker Willie Brown<sup>10</sup>

Oliver Wendell Holmes...once said that judicial reform was no sport for the short-winded. The same can be said for campaign finance reform.

— John Noble, Campaigns & Elections<sup>11</sup>

The politics of campaign finance reform are intricate. Officeholders have mastered the current campaign finance system and few incumbents are eager to tamper with success. Reforms also involve inevitable uncertainties. Even the proponents of change fear hidden loopholes or unseen problems. Members of each political party worry that even slight changes may give their opponents an advantage. Proposed reforms are thus subjected to intense partisan scrutiny. Incumbents, when in doubt, are often reluctant to change the status quo. The short-term prospects for comprehensive legislation changing California's current system of campaign financing are thus uncertain.

Proposition 40, the Ross Johnson contribution limits initiative, for example, was expected by many to pass overwhelmingly in the 1984 election. However, a number of groups ranging from the California Taxpayers Association to California Common Cause opposed the initiative. Its defeat cast a shadow over legislative reform efforts and buttressed the arguments of some that the public is uninterested in campaign finance reform or unwilling to accept limited public financing.

Partisan considerations have blocked the legislative passage of earlier campaign finance measures. The controversy over contribution limits proposals, for example, has been particularly heated. Republicans have introduced bills in recent years which would limit campaign contributions. Democrats, on the other hand, fear that contribution limits will seriously hurt Democratic incumbents and challengers who feel they must rely on large contributions from the Assembly Speaker or special interests to remain competitive. Contribution limits would cut into large labor union contributions, traditionally a major source of Democratic support. Democrats also fear that Republicans can more easily raise large contributions (up to \$1,000) from wealthier individuals and business groups than Democrats. Democrats have thus opposed bills which only limit contributions.

Republicans have also introduced bills proposing to ban transfers of funds from one candidate to another. Republican Assemblyman Gordon Duffy introduced such a bill in the early 1980s. The FPPC then opposed it, saying a ban on transfers would favor Republicans. In 1985 Senator Marian Bergeson (R-Newport Beach) introduced another bill to ban transfers. This time the bill was supported by FPPC Chairman Dan Stanford.

Table 12.1

PROJECTED COSTS OF COMMISSION'S LIMITED MATCHING FUNDS PROPOSAL  
BASED ON THREE PREVIOUS CALIFORNIA LEGISLATIVE ELECTIONS\*

1980	Primary	General
Senate	5 candidates @ \$125,000 = \$ 625,000	14 candidates @ \$175,000 = \$2,450,000
Assembly	42 candidates @ \$ 75,000 = \$3,150,000	60 candidates @ \$112,500 = \$6,750,000
	TOTAL \$3,775,000	TOTAL \$9,200,000

TOTAL ELECTION COST = \$12,975,000

1982	Primary	General
Senate	11 candidates @ \$125,000 = \$1,375,000	22 candidates @ \$175,000 = \$ 3,850,000
Assembly	40 candidates @ \$ 75,000 = \$3,000,000	66 candidates @ \$112,500 = \$ 7,425,000
	TOTAL \$4,375,000	TOTAL \$11,275,000

TOTAL ELECTION COST = \$15,650,000

1984	Primary	General
Senate	4 candidates @ \$125,000 = \$ 500,000	14 candidates @ \$175,000 = \$2,450,000
Assembly	16 candidates @ \$ 75,000 = \$1,200,000	34 candidates @ \$112,500 = \$3,825,000
	TOTAL \$1,700,000	TOTAL \$6,275,000

TOTAL ELECTION COST = \$7,975,000

AVERAGE YEARLY COST = \$6,100,000

LESS: \$2 million annually (elimination of current state income tax deduction for political contributions)

PLUS: \$500,000 annually (FPPC budget supplement for enforcement of Model Law)

TOTAL PROJECTED COST OF MATCHING FUNDS PROPOSAL = \$4.6 MILLION/YEAR

\*Candidates are listed who raised or spent \$35,000 or more and had opponents who raised or spent an equivalent amount. Candidates are assumed to receive the maximum in available funds, even though this is unlikely to occur in practice.

Source: California Commission on Campaign Financing data analysis

Democrats, however, strongly oppose a ban on transfers without additional reforms. They believe that Democrats need transfers to match what they perceive to be superior Republican access to large funding. The recent Democrat-backed Vasconcellos-Lockyer bill banned transfers, but it also included compensatory measures (such as limited public financing) which were sufficient to garner Democratic support.

Democrats have been the principal supporters of matching funds, although Republican Assemblyman Ross Johnson introduced a measure in 1983 which would have provided matching funds for in-district contributions. Democrats have supported limited matching funds because they believe a new source of money must be substituted for the special interest contributions upon which many candidates currently rely. They also believe that matching funds are necessary to counter the advantages that would flow to Republicans under a system of contribution limits.

Some Republicans, on the other hand, have opposed public matching funds on philosophical grounds, arguing that taxpayers should not pay for political campaigns. Others believe that private campaign financing benefits Republicans, a partisan advantage they are reluctant to give up.

Expenditure ceilings offer one area of possible agreement. Almost all political officials concur that too much money is spent in certain campaigns. But they acknowledge that candidates will continue to raise and spend as much as they can for fear of losing their competitive edge. If expenditure limitations could legally be imposed without matching funds, then a majority of the Legislature might support them. However, the courts have only upheld expenditure ceilings when they have been combined with limited public financing.

Many political observers believe the Legislature will not enact comprehensive reforms unless external events force its members to act. In the 1970s the Legislature refused to pass campaign disclosure laws despite the Watergate scandal. But when a tough initiative was circulated by California Common Cause and the Peoples Lobby, the Legislature quickly passed a bill which contained nearly all the initiative's disclosure provisions.

Similarly, in 1984, when Proposition 40 qualified for the November ballot, the Legislature quickly resurrected the languishing Vasconcellos-Lockyer bill (S.B. 87). Only then did the Legislature enact the bill, conditioned on the approval of Proposition 40 by the voters. Governor Deukmejian vetoed the bill for a number of reasons, including its being conditional on voter approval of Proposition 40.

Different political groups and factions frequently offer their own campaign finance solutions, yet these approaches are typically piecemeal and generate stiff opposition. Contribution limits and bans on transfers are opposed by Democrats. Public financing is opposed by Republicans. Prohibitions on off year fundraising are opposed by incumbents—both Democratic and Republican. Expenditure ceilings are opposed by those who want to outspend challengers. Although some of this opposition is partisan, many observers realize that partial solutions are quick fixes that fail to address all campaign finance problems equally.

The Commission believes strongly that only a comprehensive package of measures will fully address the wide range of campaign finance problems in California, and that partial solutions (such as bans on transfers or limits on contributions) will be ineffective or counterproductive.<sup>12</sup> The Commission also believes that its proposed Model Law will be fair, effective and politically neutral. The Commission cautions, however, that its Model Law has been designed as a *package*. *The component parts are all interrelated and cannot be adopted separately or in part without seriously damaging the Model Law's overall effect.*

The Model Law addresses all the concerns raised by citizens and groups troubled by California's current campaign finance system. The Model Law:

- Bans transfers;
- Bans off year fundraising;
- Limits contributions;
- Limits total expenditures;
- Encourages small in-district contributions;
- Provides limited public matching funds; and
- Costs the state an average of only \$4.6 million a year.

Political deadlock over campaign finance reform will perpetuate a system which is rapidly worsening. If unchecked, California's system of campaign financing will seriously damage the basic political institutions of this state. The Commission believes its Model Law can reverse this trend. It hopes its report will contribute to the process of public education, stimulate widespread debate over campaign finance reform, and ultimately encourage meaningful and constructive change.

---

## NOTES

1. Joe Quintana, *Money Talks, and Far Too Loudly*, Los Angeles Herald Examiner, Nov. 19, 1984.
2. For materials arguing for public financing without expenditure ceilings, see Nelson Polsby, *A Floor, Not a Ceiling*, 6 COMMONSENSE 1 (Dec. 1983); Herbert E. Alexander, *Public Financing of Congressional Campaigns*, Regulation, Jan./Feb. 1980, p. 27.
3. The Field Institute, *California Opinion Index, Campaign Financing* (Feb. 1985).
4. GARY C. JACOBSON, MONEY IN CONGRESSIONAL ELECTIONS 186 (1980).
5. Remarks of Gary C. Jacobson, Citizens' Research Foundation Conference, "Perspectives on Campaign Financing: Focus on California and Washington Politics," Los Angeles, California, May 2, 1985; telephone interview with Professor Jacobson by Commission staff, May 23, 1985.
6. HERBERT E. ALEXANDER, WHITE PAPER ON PUBLIC FUNDING OF POLITICAL CAMPAIGNS (Public Affairs Council Monograph, 1984).
7. FPPC, THE IMPACT OF CAMPAIGN CONTRIBUTION LIMITATIONS AND PUBLIC FINANCING ON CANDIDATES FOR THE CALIFORNIA STATE LEGISLATURE (Dec. 8, 1983).
8. Nancy Rivera, *State Tries to Stem Loss of Tourists, Jobs and Money*, Los Angeles Times, Dec. 23, 1984.
9. Dan Walters, *Ending the Special Tax Breaks*, Sacramento Union, Dec. 19, 1983.
10. Quoted in Keith Love, *Brown Decries Time Spent on Fund Raising*, Los Angeles Times, May 5, 1985.
11. John Noble, *PAC Counsel*, Campaigns & Elections 56 (Summer 1983).
12. A similar conclusion was reached by Initiatives for Campaign Reform, a non-profit California organization which has also proposed comprehensive reform measures. See INITIATIVES FOR CAMPAIGN REFORM, WHO PAYS? WHO BENEFITS?: CALIFORNIA CAMPAIGN FINANCE REFORM (1984).



## CHAPTER 13

# A Detailed Analysis of the Commission's Model Law

*What can be done about campaign spending? In races for public office, strict limits should be imposed on the size of contributions. . . . [L]imits on contributions must be accompanied by public subsidies. Then the limits could be low enough to curb the influence of special interests while ensuring that candidates have enough money so that they can devote their time and energy to discussing the issues.*

— Daniel Lowenstein, former  
Chairman, FPPC<sup>1</sup>

**T**he Commission's Model Law contains three basic elements: expenditure ceilings for candidates who accept limited public matching funds, a range of contribution limits and detailed provisions for limited public matching funds. Some provisions are modeled on federal and other states' laws. Other provisions are new and designed to address evolving California problems. The Commission's Model Law is fully drafted as a statute. (See Appendix A, "Model Law.") Constitutional considerations are discussed in Chapter 14, "Constitutional Analysis."

### **A. Expenditure Ceilings Will Cap the Escalating Demand for Campaign Funds**

The Commission's Model Law proposes voluntary expenditure ceilings for both the primary and general elections. It also contains provisions which allow candidates to compete fairly against independent expenditure committees and candidates who refuse to be bound by expenditure ceilings.

#### **1. Primary Elections**

##### **a. Assembly (Section 85400(a))**

The Commission proposes that Assembly candidates be allowed to spend up to \$150,000 in the primary. This generous amount would provide for vigorous competition between candidates yet deter excessive spending. Under this expenditure ceiling a typical candidate might



spend \$50,000 in overhead for consultants, polling, staff, fundraising, travel, telephone and other expenses, and the remaining \$100,000 on voter contacts. Candidates could distribute six mailers to all registered party members at \$15,000 each and spend an additional \$10,000 on leaflets, bumper stickers and billboards. In a few geographical areas electronic media could replace some direct mail. (See Chapter 1, "Skyrocketing Costs.")

These expenditure ceilings would have been adequate for most competitive primary campaigns in California. In 1984 four candidates (out of 203 major party candidates) running in contested races would have exceeded the Commission's \$150,000 limitation. Two of these candidates ran against each other for an open Orange County seat: Ken Carpenter who spent \$363,000 and winner Gil Ferguson who spent \$256,000. The third was Tom Hayden (D-Santa Monica) who spent \$369,000. The fourth was incumbent Terry Goggin (D-San Bernardino) who spent \$238,000; Goggin lost to challenger Gerald Eaves who spent \$114,000.

In 1982, with more competitive races and open seats, the median Assembly candidate in a competitive race spent \$82,500—considerably less than the Commission's proposed limit. Thirteen (of the 245 major party) candidates in contested primary races would have exceeded the proposed limitations. Tom Hayden spent \$750,000, the highest amount in the 1982 primary. His losing opponent, Stephen Saltzman, spent \$303,000. Other Democratic candidates exceeding the proposed limitations included Gray Davis who spent \$356,000, Wallace Albertson who spent \$274,000, and Burt Margolin who spent \$247,000 to defeat Albertson. In one other competitive race two Republican incumbents ran against each other: Gerald Felando spent \$226,000 to defeat Marilyn Ryan who spent \$199,000. (All these candidates were from the Los Angeles area.)

#### ***b. Senate (Section 85401(a))***

The Commission proposes that candidates for the State Senate be allowed to spend up to \$250,000 in a primary. In 1984, four Senate candidates would have exceeded this amount. These included Rebecca Morgan, who won the Republican primary in the Santa Clara Valley by spending \$443,000 while her chief opponent, former legislator Marz Garcia, spent \$309,000.

In 1982, two candidates running in contested races would have exceeded the proposed limitations. Alex Garcia spent \$700,000 in a losing effort. Winner Art Torres spent \$517,000. These amounts shattered the previous all-time Senate primary election spending record of \$343,000, set by Senator Ed Davis (R-Los Angeles) in the 1980 primary.

### ***2. General Elections***

The Commission's proposed expenditure ceilings are somewhat higher for the general election. In general elections candidates need to reach independent voters as well as voters of both parties. Direct mail and other expenses are correspondingly greater.

#### ***a. Assembly (Section 85400(b))***

The Commission proposes a \$225,000 expenditure ceiling for general election Assembly races. In the 1982 general election 19 of the 150 candidates would have exceeded this limit. These include Tom Hayden who spent \$1,310,000, his opponent Bill Hawkins who spent \$778,000, and Democrat John Means who spent \$433,000 in a Kern County contest against Republican incumbent Don Rogers who spent \$386,000.

In the 1984 general election 20 candidates would have exceeded the limit. These included Assemblymen Robinson (D-Santa Ana, \$636,000), Johnston (D-Stockton, \$403,000) and Filante (R-Marin, \$389,000).

#### ***b. Senate (Section 85401(b))***

The Commission proposes a \$350,000 expenditure ceiling for general election Senate races. In the 1982 State Senate elections eight of the 38 candidates would have exceeded this limit. These include Gary Hart who spent \$568,000 and Chuck Imbrecht, his Republican opponent, who spent \$494,000 in a Santa Barbara-Ventura race.

In 1984, nine of the 41 state senatorial candidates would have exceeded the \$350,000 maximum. Rebecca Morgan spent \$701,000 to win an open Santa Clara County seat, while her opponent Arlen Gregorio spent \$382,000. Two incumbents running against each other in a rural Northern California Senate district also exceeded the Commission’s proposed limitations. Republican John Doolittle spent \$604,000 in his winning battle against Independent Roy Johnson who spent \$556,000.

The limitations suggested in the Commission’s proposal are somewhat higher than those proposed in the Vasconcellos-Lockyer bill (S.B. 87), which was passed by the Legislature in August 1984 and vetoed by the Governor. (See Table 13.1.) The Commission believes the primary election limits in S.B. 87 may have been too low to give challengers a chance in highly competitive campaigns. (See Appendix G, “Analysis of Vasconcellos-Lockyer.”)

Table 13.1

PROPOSED EXPENDITURE LIMITATIONS FOR S.B. 87 AND THE COMMISSION'S PROPOSAL		
	Vasconcellos- Lockyer (S.B. 87)	Commission Proposal
Primary		
Assembly	\$104,000	\$150,000
Senate	208,000	250,000
General		
Assembly	208,000	225,000
Senate	347,000	350,000
Source: California Commission on Campaign Financing		

3. Candidates Who Refuse Expenditure Limitations (Sections 85402-85404)

Candidates often express the fear that if they accept expenditure limitations their opponents will reject them in order to spend more. The Commission’s Model Law thus provides that if opponents refuse to accept and then exceed expenditure limitations, other candidates in the same race are not bound by those limits and are also permitted to raise an additional \$35,000 free of contribution limits. Candidates who exceed the expenditure limitations must notify the FPPC and all opponents by telephone and confirming telegram the day the limitations are exceeded. If they fail to do so they are subject to stiff criminal and civil penalties.

The Commission expects that only wealthy candidates will be in a position to reject expenditure limitations. Under U.S. Supreme Court rulings these candidates are allowed to spend unlimited amounts of their own money on their campaigns. Other candidates without personal wealth must raise all their money under strict contribution limitations and would find it difficult to exceed these expenditure ceilings.

#### **4. *Independent Expenditure Committees (Sections 85402-85403, 85604)***

Independent expenditure committees cannot be limited in the amounts of money they spend on legislative races. (See Chapter 14, "Constitutional Analysis.") Candidates who accept expenditure limitations fear they will not be able to defend themselves against massive spending by independent committees. The Commission's proposal thus states that if any independent expenditures total more than \$50,000 in support of or in opposition to any candidate, then all the candidates in that race are freed from the expenditure limitations. Candidates opposed by independent expenditure committees in the primary or the general election may also raise an additional \$35,000 free of any contribution limitations.

This proposal, which would remove expenditure limitations and allow candidates to raise additional seed money, will not prohibit spending by wealthy candidates or independent committees in legislative races. But it will allow candidates to obtain sufficient resources to respond. No other state or federal law has similar provisions.

### **B. Contribution Limits Are Tailored to Address a Wide Range of Contributor Problems**

#### **1. *Basic Individual, Business, Labor and PAC Contribution Limits of \$1,000 (Section 85300)***

The Commission's Model Law proposes a basic contribution limit of \$1,000 per election. A candidate for legislative office may receive up to \$1,000 per election from any individual or other entity such as a PAC, corporation, labor union or partnership. The proposed \$1,000 limitation is identical to the federal contribution limit which applies to candidates for the House of Representatives, the U.S. Senate and the Presidency. Unlike federal law, the Model Law allows corporations and labor unions to make contributions. Prohibitions on labor and corporate contributions at the federal level have been ineffective and have encouraged the proliferation of PACs.

Some political scientists argue that a \$1,000 limitation is too small, that inflation has cut the value of the original \$1,000 federal limitation in half, and that the limits should be raised to at least \$2,000 per election. They are concerned that candidates will not be adequately funded with a \$1,000 limitation and believe that \$2,000 is low enough to avoid corruption of the legislative process.

Others believe a \$1,000 level is too high and should be reduced to \$500. They argue that a \$1,000 limit actually allows each individual, corporation, labor union and PAC to give \$2,000 per election cycle, that a husband and wife can give up to \$4,000 and that these amounts are excessive for legislative races. They contend that higher contribution limits are unnecessary when candidates can receive public matching funds for small contributions.

The Commission believes a \$1,000 limit is appropriate. Most states which limit contributions to legislative candidates impose a \$1,000 limitation, although some states have higher or lower limits. The \$1,000 limit is also equal to federal law. Identical California and federal limits will make it easier for contributors to comply with the new limitations. Although inflation has reduced the value of a \$1,000 contribution, it is still a large sum for most contributors and adequate to finance state elections which are far less expensive than U.S. senatorial or presidential races.

#### **2. *Small Contributor PAC Limits of \$5,000 for Organizations Which Receive All Contributions in Amounts of \$50 or Less (Section 85301)***

The Commission proposes to allow certain broad-based political action committees which receive all of their contributions in small amounts (\$50 or less) to make contributions up to \$5,000 per election. These small contributor PACs must be in existence at least six months, give to at least five candidates and not be candidate-controlled. This provision would allow larger PACs which receive many small donations to make contributions that reflect their

size and membership. It is expected that PACs representing groups such as the California Teachers Association, California Medical Association, United Farm Workers and the Gun Owners of California would qualify.

Proponents of this recommendation argue that large PACs should be allowed to give additional funds since they represent many thousands of contributors. Broad-based participation in PACs by many individuals would be encouraged. Opponents argue that PAC influence is a key problem with the current campaign finance system and that higher PAC contributions should not be allowed.

The small contributor PAC concept is new and no state has yet considered or adopted it. Although federal law allows PACs with 50 or more members to make \$5,000 contributions per candidate, it also allows members to give their PACs large (up to \$5,000) contributions. The Model Law, however, draws a more careful distinction between individual and organizational contributions. It allows individuals to give up to \$1,000, but only allows organizations to make larger \$5,000 contributions when those organizations reflect the wishes of many smaller contributing members.

### ***3. Legislative Caucus and/or Party Contributions of \$50,000 in the General Election Only (Section 85303)***

The Commission's Model Law allows a political party, a legislative caucus or a combination of both to give a contribution of up to \$50,000 to each legislative candidate in the general election. Party/caucus contributions are prohibited in the primary election. This prohibition is necessary to prevent challengers in primary elections from being swamped by party or caucus contributions to incumbents.

The Commission believes a higher contribution limit is appropriate and will allow political parties and/or caucuses to fund candidates in selective races. Larger party or caucus contributions are necessary for some candidates to be competitive. Large party contributions may also strengthen the political parties by encouraging discipline, loyalty and unity.

An aggregate party/caucus limit also reflects current political reality in California. Republicans have a strong party fundraising apparatus and are able to contribute significant amounts through the party organization. Democrats, on the other hand, receive relatively little money through their party but receive substantial sums from individual transfers and legislative caucus donations. By allowing Republicans and Democrats to make contributions through both their parties and caucuses, political parity is maintained.

The \$50,000 limitation is higher than the \$1,000 basic limit and the \$5,000 small contributor PAC limit, but it is comparable to federal law which allows national and state parties to give a House candidate up to \$50,000 in monetary and non-monetary contributions for the general election. Ten states also impose limits on party contributions.

Some political observers believe that legislative caucus contributions should be eliminated altogether. They argue that caucus contributions are like transfers in that both place pressure on legislators to compromise their votes in order to raise contributions which they can then give to other candidates. A six-year phase-out of caucus contributions would give Democrats time to build their party's fundraising apparatus as a substitute for caucus contributions. Such a six-year phase-out provision is a possible modification to the Commission's Model Law.

### ***4. Aggregate Non-Individual Contribution Limits of \$50,000 and \$75,000 (Section 85305)***

The Model Law places an aggregate limit on all non-individual (corporate, business, labor, partnership and PAC) contributions combined. Assembly candidates could receive no more than a total of \$50,000 per election from all non-individual contributors while Senate candidates could receive no more than \$75,000. Party and caucus contributions are not counted. This approach is similar to the Obey-Leach bill which has been introduced in Congress.



Proponents concede that single contributions from PACs, corporations or labor unions may not corrupt the legislative process since many PAC and organizational contributions are small and less than the \$1,000 or \$5,000 limitations. But they contend that the cumulative effect of all PAC and non-individual contributions orients the candidate or legislator toward the contributors' points of view and that aggregate limits would prevent this from happening.

Opponents argue that even if non-individual contributions in the aggregate are excessive, such a limit may not be constitutional. (But see Chapter 14, "Constitutional Analysis.") They also argue that one additional PAC contribution cannot corrupt the legislative process merely because a candidate has already received \$50,000 in PAC money.

Only the state of Montana limits PAC contributions in the aggregate. (See Chapter 10, "Laws of Other States.") It allows lower house candidates to receive up to \$600 in total PAC contributions and State Senate candidates up to \$1,000. Montana's limits are too small for adoption in California although the principle supporting them is applicable. Contra Costa County in California adopted an ordinance in 1984 which prohibits a candidate from receiving more than \$15,000 in aggregate PAC contributions. However, the ordinance allows candidates to receive one PAC contribution up to the \$15,000 aggregate limit.

The Commission believes the aggregate limit is an important aspect of the Model Law. The provision prevents the massing of contributions by a range of special interest groups behind a specific issue or series of issues. (See Chapter 7, "Negative Consequences.") In addition, the aggregate limit will encourage candidates to rely more heavily on individual contributions which are not limited in the aggregate.

### **5. Transfers Prohibited (Section 85308)**

The Commission's Model Law prohibits transfers of money from one legislator or legislative candidate to another. Proponents of this prohibition believe it would dramatically reduce the costs of campaigns. They argue that the need to raise transfer money subjects legislators to inordinate lobbying pressures, that last-minute transfers unsettle campaigns and pour additional fuel on fundraising fires, that transfers give excessive power to members of the legislative leadership, and that transfers upset contributors who do not expect their contributions to be passed on to other candidates. A ban on transfers would also ease the pressure on safe seat legislators to raise money.

Opponents of a ban on transfers fear a prohibition would eliminate competition in races where candidates need transfers to be competitive, weaken legislative leadership, fragment the legislative process and generate less disclosure since those who now transfer would encourage their contributors to give directly to candidates. These opponents concede that larger caucus/party contributions and limited matching funds will adequately substitute for transfers in most cases. But they are concerned that a ban on transfers could prevent minority factions inside the legislative caucuses from supporting their own candidates, particularly where the caucus majority refuses to do so.

A few states such as Connecticut and Michigan prohibit transfers. Federal law limits transfers to \$5,000 per candidate per election.

The Commission believes that transfers undermine public confidence in the legislative and electoral process. (See Chapter 5, "Partisan Sources.") Transfers encourage legislators to raise enormous sums of money they do not personally need, and to depend unnecessarily on interest group contributors supporting or opposing legislation. Transfers also often fail to reflect the wishes of original contributors.

### **6. Off Year Contributions Prohibited (Section 85309)**

The Commission's Model Law prohibits all contributions in non-election years. Proponents argue that a prohibition on off year contributions could be an enormously significant reform affecting both the electoral and governmental processes. They contend it would prevent incumbents from skewing legislation in response to special interest contributions. It

would also make it more difficult for incumbents to build huge war chests to deter challengers from entering legislative races. (See Chapter 6, “Off Year Fundraising.”)

Opponents argue that challengers need to raise money in the off year to campaign effectively against incumbents (although the Commission’s research has shown that challengers raise negligible amounts of off year money). They also argue that disclosure of off year contributions is now sufficient but that a ban would encourage legislators to obtain unwritten pledges which would not appear on disclosure reports. A total prohibition of off year contributions might also encourage legislators to establish office accounts or other slush funds funded by gifts.

An alternative to an outright prohibition of off year contributions would allow contributors to give candidates a small amount of money in non-election years—for example, no more than \$100 per contributor. Legislators would be able to raise small amounts of money which could be used for legitimate off year expenditures not reimbursed by the state (including trips to their district, trips to political conventions and other officeholder-related expenses). Opponents of this suggestion believe that legislators should not be allowed to raise any money in the off year and that any legitimate expenses should be reimbursed by the state.

No state prohibits off year contributions entirely. Texas prohibits off year contributions during its 120-day legislative session. Minnesota limits off year contributions to \$150 for State Representatives and \$300 for Senators.

The Commission believes that a ban on off year contributions will be beneficial to both the legislative and electoral processes. A year free of fundraising will permit legislators to concentrate on legislation. A ban will make it more difficult for incumbents to amass large war chests to deter challengers from running for office.

### ***7. Limitations on All Payments to Candidates and Legislators (Section 85310)***

This section limits all contributions, honoraria and gifts to legislators and legislative candidates. Small contributor PACs may make up to \$10,000 in such payments over a two-year period. Other contributors may give up to \$2,000 over a two-year period. These payments are cumulated so that contributors do not attempt to evade the contribution limits by giving candidates honoraria or gifts for slush funds. Federal law limits honoraria to \$2,000 per federal official.

### ***8. Contributions to PACs, Parties and Caucuses of \$1,000 and \$5,000 (Sections 85300, 85302)***

The Model Law limits contributions to PACs (including independent expenditure committees) to \$1,000 per person. Parties and caucuses may receive up to \$5,000 from persons and from small contributor PACs.

Limits on contributions to PACs, parties and caucuses will discourage PACs or committees from being used as conduits for contributions by individuals who have already given candidates their maximum contributions. Limits also encourage PACs or committees to be broadly based. (It is particularly important to limit contributions to parties and caucuses which may give up to \$50,000 under the Model Law.) Without such a limitation, individuals and PACs could give parties and caucuses huge sums of money which could then be transferred to favored candidates. On the other hand, because parties and caucuses are broadly based and represent many public officials, the Model Law permits them to receive larger contributions up to \$5,000 during a two-year period.

Opponents argue there is no need to limit contributions, particularly to PACs, parties or caucus committees, if such groups are limited in their contributions to specific candidates. However, the Commission supports a limitation on contributions to PACs, parties and caucuses to prevent the circumvention of its basic contribution limits.



### **9. Seed Money of \$35,000 (Section 85304)**

This provision allows candidates to receive up to \$35,000 in contributions of any size from any entity without being bound by the contribution limits in the proposal. A candidate may thus receive large contributions in excess of the \$1,000 and \$5,000 limits. The \$35,000 seed money amount includes the first \$35,000 in contributions of any size, even if they are raised in small amounts. Candidates not raising contributions in the primary may accept seed money in the general election. Party and caucus contributions are not counted against the seed money limit.

Proponents argue that seed money is essential for challengers to finance the early stages of their campaigns. Incumbents have less need of seed money since they have name recognition and are able to tap a wide variety of interest groups, constituents and other sources.

Opponents question the necessity of seed money. They worry that seed money reopens the door to large contributions from special interests. Since seed money does not count against the non-individual aggregate limitation, incumbents may raise their first \$35,000 in large contributions from corporations, labor unions or PACs.

No state has a seed money provision, but the city of Sacramento allows candidates to raise \$10,000 in seed money before the city's contribution limits become operative. One version of the 1983 Vasconcellos-Lockyer bill (S.B. 87) allowed candidates to raise \$20,000 in seed money for the primary and then again for the general election. The Commission believes that a one-time seed money exemption from contribution limits will help challengers start their campaigns and demonstrate their seriousness as candidates.

### **10. Total Contribution Limits: \$25,000 Basic and \$100,000 Small Contributor PAC (Sections 85306, 85307)**

The Model Law prohibits individuals and entities from contributing more than \$25,000 and small contributor PACs more than \$100,000 to all legislative candidates or committees in any two-year period. (Individuals may not give more than \$1,000 and small contributor PACs not more than \$5,000 per candidate per election.) Contributions to or from political parties or legislative caucuses are exempted from this provision.

The purpose behind this provision is to limit the influence of large contributors who are financially able to saturate a slate of candidates with maximum contributions. If a small contributor PAC gives \$5,000 to each of 100 incumbents (a total of \$500,000), for example, that PAC's influence over the legislative process could be enormous.

Opponents of this proposal welcome the participation of wealthy contributors in the political process, particularly when those contributors contribute only \$1,000 (or \$5,000 for small contributor PACs) to any candidate each election. They believe that total contribution limits will lead organizations to encourage their officers and employees to increase their individual contributions up to \$25,000 each. Large membership organizations such as labor unions which rely upon many small contributions may be put at a disadvantage.

The Model Law provision parallels federal law which prohibits an individual from making more than \$25,000 in total contributions to all federal candidates and committees. Seven states also limit overall individual contributions. Federal law does not, however, limit total contributions by PACs.

The Commission believes candidates should be encouraged to approach a wider range of contributors, and that wealthy individuals or organizations should be discouraged from dominating an entire slate of candidates. Contributions to and from the political parties and legislative caucuses should be encouraged, however; for this reason the Commission does not include such contributions within the limitations of this section.

C. Limited Public Matching Funds Will Encourage Acceptance of Expenditure Ceilings and Smaller Contributions

Candidates who voluntarily agree to accept expenditure ceilings would be entitled to receive limited public matching funds for small contributions.

1. Maximum Amounts per Candidate (Section 85504)

Table 13.2

MAXIMUM AMOUNT OF MATCHING FUNDS UNDER THE COMMISSION'S PROPOSAL			
	Primary	General	Total
Assembly	\$ 75,000	\$112,500	\$187,500
Senate	125,000	175,000	300,000
Source: California Commission on Campaign Financing			

The maximum matching funds provided to any candidate would be 50% of that candidate's expenditure ceilings. Each candidate would thus qualify for a substantial sum of money with no strings attached, but this money would only be available to match contributions from smaller private donors. This proposal might cost the state from \$2.6 to \$6.6 million a year to fund. Estimates are based on California's 1980, 1982 and 1984 elections and repeal of California's current political tax deduction. (See discussion below and Chapter 12, "Commission's Recommendations.")

2. Qualification Threshold for Matching Funds: Assembly \$20,000 and Senate \$30,000 (Section 85501)

To qualify for matching funds, a candidate must demonstrate his or her seriousness by meeting several criteria. First, candidates must demonstrate their viability by raising a threshold amount of money in contributions of \$1,000 or less. Assembly candidates must raise at least \$20,000 and Senate candidates at least \$30,000. Second, only contributions received after the Declaration of Candidacy is filed are counted. Declarations of Candidacy are filed in late February and early March of the election year. Third, even if candidates have raised the qualifying threshold amounts, they will not receive matching funds in the primary election unless another candidate is also running for the same nomination and has either qualified for matching funds or has raised, spent or has cash on hand of at least \$35,000. Similarly, before a candidate can receive any matching funds in the general election, the candidate must have an opponent who has either qualified for matching funds or has raised, spent or has cash on hand of at least \$35,000 in the general election.

These qualification requirements are unique. They ensure that only candidates opposed by serious competitors will receive matching funds. The requirement that an opponent raise or spend a certain amount or be eligible for matching funds substantially reduces the cost of the proposal.

Loans, pledges and non-monetary contributions are not considered to be contributions for purposes of this section. Only monetary contributions actually received and not borrowed will trigger the availability of matching funds.

### ***3. Matching Ratios with an In-District Incentive (Section 85502)***

Matching funds are given for all contributions of \$250 or less at a ratio of 3-to-1, except for individual contributions from inside the candidate's own district which are encouraged by a higher matching ratio of 5-to-1. Thus, a \$100 out-of-district contribution will be matched with \$300, whereas a \$100 in-district contribution will be matched with \$500. Candidates will have a greater incentive to fundraise within their districts. Candidates in poorer communities may still have difficulty raising money within their districts, so all candidates are allowed to raise money outside their districts and still receive matching funds.

No other state provides incentives for in-district contributions. States with public financing laws generally match funds on a 2-to-1 basis. The presidential public financing law matches contributions up to \$250 on a 1-to-1 basis.

### ***4. Tax Checkoffs to Raise Matching Fund Revenues (Section 18775 of the Revenue & Taxation Code)***

The Commission estimates its matching funds proposal may cost an average of \$4.6 million a year, ranging from a low of \$2.6 million to a high of \$6.6 million. (See Chapter 12, "Commission's Recommendations.") The Model Law's matching grants would be funded by state income tax checkoff provisions, similar to the present federal system. Taxpayers could voluntarily earmark a certain amount of money that they are already obligated to pay in taxes for assignment to a matching fund. California will need a checkoff of about \$3 per taxpayer (\$6 per married couple) to finance the Commission's proposal. This projection is based on the high-estimate annual cost of \$6.6 million and an expectation that 25% of California's ten million taxpayers will use the checkoff each year. (Approximately 25% of federal taxpayers use the checkoff; over 40% use it in New Jersey.)

### ***5. Repeal of Tax Deduction for Political Contributions (Section 17245 of the Revenue & Taxation Code)***

Under current law, California taxpayers can deduct up to \$100 a year on their state income tax returns for political contributions. Since the current tax rate is 11% for those in the highest income bracket, the maximum savings per taxpayer is \$11. The Franchise Tax Board estimates that the state loses \$2 million a year in tax revenues because of this deduction. The Commission's Model Law repeals this deduction, thus reducing the cost of the Commission's proposal to approximately \$4.6 million a year.

### ***6. Return of Surplus Funds (Section 85506)***

In some cases candidates will have surplus funds after the election has been completed. The Federal Election Commission requires presidential candidates to return surplus funds on a pro rata basis to the federal government. The ratio used is the percentage of federal funds received compared to private funds. If candidates receive 40% of all their financing from public matching funds, then they have to return 40% of their surplus funds to the Treasury. The Commission's proposal tracks federal law.

An alternative approach would require candidates to return all surplus funds to the public treasury. However, this approach might encourage candidates to spend all their money wastefully, knowing that they would otherwise have to return the surplus.

## **D. Additional Model Law Provisions Are Required for Adequate Enforcement**

### **1. Disclosure of PAC Identities (Section 84106)**

PACs in California are not required to disclose the identities of PAC sponsors in their official names. The Acme Corporation, for example, can call its PAC the “Good Government PAC” and the contribution disclosure forms filed by a candidate would not reveal Acme’s identity.

The Commission’s proposal would require a PAC’s name to disclose the identity of its principal sponsoring organization. The Acme PAC, for example, would have to be called “The Acme Good Government PAC” or something comparable. This approach is similar to current federal law. Attempts in California to improve the identification of PAC sponsors have failed. Legislators have expressed little concern over PAC names. Some legislators themselves control PACs which fail to disclose the legislators’ involvement.

### **2. Administration and Enforcement by the Fair Political Practices Commission (Sections 85700, 83122.5)**

The provisions of the Model Law would be enforced by the California Fair Political Practices Commission. The FPPC would be required to prepare studies describing the impact of the Act’s provisions. The FPPC would be appropriated \$500,000 each year to implement the Act. (This \$500,000 cost is part of the estimated \$4.6 million average annual cost for limited public matching funds described above.) The FPPC has been in existence ten years, has a record of enforcement success and political neutrality and is experienced in all aspects of campaign finance. Both the 1984 Vasconcellos-Lockyer bill (S.B. 87) passed by the Legislature and Proposition 40 (the Ross Johnson Initiative) would have given enforcement responsibilities to the FPPC.

### **3. Cost of Living Increases (Section 85700(a))**

The contribution limits, expenditure limits and matching fund amounts are indexed for inflation. They will be adjusted upwards in reasonable increments based on the consumer price index for California.

### **4. Legislative Caucus Committees (Section 85201)**

The Model Law allows each caucus in the Legislature to establish one committee which will be permitted to make substantial contributions to legislative candidates. The caucus may vote on the candidates it will support or may delegate that decision to a subcommittee. The caucus committee is not considered to be candidate-controlled even though legislative candidates may actually exercise working control.

The caucus is permitted to make contributions to any candidate running for legislative office whether that candidate is a member of the same party as the caucus or in the same house. In the 1984 election, for example, the Senate Democratic Caucus supported incumbent Senator Ray Johnson (I-Chico), who was running against another incumbent Senator Republican John Doolittle. Similarly, in 1982 Speaker Brown’s campaign fund contributed substantial sums to Assemblyman Art Torres who was running for State Senate against incumbent Senator Alex Garcia. The Model Law would allow such contributions.

### **5. Qualified Campaign Expenditures (Section 85203)**

This important section defines those expenditures which are subject to the Model Law’s expenditure ceilings (Sections 85400-85405). Non-monetary contributions given to a legislative candidate at the candidate’s request or with the candidate’s approval are considered to be expenditures (Subsection 85203(a)(3)). A non-monetary contribution would include supplying a car, office space or printing.

Subsection 85203(a)(4) defines the portion of slate mailings which are attributable as expenditures. Expenditures are considered to be the greater of either the cost to the candidate (what the candidate actually paid for the slate mailing) or the candidate's share of the cost. If a candidate does not pay for a slate mailer which is nevertheless prepared at his or her request or with his or her approval, the candidate may still be charged with a proportional share of the slate mailer as an expenditure.

#### **6. Definition of Intermediary (Section 84302.5)**

This section requires individuals or organizations who bundle contributions from others to disclose their activities as intermediaries. Bundling occurs when a person gathers contributions from different individuals and delivers them at one time in a bundle to a candidate. Bundlers use this technique to avoid contribution limitations while still receiving credit for collecting large sums for a candidate. The section specifically defines an intermediary as a person who delivers a contribution from another person to a candidate. It excludes persons who deliver contributions from their employers, members of their immediate families or associations to which they belong. It also excludes the candidate and treasurer of the campaign committee. Under current law a person who bundles contributions is not disclosed as an intermediary. The Model Law does not limit these contributions but merely requires their disclosure.

#### **7. Return of Contributions (Section 85311)**

This section allows candidates to return contributions if they are not deposited, used, negotiated or kept more than 14 days after receipt. If candidates are given contributions which exceed the prescribed maximums, they can return the excess within 14 days without violating the Model Law. This section is similar to current California law which allows candidates to return contributions in cash, the receipt of which are illegal.<sup>2</sup>

#### **8. Aggregation of Contributions (Section 85312)**

This section is similar to federal law and is designed to prevent associations or groups from splitting up and making a number of individual contributions which in the aggregate amount to more than the applicable contribution limitation. Any local unit of an organization is considered to be part of that organization and cannot make separate contributions. Subsidiaries or branches of any organization are also considered to be part of the main organization.

#### **9. Loans (Section 85313)**

This section deems loans to be contributions and subject to the contribution limitations. It also defines loan guarantees as contributions even though the guarantor may not have paid off the loan. All loans must be made by written agreement and these agreements must be filed with campaign statements. Extensions of credit by vendors which exceed 30 days are subject to contribution limitations.

Loans can be used to avoid contribution limitations unless they are strictly regulated. This section ensures that loans from lending institutions are bona fide by requiring that the loans be guaranteed or secured.

#### **10. Family Contributions (Section 85314)**

This section provides that contributions by husband and wife are considered separate contributions and are not aggregated for purposes of the contribution limitations. Contributions by children under 18, however, are attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent). In Massachusetts children are not allowed to contribute more than \$25 each. The Massachusetts provision is designed to prevent parents from using children's names to evade the contribution limitations. The Commission's Model Law allows minors under 18 years of age to make contributions but attributes them to their parents.



### ***11. Candidates for Statewide or Local Office (Section 85315)***

In some cases incumbent legislators may run for statewide or local offices. Since limitations are not imposed on contributions to other candidates for these offices, it would be unfair to limit contributions to legislators raising money for the same non-legislative office. This provision allows incumbent legislators to set up separate committees to run for non-legislative offices and receive contributions in excess of the legislative limitations. These committees cannot expend funds in legislative races.

### ***12. One Campaign Committee and One Checking Account per Candidate (Section 85316)***

This section prohibits legislative candidates from controlling more than one committee or one checking account. It also requires that all campaign expenditures be made from this checking account. Current law does not regulate the number of controlled committees or checking accounts. Auditors find it difficult to audit campaigns which transfer funds back and forth between multiple committees and checking accounts.

### ***13. Time Periods for Primary and General Election Contributions (Section 85317)***

Contributions made before July 1 of the election year are considered primary election contributions. Contributions made from July 1 through December 31 are considered general election contributions. This section is designed to prevent candidates from raising money well after the primary election is over and attempting to designate the contributions as primary contributions. San Diego, for example, has a contribution limitations ordinance, but candidates have tried to attribute contributions received in August and September back to the primary election period.

### ***14. Time Periods for Primary and General Election Expenditures (Section 85405)***

This section states that expenditures made any time before June 30 of an election year are considered primary election expenditures. Expenditures made from July 1 through December 31 are considered general election expenditures. If purchases are made in April, for example, but the items or services are not used until September, then the payments are considered expenditures for the time period in which they are used. This prevents candidates from front-loading expenditures. If a candidate purchases 10,000 bumper stickers but only uses 1,000 during the primary election, the remaining 9,000 should be counted as general election expenditures.

### ***15. Candidate Requests for Payment (Section 85503)***

This section gives the Fair Political Practices Commission the authority to determine what information candidates must submit in order to qualify for payment of public matching funds. Candidates may not ask the disbursing agency for payments of less than \$10,000 at any one time, except during the last 14 days of the election. During this 14-day period candidates may not request less than \$5,000 in payments. According to the Federal Election Commission, this section is important to prevent the administering agency from being swamped by small requests of \$500 or \$1,000 each day. This provision also prevents candidates who drop out of a race after qualifying for matching funds from continuing to submit small requests for these funds.

### ***16. Timing of Payments to Candidates (Section 85505)***

After candidates submit their requests for public matching funds, they must be paid as soon as possible. This section requires the disbursing agency to make payments to candidates within three business days.



**17. *Independent Expenditures for Mass Mailings (Section 85600)***

This section requires any person who makes independent expenditures for mass mailings (200 or more pieces of mail) to be identified on the face of the mailing. The statement must be in at least ten point type which is not subject to a half tone or screening process.

**18. *Limits on Contributions to Independent Expenditure Committees (Section 85601)***

Persons making independent expenditures may not receive contributions of more than \$1,000 from any source. Small contributor PACs which can contribute up to \$5,000 to candidates or controlled committees of candidates may only give \$1,000 to independent expenditure committees.

**19. *Limitations on Persons Who Make Independent Expenditures and Contribute to Candidates (Section 85602)***

This section provides that persons making contributions of \$100 or more to candidates are deemed to be acting in concert with those candidates. They are then prohibited from making any combination of independent expenditures and contributions in excess of the basic \$1,000 contribution limit. The independent expenditures of persons who do not make contributions to candidates are not limited.

**20. *Reproduction of Materials (Section 85603)***

This section states that persons who reproduce or broadcast material which has been prepared or broadcast by a candidate may not call those expenditures independent. They must report them as non-monetary contributions to the candidate.

**21. *Notice of Independent Expenditures (Section 85604)***

This section requires persons who make independent expenditures of more than \$10,000 on behalf of a candidate to notify the FPPC and all opponents of the candidate.

**22. *Amendments to the Text of the Legislative Election Reform Act of 1985 (Section 9)***

This section permits the Legislature to amend this Act in the same manner as it may amend the Political Reform Act—by a two-thirds vote of the Legislature. This section is only needed if the proposal is drafted in the form of an initiative.

**23. *Enforcement (Sections 91000, 91005, 83116)***

Violation of any of the provisions of this Act may be a felony or misdemeanor, depending on the seriousness of the crime. In addition, a civil action for up to three times an illegal contribution or expenditure may be assessed. Finally, the FPPC can impose fines of up to \$2,000 per violation in administrative actions.

---

**NOTES**

1. Daniel Lowenstein, *Money Talks in Politics, and We Must Cut Its Jabbering*, Los Angeles Times, Nov. 9, 1982.
2. CAL. GOV'T CODE §84300(a) (West Supp. 1985).

## CHAPTER 14

---

# **The Constitutionality of the Commission's Recommended Model Law**

*[C]ontribution and expenditure limitations operate in an area of the most fundamental First Amendment activities.... The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'*

— *Buckley v. Valeo*<sup>1</sup>

Campaign finance regulations often pose First Amendment considerations. The Supreme Court has held that restrictions on the flow of money into and out of political campaigns can affect the “[d]iscussion of public issues and debate on the qualifications of candidates...[which is] integral to the operation of the system of government established by the Constitution....”<sup>2</sup> Campaign finance reforms must thus be designed to further important governmental concerns and be drafted as narrowly as possible to avoid infringing First Amendment freedoms of speech and association.

In *Buckley v. Valeo*, the landmark 1976 campaign financing decision, the United States Supreme Court ruled that money in certain political contexts was tantamount to “speech.”<sup>3</sup> Candidates use money to buy radio and television ads, campaign literature, direct mail brochures and other expensive forms of communication. “[V]irtually every means of communicating ideas in today’s mass society requires the expenditure of money.”<sup>4</sup> Restrictions on campaign expenditures, the Court reasoned, abridge the ability of candidates to communicate their views fully to the public. The Court thus invalidated expenditure ceilings on federal campaigns, holding that the government lacked the “compelling” justification necessary to support them.

On the other hand, the Court acknowledged that candidates typically find it necessary to finance their campaigns with private contributions. When these contributions are large, the public often receives the impression that candidates have entered *quid pro quo* arrangements with wealthy contributors in which contributions are traded for influence. The Court therefore ruled that the government did have a “compelling” interest in preventing the “corruption” or “appearance of corruption” caused by a campaign finance system in which candidates were dependent on very large contributions. The Court drew an important distinction between contributions and expenditures. Contributions could be limited; expenditures could not.

The Court also held that the government could offer candidates public financing to help defray the costs of elections. The Court viewed public financing as a constitutionally legitimate effort to upgrade the quality of the electoral process. Most significantly, the Court ruled that candidates accepting public financing could properly be required to limit their expenditures. Although expenditure ceilings could not be imposed on candidates against their will, candidates could voluntarily accept them as a condition for the receipt of public financing.

The Commission’s Model Law complies with the First Amendment parameters defined by the Supreme Court.<sup>5</sup> The Commission’s proposed contribution limits are constitutional because they are necessary to prevent the “appearance of corruption.” Expenditure ceilings are not forced upon candidates but are to be accepted voluntarily by candidates in exchange for limited public matching funds.

## **A. The Commission’s Contribution Limits Are Valid Attempts to Eliminate Actual or Apparent “Corruption” in the Political Process**

*Buckley v. Valeo* and its progeny have held that contribution limits are valid if supported by a “compelling” governmental interest in eliminating “corruption” or its appearance from the political process.<sup>6</sup> The contribution limits proposed in the Commission’s Model Law are reasonably designed to reduce the influence of large contributors on candidates and elected officeholders. They are constitutional restrictions on the flow of money into political campaigns.

### **1. General Principles**

A contribution of money to a candidate or political committee involves two First Amendment rights, freedom of speech and freedom of association. Freedom of speech is involved because a contributor’s donation of money embodies a symbolic expression of support for a particular candidate or organization. The speech interests embodied in a monetary contribution, however, are relatively weak. Contributions are an “attenuated form of speech” or “speech by proxy”<sup>7</sup> because “the transformation of contributions into political debate involves speech by someone other than the contributor.”<sup>8</sup>

A limitation on the size of a contribution...entails only a marginal restriction upon the contributor’s ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing...A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication....<sup>9</sup>

Contribution limits do not violate freedoms of speech.

Contributions also involve First Amendment freedoms of association. Contributions “affiliate a person with a candidate” and enable “like-minded persons to pool their resources in furtherance of common political goals.”<sup>10</sup> Yet contribution limits do not improperly abridge associational freedoms because the limits still leave the contributor free to “become a member of any political association and to assist personally in the association’s efforts on behalf of candidates.” Political organizations also remain free to gather “large sums of money” from a

broad range of contributors. Contribution limitations, therefore, do not burden freedoms of association.<sup>11</sup>

The government, on the other hand, has a “compelling” interest in limiting contributions to prevent “corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.”<sup>12</sup> Candidates may be forced to sacrifice their independence of judgment for large private contributions:

To the extent that large contributions are given to secure a political *quid pro quo* from current and potential officeholders, the integrity of our system of representational democracy is undermined.<sup>13</sup>

Moreover, the mere “appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual contributors” is also a matter of serious and legitimate governmental concern.<sup>14</sup>

In short, *Buckley v. Valeo* allowed the government to place limits on the amount of campaign contributions, both because the burden on the contributor’s speech and associational rights is small, and because the governmental interest in preventing corruption or its appearance is great. Other asserted governmental interests, such as a desire to reduce overall campaign spending, to equalize the ability of candidates to appeal to voters or to decrease the advantages of incumbents or of wealthy candidates, are not constitutionally sufficient justifications for limiting contributions or expenditures—although they are sufficient justifications for limited public financing of campaigns.<sup>15</sup>

## **2. The \$1,000 Limit on Contributions by Individuals and Groups**

The Commission’s recommended law would limit all individual, corporate, labor union and group contributions to candidates or political committees to \$1,000 for the primary election and another \$1,000 for the general election. The Supreme Court has upheld comparable \$1,000 limits on contributions to federal candidates.<sup>16</sup> Such limits are appropriate to “limit the actuality and appearance of corruption resulting from large individual financial contributions.”<sup>17</sup> Moreover, “[t]he overall effect of... contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons....”<sup>18</sup> In the Court’s view, contribution limits still leave individuals free to express their views independently, to associate with specific campaigns by volunteering their services and to make contributions to other candidates and committees.

The Court has rejected arguments that contribution limits favor incumbents. To the extent that incumbents are more able to raise extremely large contributions than challengers, limits would have “the practical effect of benefiting challengers as a class.”<sup>19</sup>

The Court has also stated it will not second-guess the establishment of a particular dollar limit. “If it is satisfied that some limit on contributions is necessary, a court has no scalpel to prove, whether, say, a \$2,000 ceiling might not serve as well as \$1,000.” [cite] Such distinctions in degree become significant only when they can be said to amount to differences in kind.”<sup>20</sup> The Commission’s proposed \$1,000 limit on corporate, labor and other organizational contributions is thus constitutional.

## **3. The \$25,000 Total Contribution Limit**

The Commission’s Model Law would place a total limit of \$25,000 on all contributions from any person (including individuals, corporations, businesses and labor unions, but excluding small contributor PACs discussed below) to all candidates or organizations during one year. A person could thus make twenty-five \$1,000 contributions or fifty \$500 contributions but could not exceed the \$25,000 total limit.

An identical limit for individual contributions is contained in federal law.<sup>21</sup> In *Buckley v. Valeo*, the Court approved the federal total contribution limit, concluding that it was necessary to prevent individuals from evading the basic contribution limit. Without such a total

limit, persons could make dozens of contributions to political committees which could then rechannel those contributions to one candidate.<sup>22</sup> The Commission's proposed limit is also designed to prevent such evasion and is thus constitutional.

#### **4. *The \$5,000 and \$100,000 Small Contributor PAC Limits***

The Commission's Model Law would allow small contributor PACs to make contributions of up to \$5,000 in the primary and general elections. It would also limit these PACs to \$100,000 in total contributions to legislative candidates over any two-year period. Small contributor PACs must receive all of their contributions in amounts of \$50 or less. This \$50-maximum criterion is designed to ensure that groups making larger contributions are truly broad-based and not alter egos for a few wealthy contributors.

The Supreme Court has upheld a comparable \$5,000 limit for PAC contributions at the federal level. The Court viewed the higher contribution limit as enhancing the opportunity of PAC members and "bona fide groups to participate in the election process."<sup>23</sup> The Commission's proposal differs from federal law by requiring all contributions to small contributor PACs to be \$50 or less and limiting total small contributor PAC contributions to \$100,000 every two years. These additional factors are not of constitutional significance. The \$50 requirement enhances the political participation of broad-based organizations with many smaller supporters. The \$100,000 total limit is comparable to the \$25,000 total limit on individuals.

#### **5. *Limits on Contributions to PACs, Parties and Caucuses***

The Commission's Model Law would place a \$1,000 limit on all contributions to PACs and a \$5,000 limit on contributions to political parties and legislative caucuses. Limits on contributions to such organizations are necessary to prevent evasion of the basic contribution limit. Without such a restriction, an individual, corporation, labor union or other organization could give \$1,000 to a candidate and then make many additional contributions to a series of PACs or political committees which could then re-transfer that money to the same candidate. The Supreme Court has upheld the validity of a \$5,000 limit on contributions to PACs and other organizations as necessary to preserve the integrity of the basic contribution limits scheme.<sup>24</sup>

#### **6. *Aggregate Non-Individual Contribution Limits***

The Commission's Model Law would place an aggregate cap on the total contributions a candidate could receive from all non-individual contributors. Corporations, labor unions, PACs, small contributor PACs and other organizations could give Assembly candidates no more than a total of \$50,000 and Senate candidates no more than \$75,000. Once a candidate has received this maximum, the candidate can receive no additional contributions from non-individuals. The political parties and legislative caucuses are not included in the non-individual contribution totals and can make additional contributions within their own special limitations.

Aggregate limits for non-individual contributors are a relatively new idea. Legislation has been introduced in Congress to restrict aggregate PAC contributions to congressional candidates but this legislation has not yet been adopted.<sup>25</sup> Only Montana, which places an aggregate limit on the total amount of money a candidate can receive from all PACs combined, has adopted such an approach.<sup>26</sup> No court has reviewed the constitutionality of aggregate contribution limits.

The Commission believes its aggregate non-individual contribution limit is one of the most important aspects of its overall recommendation. The proposed aggregate limit is designed to reduce the appearance or actuality of corruption that flows from a massing of interest group contributions behind a particular candidate or legislative proposal. The aggregate limit would thus reduce the apparent influence of many contributions from the same industry or group of interests. (See discussion in Chapter 4, "PACs," and Chapter 7, "Negative Consequences.") It



would also diminish the public perception that certain corporate and labor PACs and other non-individual contributors exert an unhealthy influence over state government.<sup>27</sup>

The aggregate limit concept, however, poses new constitutional questions. It might be argued, for example, that an aggregate contribution limit is tantamount to a flat ban on contributions from certain organizations. Once a candidate has received the maximum in contributions from non-individuals, other organizations would be barred from contributing at all. This might arguably suppress the right of such organizations to make campaign contributions. Moreover, if corruption is not deemed to result from 35 corporations each contributing \$1,000 to a candidate, then arguably a 36th corporate contribution of \$1,000 should also not be corrupting.

Despite these arguments, the Commission believes its aggregate limit is constitutional for several reasons. First, the Supreme Court has clearly held that contributions can be limited to prevent actual or apparent corruption in the legislative and electoral processes.<sup>28</sup> Corruption or its appearance can flow just as easily from a grouping of contributions by a collection of interest groups as it can from a single large contributor. In *Federal Election Commission v. National Right to Work Committee*,<sup>29</sup> the Supreme Court upheld a prohibition on all contributions by corporations, labor unions and national banks to federal candidates,<sup>30</sup> commenting:

[I]t is the potential for such influence that demands regulation. Nor will we second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared.<sup>31</sup>

Legislation curtailing the power of contributors to aggregate wealth should also warrant Court approval.

Second, the decision to receive non-individual contributions is essentially made by each candidate. Candidates wishing to receive contributions from a large number of PACs need only accept them in smaller amounts. If an organization is barred from making any contribution because the candidate has reached the aggregate limit, then that organization still has the option of making independent expenditures.

Third, *Buckley v. Valeo* sustained the notion that one contribution limit can be upheld if it supports the integrity of another. The aggregate contribution limit supports and enhances the operation of the basic contribution limit. Each limit is designed to eliminate actual or apparent corruption. The individual limit places a cap on very large donations of money, and the aggregate limit prevents many non-individuals from massing their contributions behind a particular candidate or piece of legislation. The aggregate proposal does not limit the total amount of money candidates can potentially raise. It simply requires candidates to raise money from a larger number of individual contributors.

### **7. The Aggregate \$50,000 Political Party and/or Legislative Caucus Limits**

The Commission's Model Law places an aggregate \$50,000 limit on contributions by political parties and/or legislative caucuses combined. Party/caucus contributions can only be made in the general election. Contributions from these sources in primary elections are prohibited.

The Commission's aggregate party/caucus contribution limit poses three significant issues. First, should parties and/or caucuses be limited to \$50,000 contributions? Second, does an aggregate party/caucus contribution limit impermissibly prevent a party or caucus from contributing to a candidate where that candidate has already received his or her \$50,000 maximum? Third, is it proper to prohibit party/caucus contributions during primary elections?

#### **a. The \$50,000 Limit**

In *Buckley v. Valeo*, the Court upheld federal limitations on contributions by the national political parties.<sup>32</sup> Federal law places \$50,000 limits on national and state party contributions to candidates for the House of Representatives. Ten states also limit party contributions to



candidates. The Commission believes a \$50,000 upper limit on party/caucus contributions is reasonable and necessary for two reasons.

First, such limits reduce the danger of coercion over candidates by large party or caucus contributors. A legislator or candidate may be faced with the threatened withdrawal of party or caucus support if he or she fails to adopt a particular position. This is a particular danger where some candidates today receive up to 70% or more of their contributions from parties or caucuses. (See Chapter 5, "Partisan Sources.")

Second, limits on party/caucus contributions are necessary to preserve the integrity of other contribution limitations. If party/caucus leaders can accept contributions in exchange for favorable action on legislation and then withhold financial support from party/caucus members unless they also support that legislation, the appearance of corruption might re-emerge. Party or caucus leaders with substantial control over large amounts of campaign funding could become pressure points for influence-seekers and interest group contributors. For these reasons, some limitation should be placed on party and/or caucus contributions to candidates.

The Commission believes that \$50,000 is an appropriate sum. This amount will allow parties and caucuses to play a significant role in campaigns, yet will prevent them from becoming too dominant a source of funding.

#### ***b. The Aggregate Limit***

Under the Commission's proposed aggregate limit, a candidate could not accept more than \$50,000 from a party and/or a caucus in combination. A large party contribution would require the caucuses to make smaller contributions; conversely, a \$50,000 caucus contribution would prevent the party from making any contribution. Wisconsin is currently the only state which places an aggregate limit on combined party/caucus contributions.<sup>33</sup> The courts have upheld federal law which places a joint contribution limit on Republican or Democratic senatorial campaign committees and their respective national committees.<sup>34</sup>

An aggregate party/caucus limit is appropriate in California for two reasons. First, an aggregate limit is politically neutral and does not favor one party over another. California Democrats make most of their partisan contributions through their legislative caucuses but relatively little through their party organization. (Although Democrats convey most of their partisan money through caucus contributions, these are technically described as transfers because Assembly Speaker Willie Brown signs the caucus disclosure form as the responsible caucus official. (See Chapter 5, "Partisan Sources.") The Democratic Party organization is relatively weak and contributes little to political campaigns.

In contrast, Republicans make relatively equal contributions through their caucuses and their party organization. Two \$25,000 limits, one on the party and one on the caucus, would favor Republicans. The Democratic Party might be unable to raise sufficient funds to reach the maximum party contribution limit. An aggregate limit allows Democrats and Republicans to utilize their favored fundraising and contribution vehicles yet retains relative parity between them.

Second, party and caucus contributions are typically made by the same groups of party leaders. There thus seems little point in creating separate individual limits for parties and caucuses. Because each candidate has only one party and caucus and because the parties and caucuses are closely related, the proposed aggregate limit is comparable to a single higher limit on party and caucus contributions.

The Commission believes an aggregate party/caucus contribution limit is constitutional, even though it may infrequently prevent a party or caucus from contributing to a candidate who has already received the maximum sum. A candidate's decision to accept a \$50,000 party contribution, for example, and thus bar any caucus contributions, is essentially one for the candidate to make. A candidate may choose to accept \$25,000 each from the party and the

caucus, \$32,000 from one and \$18,000 from the other, or \$50,000 from one and nothing from the other. Any imbalance between party or caucus contributions is the result of the candidate's decision.

A persuasive analogy exists in the set of facts underlying the decision in *Republican National Committee v. Federal Election Commission*. The court ruled that a federal law barring any contribution to presidential candidates receiving public financing did not infringe potential contributors' speech rights. In the court's view, the law simply allowed the candidate to "voluntarily limit the size of the contributions he chooses to accept...."<sup>35</sup> Any complaint by the contributor lay with the candidate and not federal law. If a candidate chooses to accept public financing and reject private contributions, that is a matter solely within the candidate's discretion.

### **c. Primary Elections**

The Commission also proposes to prohibit party/caucus contributions during the primary elections. This restriction is consistent with current California law.<sup>36</sup> Allowing parties or caucuses to make contributions in the primary elections would enable them to throw their support to incumbents who have had the time to develop party and caucus support. Newcomers or challengers would be seriously disadvantaged.

A federal district court has recently ruled that California cannot prevent party endorsements in partisan primary elections.<sup>37</sup> An argument might be made that prohibitions on party/caucus contributions during the primary elections would similarly be unconstitutional. Contributions, however, have been accorded a lesser degree of First Amendment protection than "pure" forms of speech such as party endorsements. A contribution is "speech by proxy" and thus subordinate to other governmental interests in reducing actual or apparent corruption. Contributions by political parties and caucuses can appropriately be limited to prevent undue influence over primary elections, even though party endorsements might receive a higher degree of First Amendment protection.

## **8. Ban on Transfers**

The Commission proposes to prohibit transfers of campaign contributions from one candidate to another or from one candidate to a political party or legislative caucus. Four other states prohibit or restrict transfers. Connecticut and Michigan ban them altogether.<sup>38</sup> Massachusetts imposes a \$100 limit on transfers.<sup>39</sup> Hawaii allows candidates to use campaign money to buy a maximum of two tickets to another candidate's fundraiser.<sup>40</sup>

No court has yet addressed the question whether a ban on transfers is constitutional. The Supreme Court has, however upheld flat prohibitions on contributions by corporations and labor unions.<sup>41</sup> The Court has also observed:

The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.<sup>42</sup>

The Commission believes the special nature of transfers also warrants different forms of regulation to protect the electoral process.

Transfers do not actually affect the transferor's own speech rights since a transfer involves the relay of another contributor's money. A transfer is thus one step removed from the speech interests involved in the original contribution. A prohibition on transfers does not affect the original contributor's ability to participate in campaigns since that contributor can still give money to any candidate. Candidates can still contribute their own money to the campaigns of others. A prohibition on transfers only stops the retransmittal of original contributions through middlemen.

A prohibition on transfers does not, therefore, directly affect the original contributor's right to give money to candidates. It simply prohibits the brokering of contributions by candi-

dates and incumbents. Candidates can still approach contributors directly instead of receiving their contributions through middlemen.

### **9. *Ban on Off Year Contributions***

The Commission proposes to prevent candidates or incumbents from receiving any contributions during a non-election year. This restriction is justified for two basic reasons. First, off year contributions are significantly more “corrupting” of the legislative process than contributions made at any other time. (See Chapter 6, “Off Year Fundraising.”) Contributions made to candidates 18 to 24 months before the next election (or, in the case of State Senators, up to four years before the next election) are typically made to influence legislation and not to assist an incumbent in an upcoming campaign.

Second, a prohibition on off year fundraising would not deprive contributors of the chance to make contributions, nor would it deprive candidates of the chance to receive them. A moratorium on off year fundraising would, however, very substantially alleviate both the actuality and the appearance of corruption in the legislative process while simply deferring fundraising to a later time.

An off year fundraising prohibition is thus similar to a “time, place and manner” restriction which channels speech into certain places or time periods, yet it imposes no substantive restrictions on speech content.<sup>43</sup> Presidential candidates who accept public financing, for example, may receive no private contributions whatsoever during the general election. This federal restriction does not prohibit contributions to presidential candidates; it simply requires the contributor to make them during a different time period.

### **10. *The \$35,000 Seed Money Exemption***

The Commission proposes to allow candidates to raise up to \$35,000 in “seed money.” This provision would allow candidates to raise money from any source and in any amount until the \$35,000 limit was reached. All contributions raised thereafter would have to be received in amounts complying with other contribution limitations. The seed money exemption will allow candidates to raise a few large contributions to start up their campaigns.

No other state has adopted a seed money exemption to its basic contribution limits and no court has yet reviewed the concept. The Commission believes, however, that the seed money concept is desirable and well within constitutional limitations. The seed money concept is merely a limited exemption from other contribution limitations. Because the exemption would apply only at the beginning of the campaign and would cease as soon as the candidate’s first \$35,000 was raised, the potential for corruption is reduced.

## **B. The Commission’s Expenditure Ceilings Are Voluntary and Constitutionally Valid**

In *Buckley v. Valeo*, the Supreme Court drew an important distinction between contribution limits and expenditure ceilings. In the Court’s view, contributions were an indirect form of “speech by proxy.” Contributions could thus be limited to prevent corruption or its appearance without actual damage to the First Amendment rights of contributors or candidates.

On the other hand, the Court concluded that expenditure limitations “restrict the quantity of campaign speech by individuals, groups, and candidates” and thus strike at “the core of our electoral process and of the First Amendment freedoms.”<sup>44</sup> Moreover, the legitimate governmental interest in reducing the actuality or appearance of corruption is not served by expenditure limits. A candidate might be corrupted by a contribution, but that candidate could not be corrupted by an expenditure.

Although mandatory expenditure ceilings were ruled invalid, the Court concluded that expenditure ceilings could be voluntarily accepted by candidates in exchange for additional governmental benefits. The Court observed:

Congress...may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forego private fundraising and accept public financing.<sup>45</sup>

The Commission's proposed expenditure ceilings fit within these parameters. They are not mandatory but are to be voluntarily accepted by candidates as a condition for receiving limited public matching funds. Expenditure limits are a constitutional limitation placed on receipt of publicly offered benefits.

The Supreme Court has also held that independent expenditures made for or against a candidate by individuals or committees not controlled by that candidate cannot be restricted. Such expenditures are viewed as direct expressions of speech and association and cannot be abridged without some "compelling" governmental interest.<sup>46</sup> The Commission's proposal does not limit independent expenditures and thus does not contravene the Court's guidelines.

The Commission's proposal does provide, however, that the expenditure ceilings for candidates in specific races will be lifted whenever independent expenditures of \$50,000 or more are made for or against any one of the candidates in that race. The purpose of this proposal is to eliminate the unfairness that might result if independent political groups spent large sums attacking candidates who, because they had voluntarily agreed to limit their expenditures, might be barred from presenting an adequate response. Lifting expenditure ceilings in such circumstances would not abridge the right of political groups to make independent expenditures, yet would still allow candidates to defend themselves against attack. The Commission's proposal is thus consistent with the Court's constitutional rulings.

Expenditure ceilings serve important public goals. As Justice White has commented:

Without limits on total expenditures, campaign costs will inevitably and endlessly escalate. Pressure to raise funds will constantly build and with it the temptation to resort in "emergencies" to those sources of large sums, who, history shows, are sufficiently confident of not being caught to risk flouting contribution limits.<sup>47</sup>

The Commission's proposed voluntary expenditure ceilings are thus desirable and consistent with the First Amendment.

### **C. Limited Public Matching Funds Are Constitutionally Valid Because They Further Important Governmental Interests**

The Commission has proposed that matching funds be made available to candidates on a limited basis. In *Buckley v. Valeo*, the Supreme Court upheld a comparable system for presidential elections. The Court viewed limited public financing as "a means of eliminating the improper influence of large private contributions" which "further[s] a significant governmental interest":

In addition, the limits on contributions necessarily increase the burden of fundraising, and Congress properly regarded public financing as an appropriate means of relieving major-party Presidential candidates from the rigors of soliciting private contributions.<sup>48</sup>

A federal court elaborated on the Supreme Court's reasoning in *Republican National Committee v. Federal Election Commission*. The court explained that limited public financing furthered two important governmental concerns:



...to give candidates the opportunity to lessen the 'great drain on [their] time and energies' required by fundraising 'at the expense of providing competitive debate on the issues for the electorate' and to 'eliminate reliance on large private contributions' that may arise from such reliance without decreasing the ability of the candidates to get their message to the people....If the candidate chooses to accept public financing he or she is beholden unto no person, and, if elected, should feel no post-election obligation toward any contributor of the type that might have existed as a result of a privately financed campaign.<sup>49</sup>

Offering a candidate matching funds does not require a candidate to "sacrifice" constitutional rights—even though expenditure ceilings must be accepted as a condition for receipt of public funds. Instead, matching funds offer the candidate a choice between "two methods of exercising the same constitutional right." The candidate remains "free to choose" between them.<sup>50</sup> As the Supreme Court concluded in *Buckley v. Valeo*, public financing

...is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process...[and it] furthers, not abridges, pertinent First Amendment values.<sup>51</sup>

The court in *Republican National Committee* also rejected the argument that limited public funding "compelled" the candidate to accept expenditure limitations as an unconstitutional "condition" on the candidate's freedom of speech. Rather, the effect of public financing was to "facilitate and enlarge ... [candidates'] exercise of free speech over what it would otherwise be rather than to inhibit or reduce their speaking power."<sup>52</sup> The court added:

If a candidate were permitted, in addition to receipt of public funds, to raise and expend unlimited private funds, the purpose of public financing would be defeated....[C]andidates would no longer be relieved of the burdens of soliciting private contributions and of avoiding unhealthy obligations to private contributors. Thus the conditions placed on the expenditure of public funds are necessary to the effectiveness of a program which furthers significant state interests.<sup>53</sup>

The court also rejected the argument that a flat prohibition on private contributions in the general election to presidential candidates accepting public financing would abridge the rights of candidates or contributors. Contributors can still make independent expenditures and candidates are left with control over the choice of their funding sources. Limited public financing thus provides "an alternative to private funding with its burdens and unhealthy influences."<sup>54</sup> Moreover public financing

...offers the presidential candidate an alternative that may enhance his or her First Amendment powers of communication, "free[s] candidates from the rigors of fundraising," ...and eliminates the "danger of corruption," ... without barring a candidate from deciding to adhere to private rather than public financing.<sup>55</sup>

The Commission thus believes that its limited matching funds proposal is not only constitutionally supportable but affirmatively desirable. Matching funds are not imposed on candidates. Only candidates limiting their expenditures will qualify. Limited matching funds will make candidates less dependent on private contributions, reduce improper contributor influence, lessen candidates' fundraising burdens, increase their responsiveness to constituents and enlarge public discussion.

The Commission also believes that it is appropriate to limit the expenditures of candidates receiving matching funds. Otherwise candidates would still experience mounting pressures to raise additional private funding. Expenditure ceilings are thus necessary to achieve the goals of a matching funds system.<sup>56</sup>

## NOTES

1. *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (citing and quoting *Roth v. United States*, 354 U.S. 254, 270 (1957)).
2. *Buckley*, 424 U.S. at 14.
3. *Id.* at 1.
4. *Id.* at 19.
5. The genesis of modern constitutional law affecting political campaigns is found in *Buckley v. Valeo*, *supra*. For other leading court decisions in the area of campaign finance, see *Federal Election Comm'n v. National Conservative Political Action Comm.*, 105 S. Ct. 1459 (1985) (independent PAC expenditures); *Federal Election Comm'n v. National Right to Work Comm.*, 459 U.S. 197 (1982) (solicitation of money by corporate PACs); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981) (contributions to ballot measure committees); *California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. 182 (1981) (contributions to political committees); *Republican Nat'l Comm. v. Federal Election Comm'n*, 461 F. Supp. 570 (S.D.N.Y. 1978), 487 F. Supp. 280 (S.D.N.Y. 1980) (by a three-judge court), *aff'd*, 616 F.2d 1 (2d Cir. 1980) (en banc), *aff'd mem.*, 445 U.S. 955 (1980) (independent expenditures); *First Nat'l Bank v. Bellotti*, 435 U.S. 765 (1978) (corporate expenditures on ballot measures); *United States v. UAW*, 352 U.S. 567 (1957) (prohibition on corporate and labor union contributions); *Mott v. Federal Election Comm'n*, 494 F. Supp. 131 (D.D.C. 1980) (limits on contributions to PACs and overall limits on individual contributions).
6. *Buckley*, 424 U.S. at 20-29, and cases cited in note 5, *supra*.
7. *California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. at 196 & n.16.
8. *Buckley*, 424 U.S. at 20.
9. *Id.* at 20-21.
10. *Id.* at 22.
11. *Id.*
12. *Id.* at 25.
13. *Id.* at 26-27.
14. *Id.* at 27.
15. *Id.* at 38-49, 91-96.
16. *Id.* at 23-35.
17. *Id.* at 26.
18. *Id.* at 21-22. The Court has also upheld a flat prohibition on corporate and labor contributions. See *Federal Election Comm'n v. National Right to Work Comm.*, 459 U.S. 197 (1982). *A fortiori* a \$1,000 limit on corporate and labor contributions is constitutional.
19. *Buckley*, 424 U.S. at 32.
20. *Id.* at 30.
21. 2 U.S.C.A. §441a(3) (West 1985).
22. *Buckley*, 424 U.S. at 38; see *Mott v. Federal Election Comm'n*, 494 F. Supp. 131 (D.D.C. 1980). Although federal law prohibits contributions by corporations and labor unions, the Commission's proposal allows such contributions up to \$1,000. For this reason the \$25,000 total contribution limit is also applied to corporate and labor donations.
23. *Buckley*, 424 U.S. at 35.
24. *California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. 182 (1981); see *Mott v. Federal Election Comm'n*, 494 F. Supp. 131 (D.D.C. 1980); *Florida Police Benev. Ass'n v. Florida Election Comm'n*, 430 So. 2d 483 (Fla. Dist. Ct. App. 1983).
25. Obey-Leach Bill, H.R. 4428, 98th Cong., 1st Sess. (1983).
26. MONT. CODE ANN. §§13-37-101 to 13-37-308 (1983).
27. See Harris Survey, May 31, 1984; Roper Report 82-8, Oct. 1982.
28. *Buckley*, 424 U.S. at 20-29.
29. See note 5, *supra*.
30. 2 U.S.C.A. §441b (West 1985).
31. *Nat'l Right to Work Comm.*, 459 U.S. at 210.
32. See 2 U.S.C.A. §441a(d),(h) (1985).
33. WIS. STAT. ANN. tit. 17 §§11.001-11.67 (West Supp. 1984-1985).
34. *Republican Nat'l Comm. v. Federal Election Comm'n*, 461 F. Supp. 570 (S.D.N.Y. 1978), 487 F. Supp. 280 (S.D.N.Y. 1980) (by a three-judge court), *aff'd*, 616 F.2d (2d Cir. 1980) (en banc), *aff'd mem.*, 445 U.S. 955 (1980).
35. *Republican Nat'l Comm.*, 487 F. Supp. at 284 (quoting *Buckley v. Valeo*, 424 U.S. at 57 n.65).



36. Political parties in California cannot "support" or "oppose" candidates in the primary elections. CAL. ELEC. CODE §11702 (West 1977).
37. *San Francisco County Democratic Central Comm. v. March Fong Eu*, No. 83-5599 (N.D. Cal. 1983), *stay granted*, No. 84-1851 (Apr. 24, 1984); see *Abrams v. Reno*, 452 F. Supp. 1166 (S.D. Fla. 1978); cf. *Unger v. Superior Court*, 37 Cal. 3d 612 (1984) (political parties may make endorsements in non-partisan races).
38. CONN. GEN. STAT. ANN. §§9-333 to 9-348 (West 1958 & Supp. 1985); MICH. COMP. LAWS §§169.201-169.282 (West Supp. 1984-1985).
39. MASS. ANN. LAWS ch. 55 §§1-42, ch. 55A §§1-12 (Michie/Law Co-op 1978 & Supp. 1985), ch. 10 §43 (Michie/Law Co-op 1980), ch. 62 §6C (Michie/Law Co-op Supp. 1985).
40. HAWAII REV. STAT. §§11-191 to 11-229 (Supp. 1984), §§235-7(g), 235-102.5 (Supp. 1984).
41. See *Nat'l Right to Work Comm.*, 459 U.S. 197 (1982); *United States v. UAW*, 352 U.S. 567 (1957).
42. *California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. at 201.
43. See, e.g., *Young v. American Mini Theatres*, 427 U.S. 50 (1976) (zoning of adult movie theatres is permissible); *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) (zoning of protected speech into late evening broadcast hours is permissible).
44. *Buckley*, 424 U.S. at 39.
45. *Id.* at 57 n.65.
46. *Federal Election Comm'n v. National Conservative Political Action Comm.*, 105 S. Ct. 1459 (1985).
47. *Buckley*, 424 U.S. at 264, 265 (dissenting opinion).
48. *Buckley*, 424 U.S. at 96.
49. *Republican Nat'l Comm.*, 487 F. Supp. at 284.
50. *Id.* at 284-85.
51. *Buckley*, 424 U.S. at 92-93.
52. *Republican Nat'l Comm.*, 487 F. Supp. at 285.
53. *Id.* at 285-86.
54. *Id.* at 297.
55. *Id.* at 289 quoting *Buckley v. Valeo*, 424 U.S. at 91, 33.
56. *Buckley*, 424 U.S. at 92-93.

# **PART IV**

## **Appendices**

### Expenditure Limitations, Contribution Limitations and Limited Matching Funds

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

## APPENDIX A

MODEL LAW PROVISIONS

The Legislative Election Reform Act of 1986 is a comprehensive statutory amendment to the Political Reform Act of 1974--Government Code Sections 81000 et seq. Therefore, the Political Reform Act should be consulted for enforcement provisions (Sections 91000 et seq.), auditing provisions (Sections 90000 et seq.), regulatory authority of the FPPC (Sections 83111 et seq.), and definitions of such words as "contribution" (Section 82015), "committee" (Section 82013), "independent expenditure" (Section 82031), "loan" (Section 84216), and "person" (Section 82047). "Commission" means the Fair Political Practices Commission.

The headnotes for each section are for informational purposes only and are not part of the actual statutory language.

SECTION 1. Chapter 5 is added to Title 9 of the Government Code as follows:

CHAPTER 5LEGISLATIVE ELECTION REFORM ACT OF 1986

## Article 1

## FINDINGS AND PURPOSES

85100. Title

This chapter shall be known as the Legislative Election Reform Act of 1986.

85101. Findings and Declarations

The people find and declare each of the following:

(a) Monetary contributions to political campaigns are a legitimate form of participation in the American political process, but the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of legislative candidates.

(b) Campaign spending for California legislative campaigns is escalating to dangerous levels. The average legislative race cost nearly \$450,000 in 1984. Million dollar electoral contests for seats which pay \$33,000 a year are increasingly common.

(c) The rapidly increasing costs of political campaigns have forced many legislative candidates to raise larger and larger sums of money from statewide interest groups with a specific financial stake in matters before the Legislature. This has

caused the public perception that legislators' votes are being improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the Legislature and the governmental process.

(d) The average legislative candidate now raises over 90% of his or her campaign contributions from sources outside his or her own district. This has caused the growing public perception that legislators are less interested in the problems of their own constituents than the problems of wealthier statewide contributors.

(e) Legislative candidates are raising less money in small contributions and more money in large individual and organizational contributions. This has created the public impression that the small contributor has an insignificant role to play in political campaigns.

(f) High campaign costs are forcing legislators to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting legislators from urgent legislative matters.

(g) Legislators are responding to high campaign costs by raising large amounts of money in off-election years. This fundraising distracts legislators from important public matters, encourages contributions which may have a corrupting influence and gives incumbents an unfair fundraising advantage over potential challengers.

(h) Incumbents are raising far more money than challengers. In the 1984 general election, Assembly incumbents outspent their challengers by a 14-to-1 ratio and won 100% of their contests. In 1983, a non-election year, incumbent legislators raised \$14.3 million while their challengers raised less than \$50,000. In 1984, out of 100 legislative races in the primary and general elections, only two incumbents were defeated. The fundraising advantages of incumbency are diminishing electoral competition between incumbents and challengers.

(i) The integrity of the legislative process, the competitiveness of campaigns and public confidence in legislative officials are all diminishing.

## **85102. Purpose of this Chapter**

The people enact this Act to accomplish the following purposes:

(a) To ensure that individuals and interest groups in our society have a fair and equal opportunity to participate in the elective and legislative processes;

(b) To reduce the influence of large contributors with a specific financial stake in matters before the Legislature, thus countering the perception that legislation is influenced more by the size of contributions than the merits of legislation or the best interests of the people of California;

(c) To assist candidates in raising enough money to communicate their views and positions adequately to the public without excessive expenditures or large contributions, thereby promoting public discussion of the important issues involved in political campaigns;

(d) To limit overall expenditures in legislative campaigns, thereby reducing the pressure on legislative candidates to raise large campaign war chests beyond the amount necessary to communicate reasonably with voters;

(e) To provide a neutral source of campaign financing by allowing individual taxpayers voluntarily to dedicate a portion of their state taxes to defray a portion of the costs of legislative campaigns;

(f) To increase the importance of in-district contributions;

(g) To increase the importance of smaller contributions;

(h) To eliminate off year fundraising;

(i) To reduce excessive fundraising advantages of incumbents and thus encourage competition for elective office;

(j) To allow candidates and legislators to spend a lesser proportion of their time on fundraising and a greater proportion of their time discussing important legislative issues;

(k) To improve the disclosure of contribution sources in reasonable and effective ways;

(l) To ensure that candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of the important issues involved in political campaigns; and

(m) To help restore public trust in the state's legislative and electoral institutions.

## Article 2

### DEFINITIONS

#### 85200. Interpretation of this Chapter

Unless the term is specifically defined in this chapter or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) shall govern the interpretation of this chapter.



**85201. Legislative Caucus Committee**

"Legislative caucus committee" means a committee controlled by the caucus of each political party of each house of the Legislature. Each party of each house may establish only one such committee which shall not be considered to be a candidate-controlled committee. A "legislative caucus committee" may make contributions to any candidate running for legislative office.

**85202. Small Contributor Political Action Committee**

"Small contributor political action committee" means any committee which meets all of the following criteria:

- (a) all the contributions it receives are \$50 or less;
- (b) it has been in existence at least six months;
- (c) it contributes to at least five candidates; and
- (d) it is not a candidate-controlled committee.

**85203. Qualified Campaign Expenditure**

(a) "Qualified campaign expenditure" for legislative candidates includes all of the following:

- (1) Any expenditure made by a candidate for legislative office, or by a committee controlled by such a candidate, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for legislative office;
- (2) Any transfer of anything of value made by the legislative candidate's controlled committee to any other committee;
- (3) A non-monetary contribution provided at the request of or with the approval of the legislative candidate, legislative officeholder or committee controlled by the legislative candidate or legislative officeholder; and
- (4) That portion of a slate mailing or other campaign literature produced or authorized by more than one legislative candidate which is the greater of the cost actually paid by the committee or controlled committee of the legislative candidate or the proportionate share of the cost for each such candidate. The number of legislative candidates sharing costs and the emphasis on or space devoted to each such candidate shall be considered in determining the cost attributable to each such candidate.

(b) "Qualified campaign expenditure" does not include any payment if it is clear from the surrounding circumstances that it was not made for political purposes.

**85204. Two-Year Period**

"Two-year period" means the period commencing with January 1 of an odd-numbered year and ending with December 31 of an even-numbered year.

**Article 3****CONTRIBUTION LIMITATIONS****85300. Limitations on Contributions from Persons**

(a) No person shall make to any candidate for legislative office and the controlled committee of such a candidate and no such candidate and the candidate's controlled committee shall accept from each such person a contribution or contributions totaling more than \$1,000 for each of the following elections in which the candidate is on the ballot or is a write-in candidate: a primary election, a general election, a special election or special runoff election.

(b) No person shall make to any committee which supports or opposes any legislative candidate and no such committee shall accept from each such person a contribution or contributions totaling more than \$1,000 in a two-year period.

**85301. Limitations on Contributions from Small Contributor Political Action Committees**

(a) No small contributor political action committee, as defined in Section 85202, shall make to any candidate for legislative office and the controlled committee of such a candidate, and no such candidate and the candidate's controlled committee shall accept from a small contributor political action committee a contribution or contributions totaling more than \$5,000 for each of the following elections in which the candidate is on the ballot or is a write-in candidate: a primary election, a general election, a special election or special runoff election.

(b) No small contributor political action committee shall make to any committee supporting or opposing a legislative candidate and no such committee shall accept from a small contributor political action committee a contribution or contributions totaling more than \$5,000 in a two-year period.

**85302. Limitations on Contributions to Political Parties and Legislative Caucus Committees**

No person, including a small contributor political action committee, shall make to any political party or legislative caucus, and no such party or legislative caucus committee shall accept from each such person a contribution or contributions totaling more than \$5,000 in a two-year period.

**85303. Limitations on Contributions from Political Parties and Legislative Caucuses**

No legislative candidate and the controlled committee of such a candidate shall accept a contribution or contributions totaling more than \$50,000 in a general election or special runoff election from a legislative caucus committee and/or a political party. No legislative caucus committee or political party shall make a contribution to a legislative candidate running in a primary election or special election.

**85304. Seed Money**

The limitations in Sections 85300 and 85301 shall not apply to contributions to a candidate for legislative office until the candidate has raised \$35,000 in the election year.

**85305. Limitations on Contributions from Non-Individuals**

No more than a total of \$50,000 in the case of an Assembly candidate, and a total of \$75,000 in the case of a Senate candidate, for either a primary, general, special or special runoff election, shall be accepted in contributions from non-individuals by any candidate and the controlled committee of such a candidate. Contributions from political parties and legislative caucuses shall be exempt from this provision.

**85306. Limitations on Total Contributions from Persons**

No person, including an individual, committee, corporation, labor union, business entity or non-profit organization, shall make to legislative candidates or to committees supporting legislative candidates contributions aggregating more than twenty-five thousand dollars (\$25,000) in a two-year period. Contributions to and contributions from political parties and legislative caucuses shall be exempt from this provision.

**85307. Limitations on Total Contributions from Small Contributor Political Action Committees**

No small contributor political action committee shall make to legislative candidates or to committees supporting legislative candidates contributions aggregating more than one hundred thousand dollars (\$100,000) in a two-year period. Contributions to and contributions from political parties and legislative caucuses shall be exempt from this section.

**85308. Prohibition on Transfers**

(a) No candidate and no committee controlled by a candidate or candidates for legislative office or controlled by a legislator or legislators, other than a legislative caucus committee or political party, shall make any contribution to a candidate running for legislative office or to any committee

supporting such a candidate including a legislative caucus committee or party committee.

(b) This section shall not prohibit a candidate from making a contribution from his or her own personal funds to his or her candidacy or to the candidacy of any other candidate for legislative office.

**85309. Prohibition on Off Year Contributions**

(a) No legislative candidate or legislator or any controlled committee of such a candidate or legislator shall accept any contribution in any year other than the year in which the legislative candidate or legislator is listed on the ballot as a candidate for legislative office.

(b) No legislative caucus committee shall accept any contribution in an odd-numbered year.

**85310. Limitations on Payments of Gifts, Honoraria and Contributions**

No legislator or legislative candidate and any fund controlled by such a person shall receive more than \$2,000 in honoraria, gifts and contributions in a two-year period from any person or more than \$10,000 in any two-year period from a small contributor political action committee. Payments from political parties and legislative caucuses and payments made to committees established pursuant to Section 85315 shall be exempt from this section.

**85311. Return of Contributions**

A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and in addition it is returned to the donor within fourteen (14) days of receipt.

**85312. Aggregation of Payments**

For purposes of the limitations in Sections 85300-85307 and Section 85310:

(a) All payments made by a person or small contributor political action committee whose contributions or expenditure activity is financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons shall be considered to be made by a single person, committee or small contributor political action committee.

(b) Two or more corporations shall be treated as one person when such corporations:

- (1) Share the majority of members of their boards of directors;
- (2) Share two or more corporate officers;
- (3) Are owned or controlled by the same majority shareholder or shareholders; or
- (4) Are in a parent-subsidiary relationship.

(c) An individual and any general partnership in which the individual is a partner, or an individual and any corporation in which the individual owns a controlling interest, shall be treated as one person.

(d) No committee which supports or opposes a candidate for legislative office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

#### **85313. Loans**

(a) A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this chapter.

(b) Every loan to a candidate or the candidate's controlled committee shall be by written agreement and shall be filed with the candidate's or committee's campaign statement on which the loan is first reported.

(c) The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limits of this chapter.

(d) Extensions of credit, other than loans pursuant to subsection (c), for a period of more than thirty (30) days are subject to the contribution limitations of this chapter.

#### **85314. Family Contributions**

(a) Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated.

(b) Contributions by children under 18 shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent).

#### **85315. Candidate for Statewide or Local Office**

The contribution limitations shall not apply to any contributions to a candidate for legislative office where such

contributions are made to support the candidate's campaign for a statewide or local elective office, and the following conditions are met:

(a) A separate committee and account for the non-legislative office being sought shall be established for the receipt of all contributions and the making of all expenditures in connection with the non-legislative office;

(b) The contributions to be exempted from the contribution limitations in this chapter are made directly to this separate committee's account; and

(c) No expenditures from such an account shall be made to support the legislative candidate's campaign, or any other candidate's campaign for legislative office.

**85316. One Campaign Committee and One Checking Account per Candidate**

A legislative candidate shall have no more than one campaign committee and one checking account out of which all expenditures shall be made.

**85317. Time Periods for Primary Contributions and General Election Contributions**

For purposes of the contribution limitations, contributions made at any time before July 1 of the election year shall be considered primary contributions, and contributions made from July 1 until December 31 of the election year shall be considered general election contributions. Contributions made at any time after the seat has become vacant and up through the date of the election shall be considered contributions in a special election, and contributions made after the special election and up through fifty-eight (58) days after the special runoff election shall be considered contributions in a special runoff election.

**Article 4**

**EXPENDITURE LIMITATIONS**

**85400. Expenditure Limitations for Assembly Candidates**

No candidate for State Assembly who files a statement of acceptance of financing from the Campaign Reform Fund and any controlled committee of such a candidate shall make qualified campaign expenditures above the following amounts:

(a) \$150,000 in a primary election; and

(b) \$225,000 in a general, special, or special runoff election.



**85401. Expenditure Limitations for State Senate Candidates**

No candidate for State Senate who files a statement of acceptance of financing from the Campaign Reform Fund and any controlled committee of such a candidate shall make qualified campaign expenditures above the following amounts:

- (a) \$250,000 in a primary election; and
- (b) \$350,000 in a general, special or special runoff election.

**85402. Expenditure Limitations Lifted--Primary Elections**

In the primary election, if a candidate who declines to accept payments from the Campaign Reform Fund makes qualified campaign expenditures in excess of the expenditure limits, or if an independent committee or committees spend more than \$50,000 in support of or in opposition to any legislative candidate, the expenditure limitation shall no longer be applicable to all candidates who seek the party nomination for the same seat. In addition, each candidate, other than the candidate who exceeded the expenditure limits, shall be permitted to receive an additional \$35,000 free of contribution limitations, in accordance with Section 85304.

**85403. Expenditure Limitations Lifted--Non-Primary Elections**

If a candidate in the general, special or special runoff election makes qualified campaign expenditures in excess of the expenditure limits, or if an independent expenditure committee or committees spend more than \$50,000 in support of or in opposition to any legislative candidate, the expenditure limitations shall no longer be applicable to all candidates running for the same seat in the general, special or special runoff election. In addition, each candidate, other than the candidate who exceeded the expenditure limits, shall be permitted to receive an additional \$35,000 free of contribution limitations, in accordance with Section 85304.

**85404. Notification by Candidate Who Exceeds Expenditure Limitations**

A candidate who exceeds the expenditure limitations shall notify all opponents and the Commission by telephone and by confirming telegram the day the expenditure limitations are exceeded.

**85405. Time Periods for Primary Election Expenditures and General Election Expenditures**

For purposes of the expenditure limitations, qualified campaign expenditures made at any time before June 30 of the election year shall be considered primary election expenditures, and qualified campaign expenditures made from July 1 until December 31 of the election year shall be considered general

election expenditures. Qualified campaign expenditures made at any time after the seat has become vacant and up through the date of the election shall be considered expenditures in a special election, and qualified campaign expenditures made after the special election and up through fifty-eight (58) days after the special runoff election shall be considered expenditures in a special runoff election. However, in the event that payments are made but the goods or services are not used during the period purchased, the payments shall be considered qualified campaign expenditures for the time period when they are used. Payments for goods or services used in both time periods shall be prorated.

## Article 5

### CAMPAIGN REFORM FUND

#### 85500. Candidate Acceptance or Rejection of Funds

Each candidate for legislative office, at the time of filing his or her Declaration of Candidacy, shall file a statement of acceptance or rejection of financing from the Campaign Reform Fund. If a candidate agrees to accept financing from the Campaign Reform Fund, the candidate shall comply with the provisions of Article 4 of this Act. A candidate who agrees to accept financing from the Campaign Reform Fund may not change that decision. A candidate who does not agree to accept such financing shall notify all opponents and the Commission by telegram on the day such a candidate raises, spends or has cash on hand of more than \$35,000.

#### 85501. Qualification Requirements

In order to qualify to receive payments from the Campaign Reform Fund, a candidate shall meet the following requirements:

(a) The candidate has raised at least \$20,000 in contributions of \$1,000 or less if running for the Assembly, or at least \$30,000 in contributions of \$1,000 or less if running for the Senate. Only contributions received after the Declaration of Candidacy is filed may be counted for the above threshold. For purposes of this subsection, a loan, a pledge or a non-monetary contribution shall not be considered a contribution;

(b) In the primary election, the candidate is opposed by a candidate running for the same nomination who has qualified for payments from the Campaign Reform Fund or has raised, spent or has cash on hand of at least \$35,000; and

(c) In the general election, the candidate is opposed by a candidate who has qualified for payments from the Campaign Reform Fund or has raised, spent or has cash on hand of at least \$35,000.

**85502. Campaign Reform Fund Formula**

A candidate who is eligible to receive payments from the Campaign Reform Fund shall receive payments on the basis of the following formulas:

(a) For a contribution of \$250 or under from a single source received after a Declaration of Candidacy is filed, a matching ratio of three dollars (\$3) from the Campaign Reform Fund for each dollar received.

(b) For a contribution of \$250 or under from an individual who is a registered voter in the candidate's district and whose contribution is made after the candidate's Declaration of Candidacy is filed, a matching ratio of five dollars (\$5) from the Campaign Reform Fund for each dollar received.

(c) For purposes of this section, a loan, a pledge or a non-monetary payment shall not be considered a contribution.

**85503. Candidate Request for Payment**

The Commission shall determine the information needed to be submitted to qualify for payment from the Campaign Reform Fund. A candidate may not request less than \$10,000 in payments at any one time from the Campaign Reform Fund; provided, however, that in the fourteen (14) days preceding an election, a candidate may not request less than \$5,000 in such payments.

**85504. Maximum Funds Available to Candidate**

No candidate shall receive payments from the Campaign Reform Fund in excess of the following amounts:

(a) For an Assembly candidate, \$75,000 in the primary election and \$112,500 in the general, special or special runoff election.

(b) For a Senate candidate, \$125,000 in the primary election and \$175,000 in the general, special or special runoff election.

**85505. Timing of Payments to Candidates**

The Controller shall make payments from the Campaign Reform Fund in the amount certified by the Commission. Payments shall be made no later than three (3) business days after receipt of the request by the candidate.

**85506. Surplus Funds**

Surplus funds remaining after all obligations are met by the candidate shall be returned to the Campaign Reform Fund after the general election based on a ratio of the public funds received by a candidate compared to the private funds raised by the candidate for each election.

**Article 6****INDEPENDENT EXPENDITURES****85600. Independent Expenditures for Mass Mailings**

(a) Any person who makes independent expenditures for a mass mailing which supports or opposes any candidate for legislative office shall put the following statement on the mailing:

**NOTICE TO VOTERS  
(Required by State Law)**

This mailing is not authorized or approved by  
any legislative candidate or election official.

It is paid for by \_\_\_\_\_.  
(name)

\_\_\_\_\_  
Address, City, State

(b) The statement required by this section shall appear on the envelope and on each page or fold of the mass mailing in at least 10-point type, not subject to the half-tone or screening process, and in a printed or drawn box set apart from any other printed matter.

**85601. Contribution Limitations**

Any person who makes independent expenditures shall not accept any contribution in excess of the amounts set forth in Section 85300(b).

**85602. Limitations on Persons Who Make Independent Expenditures and Contributions to Candidates**

Any person who makes a contribution of one hundred dollars (\$100) or more to a candidate for legislative office at any time after the candidate has filed a Declaration of Candidacy shall be considered to be acting in concert with that candidate and shall not make independent expenditures and contributions in excess of \$1,000 per election in support of that candidate or in opposition to that candidate's opponent.

**85603. Reproduction of Materials**

Any person who reproduces, broadcasts or distributes any material which is drafted, printed, prepared or previously broadcast by a legislative candidate or a committee controlled by such a candidate shall report such an expenditure as a non-monetary contribution to such candidate or committee.

**85604. Notice of Independent Expenditures**

Any person who makes independent expenditures of more than \$10,000 in support of or in opposition to any legislative candidate shall notify the Commission and all candidates in that legislative district by telegram each time this threshold is met.

**Article 7****AGENCY RESPONSIBILITIES****85700. Duties of the Fair Political Practices Commission**

The Fair Political Practices Commission, in addition to its responsibilities set forth in Sections 83100 et seq., shall also:

(a) Adjust the expenditure limitations, contribution limitations and public financing provisions in January of every even-numbered year to reflect any increase or decrease in the Consumer Price Index. Such adjustments shall be rounded off to the nearest hundred for the limitations on contributions and the nearest thousand for the limitations on expenditures and the public financing provisions;

(b) Prescribe the necessary forms for filing the appropriate statements;

(c) Verify the requests for payment for Campaign Reform Funds; and

(d) Prepare and release studies on the impact of this title. These studies shall include legislative recommendations which further the purposes of this title.

**85701. Duties of the Franchise Tax Board**

The Franchise Tax Board shall audit each candidate who has received payments from the Campaign Reform Fund in accordance with the procedures set forth in Sections 90000 et seq.

**SECTION 2.** Chapter 18.6 (commencing with Section 18775) is added to Part 10 of Division 2 of the Revenue and Taxation Code, to read:

**CHAPTER 18.6****CAMPAIGN REFORM FUND DESIGNATION****18775. Tax Checkoff**

Every individual whose income tax liability for any taxable year is three dollars (\$3) or more may designate an amount up to three dollars (\$3) of that tax liability to be deposited into the

Campaign Reform Fund. In the case of a joint return of husband and wife having an income tax liability of six dollars (\$6) or more, each spouse may designate that an amount up to three dollars (\$3) of that tax liability shall be paid to the Fund. Taxpayer designations of funds shall not increase that taxpayer's tax liability. Money in this Fund shall be available for distribution in accordance with the provisions of Chapter 5 of Title 9, commencing with Section 85100 of the Government Code.

SECTION 3. Section 17245 of the Revenue and Taxation Code (which currently reads as follows) is repealed:

17245.

In computing taxable income there shall be allowed as a deduction political contributions by any person in excess of one hundred dollars (\$100) (two hundred dollars (\$200) on a joint return) in any year, except that no deduction shall be allowed for contributions which are designated pursuant to Section 18720.

SECTION 4. Section 83122.5 is added to the Government Code to read:

83122.5. Appropriation to Fair Political Practices Commission

There is hereby appropriated from the Campaign Reform Fund to the Fair Political Practices Commission a sum of \$500,000, adjusted for cost of living changes, during each fiscal year, for expenditures to support the operations of the Commission to carry out its responsibilities pursuant to the Legislative Elections Reform Act. The expenditure of funds under this appropriation shall be subject to the normal administrative review given to other state appropriations. The Legislature shall appropriate additional amounts to the Commission and other agencies as may be necessary to carry out the provisions of this title.

SECTION 5. Section 91000 of the Government Code is amended to read:

91000. Violations: Criminal

(a) Any violation of Chapter 5 of this title commencing with Section 85100 is a public offense punishable by imprisonment in a state prison or in a county jail for a period not exceeding one year.

~~{a}-Any-person-who-knowingly-or-willfully-violates-any provision-of-this-title-is-guilty-of-a-misdemeanor.~~

(b) Any violation of any other section of this title is a misdemeanor.

~~{b}~~

(c) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three



times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction of each violation.

{e}

(d) Prosecution for violation of this title must be commenced within four years after the date on which the violation occurred.

SECTION 6. Section 91005 of the Government Code is amended to read:

**91005. Civil Liability for Violations**

(a) Any person who makes or receives a contribution, payment, gift or expenditure in violation of Section 84300, 84304, 85300, 85301, 85302, 85303, 85305, 85306, 85307, 85308, 85309, 85310, 85400, 85401, 85405, 85500, 85501, 85502, 85504, 85506, 85600, 85601, 85602, 85603, 85604, 86202, 86203 or 86204 is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to ~~five-hundred-dollars-(\$500)~~ one thousand dollars (\$1,000) or three times the amount of the unlawful contribution, gift or expenditure, whichever is greater.

(b) Any designated employee or public official specified in Section 87200, other than an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a Conflict of Interest Code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.

SECTION 7. Section 83116 of the Government Code is amended to read:

**83116. Violation of Title**

When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if such a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, Part I, Chapter 5, Sections 11500 et seq.) The Commission shall have all the powers granted by that chapter.

When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order which may require the violator to:

(a) Cease and desist violation of this title;

(b) File any reports, statements or other documents or information required by this title; and

(c) Pay a monetary penalty of up to two thousand dollars (\$2,000) for each violation to the General Fund or the state.

When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

SECTION 8. Section 84106 is added to the Government Code to read:

**84106. Identification of Committees**

The name of any committee shall include or be accompanied by the name of any individual, entity or other person by which the committee is controlled. Any committee required to file a statement of organization shall amend its statement to comply with this section within thirty (30) days of the effective date of this Act.

SECTION 9. Section 84302.5 is added to the Government Code to read:

**84302.5. Definition of Intermediary**

A person is an intermediary for transmittal of a contribution if he or she delivers to a candidate or committee a contribution from another person unless such contribution is from the person's employer, immediate family or an association to which the person belongs. No person who is the treasurer of the committee to which the contribution is made or is the candidate who controls the committee to which the contribution is made shall be an intermediary for such a contribution.

**SECTION 10. Severability Clause**

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those as to which it was held invalid, shall not be affected thereby, and to this end, the provisions of this Act are severable.

SECTION 11. Legislative Amendments (if Model Law is adopted as an initiative measure)

The provisions of Section 81012 of the Government Code which allow legislative amendments to the Political Reform Act of 1974 shall apply to the provisions of this Act.

**THE COMMISSION’S  
ALTERNATIVE  
CAMPAIGN FINANCE PROPOSAL  
FOR CALIFORNIA STATE LEGISLATIVE ELECTIONS**

Contribution Limitations, Expenditure Limitations and Tax Credits

**I. 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
Legislative Caucus and/or Party (general election only). (Will be increased for those candidates accepting expenditure limitations.)	\$10,000
Transfers	Prohibited
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

**II. Expenditure Limitations**

	<i>Primary</i>	<i>General</i>	<i>Total</i>
Assembly	\$150,000	\$225,000	\$375,000
Senate	250,000	350,000	600,000

**III. Incentives for Accepting Expenditure Limits**

Tax credit for contributions of \$100 or less to parties, caucuses and in-district legislative candidates: state credit is 50% plus federal credit of 50% for \$100 contribution.

Disincentives for wealthy candidates, those who exceed expenditure limitations, and independent expenditure committees. (Unlimited party/caucus money and no expenditure limitations for opponents.)

Maximum contributions from party/caucus:

	<i>General Election</i>
Assembly	\$112,500
Senate	175,000

**IV. Miscellaneous**

Limitations on all 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

FPPC administration and enforcement

Cost of living adjustments

## APPENDIX B

AN ALTERNATIVE PROPOSALTax Credits and Variable Contribution Limits  
as an Alternative to Limited Public Financing:  
Analysis, Constitutionality and Model Law ProvisionsTABLE OF CONTENTS

1. Background and Summary of the Alternative Proposal
  - a. Background
  - b. Overview
    - 1) Contribution Limits
    - 2) Expenditure Ceilings
    - 3) Tax Credits
    - 4) Variable Party and/or Caucus Contribution Limits
    - 5) Independent Expenditures and Opponents Who Reject Expenditure Ceilings
2. Political Tax Credits Analyzed
  - a. Other Jurisdictions
  - b. The Potential Costs for California
  - c. Tax Credits in Other Areas
3. The Pros and Cons of Political Tax Credits
  - a. Arguments for Political Tax Credits
  - b. Arguments Against Political Tax Credits
4. Variable Political Party and/or Legislative Caucus Contributions Analyzed
5. The Pros and Cons of Variable Contribution Limits
  - a. Arguments for Variable Contribution Limits
  - b. Arguments Against Variable Contribution Limits
6. The Constitutionality of the Alternative Proposal
  - a. Tax Credits
  - b. Variable Contribution Limits
7. Conclusion
8. Statutory Provisions for the Alternative Proposal

## AN ALTERNATIVE PROPOSAL

### Tax Credits and Variable Contribution Limits as an Alternative to Limited Public Financing: Analysis, Constitutionality and Model Law Provisions

#### 1. Background and Summary of the Alternative Proposal

The Commission's main proposal (described in the foregoing Report and drafted as a model statute in Appendix A, "Model Law") contains expenditure ceilings, contribution limits and limited matching funds. The Commission believes, and this belief is supported by many of the experts interviewed in the course of its research, that only such a combination will fully address California's serious campaign finance problems. Expenditure ceilings will cap the escalating demand for campaign funds. Contribution limits will curtail the influence of large contributors. Limited matching funds will encourage candidates to accept expenditure ceilings, decrease the pressures of fundraising, increase the time candidates spend on important issues, replace large private interest contributions with a new and totally neutral source of funding and increase competition between challengers and incumbents.

This Appendix describes an alternative campaign financing proposal. The Commission's alternative proposal also contains expenditure limitations and contribution limitations for State Assembly and Senate campaigns. It omits limited matching funds of the type included in the main proposal and substitutes two new concepts in its place: (1) 100% tax credits for small in-district contributions, and (2) "variable" or large political party and/or legislative caucus contributions. Although this alternative lacks the comprehensiveness of the Commission's main proposal, the Commission believes it warrants careful consideration. The alternative is summarized in the accompanying chart and is fully drafted as a model law at the end of this Appendix.

##### a. Background

Some experts and political observers have questioned whether public opinion will support a proposal containing limited matching funds. They suggest that Proposition 40 on California's 1984 general election ballot may have been defeated because it contained a small amount of public financing. (See Appendix F, "Analysis of Proposition 40.") They point to opinion polls which suggest the public may resist the donation of tax funds directly to candidates. However, they concede that other opinion polls indicate support for public financing when it is combined with other comprehensive reforms. (See Appendix H, "Public Opinion Polls.")

At the same time, many experts in the state support expenditure limitations on campaigns. They believe that campaign spending on certain legislative races is much higher than necessary and that only expenditure ceilings will cap the currently unlimited demand for contributions.

The Commission agrees that expenditure ceilings are essential to any adequate campaign finance reform proposal. However, the United States Supreme Court has made the adoption of expenditure ceilings difficult. In Buckley v. Valeo, 1/ the Court held that mandatory expenditure ceilings improperly restrict candidates' freedom of political speech. But the Court acknowledged that expenditure ceilings can be attached as a legitimate condition to a candidate's receipt of public financing.

Buckley v. Valeo thus poses a dilemma: if, as the Supreme Court has ruled, expenditure ceilings cannot be imposed and candidates must voluntarily accept them in exchange for limited public financing (or, possibly, some other benefit); and if, as some think, the public may not support limited matching funds as recommended in the Commission's main proposal; then expenditure ceilings are neither legally nor politically feasible.

The Commission believes an informed public may accept limited matching funds as a necessary component of comprehensive campaign reform. However, the Commission has worked out and drafted for consideration an alternative proposal designed to encourage candidates to accept expenditure ceilings without offering them matching funds. This alternative proposal is described below.

#### b. Overview

The alternative proposal shares certain features of the Commission's main proposal. It contains both contribution limits and voluntary expenditure ceilings. In the place of limited matching funds, and as an incentive for candidates to accept expenditure ceilings, it substitutes state income tax credits for small in-district contributions and large "variable" party/caucus contributions. (See the summary chart at the beginning of Appendix B and statutory provisions in Section H below.) The alternative proposal has the following key features:

##### 1) Contribution Limits

All candidates whether or not they agree to expenditure limitations must comply with contribution limits. They include a maximum of \$1,000 on all contributions from individuals, corporations and labor unions and \$5,000 on contributions from small contributor PACs. Contributions from a political party and/or legislative caucus committee are limited to \$10,000. Transfers and off year contributions are prohibited. Assembly candidates cannot receive more than \$50,000 and Senate candidates more than \$75,000 in total aggregate contributions from all non-individuals (PACs, businesses and labor unions). Individuals, businesses and PACs can contribute no more than a total of \$25,000 to all legislative candidates. Small contributor PACs can give no more than a total of \$100,000 to all legislative candidates.

##### 2) Expenditure Ceilings

Candidates may voluntarily accept overall expenditure limits on their campaigns in exchange for the benefits described in (c)



and (d) below. These expenditure ceilings are the same as in the Commission's main proposal. Expenditure limitations for an Assembly candidate are \$150,000 in the primary election and \$225,000 in the general election. For a Senate candidate, expenditure limitations are \$225,000 in the primary and \$350,000 in the general election.

### 3) Tax Credits

A candidate who agrees to limit his or her expenditures may authorize contributors who reside in the candidates' home district to receive a state tax credit of 50% for contributions up to \$100 a person or \$200 for a married couple. Contributors to such candidates can thus make virtually "cost-free" contributions since their contributions will entitle them to both a 50% state tax credit and the current 50% federal tax credit. The resulting 100% tax credit will reduce the contributor's taxes by the same amount as his or her contribution. The 100% combined tax credit will also be available for \$100 contributions (or \$200 per couple) to political parties or legislative caucuses. If the 50% federal tax credit is repealed, the state tax credit would be increased to 100%.

### 4) Variable Party and/or Caucus Contribution Limits

Candidates who accept expenditure limitations will also qualify for political party and/or caucus contributions during the general election in amounts up to \$112,500 for Assembly candidates and \$175,000 for Senate candidates. These amounts are one-half of the candidates' total expenditure ceilings. Candidates who decline expenditure limitations will only be able to receive party and/or caucus contributions up to the basic contribution limit of \$10,000 per candidate.

### 5) Independent Expenditures and Opponents Who Reject Expenditure Ceilings

Expenditure ceilings and limitations on party/caucus contributions will not apply to a candidate in a campaign where more than \$50,000 in so-called "independent expenditures" are expended for or against any candidate in that campaign, or where that candidate's opponent spends more than the voluntary expenditure limits. Candidates in such campaigns can still receive large party/caucus contributions and may also qualify their in-district contributors for state tax credits.

### 6) Summary

The alternative proposal is innovative and untested. Neither the federal government nor any state has adopted such an approach. The courts have not ruled on its key provisions. However, several bills have been introduced in Congress which permit contributors to take 100% tax credits if they contribute to candidates who agree to limit their expenditures. 2/

The Commission believes the alternative proposal holds considerable promise. It accomplishes many of the basic goals of campaign finance reform, yet does so without raising the politically sensitive issue of direct, limited matching funds.

The alternative proposal is less comprehensive than the Commission's main recommendation. However, the alternative proposal appeals to some members of the Commission as more practical than the Commission's main recommendation.

## 2. Political Tax Credits Analyzed

Tax credits for political contributions have been utilized to a limited degree in other jurisdictions. Their costs are relatively modest. Tax credits have also been used in areas not involving campaign finance to implement desired national policy. Although tax credits have several disadvantages, the Commission believes they should be considered in connection with campaign finance reform in California.

### a. Other Jurisdictions

Under current federal law, individuals making contributions of up to \$100 to any candidate (federal, state or local) receive a 50% tax credit on their federal income tax returns. A married couple can receive a 50% tax credit for contributions up to \$200. Approximately 6.6% of federal tax returns claim an average political tax credit of \$51.45. (See Chapter 10, "Laws of Other States," and Chapter 11, "Federal Experience.")

The District of Columbia and four states (Idaho, Minnesota, Oregon and Rhode Island) allow additional state tax credits for political contributions. Only Minnesota, the District of Columbia and Oregon provide a 50% tax credit on contributions up to \$100. When combined with the federal tax credit, state tax credits in Minnesota and the District of Columbia give contributors a 100% total tax credit on their contributions (50% state and 50% federal). Oregon allows taxpayers to take a tax credit only if the taxpayer has not claimed a credit on the federal return. In Minnesota, contributors receive a state tax credit only if the recipient candidate has accepted expenditure ceilings. Approximately 6.5% of Minnesota's taxpayers use the credit for an average of \$41.65 per return. A fifth state, Alaska, does not require acceptance of any expenditure ceilings and nevertheless gives contributors 100% reimbursement for their contributions from state revenues which, when added to the 50% federal tax credit, gives Alaskans a 150% return! (See Chapter 10, "Laws of Other States.")

Current California state law does not provide tax credits but permits tax deductions for contributions up to \$100 a person or \$200 a married couple. These deductions are available only to those taxpayers who itemize their contributions. The maximum deduction available, depending on the contributor's income, is 11% of the contribution. A \$100 contribution by a contributor or couple in the highest tax bracket would reduce an individual's taxes by \$11 and a couple's taxes by \$22.

The Commission's alternative proposal would provide California taxpayers with a total tax credit of 100% (50% state and 50% federal) for in-district contributions to legislative candidates of up to \$100 (or \$200 for a married couple). Contributions of \$100 or less (\$200 or less for a married couple)

to parties or caucuses would also qualify for a tax credit amounting, in total, to 100%. An individual could thus make a "free" tax credit qualifying contribution of \$100 to a candidate running in the contributor's district, a political party or a legislative caucus, or divide a \$100 contribution among all three.

**b. The Potential Costs for California**

Approximately 7% of federal taxpayers now claim the existing 50% federal tax credit for political contributions. If this 7% participation rate is used as a guide for California, approximately 750,000 state taxpayers (out of more than 10 million) might claim the additional tax credit of up to \$50 on their state income tax returns--thereby triggering a \$37 million state reimbursement for contributions to legislative campaigns, parties and caucuses. Tax credits thus amount to an indirect form of limited public financing.

California's participation percentage will undoubtedly be lower than the federal participation percentage for several reasons. The 7% federal figure includes contributions to presidential and congressional candidates. Californians would probably make fewer contributions to state legislative candidates because they are less visible. The federal tax code does not require contributors to attach a receipt for the contribution to their tax return. The Commission's alternative proposal would require such a receipt. Both factors would diminish California's participation below the 7% level.

More significantly, the Commission's alternative proposal only permits tax credits for contributions to legislators located in the contributor's district. The actual cost of tax credits would thus be far less than \$37 million. Assuming that 160 Assembly candidates averaged 300 contributors per district at \$100 each, then the cost to the state would be \$2.4 million. (The federal government would defray the other 50%.) Forty Senate candidates raising contributions of \$100 from 500 people would cost an additional \$1 million. The total state cost for legislative races would be approximately \$3.4 million dollars every two years or \$1.7 million each year.

Assuming that both major political parties can raise contributions of \$100 each from 50,000 people every two years, then the additional cost to the state (of a \$50 credit) would be \$5 million. The highest estimated combined cost of legislative and party contributions would thus be \$8.4 million every two years, or \$4.2 million a year. If the parties were allowed to raise funds in the off year as well (legislative candidates are prohibited from off year fundraising under the alternative proposal), the cost could be an additional \$5 million for a total cost of \$13.4 million every two years or \$6.7 million every year.

The alternative proposal would also repeal California's tax deduction for political contributions, thus saving the state \$2 million a year. The final cost of the tax credit program to the state is thus estimated to be approximately \$9.4 million every two years, or \$4.7 million each year. This is less than the \$5.1

million the state currently spends on advertising to promote tourism in California. 3/

One important question, of course, is whether the additional contributions which could be expected by legislative candidates under this proposal would be sufficient to induce them voluntarily to accept the Commission's proposed expenditure limitations. (See "Arguments Against Political Tax Credits" below.)

### c. Tax Credits in Other Areas

The use of tax credits to encourage members of the public to support socially or economically meritorious activities dates back to the enactment of the investment tax credit in 1962. Since then a number of special purpose incentive tax credits have been enacted at the federal level: the political contribution credit, the work incentive credit, the credit for purchase of a new principal residence, the new jobs credit, the energy tax credit, the credit for producing fuel from nonconventional sources, the credit for alcohol used as fuel, the credit for incremental research expenditures and the historic buildings preservation credit. 4/

Critics of incentive tax credits typically argue that direct government expenditures are superior to tax credits. Stanley Surrey contends, for example, that direct government expenditure programs avoid the waste, inefficiency and inequity of tax credit systems. He argues that the major advantages of tax incentives--encouraging private decision-making and reducing detailed administrative requirements--can be achieved by direct expenditure programs. 5/

However, supporters of tax incentive programs acknowledge the considerable evidence that tax incentives do in fact encourage desired behavior. Energy tax credits have encouraged taxpayers to install energy-saving devices in their homes. 6/ The 25% historic preservation tax has increased the rehabilitation of historic buildings. 7/ It is reasonable to assume that tax credits for political contributions in California would also attract additional financial support for legislative candidates. As noted above, there remains the question whether it would be enough.

## 3. The Pros and Cons of Political Tax Credits

### a. Arguments for Political Tax Credits

A combined 100% state and federal tax credit for in-district contributions to California legislative candidates would have a number of significant advantages. First, such a tax credit would allow each individual contributor/taxpayer to decide where to direct his or her tax money. The state treasury would not provide money to each and every qualifying candidate. This feature may encourage contributors to participate more directly in the political process. Contributors can direct their contributions to the candidates they support.

Second, the tax credit proposal will encourage candidates to seek small contributions from individual constituents in their own districts. Small individual constituent contributions may be the cleanest and best source of campaign money. They are generally given without strings and they enhance the individual's involvement in the electoral process.

Third, the tax credit proposal will encourage political parties to build an established base of support from individuals around the state. Tax credits will strengthen the political parties and allow them to play a more active role in California state politics.

Fourth, tax credits may create a new source of funding for legislative campaigns. Campaign costs are so high in California that many candidates must receive their contributions from organized interest groups, thereby often creating an appearance of impropriety. A new source of campaign money would counter this trend. A statewide poll conducted by USC at the request of the Commission reported that 35% of California residents would either increase their political contributions or contribute for the first time if a 100% tax credit were available to them. (See Appendix H, "Public Opinion Polls.")

Fifth, tax credits are an incentive for candidates to accept expenditure ceilings. They are arguably more acceptable to many than matching funds. The use of tax credits may thus present an acceptable compromise to those who seek expenditure ceilings yet resist limited matching funds in any amount.

#### b. Arguments Against Political Tax Credits

Tax credits also have a number of disadvantages. First, they only benefit individuals who pay taxes. Those who do not file returns will not qualify and would have no incentive under the proposal to become more involved in the political process. Tax credits also benefit only those who are financially able to make contributions. The prospect of a small 100% tax refund several months in the future may not provide lower income groups with a sufficient incentive to part with up to \$100. The Commission's own poll, however, indicates that large numbers of lower income Californians would take advantage of the tax credit proposal.

Second, tax credits are an inefficient way of creating a new source of campaign financing. Tax credits may give a windfall to contributors who already make campaign contributions.

Third, the proposal may face opposition from federal and statewide officeholders whose contributors would not qualify for the 50% state tax credit. These officeholders may fear that their contributors will redirect their contributions to legislative candidates.

Fourth, tax credits may not initially be "party neutral." The Republican Party currently raises substantial sums from small contributors who would qualify for tax credits. The Democratic Party has no equivalent base of small contributors. Tax credits may thus favor Republicans, although possibly only in the short



run. Democrats may be able to change their fundraising strategies to build a large base of smaller contributors.

Fifth, President Reagan has submitted a tax proposal to Congress which would eliminate the current 50% federal tax credit for political contributions. If adopted, this would dilute the effectiveness of the tax credit proposal. However, the Commission's proposal incorporates a contingent increase in California's tax credit if the federal credit is eliminated or reduced.

Sixth, there is a significant question whether in-district tax credits, even if combined with the opportunity to receive larger party or caucus contributions than would otherwise be the case (see below), could be expected to bring enough new money to a particular candidate to induce that candidate to accept expenditure limits. (As to the advantages and disadvantages of variable party/caucus contributions, see below.)

Finally, tax credits are not immune from the charge that they are an indirect form of "public financing." Although tax credits allow individuals to contribute directly to candidates, credits involve a drain on the public treasury. Those who oppose any use of public monies for political campaigns may oppose tax credits to contributors as well as limited public financing.

#### 4. Variable Political Party and/or Legislative Caucus Contribution Limits Analyzed

Under the alternative proposal, candidates accepting expenditure limitations would not only qualify their in-district contributors for 100% tax credits, but would also become eligible themselves for larger political party and/or legislative caucus contributions in amounts up to one-half of their expenditure ceilings. The available contributions from the party and/or caucus would amount to \$112,500 for Assembly candidates and \$175,000 for Senate candidates. These contributions may come from either the party, the caucus or both, but the total may not exceed the prescribed limits. Candidates who do not accept expenditure limitations may only receive combined party/caucus contributions of up to \$10,000 in the general election.

This "variable" contribution limit proposal is new and has not been tested in any jurisdiction. It essentially involves two contribution limits. First, a basic limit of \$10,000 is placed on combined party/caucus contributions. This \$10,000 limit is designed to eliminate actual or apparent corruption in the political process. The limit is then lifted for candidates accepting overall expenditure ceilings on their campaigns. A higher or "variable" limit is then placed on the amount qualifying candidates can receive from parties and/or caucuses. Although this higher limit would allow the actuality or appearance of a quid pro quo between candidates and parties and/or caucuses (which the Commission's main proposal is designed to prevent), the overall benefits from expenditure ceilings may outweigh the disadvantages of modified higher contribution limits.



## 5. The Pros and Cons of Variable Contribution Limits

### a. Arguments for Variable Contribution Limits

There are several advantages to the variable party/caucus contribution limit proposal. First and foremost, it encourages candidates to accept expenditure ceilings without the use of matching funds as an incentive. Unlike proposals which contain only straight contribution limits, the variable contribution limits approach allows the infusion of large sums of money into political campaigns. Such a source of money is arguably necessary if campaigns are to remain competitive.

Second, variable contribution limits acknowledge the current realities of California's campaign fundraising. Legislative caucuses and political parties already provide a major portion of competitive candidates' campaign contributions and the role of partisan political contributions is increasing. (See Chapter 5, "Partisan Sources.") In some races, the Democratic Assembly Caucus acting through the Speaker's controlled funds has contributed up to 70% of Democratic candidates' contributions. The alternative proposal thus uses partisan political contributions as a large funding source and as a partial substitute for matching funds. So long as contributions to the parties and caucuses are limited to \$5,000, the parties and caucuses will not be as subject to the same special interest influences as would individual legislators.

Third, a variable contribution limits proposal is simpler than matching funds. It eliminates the need for a matching funds mechanism to be administered by the Fair Political Practices Commission and the State Controller's office.

Fourth, the proposal may strengthen the historically weak political parties in California. If parties are able to raise and contribute larger sums of money to candidates, their ability to formulate general party policy may be enhanced. Party caucuses may also be able to enforce greater legislative discipline if their fundraising abilities are supplemented by smaller individual contributions.

### b. Arguments Against Variable Contribution Limits

The variable contribution limits proposal also has several potential disadvantages. First, it does not allow large party/caucus contributions in the primary elections for fear that they would flow primarily to incumbents. (However, the proposal does require candidates to accept expenditure ceilings in both the general and primary elections to qualify for larger party/caucus grants in the general election.) Without access to larger funding sources, some candidates (particularly challengers) may not be able to mount competitive campaigns.

Second, the proposal gives the parties and caucuses considerable power to determine which candidates will receive large amounts of campaign money. Candidates who dissent from party philosophy or personally clash with party leaders may receive no money. Parties and caucuses may also feel greater

pressure to raise money and thus be tempted to exchange their legislative influence for contributions.

Third, legislative leaders may be encouraged to assert greater control over the political parties. Party officials have indicated the parties are relatively free of legislative control precisely because they raise and contribute little money to candidates. Should their fundraising abilities increase, the parties might become more attractive takeover candidates.

Fourth, permitting very large party/caucus contributions gives rise to the possibility of legislative corruption which the Commission's main proposal is intended to prevent.

Fifth, there is some question whether a variable contribution limit would be held constitutional by the courts. Under Buckley v. Valeo, candidates may accept expenditure ceilings in return for the benefit of public financing. The variable contribution limit might be viewed as a penalty imposed on candidates who reject expenditure ceilings.

## 6. The Constitutionality of the Alternative Proposal

A combined 100% tax credit (50% state and 50% federal) and a variable contribution limit are relatively untested in constitutional law. Although 100% tax credits are used by a few states, their constitutionality has not been reviewed. Variable party/caucus contribution limits pose new constitutional problems. The Commission nonetheless believes that both aspects taken together will more likely than not withstand constitutional attack.

### a. Tax Credits

The tax credit proposal is designed to encourage constituent support of candidates with small contributions, thus enhancing the candidate's base of support and responsiveness to constituent concerns. Tax credits will enable candidates to decrease their reliance on special interest contributions. The "real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office" 8/ will diminish. A tax credit proposal also helps candidates to run competitive campaigns without drawing on large personal wealth.

In Buckley v. Valeo, the Supreme Court held that the federal government could legitimately offer public financing to political candidates. The Supreme Court and lower courts have rejected the argument that public financing compels a candidate to sacrifice basic constitutional rights (that is, the right to expend unlimited amounts of money on a campaign). Instead, public financing simply offers candidates a "choice" between "two methods of exercising the same constitutional right." 9/ Candidates are free to accept or reject public financing. The existence of an additional public subsidy is not a form of compulsion to require a candidate to accept expenditure ceilings. 10/

The Commission believes that tax credits are constitutionally indistinguishable from direct public financing. Under both public financing and tax credit proposals, public revenues are tapped to support political candidates. A tax credit proposal simply uses public funds to reimburse the contributor for his donation.

The Commission also believes a candidate's acceptance of expenditure ceilings is an appropriate condition to place on the receipt of tax credit qualifying contributions. Candidates are not "compelled" to accept expenditure ceilings. They are merely given a "choice" of two funding methods: totally private funding or private funding plus an indirect public subsidy to their contributors. Because direct public financing is constitutional, a fortiorari tax credits are constitutional as well.

#### b. Variable Contribution Limits

The Commission's alternative model imposes a basic \$10,000 limit on contributions from the political parties and/or legislative caucuses. (For a discussion of the constitutionality of aggregate limits, see Chapter 14, "Constitutional Analysis.") For candidates accepting expenditure ceilings and tax credits, these limits would be raised. Qualifying candidates could receive up to \$112,500 for Assembly races and \$175,000 for Senate races. The Commission's alternative model thus raises the question whether its "variable" or higher contribution limit is constitutional.

In Buckley v. Valeo, the Supreme Court ruled that limits could be placed on contributions only to eliminate the appearance or actuality of a "corrupting" quid pro quo exchange of contributions for legislators' votes. Variable contribution limits might be attacked on the ground that higher contribution limits demonstrate the invalidity of the lower \$10,000 limit. If some candidates can receive large contributions from the parties or caucuses, how can other candidates be restricted to only \$10,000? The existence of a higher limit, in other words, may show that a lower limit is unnecessary to prevent corruption or its appearance. 11/

There is nothing in First Amendment law, however, to suggest that a state must impose contribution limits to eliminate apparent or actual corruption. Indeed, some states (currently including California) have no contribution limits at all. A state that can limit contributions to eliminate actual or apparent corruption can also arguably choose not to impose, or to lift, those contribution limits. Here, the Commission's alternative model allows low limits to be partially lifted in exchange for expenditure ceilings and tax credits--benefits which any legislature adopting the proposal could find outweigh the resulting potential for corruption.

An analogous variable contribution limit exists in federal election law. Individuals can contribute only \$1,000 to presidential candidates. If candidates accept public financing, however, individuals can make no private contributions in the general election. The contribution limit for candidates accepting public financing drops to zero. 12/ The Supreme Court

and other federal courts have upheld this variable limit. 13/ If a contribution limit can be reduced to zero at the federal level, there seems no significant difference from a contribution limit that can be increased at the state level. In both instances the basic contribution limit is varied. Under the Commission's alternative proposal, candidates accepting expenditure ceilings and tax credits would receive larger contributions (from parties and/or caucuses), not smaller ones.

## 7. Conclusion

The alternative proposal serves several basic purposes of campaign finance reform. It creates an incentive for candidates to limit their overall expenditures. It limits the influence of large contributors through the imposition of contribution limits. It creates a new source of money (tax credit qualifying donations and large party/caucus contributions) to replace the money lost by the imposition of contribution limits. It encourages small contributions from candidates' own districts. And it supports the growth of state political parties. However, it poses some disadvantages outlined in the text above. The Commission believes the alternative proposal is a useful addition to ongoing discussions over campaign finance reform.

## 8. Statutory Provisions for the Alternative Proposal

The Legislative Election Reform Act of 1986 is a comprehensive statutory amendment to the Political Reform Act of 1974--Government Code Sections 81000 et seq. Therefore, the Political Reform Act should be consulted for enforcement provisions (Sections 91000 et seq.), auditing provisions (Sections 90000 et seq.), regulatory authority of the FPPC (Sections 83111 et seq.), and definitions of such words as "contribution" (Section 82015), "committee" (Section 82013), "independent expenditure" (Section 82031), "loan" (Section 84216), and "person" (Section 82047). "Commission" means the Fair Political Practices Commission.

The headnotes for each section are for informational purposes only and are not part of the actual statutory language.

SECTION 1. Chapter 5 is added to Title 9 of the Government Code as follows:

### CHAPTER 5

### LEGISLATIVE ELECTION REFORM ACT OF 1986

#### Article 1

#### FINDINGS AND PURPOSES

#### 85100. Title

This chapter shall be known as the Legislative Election Reform Act of 1986.

### 85101. Findings and Declarations

The people find and declare each of the following:

(a) Monetary contributions to political campaigns are a legitimate form of participation in the American political process, but the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of legislative candidates.

(b) Campaign spending for California legislative campaigns is escalating to dangerous levels. The average legislative race cost nearly \$450,000 in 1984. Million dollar electoral contests for seats which pay \$33,000 a year are increasingly common.

(c) The rapidly increasing costs of political campaigns have forced many legislative candidates to raise larger and larger sums of money from statewide interest groups with a specific financial stake in matters before the Legislature. This has caused the public perception that legislators' votes are being improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the Legislature and the governmental process.

(d) The average legislative candidate now raises over 90% of his or her campaign contributions from sources outside his or her own district. This has caused the growing public perception that legislators are less interested in the problems of their own constituents than the problems of wealthier statewide contributors.

(e) Legislative candidates are raising less money in small contributions and more money in large individual and organizational contributions. This has created the public impression that the small contributor has an insignificant role to play in political campaigns.

(f) High campaign costs are forcing legislators to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting legislators from urgent legislative matters.

(g) Legislators are responding to high campaign costs by raising large amounts of money in off-election years. This fundraising distracts legislators from important public matters, encourages contributions which may have a corrupting influence and gives incumbents an unfair fundraising advantage over potential challengers.

(h) Incumbents are raising far more money than challengers. In the 1984 general election, Assembly incumbents outspent their challengers by a 14-to-1 ratio and won 100% of their contests. In 1983, a non-election year, incumbent legislators raised \$14.3 million while their challengers raised less than \$50,000. In 1984, out of 100 legislative races in the primary and general elections, only two incumbents were defeated. The fundraising advantages of incumbency are diminishing electoral competition between incumbents and challengers.

(i) The integrity of the legislative process, the competitiveness of campaigns and public confidence in legislative officials are all diminishing.

#### 85102. Purpose of this Chapter

The people enact this Act to accomplish the following purposes:

(a) To ensure that individuals and interest groups in our society have a fair and reasonable opportunity to participate in the elective and legislative processes;

(b) To reduce the influence of large contributors with a specific financial stake in matters before the Legislature, thus countering the perception that legislation is influenced more by the size of contributions than the merits of legislation or the best interests of the people of California;

(c) To assist candidates in raising enough money to communicate their views and positions adequately to the public without excessive expenditures or large contributions, thereby promoting public discussion of the important issues involved in political campaigns;

(d) To limit overall expenditures in legislative campaigns, thereby reducing the pressure on legislative candidates to raise large campaign war chests beyond the amount necessary to communicate reasonably with voters;

(e) To provide a neutral source of campaign financing by allowing individual taxpayers voluntarily to dedicate a portion of their state taxes to defray a portion of the costs of legislative campaigns;

(f) To increase the importance of in-district contributions;

(g) To increase the importance of smaller contributions;

(h) To eliminate off year fundraising;

(i) To reduce excessive fundraising advantages of incumbents and thus encourage competition for elective office;

(j) To allow candidates and legislators to spend a lesser proportion of their time on fundraising and a greater proportion of their time considering and discussing important legislative issues;

(k) To improve the disclosure of contribution sources in reasonable and effective ways; and

(l) To help restore public trust in the state's legislative and electoral institutions.



## Article 2

### DEFINITIONS

#### 85200. Interpretation of this Chapter

Unless the term is specifically defined in this chapter or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) shall govern the interpretation of this chapter.

#### 85201. Legislative Caucus Committee

"Legislative caucus committee" means a committee controlled by the caucus of each political party of each house of the Legislature. Each party of each house may establish only one such committee which shall not be considered to be a candidate-controlled committee. A "legislative caucus committee" may make contributions to any candidate running for legislative office.

#### 85202. Small Contributor Political Action Committee

"Small contributor political action committee" means any committee which meets all of the following criteria:

- (a) all the contributions it receives are \$50 or less;
- (b) it has been in existence at least six months;
- (c) it contributes to at least five candidates; and
- (d) it is not a candidate-controlled committee.

#### 85203. Qualified Campaign Expenditure

(a) "Qualified campaign expenditure" for legislative candidates includes all of the following:

- (1) Any expenditure made by a candidate for legislative office or by a committee controlled by such a candidate for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for legislative office;
- (2) Any transfer of anything of value made by the legislative candidate's controlled committee to any other committee;
- (3) A non-monetary contribution provided at the request of or with the approval of the legislative candidate, legislative officeholder or committee controlled by the legislative candidate or legislative officeholder; and
- (4) That portion of a slate mailing or other campaign literature produced or authorized by more than one

legislative candidate which is the greater of the cost actually paid by the committee or controlled committee of the legislative candidate or the proportionate share of the cost for each such candidate. The number of legislative candidates sharing costs and the emphasis on or space devoted to each such candidate shall be considered in determining the cost attributable to each such candidate.

(b) "Qualified campaign expenditure" does not include any payment if it is clear from the surrounding circumstances that it was not made for political purposes.

#### 85204. Two-Year Period

"Two-year period" means the period commencing with January 1 of an odd-numbered year and ending with December 31 of an even-numbered year.

### Article 3

#### CONTRIBUTION LIMITATIONS

##### 85300. Limitations on Contributions from Persons

(a) No person shall make to any candidate for legislative office and the controlled committee of such a candidate and no such candidate and the candidate's controlled committee shall accept from each such person a contribution or contributions totaling more than \$1,000 for each of the following elections in which the candidate is on the ballot or is a write-in candidate: a primary election, a general election, a special election or special runoff election.

(b) No person shall make to any committee which supports or opposes any legislative candidate and no such committee shall accept from each such person a contribution or contributions totaling more than \$1,000 in a two-year period.

##### 85301. Limitations on Contributions from Small Contributor Political Action Committees

(a) No small contributor political action committee, as defined in Section 85202, shall make to any candidate for legislative office and the controlled committee of such a candidate, and no such candidate and the candidate's controlled committee shall accept from a small contributor political action committee a contribution or contributions totaling more than \$5,000 for each of the following elections in which the candidate is on the ballot or is a write-in candidate: a primary election, a general election, a special election or special runoff election.

(b) No small contributor political action committee shall make to any committee supporting or opposing a legislative

candidate and no such committee shall accept from a small contributor political action committee a contribution or contributions totaling more than \$5,000 in a two-year period.

**85302. Limitations on Contributions to Political Parties and Legislative Caucus Committees**

No person, including a small contributor political action committee, shall make to any political party or legislative caucus, and no such party or legislative caucus committee shall accept from each such person a contribution or contributions totaling more than \$5,000 in a two-year period.

**85303. Limitations on Contributions from Political Parties and Legislative Caucuses**

Except as provided in Section 85501, no legislative candidate and the controlled committee of such a candidate shall accept a contribution or contributions totaling more than an aggregate of \$10,000 in a general election or special runoff election from a legislative caucus committee and/or a political party. No legislative caucus committee or political party shall make a contribution to a legislative candidate running in a primary election or special election.

**85304. Seed Money**

The limitations in Sections 85300 and 85301 shall not apply to contributions to a candidate for legislative office until the candidate has raised \$35,000 in the election year.

**85305. Limitations on Contributions from Non-Individuals**

No more than a total of \$50,000 in the case of an Assembly candidate, and a total of \$75,000 in the case of a Senate candidate, for either a primary, general, special or special runoff election, shall be accepted in contributions from non-individuals by any candidate and the controlled committee of such a candidate. Contributions from political parties and legislative caucuses shall be exempt from this provision.

**85306. Limitations on Total Contributions from Persons**

No person, including an individual, committee, corporation, labor union, business entity or non-profit organization, shall make to legislative candidates or to committees supporting legislative candidates contributions aggregating more than twenty-five thousand dollars (\$25,000) in a two-year period. Contributions to and contributions from political parties and legislative caucuses shall be exempt from this provision.

**85307. Limitations on Aggregate Contributions from Small Contributor Political Action Committees**

No small contributor political action committee shall make to legislative candidates or to committees supporting legislative candidates contributions aggregating more than one hundred thousand dollars (\$100,000) in a two-year period. Contributions to and contributions from political parties and legislative caucuses shall be exempt from this section.

**85308. Prohibition on Transfers**

(a) No candidate and no committee controlled by a candidate or candidates for legislative office or controlled by a legislator or legislators, other than a legislative caucus committee or political party, shall make any contribution to a candidate running for legislative office or to any committee supporting such a candidate including a legislative caucus committee or party committee.

(b) This section shall not prohibit a candidate from making a contribution from his or her own personal funds to his or her candidacy or to the candidacy of any other candidate for legislative office.

**85309. Prohibition on Off Year Contributions**

(a) No legislative candidate or legislator or any controlled committee of such a candidate or legislator shall accept any contribution in any year other than the year in which the legislative candidate or legislator is listed on the ballot as a candidate for legislative office.

(b) No legislative caucus committee shall accept any contribution in an odd-numbered year.

**85310. Limitations on Payments of Gifts, Honoraria and Contributions**

No legislator or legislative candidate and any fund controlled by such a person shall receive more than \$2,000 in honoraria, gifts and contributions in a two-year period from any person or more than \$10,000 in any two-year period from a small contributor political action committee. Payments from political parties and legislative caucuses and payments made to committees established pursuant to Section 85315 shall be exempt from this section.

**85311. Return of Contributions**

A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and in addition it is returned to the donor within fourteen (14) days of receipt.

**85312. Aggregation of Payments**

For purposes of the limitations in Sections 85300-85307 and Section 85310:

(a) All payments made by a person or small contributor political action committee whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons shall be considered to be made by a single person, committee or small contributor political action committee.

(b) Two or more corporations shall be treated as one person when such corporations:

- (1) Share the majority of members of their boards of directors;
- (2) Share two or more corporate officers;
- (3) Are owned or controlled by the same majority shareholder or shareholders; or
- (4) Are in a parent-subsidiary relationship.

(c) An individual and any general partnership in which the individual is a partner, or an individual and any corporation in which the individual owns a controlling interest, shall be treated as one person.

(d) No committee which supports or opposes a candidate for legislative office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

**85313. Loans**

(a) A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this chapter.

(b) Every loan to a candidate or the candidate's controlled committee shall be by written agreement and shall be filed with the candidate's or committee's campaign statement on which the loan is first reported.

(c) The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limits of this chapter.

(d) Extensions of credit, other than loans pursuant to subsection (c), for a period of more than thirty (30) days are subject to the contribution limitations of this chapter.

**85314. Family Contributions**

(a) Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated.

(b) Contributions by children under 18 shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent).

**85315. Candidate for Statewide or Local Office**

The contribution limitations shall not apply to any contributions to a candidate for legislative office where such contributions are made to support the candidate's campaign for a statewide or local elective office, and the following conditions are met:

(a) A separate committee and account for the non-legislative office being sought shall be established for the receipt of all contributions and the making of all expenditures in connection with the non-legislative office;

(b) The contributions to be exempted from the contribution limitations in this chapter are made directly to this separate committee's account; and

(c) No expenditures from such an account shall be made to support the legislative candidate's campaign, or any other candidate's campaign for legislative office.

**85316. One Campaign Committee and One Checking Account per Candidate**

A legislative candidate shall have no more than one campaign committee and one checking account out of which all expenditures shall be made.

**85317. Time Periods for Primary Contributions and General Election Contributions**

For purposes of the contribution limitations, contributions made at any time before July 1 of the election year shall be considered primary contributions, and contributions made from July 1 until December 31 of the election year shall be considered general election contributions. Contributions made at any time after the seat has become vacant and up through the date of the election shall be considered contributions in a special election, and contributions made after the special election and up through fifty-eight (58) days after the special runoff election shall be considered contributions in a special runoff election.



## Article 4

### EXPENDITURE LIMITATIONS

#### 85400. Expenditure Limitations for Assembly Candidates

No candidate for State Assembly and any controlled committee of such a candidate who agrees to limit expenditures shall make qualified campaign expenditures above the following amounts:

- (a) \$150,000 in a primary election; and
- (b) \$225,000 in a general, special, or special runoff election.

#### 85401. Expenditure Limitations for State Senate Candidates

No candidate for State Senate and any controlled committee of such a candidate who agrees to limit expenditures shall make qualified campaign expenditures above the following amounts:

- (a) \$250,000 in a primary election; and
- (b) \$350,000 in a general, special or special runoff election.

#### 85402. Expenditure Limitations Lifted--Primary Elections

In the primary election, if a candidate who makes qualified campaign expenditures in excess of the expenditure limits, or if an independent committee or committees spend more than \$50,000 in support of or in opposition to any legislative candidate, the expenditure limitation shall no longer be applicable to all candidates who seek the party nomination for the same seat. In addition, each candidate, other than the candidate who exceeded the expenditure limits, shall be permitted to receive an additional \$35,000 free of contribution limitations, in accordance with Section 85304.

#### 85403. Expenditure Limitations Lifted--Non-Primary Elections

If a candidate, including his or her controlled committee, in the general, special or special runoff election makes qualified campaign expenditures in excess of the expenditure limits, or if an independent expenditure committee or committees spend more than \$50,000 in support of or in opposition to any legislative candidate, the expenditure limitations shall no longer be applicable to other candidates running for the same seat in the general, special or special runoff election. In addition, such opponents shall be permitted to receive unlimited contributions from a political party or legislative caucus committee.

**85404. Notification by Candidate Who Exceeds Expenditure Limitations**

A candidate who exceeds the expenditure limitations shall notify all opponents and the Commission by telephone and by confirming telegram the day the expenditure limitations are exceeded.

**85405. Time Periods for Primary Election Expenditures and General Election Expenditures**

For purposes of the expenditure limitations, qualified campaign expenditures made at any time before June 30 of the election year shall be considered primary election expenditures, and qualified campaign expenditures made from July 1 until December 31 of the election year shall be considered general election expenditures. Qualified campaign expenditures made at any time after the seat has become vacant and up through the date of the election shall be considered expenditures in a special election, and qualified campaign expenditures made after the special election and up through fifty-eight (58) days after the special runoff election shall be considered expenditures in a special runoff election. However, in the event that payments are made but the goods or services are not used during the period purchased, the payments shall be considered qualified campaign expenditures for the time period when they are used. Payments for goods or services used in both time periods shall be prorated.

**Article 5****BENEFITS FOR CANDIDATES WHO ACCEPT EXPENDITURE LIMITATIONS****85500. Candidate Acceptance or Rejection of Expenditure Limitations**

Each candidate for legislative office, at the time of filing his or her Declaration of Candidacy, shall file a statement of acceptance or rejection of expenditure limitations. If a candidate agrees to limit expenditures, the candidate shall comply with the provisions of Article 4 of this Act. A candidate who agrees to limit expenditures may not change that decision. A candidate who does not agree to limit expenditures shall notify all opponents and the Commission by telegram on the day such a candidate spends more than \$35,000 in qualified campaign expenditures.

**85501. Benefits for Candidates Who Limit Expenditures**

A candidate who limits his or her expenditures pursuant to Sections 85400 or 85401 shall be permitted to receive the following benefits:

(a) Notwithstanding Section 85303, a candidate running for the Assembly in the general or special runoff election may

receive up to \$112,500 in contributions from a political party and/or legislative caucus committee.

(b) Notwithstanding Section 85303, a candidate running for the state Senate in the general or special runoff election may receive up to \$175,000 from a political party and/or legislative caucus committee.

(c) All contributors to such candidates may receive a state tax credit of 50% for contributions totalling \$100 or less or a total of two hundred dollars (\$200) or less on a joint return if they are registered voters in the candidates' districts to whom they make such contributions. For purposes of this section, a loan, pledge or non-monetary payment shall not be a contribution.

## Article 6

### INDEPENDENT EXPENDITURES

#### 85600. Independent Expenditures for Mass Mailings

(a) Any person who makes independent expenditures for a mass mailing which supports or opposes any candidate for legislative office shall put the following statement on the mailing:

<p><b>NOTICE TO VOTERS</b>  <b>(Required by State Law)</b></p> <p style="margin-top: 20px;">This mailing is not authorized or approved by  any legislative candidate or election official.</p> <p style="margin-top: 20px;">It is paid for by _____.  <span style="display: block; text-align: right;">(name)</span></p> <hr style="border: 0; border-top: 1px solid black; margin: 20px 0;"/> <p style="text-align: center;">Address, City, State</p>
--

(b) The statement required by this section shall appear on the envelope and on each page or fold of the mass mailing in at least 10-point type, not subject to the half-tone or screening process, and in a printed or drawn box set apart from any other printed matter.

#### 85601. Contribution Limitations

Any person who makes independent expenditures shall not accept any contribution in excess of the amounts set forth in Section 85300(b).

**85602. Limitations on Persons Who Make Independent Expenditures and Contributions to Candidates**

Any person who makes a contribution of one hundred dollars (\$100) or more to a candidate for legislative office at any time after the candidate has filed a Declaration of Candidacy shall be considered to be acting in concert with that candidate and shall not make independent expenditures and contributions in excess of \$1,000 per election in support of that candidate or in opposition to that candidate's opponent.

**85603. Reproduction of Materials**

Any person who reproduces, broadcasts or distributes any material which is drafted, printed, prepared or previously broadcast by a legislative candidate or a committee controlled by such a candidate shall report such an expenditure as a non-monetary contribution to such candidate or committee.

**85604. Notice of Independent Expenditures**

Any person who makes independent expenditures of more than \$10,000 in support of or in opposition to any legislative candidate shall notify the Commission and all candidates in that legislative district by telegram each time this threshold is met.

**Article 7**

**AGENCY RESPONSIBILITIES**

**85700. Duties of the Fair Political Practices Commission**

The Fair Political Practices Commission, in addition to its responsibilities set forth in Sections 83100 et seq., shall also:

(a) Adjust the expenditure limitations and contribution limitations provisions in January of every even-numbered year to reflect any increase or decrease in the Consumer Price Index. Such adjustments shall be rounded off to the nearest hundred dollars for the limitations on contributions and the nearest thousand dollars for the limitations on expenditures; and

(b) Prepare and release studies on the impact of this title. These studies shall include legislative recommendations which further the purposes of this title.

**SECTION 2.** Chapter 18.6 (commencing with Section 18775) is added to Part 10 of Division 2 of the Revenue and Taxation Code, to read:

## CHAPTER 18.6

## CAMPAIGN REFORM FUND DESIGNATION

18775. Tax Credit

(a) Every individual whose income tax liability is fifty dollars (\$50) for any year in which there is an election for legislative office may receive a state tax credit of 50% on a contribution of one hundred dollars (\$100) or less on an individual return (or two hundred dollars (\$200) or less on a joint return) to legislative candidates who are candidates in the taxpayer's district and who file a statement of acceptance of expenditure limitations, a political party or legislative caucus committee. No taxpayer shall receive a total credit of more than fifty dollars (\$50) on an individual return or a total of one hundred dollars (\$100) on a joint return. A taxpayer claiming this credit shall attach to his or her tax return a receipt from each legislative candidate, political party or legislative caucus committee.

(b) In the event that the federal tax credit for state political contributions is modified, the state tax credit in subsection (a) shall be adjusted accordingly so that the tax credit to contributors is always 100%.

(c) For purposes of this section, a loan, pledge or non-monetary contribution shall not be a contribution.

SECTION 3. Section 17245 of the Revenue and Taxation Code (which currently reads as follows) is repealed:

## 17245.

In computing taxable income there shall be allowed as a deduction political contributions by any person in excess of one hundred dollars (\$100) (two hundred dollars (\$200) on a joint return), in any year, except that no deduction shall be allowed for contributions which are designated pursuant to Section 18720.

SECTION 4. Section 83122.5 is added to the Government Code to read:

83122.5. Appropriation to Fair Political Practices Commission

There is hereby appropriated to the Fair Political Practices Commission a sum of \$500,000, adjusted for cost of living changes, during each fiscal year, for expenditures to support the operations of the Commission to carry out its responsibilities pursuant to the Legislative Elections Reform Act. The expenditure of funds under this appropriation shall be subject to the normal administrative review given to other state appropriations. The Legislature shall appropriate additional amounts to the Commission and other agencies as may be necessary to carry out the provisions of this title.

SECTION 5. Section 91000 of the Government Code is amended to read:

91000. Violations: Criminal

(a) Any violation of Chapter 5 of this title commencing with Section 85100 is a public offense punishable by imprisonment in a state prison or in a county jail for a period not exceeding one year.

~~{a}-Any person who knowingly or willfully violates any provision of this title is guilty of a misdemeanor.~~

(b) Any violation of any other section of this title is a misdemeanor.

~~{b}~~

(c) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction of each violation.

~~{c}~~

(d) Prosecution for violation of this title must be commenced within four years after the date on which the violation occurred.

SECTION 6. Section 91005 of the Government Code is amended to read:

91005. Civil Liability for Violations

(a) Any person who makes or receives a contribution, payment, gift or expenditure in violation of Section 84300, 84304, 85300, 85301, 85302, 85303, 85305, 85306, 85307, 85308, 85309, 85310, 85400, 85401, 85405, 85500, 85501, 85502, 85504, 85506, 85600, 85601, 85602, 85603, 85604, 86202, 86203 or 86204 is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to five-hundred-dollars-~~{500}~~ one thousand dollars (\$1,000) or three times the amount of the unlawful contribution, gift or expenditure, whichever is greater.

(b) Any designated employee or public official specified in Section 87200 other than an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a Conflict of Interest Code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.



**SECTION 7. Section 83116 of the Government code is amended to read:**

**83116. Violation of Title**

When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if such a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 5, Sections 11500 et seq.) The Commission shall have all the powers granted by that chapter.

When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order which may require the violator to:

- (a) Cease and desist violation of this title;
- (b) File any reports, statements or other documents or information required by this title; and
- (c) Pay a monetary penalty of up to two thousand dollars (\$2,000) for each violation to the General Fund of the state.

When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

**SECTION 8. Section 84106 is added to the Government Code to read:**

**84106. Identification of Committees**

The name of any committee shall include or be accompanied by the name of any individual, entity or other person by which the committee is controlled. Any committee required to file a statement of organization shall amend its statement to comply with this section within thirty (30) days of the effective date of this Act.

**SECTION 9. Section 84302.5 is added to the Government Code to read:**

**84302.5. Definition of Intermediary**

A person is an intermediary for transmittal of a contribution if he or she delivers to a candidate or committee a contribution from another person unless such contribution is from the person's employer, immediate family or an association to which the person belongs. No person who is the treasurer of the committee to which the contribution is made or is the candidate who controls the committee to which the contribution is made shall be an intermediary for such a contribution.

**SECTION 10. Severability Clause**

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those as to which it was held invalid, shall not be affected thereby, and to this end, the provisions of this Act are severable.

**SECTION 11. Legislative Amendments (if Model Law is adopted as an initiative measure)**

The provisions of Section 81012 of the Government Code which allow legislative amendments to the Political Reform Act of 1974 shall apply to the provisions of this Act.

**NOTES**

- 1/ 424 U.S. 1 (1976).
- 2/ For example, Obey-Leach Bill, H.R. 4428, 98th Cong., 1st Sess. (1983).
- 3/ Nancy Rivera, "State Tries to Stem Loss of Tourists, Jobs and Money," Los Angeles Times, Dec. 23, 1984.
- 4/ R. Hoff, The Appropriate Role for Tax Credits in an Income Tax System, 35 Tax Lawyer 339 (1982).
- 5/ Note, Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures, 83 Harv. L. Rev. 705 (1970); see Hoff, *supra* note 4.
- 6/ Legislators and Industry Support Energy Tax Credits, 20 Tax Notes 327 (1983); but see Treasury Opposes Extension of Energy Credits, 19 Tax Notes 1199 (1983); see also CRS Evaluates Residential Energy Tax Credits, 18 Tax Notes 259 (1983).
- 7/ Historic Preservation Incentives Are Effective, Study Says, 21 Tax Notes 917 (1983); GAO Analyzes Historic Preservation Tax Incentives, 23 Tax Notes 329 (1984); see also Clotfelter and Steuerle, "Charitable Contributions," in How Taxes Affect Economic Behavior 403 (1981); NBER Reports, 25 Tax Notes 1252 (1984); Charitable Deductions and Tax Reform: New Evidence on Giving Behavior, 26 Tax Notes 367 (1985).
- 8/ Federal Election Comm'n v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 41 (1981).

- 9/ Republican Nat'l Comm. v. Federal Election Comm'n, 487 F. Supp. 280, 284-85 (S.D.N.Y. 1980) (by a three-judge court), aff'd, 616 F.2d 1 (2d Cir. 1980), aff'd mem., 445 U.S. 955 (1980); see Buckley, 424 U.S. at 92-93.
- 10/ Offering tax credits as a condition for expenditure ceilings does not create "unconstitutional conditions." Cf. Grove City College v. Bell, 104 S. Ct. 1211 (1984); Regan v. Taxation with Representation of Washington, 103 S. Ct. 1997 (1983).
- 11/ Cf. Buckley 424 U.S. at 20-28.
- 12/ 26 U.S.C.A. §9003(b)(2) (West Supp. 1985).
- 13/ Buckley v. Valeo, 424 U.S. 1 (1976); Republican Nat'l Comm. v. Federal Election Comm'n, 487 F. Supp. 280 (S.D.N.Y. 1980) (by a three-judge court), aff'd, 616 F.2d 1 (2d Cir. 1980), aff'd mem., 445 U.S. 955 (1980).

## APPENDIX C

CONSULTANTS

The Commission wishes to thank the many individuals who offered their valuable advice and comments to the Commission and its staff as this report was prepared. A list of those persons consulted appears below. The Commission also wishes to acknowledge the efforts of a number of persons who were particularly generous with their time and made special contributions to the Commission's work:

Professor Herbert E. Alexander, Director of the Citizens' Research Foundation and Professor of Political Science at the University of Southern California, made perceptive and helpful comments to the Commission throughout its research. Professor Edwin M. Epstein, School of Business, University of California at Berkeley, provided valuable assistance, particularly in connection with the preparation of Chapter 4 ("PACs"). Professor Ruth Jones, Department of Political Science at Arizona State University, made many important contributions to the Commission's research and assisted in the preparation of Chapter 10 ("Laws of Other States"). Professor Daniel H. Lowenstein, former Chairman of the California Fair Political Practices Commission and currently Professor of Law at the UCLA School of Law, made useful contributions at the outset of and throughout the Commission's work. Marilyn Fuller Newquest and Roy M. Ulrich were particularly helpful in the preparation of Chapter 9 ("California History").

Dan Stanford, the current Chairman of the FPPC, was generous with his time and comments. John Greenwood and many members of the FPPC staff contributed helpful ideas for research. Michael Berman, Berman and D'Agostino Campaigns, provided many valuable insights from his campaign experiences. Bill Cavala, Assembly Speaker's Office of Majority Services, Timothy A. Hodson, Senior Consultant, State Senate Office of Research, Tony Quinn, former Consultant, Assembly Minority Caucus and Greg Schmidt, State Senator Bill Lockyer's office, all offered perceptive political insights. Tom Houston, former Chairman of the FPPC and currently Deputy Mayor of the City of Los Angeles, contributed many helpful ideas at all stages of the Commission's work. John Phillips, Center for Law in the Public Interest, provided valuable advice during the organization of the Commission.

Helpful as these individuals and the many others listed below have been, they bear no responsibility for the Commission's final conclusions and recommendations. In the case of any inadvertent omissions from the following list, the Commission offers its apologies.

Persons Consulted

Assemblyman Art Agnos  
Assemblyman Richard Alatorre  
Professor Herbert E. Alexander, Director, Citizens' Research  
Foundation  
Anthony Alperin, Los Angeles City Attorney's Office

Betty Andrews, ABC/California Teachers Association  
Richard A. Armstrong, Public Affairs Council

Assemblyman Charles Bader  
Assemblyman Tom Bates  
Mike Bennett, United Teachers, Los Angeles  
Cliff Berg, Executive Officer, State Senate Rules Committee  
Congressman Howard Berman  
Michael Berman, Berman and D'Agostino Campaigns  
Ron Biron, Director of the Senate Mail Data Center; former  
Director of the State Senate Republican Caucus  
Leah Bishop, O'Melveny & Myers  
Joan Bloch, California State Employees Association  
Patrick M. Boarman, former legislative candidate  
Larry Boyle, Federal Election Commission  
Jim Branham, State Senator Jim Nielsen's Office  
Barry Brokaw, State Senator Dan Boatwright's Office  
Lou Bromley, Consultant to the State Senate Constitutional  
Amendments Committee  
Roger Brown, Enforcement Director for the Fair Political  
Practices Commission  
Assembly Speaker Willie Brown  
Dr. John H. Burton, Vice President for Corporate Relations, Fluor  
Corp.  
Bill Butcher, Butcher-Forde Consulting  
Professor E. David Butler, Oxford University  
Lewis H. Butler, California Tomorrow

Dr. Bruce Cain, California Institute of Technology  
Beth Capell, California Manufacturers Association  
Steven A. Capps, San Francisco Examiner  
Bill Cavala, Speaker's Office of Majority Services  
Joe Caves, State Senator Gary K. Hart's Office  
Otis Chandler, Chairman of the Board and Editor-in-Chief, Times  
Mirror Corp.  
Peter Clarke, Dean, Annenberg School of Communications,  
University of Southern California  
Gale Cook, San Francisco Examiner  
Kent Cooper, Federal Election Commission  
Gloria Cornette, Administrative Assistant to the Citizens'  
Research Foundation  
Geoffrey Cowan, Chairman, California Common Cause  
Danny Curtin, California Federation of Labor, AFL-CIO PAC

Frank Dale, former Publisher, Los Angeles Herald Examiner  
Alan Davis, President, Conservatree Paper Company  
Roberto Delacruz, National United Farm Workers PAC  
Tom Dey, former Director of the Assembly Minority Consultants

Mike Ebert, Citizens' Research Foundation  
Fred Eiland, Press Officer, Federal Election Commission  
State Senator Jim Ellis  
Melvyn C. Embree, Gibson, Dunn & Crutcher  
William Endicott, Sacramento Bureau Chief, Los Angeles Times  
Professor Edwin M. Epstein, School of Business, University of  
California, Berkeley  
Tom Epstein, Chief of Staff, State Senator John Garamendi  
Dee Ertukel, Center for the Study of Law and Politics

Susan H. Evans, Director, Academic Development, Annenberg School  
of Communications, University of Southern California  
Representative Reid Ewing, Arizona State Legislature

Robert Fairbanks, former Editor, California Journal  
Mark Fall, State Senator Art Torres' Office  
Assemblyman Sam Farr  
Professor James Fay, California State University, Hayward  
Houston I. Flournoy, USC Public Affairs Center

State Senator John Garamendi  
Jeffrey Garfield, Executive Director of the Connecticut State  
Elections Enforcement Commission  
J. Patrick Garner, Vice President, Southern California Gas  
Company  
Paul Gillies, Vermont Deputy Secretary of State  
Professor Robert Girard, Stanford University Law School  
Laurie Glenn, former Project Director, Initiatives for Campaign  
Reform  
Jack Gonzales, Executive Director of the Hawaii Campaign Spending  
Commission  
Michael Gordon, former Executive Director of the California  
Democratic Party  
John Greenwood, Legislative Coordinator for the Fair Political  
Practices Commission  
Arlen Gregorio, former State Senator

Loni Hancock, Executive Director, The Shalan Foundation  
State Senator Gary K. Hart  
Ellen Stern Harris, Executive Director, Public Access Producers  
Academy  
Brenda Haskins, California Dental PAC  
Jerry Haleva, State Senator Bill Campbell's Office  
Jasper Hempel, Vice President of Governmental Affairs, Western  
Growers PAC  
Margaret Herman, Legislative Advocate, League of Women Voters of  
California  
Robert Herstek, graphic designer and lecturer  
Dr. Alan Heslop, The Rose Institute, Claremont-McKenna College  
Amy Hewes, Assemblyman Tom Bates' Office  
Timothy A. Hodson, Senior Consultant, State Senate Office of  
Research  
Allen Hoffenblum, campaign manager, Hoffenblum & Mollich  
Steve Hopcraft, Lieutenant Governor Leo McCarthy's Office  
Tom Houston, Deputy Mayor, City of Los Angeles  
Barbara Howard, PACE/California School Employees Association  
Bill Howe, California Certified Public Accountants PAC  
Jackie Huckaby, California Republican Party  
Dolores Huerta, National UFW PAC  
John Huerta, President, Mexican-American Legal Defense and  
Educational Fund (MALDEF)  
Shirley Hufstedler, Hufstedler, Miller, Carlson & Beardsley  
  
Wayne Imberi, Political Reform Division, Secretary of State's  
Office  
Charles Imbrecht, Chairman, California Energy Commission  
Assemblyman Philip Isenberg



Brooks Jackson, The Wall Street Journal  
Professor Gary C. Jacobson, Department of Political Science,  
University of California, San Diego  
Dennis Jensen, Councilman Ernani Bernardi's Office, City of Los  
Angeles  
Graham Johnson, Executive Director of the Washington State Public  
Disclosure Commission  
Assemblyman Ross Johnson  
Professor Ruth Jones, Department of Political Science, Arizona  
State University  
Professor William T. Jones, California Institute of Technology

Bruce Kelly, California Tomorrow  
Peter Kelly, former Chairman, California Democratic Party  
John Keplinger, Executive Director of the Fair Political  
Practices Commission  
George David Kieffer, Manatt, Phelps, Rothenberg & Tunney  
Professor Rod Kiwi, California Institute of Technology  
Allyn O. Kreps, Jones, Day, Reavis & Pogue  
Thomas H. Kuchel, Wyman, Bautzer, Rothman, Kuchel & Silbert

Professor Kay Lawson, Department of Political Science, San  
Francisco State University  
Congressman Mel Levine  
Rich Leib, Field Representative to State Senator Gary K. Hart  
Donald Livingston, Vice President for Public Affairs, Carter  
Hawley Hale Stores, Inc.  
State Senator Bill Lockyer  
Professor Daniel H. Lowenstein, UCLA School of Law  
Ignacio Lozano, Owner, Director and Publisher, La Opinion

Dennis Mangers, Vice President of Governmental Affairs,  
California Cable Television Association  
Hal Mayer, Skil-Set Typographers  
Jack Mayesh, former aide to Assemblyman Howard Berman  
Ann McBride, Common Cause  
Mary Ann McCoy, Executive Director, Minnesota Ethical Practices  
Board  
Leo McCarthy, Lieutenant Governor  
Walter McGuire, Executive Director, Center for the Study of Law  
and Politics  
Ken McQuinn, political consultant  
John Means, Southern Controller, California Democratic Party  
Steve Merksamer, Chief of Staff, Office of the Governor  
Anthony Miller, Chief Deputy Secretary of State  
E. Peter Miller, Vice President and Counsel, Government Affairs,  
Ticor  
Representative Michael Miller, Alaska State Legislature  
Barbara Milman, General Counsel to the Fair Political Practices  
Commission  
Lynn Montgomery, Media Director for the Fair Political Practices  
Commission  
Mike Montgomery, Commissioner, Fair Political Practices  
Commission  
Bob Mulholland, Campaign for Economic Democracy PAC

Dr. Julian Nava, former United States Ambassador to Mexico  
Assemblyman Robert Naylor  
Marilyn Fuller Newquest, educator/author

State Senator Jim Nielsen  
Vigo G. "Chip" Nielsen, Jr., Nielsen, Hodgson, Parrinello &  
Mueller  
Assemblyman Pat Nolan

Assemblyman Jack O'Connell  
Pierce O'Donnell, O'Donnell & Gordon  
Louise Olson, Western International Media Corp.

David Panush, Administrative Assistant to Assemblywoman Jean M.  
Duffy  
Jerry Partain, Director, California State Department of Forestry  
Professor John Petrocik, Department of Political Science,  
University of California, Los Angeles  
John Phillips, Center for Law in the Public Interest  
Joy Picus, Councilwoman, City of Los Angeles  
Theda S. Pittman, Executive Director of the Alaska Public Offices  
Commission  
Joe Placentia, UAW Region 6 PAC  
George Pollock, Administrative Technician, Texas Office of  
Secretary of State  
Carl Pope, Executive Director, Sierra Club of California  
A. Alan Post, former Legislative Analyst, State of California  
Ted Prim, Deputy Attorney General, State of California  
Jeanne Pritchard, Division Chief of the Technical Assistance and  
Analysis Division, Fair Political Practices Commission

T. Anthony Quinn, Director of the California Office of Economic  
Research of the Department of Commerce; former consultant,  
Assembly Minority Caucus  
Tom Quinn, City News Service

Frank Reiche, Commissioner, Federal Election Commission  
Clinton Reilly, Clinton Reilly Campaigns  
Ed Reinecke, former Chairman of the California Republican Party  
John Rico, Washington State Senate Republican Caucus; former  
Political Director of the California Republican Party  
Professor Doug Rivers, California Institute of Technology  
Steve Rivers, former aide to Assemblyman Tom Hayden  
State Senate President pro Tem David Roberti  
Mary Robinson, Chairman, Election, Laws and Reapportionment  
Issues Committee, California Federation of Republican Women  
Stanley M. Roden, Commissioner, Fair Political Practices  
Commission  
James M. Rogers, Attorney, Berkeley, California; Vice Chair of  
California Common Cause  
Harvey Rosenfield, former Director, CalPIRG  
Richard Ross, Director of the Speaker's Office of Majority  
Services

Bill Saracino, Assemblyman Pat Nolan's office  
Greg Schmidt, State Senator Bill Lockyer's Office  
Frank Schubert, former Director of the Assembly Republican PAC  
Jim Shultz, former lobbyist for California Common Cause  
Charles Scully, General Counsel, California State Federation of  
Labor, AFL-CIO  
Stanley Sheinbaum, economist  
Nancy Sheppard, Assistant Treasurer, Bankers Responsible  
Government Committee

Assemblyman Byron Sher  
 Jerry Simpson, California Medical PAC  
 Jim Smith, Twentieth Century Fund  
 Martin Smith, Sacramento Bee  
 Gayle Smookler, California Trial Lawyers PAC  
 Donald R. Spuehler, O'Melveny & Myers  
 Dan Stanford, Chairman, Fair Political Practices Commission  
 Mary Anne Sterling, Pat Penney Public Relations  
 Philip Stern, author  
 Charlie Steele, General Counsel to the Federal Election  
 Commission  
 Galen Streamer, Associated General Contractors PAC  
 William Sullivan, Deputy Director, Massachusetts Office of  
 Campaign and Political Finance  
 John Surina, Staff Director of the Federal Election Commission  
 Cynthia Suzuki, California Chamber of Commerce  
 Joel Swerdlow, author  
 Susan Swatt, aide to Assemblyman Ross Johnson  
 Peter Szego, consultant to the State Senate Elections Committee

Peter Tagger, direct mail consultant  
 Kathy Taylor, California Association of Health Facilities PAC  
 Mark Timmerman, Assembly Republican Caucus  
 Stuart Tobisman, O'Melveny & Myers  
 Jim Tucker, consultant to the Assembly Elections Committee  
 John Turnquist, Deputy Director, Michigan Campaign Finance  
 Reporting Section, Secretary of State's Office

Roy M. Ulrich, public interest lawyer/broadcaster/California  
 Common Cause board member  
 Jesse M. Unruh, California State Treasurer

Assemblyman John Vasconcellos

Bill Walsh, Evergreen Association  
 Dan Walters, Sacramento Bee  
 John B. Warner, Managing Director, J. Burton Company  
 Mark Edward Warren, Gibson, Dunn & Crutcher  
 Doug Watts, political consultant, Russo-Watts Consulting  
 Congressman Henry Waxman  
 Tom Weinberg, President, Evans Weinberg Advertising  
 Elizabeth Whitney, Assistant State Treasurer  
 Harold Williams, Chief Executive, J. Paul Getty Trust  
 Chuck Winner, Winner/Wagner Associates  
 Jim Wisely, Southern California Executive Director, California  
 Democratic Party  
 Jim Wood, Assistant Executive Secretary-Treasurer, Los Angeles  
 County Federation of Labor, AFL-CIO  
 Lois Woodruff, League of Women Voters of California

Richard Zeiger, Editor of the California Journal; former  
 correspondent for the Riverside Press-Enterprise  
 Walter A. Zelman, Executive Director, California Common Cause  
 Mickey Ziffren, former Commissioner, Fair Political Practices  
 Commission  
 Bill Zimmerman, Zimmerman, Galanty & Fiman  
 Ed Zuckerman, Editor and Publisher, PACs & Lobbies

## APPENDIX D

HOW LEGISLATIVE CANDIDATES RAISE MONEY TODAY:  
A HYPOTHETICAL CASE STUDY

The following is a schematic outline of guidelines that a typical candidate for the California Legislature might follow to raise campaign funds today. It provides a highly simplified yet useful overview of the campaign fundraising process. This hypothetical outline by no means applies to every legislator or candidate. Many do not involve themselves in all of the steps discussed. However, an aggressive legislator who aspires to a leadership position or higher office is likely to engage in most of these activities.

**A. Assumptions**

You are a candidate attempting to unseat an incumbent of another party. The district is one in which party registration is close enough so that a challenge could be successful. The incumbent has not developed a distinguished record. You must overcome opposition in your own party's primary before you can meet the incumbent in the general election. The incumbent you confront has the following advantages:

- a. Name recognition;
- b. Quarterly newsletters from Sacramento;
- c. Columns placed in local newspapers;
- d. Press releases;
- e. An active district office with several full-time staffers;
- f. \$100,000 raised from various sources (primarily special interests--see below).

**B. Primary Campaign**

1. Your problem is finding the \$100,000 needed to wage an effective primary campaign. Sources:
  - Your own money--perhaps \$25,000.
  - Friends--another \$20,000.
  - Statewide special interests--most are in Sacramento and are reluctant to get involved in primary battles. They will tend to support the incumbent, hence very little money is available--perhaps \$5,000 to \$10,000.
  - Other legislators--they like to pick winners and sometimes give early to pick up "chits"--perhaps \$5,000. It will help if you are a former legislative aide with Sacramento contacts.

-- Local special interests--if you are a city council member or county supervisor you have a special advantage because you can tap local special interests--real estate developers, people seeking permits, etc. They will contribute for two reasons: (i) in case you lose, you will still be in a decision-making role; (ii) they may have permit applications or other matters before you. So--\$45,000. **NOTE:** State legislators have tried to stack the deck against local city council members, precisely because they have local fundraising abilities. The Legislature has passed a law that local elections in General Law Cities must be held in April of election (even) years. One-half of local officials must thus decide whether to run for local reelection or for the Legislature--they can't do both. Supervisors have the same problem: half are up for reelection in the June primary in even-numbered years.

2. You raise \$95,000 to \$100,000. You win the primary.

### C. General Election

1. You have zero cash and a deficit; you must pay off your debts and raise \$250,000 (generally necessary to wage an effective contested general election campaign). Sources:

- Party and caucus leaders will give significant amounts of money if they think you can win. They will make this decision on their own timetable, often late in the campaign.
- Statewide special interests--you are introduced to their representative by party and caucus leaders. If you are a Republican, business PACs will give \$500 to \$1,000 contributions; if you are a Democrat, you ask for support from labor unions.
- Approximately 92% of your money will come from outside your district. Most will come from PACs, businesses or partisan sources. Only four to six percent will come in small contributions under \$100.
- Party and caucus leaders may run your campaign from Sacramento; if so, they will design your brochures and mailings. Frequently they will send consultants to act as campaign managers.

2. Most of your money is spent on direct mail--very little on radio/TV (unless you are running in a small media market) and very little on newspaper ads or billboards.

3. You win, even though the incumbent outspends you.

**D. After the General Election**

1. You have zero cash and a huge deficit which must be paid off or substantially reduced.
2. Typical technique--fundraisers.
  - You can charge higher prices for Sacramento fundraisers than for ones in your district. Reason: special interest PACs are located in Sacramento.
  - Many fundraisers are held in the early part of the legislative session--in December, January or February; \$250/plate dinners are typical (can be up to \$1,250/plate). This is when you will be drafting your first legislation. People attend because they seek access and want to make a good impression on the new legislator.
  - You will personally call special interests and invite them to attend the fundraiser.
  - Your legislative leadership will assist in planning the event.
  - You pay off your deficit.

**E. Off Year Fundraisers**

Usually several are held in the off year to build up a war chest for the next election, to build a power base in the Legislature (for transfers to other candidates) or to give money to the Speaker or your party caucus for them to transfer to favored candidates.

**F. Impact on the Legislative Process**

1. If a special interest group wants legislation, it will come to you and suggest that you introduce a bill.
2. At hearings, especially when you don't care (e.g., an equal battle between banks and savings and loans), you may cast your vote in favor of the side which made the largest contributions in the past. You intimate to the losing side that you did this so they will increase their contributions next time.
3. If you are the chair of a committee or in a leadership position, you are much more attractive to special interests.

**G. Election Year Fundraising**

1. If you are worried about challengers by the beginning of the election year, you will have raised at least \$100,000 to scare off potential opponents.



2. You will engage in another round of fundraising at the beginning of the year.
3. You will hope that there is a "money bill" pending before the Legislature where both sides are heavy spenders and are willing to bid against each other. If not, you consider introducing one. You stay uncommitted, playing off each side against the other.
4. Even if you don't expect a strong opponent, you will attempt to raise lots of money, either for a rainy day, for new equipment in your district offices or to transfer to other candidates you support.
5. There is intense competition among legislators as to who can raise the most funds. Big fundraisers are rewarded with key leadership positions.

#### H. Primary Election

1. As the incumbent you should have scared off any significant primary or general election challengers, provided you have not been tarred by scandal or do not have a marginal district. In a safe seat you don't have to worry about the June or November election.
2. In a marginal seat your opponent will be using up his or her resources in the primary if faced with strong primary opponents.
3. You will spend a limited amount of money in the primary election, just to keep your name before the public. Your prime goal is to conserve your resources for the November election.
4. By law you are not allowed to send out state-funded newsletters once you have filed for office in March.

#### I. General Election (assuming an active opponent)

1. You increase your fundraising, particularly as the Legislature winds up in August. The special interests are desperate to get their legislation passed (or killed) and you talk to them about your upcoming tough campaign.
2. You hold a series of fundraisers in your district, not so much to raise significant funds but to build up your mailing list and to increase your in-district visibility.
3. At the end of a tough campaign you solicit support from the legislative leadership. You let them run your campaign as part of their financial support.
4. You are on the phone constantly, trying to get money for a last-minute "hit piece" against your opponent.

5. You win, but have huge deficit and zero cash. The cycle begins again.

**J. General Election (weak opponent)**

1. You send out one mailer just to let your constituents know you exist.
2. You stockpile money in case you decide to run for higher office.
3. You transfer last-minute money to your legislative colleagues, hoping that they will support you in the future.
4. You send out mailings to show opponents in the next election that you can't be beaten.
5. You coordinate slate mailings.
6. You back local candidates so that you can build a loyal local base.
7. You win, and you have a comfortable surplus. But because you are worried that you may be targeted at the next election, you begin raising funds immediately.



## APPENDIX E

HOW LEGISLATIVE CANDIDATES MIGHT RAISE MONEY UNDER  
THE COMMISSION'S RECOMMENDED MODEL LAW: A SCENARIO

The following scenario outlines the steps typical candidates might follow, and the sources candidates might approach, to raise sufficient funds for a competitive campaign under the Commission's Model Law. (See Appendix A, "Model Law.") The scenario assumes that the hypothetical candidate is a local elected official running in the primary for an Assembly seat and that the winner of the primary will have a reasonable chance to beat the incumbent in the general election. The scenario continues with a look at a general election campaign for a challenger and the primary and general election campaigns for an incumbent.

The following estimates are inevitably speculative. One candidate may be able to draw more on family and friends, another may be able to draw on a wider circle of professional associates. The figures below, however, may provide a relatively concrete sense of the approaches a candidate might take in raising specific sums under the Model Law.

The following is a brief overview of the Model Law for Assembly candidates:

Contribution Limits

- Individuals, PACs, corporations and labor unions may give up to \$1,000.
- Small contributor PACs may give up to \$5,000.
- Parties and caucuses may give up to \$50,000 in the general election.
- Off year money is prohibited.
- Candidates may only accept \$50,000 in non-individual contributions.
- Before the contribution limitations apply, candidates may accept \$35,000 in larger amounts for the primary.

Expenditure Limits

- Total expenditures by candidates are limited to a maximum of \$150,000 in the primary election and \$225,000 in the general election.

Matching Funds

- Maximum amount: \$75,000 in the primary and \$112,500 in the general election.
- Candidates may receive matching funds after they have raised \$20,000 in contributions of \$1,000 or less and at

least one opponent has qualified for matching funds or has raised or spent at least \$35,000.

-- Contributions up to \$250 are matched at a ratio of 3-to-1.

-- In-district contributions are matched 5-to-1.

**A. Primary Election--New Candidate**

1. You make your decision to run for the Assembly known to friends and family in February. You give \$20,000 of your own money to your campaign. Your parents (who live outside your district) give another \$15,000. This is the total allowable seed money.

Amount Raised - \$35,000

Seed Money - Maxed Out

Matching Funds Threshold - Not Met

Amount Counted Towards Matching Funds Threshold - \$3,000

2. You make phone calls to arrange a series of visits with close friends to ask for money. Six give \$1,000, four give \$500, ten give \$250, and ten (five of whom live in your district) give \$100.

Amount Raised - \$11,500

Matching Funds Threshold - Not Met

Amount Counted Towards Matching Funds Threshold - \$14,500

CUMULATIVE TOTAL RAISED - \$46,500

3. You make a series of phone calls and visits to relatives to ask for money. Two give \$1,000, four give \$250, and four (two of whom live in your district) give \$100.

Amount Raised - \$3,400

Matching Funds Threshold - Not Met

Amount Counted Towards Matching Funds Threshold - \$17,900

CUMULATIVE TOTAL RAISED - \$49,900

4. You hold a major fundraiser and invite constituents (individual developers, businessmen, labor officials) with whom you have dealt in your capacity as a local elected official. Six give \$1,000, five give \$500, eight give \$250 and twelve give \$100; all the \$100 contributors live in your district.

Amount Raised - \$11,700

Matching Funds Threshold - Reached (\$29,600)

Matching Funds - \$48,100

CUMULATIVE TOTAL RAISED - \$109,700

Now you have reached the qualification threshold for limited matching funds. Because one of your opponents has also

qualified for matching funds, you can receive funds for all contributions received to date in the following amounts:

For each \$100 contribution-----\$300  
 For each \$1,000, \$500 or \$250 contribution--\$750

If the contribution comes from an in-district source, use the following higher amounts:

For each \$100 contribution-----\$500  
 For each \$1,000, \$500 or \$250 contribution--\$1,250

5. You send a mail appeal for funds to more distant friends and relatives, and some community leaders. Two give \$100, ten give \$50, thirty (ten of whom live in your district) give \$25 and twenty (half of whom live in your district) give \$10.

Amount Raised - \$1,650  
 Matching Funds - \$5,650  
 Total Matching Funds - \$53,750

CUMULATIVE TOTAL RAISED - \$117,000

6. You hold a series of small fundraisers in your district. These are attractive because of the high matching ratio. You charge \$50 for a cocktail party, \$10 for a barbecue, \$10 for a spaghetti feed and \$5 for a coffee. Three-quarters of those attending live in your district. These contributions qualify you for the maximum allowable matching funds for an Assembly primary campaign (\$75,000), and as a result, some of these contributions are not matched.

12 at \$100  
 40 at \$50  
 4 at \$25  
 120 at \$10  
 80 at \$5

Amount Raised - \$4,900  
 Matching Funds - \$21,250  
 Total Matching Funds - \$75,000

CUMULATIVE TOTAL RAISED - \$143,150

7. Late in the campaign you ask all contributors who haven't yet maxed out at \$1,000 to give again. Additional contributions are not eligible for matching funds. Nevertheless, six people give another \$500 each and six give \$250 each, all from within the district.

Amount Raised - \$4,500

CUMULATIVE TOTAL RAISED - \$147,650

CONGRATULATIONS! You have come within \$2,350 of your fundraising goal--the \$150,000 limit on primary campaign expenditures. You have outspent all your opponents and win your primary convincingly.



**B. General Election--Challenger**

1. You are the party nominee, but your treasury is empty. On the positive side, you are not required to meet a threshold for matching funds a second time; you are eligible to receive matching funds immediately since the incumbent has over \$35,000 in his war chest. You start by kicking in \$1,000 of your own money, and you receive \$1,000 from each of your parents.

Total Raised - \$3,000  
Matching Funds - \$2,750

CUMULATIVE TOTAL RAISED - \$5,750

2. Next, go back to all your friends who gave you money in the primary. They are excited that you won and are willing to give again.

6 at \$1,000 each (out-of-district) - \$6,000  
4 at \$500 each (out-of-district) - \$2,000  
9 at \$250 each (out-of-district) - \$2,250  
6 at \$100 each (out-of-district) - \$600  
6 at \$100 each (in-district) - \$600

Total Raised - \$11,450  
Matching Funds - \$19,050  
Total Matching Funds - \$21,800

CUMULATIVE TOTAL RAISED - \$36,250

3. You ask your relatives to give again. Some don't like your asking them for more money, but a few come through anyway.

2 at \$1,000 each (out-of-district) - \$2,000  
2 at \$100 each (out-of-district) - \$200  
2 at \$100 each (in-district) - \$200

Total Raised - \$2,400  
Matching Funds - \$3,100  
Total Matching Funds - \$24,900

CUMULATIVE TOTAL RAISED - \$41,750

4. Since you are considered by observers to have a good shot at winning, political action committees are now willing to back you. Four small contributor PACs give \$5,000 apiece, eight give \$1,000, nine give \$500 and ten give \$250.

Total Raised - \$35,000  
Matching Funds - \$23,250  
Total Matching Funds - \$48,150

CUMULATIVE TOTAL RAISED - \$100,000

5. You go back to the local interest groups that gave before. Most, though not all, match their previous contribution.

10 at \$1,000 each (in-district) - \$10,000  
2 at \$500 each (in-district) - \$ 1,000  
5 at \$250 each (in-district) - \$ 1,250  
8 at \$100 each (in-district) - \$ 800

Total Raised - \$13,050  
Matching Funds - \$25,250  
Total Matching Funds - \$73,400

CUMULATIVE TOTAL RAISED - \$138,300

6. You send another appeal for funds to your smaller contributors.

2 at \$100 (out-of-district) - \$200  
10 at \$50 (out-of-district) - \$500  
30 at \$25 (half in-district) - \$750  
20 at \$10 (half in-district) - \$200

Total Raised - \$1,650  
Matching Funds - \$5,900  
Total Matching Funds - \$79,300

CUMULATIVE TOTAL RAISED - \$145,850

7. You hold a second series of small fundraising events. While these require substantial amounts of time and energy, generous matching funds make it all worthwhile.

4 at \$100)  
40 at \$50 )  
4 at \$25 ) (three-quarters in-district)  
120 at \$10 )  
80 at \$5 )

Total Raised - \$4,100  
Matching Funds - \$18,450  
Total Matching Funds - \$97,750

CUMULATIVE TOTAL RAISED - \$168,400

8. Your party and legislative caucus have targeted your race; they give you maximum financial support.

1 at \$47,000 (out-of-district)  
1 at \$3,000 (out-of-district)

Total Raised - \$50,000  
Matching Funds - \$1,500  
Total Matching Funds - \$99,250

CUMULATIVE TOTAL RAISED - \$219,900

9. In the closing days of the campaign, you once again return to your most faithful supporters who have yet to give \$1,000 during the general election period, and ask for more money. Note that contributions from people who have previously given \$250 or more cannot be matched.

2 at \$500 - \$1,000 (no match)  
 2 at \$250 - \$500 (no match)  
 4 at \$100 - \$400 (out-of-district)  
 2 at \$50 (in-district) - \$100  
 11 at \$25 (six in-district) - \$275

Total Raised - \$2,275  
 Matching Funds - \$2,825  
 Total Matching Funds - \$102,075

CUMULATIVE TOTAL RAISED - \$225,000

CONGRATULATIONS! You defeat the incumbent in a close race.

### C. Primary Election--Incumbent

As an incumbent Assemblymember facing only token opposition in the party primary but expecting a tough fight in the general election, you might raise funds from the following sources:

#### Off Year

You are delighted to learn that you are free of fundraising for one year. You concentrate on learning the legislative process.

#### Election Year

1. Ten businesses who appreciate your record in the Assembly contribute \$2,000 each.

10 at \$2,000 each - \$20,000

Seed Money - \$20,000  
 Matching Funds Threshold - Not Met  
 Amount Counted Towards Matching Funds Threshold - \$8,000

CUMULATIVE TOTAL RAISED - \$20,000

2. You hold a \$250-a-plate dinner. Eighty individuals attend (half from your district). You reach the threshold needed to qualify for matching funds but none of your opponents has qualified.

Total Raised - \$20,000  
 Seed Money - Maxed Out  
 Matching Funds Threshold - Reached (\$28,000)

CUMULATIVE TOTAL RAISED - \$40,000

3. You hold an event in your district to strengthen your community relations.

200 at \$200 each (in-district) - \$40,000

Total Raised - \$40,000

CUMULATIVE TOTAL RAISED - \$80,000

4. Some political action committees show their support, providing the maximum in contributions from non-individuals.

2 small contributor PACs at \$5,000 each - \$10,000  
10 at \$1,000 each - \$10,000  
10 at \$500 each - \$5,000  
20 at \$250 each - \$5,000

Total Raised - \$30,000

CUMULATIVE TOTAL RAISED - \$110,000

No opponent qualifies for matching funds or raises or spends more than \$35,000, so you fail to receive any matching funds. Your overwhelming renomination surprises no one. You carry over some of your surplus funds (\$30,000) because you expect a tough reelection campaign.

D. General Election--Incumbent

1. Now entering the general election stretch, you want to raise the maximum allowable funds with a minimum amount of effort. Your general election opponent has qualified for matching funds. You hold a large fundraiser in your district during the July legislative recess. Matching funds make this most lucrative.

12 at \$50 (three-quarters in-district) - \$600  
210 at \$25 (three-quarters in-district) - \$5,250

Total Raised - \$5,850

Matching Funds - \$26,350

CUMULATIVE TOTAL RAISED - \$32,200

2. You hold a Sacramento fundraiser during the August legislative session.

4 at \$1,000 each (out-of-district) - \$4,000  
90 at \$250 each (out-of-district) - \$22,500

Total Raised - \$26,500

Matching Funds - \$70,500

Total Matching Funds - \$96,850

CUMULATIVE TOTAL RAISED - \$129,200

3. A small neighborhood fundraiser generates good publicity and more matching funds.

4 at \$100 each (in-district) - \$400  
45 at \$15 each (in-district) - \$675

Total Raised - \$1,075

Matching Funds - \$5,375

Total Matching Funds - \$102,225

CUMULATIVE TOTAL RAISED - \$135,650

4. You hold your last major fundraiser in your district. Note that this set of contributions qualifies you for the maximum you may receive in matching funds for an Assembly general election.

70 at \$250 (in-district) - \$17,500  
 140 at \$125 (in-district) - \$17,500

Total Raised - \$35,000  
 Matching Funds - \$10,275  
 Total Matching Funds - \$112,500

CUMULATIVE TOTAL RAISED - \$180,925

5. Your party and caucus are concerned about your reelection; they provide the remaining funds you need to reach the maximum you are allowed to spend.

1 at \$10,000  
 1 at \$4,075

Total Raised - \$14,075

CUMULATIVE TOTAL RAISED - \$225,000 (including \$30,000 from the primary)

CONGRATULATIONS! You are narrowly reelected.

#### E. Advantages of the Model Law over the Status Quo

The Commission's proposed Model Law gives candidates a number of advantages over current fundraising practices.

1. Expenditure ceilings give each candidate a reasonable and realistic fundraising goal. Expenditure limits will also cap the campaign finance "arms race." Candidates are relieved of considerable pressure to engage in continuous fundraising.
2. The importance of any single contribution is reduced. No one contribution can exceed \$1,000 for an individual or \$5,000 for a small contributor PAC. Contributions this small are less likely to be rewarded with influence.
3. The total amount of money candidates can receive from non-individual contributors is limited in the aggregate. Assembly candidates can receive no more than \$50,000 from PACs, corporations and labor unions. This will prevent candidates from paying undue deference to organized interest groups.
4. In many competitive races, overall campaign costs will be reduced.
5. Candidates will be encouraged to raise more funds from residents within their own districts.

6. Incumbents will be prohibited from engaging in fundraising activities during the off-election year.
7. Incumbents' fundraising advantages will be reduced in competitive campaigns. Incumbents will not be able to spend more than the expenditure ceilings, and challengers will receive public money to offset the incumbents' inherent fundraising advantage.
8. Serious candidates will receive a substantial new source of "clean" campaign funding. They will not have to compromise legislative positions in exchange for contributions.
9. The appearance of corruption in the legislative process will be significantly reduced. Extremely large contributions will disappear. PACs, corporations, labor unions and other organized special interests will be able to give only limited contributions. The appearance of a quid pro quo exchange of money for legislative influence will dissipate.





## APPENDIX F

ANALYSIS OF PROPOSITION 40:  
THE ROSS JOHNSON CAMPAIGN FINANCE INITIATIVE

Assemblyman Ross Johnson (R-La Habra) qualified an initiative on campaign finance which appeared as Proposition 40 on the November 1984 ballot. The measure was soundly defeated by the voters after a wide variety of groups opposed it for various reasons. The following analysis (1) summarizes the initiative's main provisions, (2) lists some of its major potential impacts, (3) discusses supporting and opposing arguments, and (4) briefly describes some of the legal questions it raised.

MAIN PROVISIONSA. Contribution Limitations

1. An individual could not have contributed more than \$1,000 per state candidate (legislative and statewide) per fiscal year (July 1 through June 30).
2. A political party could not have contributed more than \$1,000 per state candidate per fiscal year. The party could not have accepted any contribution of more than \$250 per fiscal year from an individual.
3. A PAC could not have contributed more than \$1,000 per state candidate per fiscal year. PACs could not have accepted contributions of more than \$250 per fiscal year from an individual.
4. Contributions would have been prohibited from corporations, labor unions, partnerships, legislative caucuses and other legislators ("transfers"). Only contributions from individuals, PACs and political parties could have been accepted by candidates for state office.
5. No individual could have contributed more than a total of \$10,000 in a fiscal year to all state candidates, PACs and political parties combined. On the other hand, PACs and parties could have contributed to candidates an unlimited number of \$1,000 contributions.
6. Candidates could not have borrowed more than \$250 per vendor or creditor to finance their campaigns and would have had to repay these loans within 30 days.

**B. Use of Funds**

1. Any funds in possession of a candidate, PAC or party when this law would have become effective (November 7, 1984) could not have been used for future state campaigns.
2. Candidates would have been required to declare which office they were seeking before receiving any contributions.
3. Candidates would have had to establish one checking account for all contributions and expenditures.
4. Funds could only have been used for the one office for which the candidate declared.
5. Surplus funds left over after an election for a particular office could not have been used for personal purposes or for future elections to any other office.

**C. Declarations of Free Will**

Each individual making any contribution--no matter how small--to a candidate or PAC would have had to sign a Declaration of Free Will, under penalty of perjury, for each contribution (identifying the name, address and occupation of the contributor, as well as whether the contributor was a registered voter). The Declaration would have stated that the individual was making the contribution of his or her own free will, without coercion, and with his or her own funds.

**D. Candidates' Personal Money**

1. Candidates who wished to spend their own personal money on their election would have had to deposit their personal funds into their campaign's checking account.
2. Candidates would have had to notify opposing candidates within one hour of depositing their own personal money into their campaign's checking account.

**E. Limited Public Financing**

1. If a candidate contributed his or her own money into the campaign, all opponents of the candidate would have been eligible for public funds based on the following formula: once the opponents had raised a minimum amount of money (\$200,000 for candidates for Governor; \$100,000 for other statewide candidates; \$25,000 for Board of Equalization candidates and \$7,500 for legislative candidates), they could receive \$1 of public money for each \$1 of personal money put in by any candidate running for the same office.
2. No more than \$1 million per fiscal year could have been given by the state to all candidates.

3. The purpose of this provision was to have discouraged wealthy candidates from contributing to their own campaigns.

#### F. Independent Expenditures

1. An independent expenditure would have been defined as an expenditure which was not made to or at the behest of a candidate.
2. Only individuals could have made contributions to an independent expenditure committee.
3. An independent committee could not have received more than \$250 from any individual per fiscal year. (As indicated above, no individual could have made total contributions of more than \$10,000 to independent committees, PACs, political parties or candidates.)
4. An individual or committee which had contributed to a candidate during any calendar year in which an election was held would have been considered to be acting in concert with that candidate and could not have made independent expenditures on behalf of that candidate.
5. A person making an independent expenditure for a mass mailing would have had to identify himself or herself on the inside and outside of the mailing and would have had to put on the inside and outside a notice that the independent mailing was not authorized or approved by the candidate.

#### G. Political Action Committees

1. PACs could only have received contributions from individuals in amounts of \$250 or less per fiscal year. Corporations and labor unions would have apparently been prohibited from contributing toward PACs' administrative and overhead costs.
2. A PAC could not have had as an officer any person who was an officer of another PAC which supported or opposed the same state candidates.
3. No PAC could have acted in concert with any other PAC.
4. PACs could not have transferred funds to other PACs.

#### H. Campaign Conduct

A candidate would have been made personally responsible for campaign ads produced by his or her own committee and would have been personally responsible for any libelous materials.

## **I. Enforcement**

The initiative would have amended California's Political Reform Act, and would have been implemented by the Fair Political Practices Commission, with its full range of enforcement and regulatory powers.

### **POTENTIAL IMPACTS**

#### **A. Substantial Reduction in Campaign Funds**

1. The contribution limitations would have significantly reduced candidates' campaign funds. An average legislative candidate in 1982, for example, would have had 62% of all his or her campaign funds cut by the measure (FPPC analysis). One candidate would have had a reduction of 89% of his funds (Commission analysis). Governor Deukmejian and Mayor Bradley, respectively, would have had 69% and 60% of their campaign funds cut by the measure (Commission analysis).
2. Labor and corporate participation in elections could have been drastically reduced. Direct contributions could have been prohibited altogether. Labor PACs, such as the United Farm Workers PAC, would have been able to contribute relatively small amounts. PACs which received their contributions from corporations, such as United for California, would have had to cease operations.
3. Up to 90% of the funds contributed to candidates by the political parties would have been eliminated.
4. Transfers and legislative caucus contributions, which comprise over 20% of the average legislator's funds, would have been eliminated. The effect of this prohibition could have been softened if legislators and caucuses urged their contributors to give directly to other favored candidates.

#### **B. Effect on Electoral Competition**

1. Many experts predicted the measure would decrease electoral competition for legislative seats and make it more difficult for challengers to unseat incumbents. They also warned that many candidates would lack the funding to communicate effectively with the public.
2. The FPPC estimated, for example, that Assembly candidates need a minimum of \$100,000, and Senate candidates \$150,000, to communicate their messages to voters. If the measure had been in effect during the 1982 election, and if candidates could not replace lost revenues from other sources, then in only one 1982 legislative race would both candidates have been able to raise these minimum amounts. Only five candidates

in California would have met these minimal thresholds (FPPC analysis).

**C. Shift in Contributor Roles**

1. Individual contributors provide about 14% of legislative candidates' campaign funds. Under the measure, it appeared that they would have supplied a larger proportion--up to one-third of overall campaign contributions (FPPC analysis).
2. Organizations that were able to influence their members to make direct contributions to candidates could have increased their influence. This was likely to be true of such groups as real estate brokers, doctors and trial lawyers. Individuals who could "broker" many individual contributions would have grown in importance.
3. The overall percentage of PAC contributions to candidates would have been likely to remain the same as the percentage coming from PACs and corporations, combined, before the measure was to have become effective (FPPC analysis). The total dollar amounts of PAC contributions, however, would have dropped--unless PACs could have multiplied their numbers to compensate for the low contribution limits.
4. The effectiveness of some labor or corporate-employee PACs could have diminished because their administrative expenses could not have been subsidized by unions or corporations. Existing PACs would not have been able to expend previously collected funds on candidates or overhead.
5. Independent expenditure committees could have grown in numbers and importance. Some labor, corporate-employee and other PACs could have converted themselves into independent expenditure committees to avoid restrictions on their contributions.
6. Each party's legislative candidates would have had to replace a similar proportion of their campaign funds had the measure been in effect in 1982, according to the FPPC.

**D. Changes in Time Spent on Fundraising**

1. Candidates in competitive races now spend a great deal of time raising money. Under this measure, they would have had to spend more time, for they would have had to receive contributions in smaller amounts.
2. Candidates in non-competitive races would have been able to spend less time fundraising, if their challengers had been unable to raise enough money to campaign effectively against them.



#### E. Changes in Expenditures of Candidates' Own Money

1. In 1982 candidates spent \$2,263,000 of their own money on their campaigns. (This figure includes contributions of \$1,288,000 to Tom Hayden's campaign from his wife.) The measure could have discouraged this practice, because the opponents of these candidates would have received equal public matching funds.
2. If the \$1 million public matching fund were depleted, its deterrent effect would have disappeared. Candidates would have been able to contribute funds to their own campaigns without their opponents receiving matching funds.

#### F. Elimination of Surpluses

Any candidate or officeholder with a surplus after the November 1984 election would have been barred from using it on any future state campaigns.

#### G. Reduction in War Chests for Future Elections

Current officeholders often build large war chests to use, not for reelection, but for higher elective office. The measure would have prevented candidates from raising money for one office and spending it on another office.

#### H. Delays in Fundraising

Uncertainties of interpretation would have delayed fundraising until the FPFC was able to issue interpretative regulations.

### PROS AND CONS OF THE JOHNSON INITIATIVE

The following are some of the arguments that were raised for and against Proposition 40:

#### A. Arguments in Favor of the Johnson Initiative

1. The \$1,000 contribution limitations would have:
  - a. Diminished the influence of large contributors on campaigns and on legislation;
  - b. Lessened the appearance of corruption (a quid pro quo exchange of money for votes);
  - c. Reduced overall campaign expenditures;
  - d. Encouraged candidates to seek small contributions; and

- e. Allowed individual \$1,000 contributors to match the largest possible contribution of the most powerful PAC.
2. Several provisions would have encouraged PACs to operate in a more egalitarian fashion:
  - a. Contributions to PACs were limited (to \$250).
  - b. Sponsoring corporations and labor unions were barred from providing funds for administration.
  - c. A "Declaration of Free Will" had to be signed by each contributor to prevent employees from being coerced into giving to PACs.
3. The initiative would have prohibited corporations and unions from making contributions because they are organized for specific, narrow purposes.
4. Money given to a candidate for office in one district should not be transferred to support a different candidate in a different district. Eliminating transfers would have made last-minute infusions of money into campaigns unlikely, thus reducing incumbents' apprehensions that they had to raise substantial funds to defend themselves from such an eventuality.
5. Large debts make candidates susceptible to special interest influence. Loans to candidates would have therefore been strictly limited.
6. Eliminating stockpiles of campaign funds when this measure was to have taken effect would have put incumbents and challengers on a more equal footing. Both would have had to raise new funds afresh under the limits for the 1986 election.
7. Wealthy candidates should not have an unfair advantage over their opponents. Candidates would not spend personal funds on their campaigns if they knew their opponents could then receive comparable amounts of public money as was required under the measure's provisions.
8. The incumbents' advantage over challengers might have increased slightly but incumbents now win 98% of their races anyway. The impact on the legislative process could have been so beneficial that it would have far outweighed any possible negative impact on the electoral process.
9. This measure was so drastic that it could have had the beneficial effect of encouraging the Legislature to enact further reforms.

**B. Arguments Against the Johnson Initiative**

1. Imposing low contribution limits of \$1,000, without providing a new source of campaign funds, would have had the following undesirable results:
  - a. Incumbents would have become nearly invulnerable. Their opponents would have found it impossible to raise enough money to challenge them.
  - b. Candidates would have become more beholden to outside interests. They would have needed to pressure an even broader range of businessmen and labor leaders for money and would have thus encumbered their votes on even more issues.
  - c. Candidates and officeholders would have been forced to spend even more time than the large amount now spent on fundraising. For officeholders this would have meant less attention to their governmental duties.
  - d. The low contribution limits would have stimulated the proliferation of PACs and independent expenditure committees.
  - e. Limits based on the fiscal year (July through June) instead of election cycles would have had unintended effects. If special elections were called to fill vacancies and both elections were scheduled in the same fiscal year, candidates could receive only \$1,000 per contributor for both primary and runoff elections.
  - f. Incumbents, especially those with four-year terms, who solicited \$1,000 contributions from donors every fiscal year, could have still built large surpluses to deter potential challengers from running.
  - g. Limitations would have given the public the illusion that substantial reforms had curbed the influence of special interest money, yet the collective impact of special interests would have actually increased.
2. A \$1,000 limitation on political parties would have hindered their operation.
3. Direct contributions from corporations and labor unions should have been limited, not prohibited. These organizations have a legitimate interest in legislative business. Similar prohibitions at the federal level have caused a proliferation of PACs.
4. The prohibition of transfers and caucus contributions would have had undesirable results:

- a. It would have removed a source of funds which has fewer strings attached than direct contributions from special interests.
  - b. It would have driven transfers "underground," resulting in less disclosure of sources of campaign funds.
  - c. It would have protected incumbents from those challengers who are only competitive if they have access to transfers.
  - d. It could have initially hurt Democrats more than Republicans because Democrats are more dependent on transfers.
5. The severe limitation on loans to candidates would have suppressed competition since candidates typically receive the bulk of their campaign funds just before the election, yet have to pay for some items earlier.
  6. Prohibiting the use of all campaign funds raised before November 1984 would have pushed incumbents into frantic fundraising in 1985 and thus left them more dependent on special interests.
  7. The \$1 million limit on public funds in each fiscal year would have created serious problems in any election where these funds were exhausted. A single candidate (Tom Hayden) would have broken the bank in 1982.
  8. Many provisions were unnecessarily burdensome: requiring even the smallest contributor to execute a "Declaration of Free Will" and to make contributions by check, requiring public matching funds for a candidate's personal contributions of even one dollar and prohibiting all anonymous contributions.
  9. Small fundraising events would have been crippled. A \$2 admission ticket and the sale of a \$1 hot dog at a political fundraising event, for example, would each have had to be paid for with a check and accompanied by a Declaration of Free Will (assuming the profits were going to the campaign).
  10. If the initiative were to have been adopted by the voters, its detailed provisions would have been "etched in stone" since it could not have been amended without a second vote of the people.
  11. Passage of the Johnson Initiative would have damaged future opportunities for other types of campaign reform for years to come.

### LEGAL QUESTIONS

A number of constitutional and legal questions were raised concerning the validity or interpretation of provisions of Proposition 40. Many of these required fairly intricate analyses and definitive resolution by the courts. The following provides an abbreviated list of some of the more important questions.

#### A. Limits on Independent Expenditures

The initiative prohibited individuals from making independent expenditures on behalf of a candidate, whenever that individual also made a contribution directly to the same candidate. The courts have consistently ruled, however, that independent expenditures (*i.e.*, expenditures not made at the request of, or coordinated with, the candidate) cannot be limited. Buckley v. Valeo, 424 U.S. 1 (1976); PEC v. NCPAC, 105 S. Ct. 1459 (1985).

#### B. Limits on Contributions to Independent Committees

The initiative prohibited individuals from contributing more than \$250 to an independent committee. Although courts have upheld limits on contributions to candidates (stating they were necessary to prevent "corruption" or its "appearance"), they might possibly rule that contributions to independent committees cannot corrupt candidates and thus cannot be limited. *Cf.* Buckley v. Valeo; Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981).

#### C. Limits on Political Party Contributions

The initiative prohibited political parties from contributing more than \$1,000 to a candidate. Although the Supreme Court has upheld significantly higher contribution limits on political parties, it might conclude that a \$1,000 limit was lower than necessary to prevent corruption of candidates.

#### D. Restrictions on Small Contributions

The initiative prohibited cash or anonymous contributions. It also required individuals to sign a "Declaration of Free Will" stating their name, address, occupation and voter registration status. If these provisions deterred contributions by low-income individuals who lacked checking accounts or were reluctant to sign a Declaration, they might violate the First Amendment and the Equal Protection Clause.

#### E. Strict Liability for Libel

The initiative made candidates personally responsible for all political advertisements or communications distributed by their campaign staff. If this provision subjected candidates to libel suits for materials they did not know were false, it could violate First Amendment standards protecting individuals against

improper libel litigation. New York Times v. Sullivan, 376 U.S. 254 (1964); cf. Smith v. California, 361 U.S. 147 (1959).

#### F. Expenditure of Personal Funds

The initiative sought to deter candidates from spending their own money on their campaigns by giving their opponents an equal matching grant of public money. The courts could invalidate such a provision, however, holding that a candidate's right to spend his or her own money was improperly affected. Cf. Buckley v. Valeo.

#### G. Restraints on the Use of Campaign Funds

The initiative imposed several restrictions on the use of campaign funds. It forbade candidates from spending on state campaigns any funds received before the effective date of the measure (November 7, 1984); it required candidates to pay unused funds to the state; and it prevented candidates from spending funds raised for one office on an election to another office. These restrictions could be deemed unconstitutional restraints on "expenditures." Alternatively, if they were viewed as restraints on contributions, they could be invalid unless shown necessary to prevent the actual or apparent corruption of candidates.

#### H. Special Elections

The initiative limited contributions to \$1,000 in any fiscal year. If a special election primary and runoff were scheduled in the same fiscal year, candidates could be unable to raise sufficient funds for the second election to communicate adequately with the voters. The Supreme Court has suggested that restrictions placing a "dramatic adverse effect on the funding of campaigns" might be unconstitutional. Buckley v. Valeo.

#### I. Amendability

It was unclear whether the initiative could have been amended by the Legislature. The initiative contained no language permitting legislative amendment, and the California Constitution (art. II, §10) prohibits amendments without specific authorization. On the other hand, the initiative amended the 1974 Political Reform Act which does allow legislative amendment by a two-thirds vote. A definitive court ruling would have been necessary to determine whether or not the Legislature could amend the initiative.





## APPENDIX G

ANALYSIS OF THE VASCONCELLOS-LOCKYER BILL (S.B. 87)

The Vasconcellos-Lockyer bill (S.B. 87), authored by Senator Bill Lockyer (D-Hayward) and Assemblyman John Vasconcellos (D-San Jose), was passed in 1984 by both houses of the Legislature, but it was vetoed by Governor Deukmejian. The bill provided for expenditure limitations, partial public financing and (before its last amendment) contribution limitations in legislative races.

**A. Expenditure Limitations**

The bill contained strict expenditure limitation provisions for both the primary and the general elections.

Proposed Expenditure Limitations

<u>Assembly Primary</u>	<u>Assembly General</u>	<u>Senate Primary</u>	<u>Senate General</u>
\$103,500	\$207,000	\$207,000	\$345,000

These proposed limits would have clearly reduced spending in at least some races. Applying these limits to the 1982 elections, 12% to 24% of the candidates would have been affected.

**B. Matching Public Money in the General Election**

The bill called for public funding in the general election only. The bill rewarded small contributions by providing for public funding at a greater matching ratio for the smaller grassroots contributor. The first \$100 was matched at a ratio of 3-to-1; from \$101 - \$500, the ratio was 2-to-1; and from \$501 - \$1,000, the ratio was 1-to-1. Thus, for a \$1,000 contribution, public money amounted to an additional \$1,600 for a total of \$2,600.

The maximum amount of public money which could have been received by a candidate was two-thirds of the possible total expenditures:

Maximum Public Financing

<u>Assembly General Election</u>	<u>Senate General Election</u>
\$138,000	\$230,000

Before a candidate was eligible to receive any public funds, the candidate first had to meet a threshold level of private fundraising. Under the bill, these thresholds were \$40,000 (for an Assembly candidate) and \$60,000 (for a Senate candidate) in contributions of \$1,000 or less after the June primary election. This extremely high threshold would have eliminated public funding for at least 46 of the 150 Assembly candidates in the

1982 general election. In the Senate, at least 14 of the 38 candidates in 1982 might have failed to qualify. These 60 candidates failed to raise the threshold in any amounts, including contributions of over \$1,000.

The public financing of legislative campaigns would have come from a fund consisting of money contributed by state tax checkoffs (similar to the federal checkoff) by which a taxpayer could designate up to \$5 (for a single taxpayer) or \$10 (for a married couple) to the fund. This checkoff would not have cost the taxpayer any additional taxes.

Candidates could only receive public money for the general election, but the expenditure limitations applied to both the primary and general elections. Thus during the primary the candidate had to decide whether or not to opt for public money in the general--and expenditure limitations for both.

The FPFC estimated that the bill would have cost \$18 million for general election public financing.

#### C. Contribution Limitations

The bill, before it was amended to conform its provisions to the Ross Johnson Initiative, limited individual contributions to \$1,000 per candidate per election, and PACs to \$3,000 per candidate per election, but only after the candidate had raised "seed money" (unlimited contributions of up to \$20,000 for the Assembly and \$40,000 for the Senate). The "seed money" provision applied in the primary election and then again in the general election.

The bill prohibited transfers from one candidate to another. But while the bill prohibited transfers, it permitted caucus and party contributions up to one-third of the total expenditures allowed:

#### Maximum Caucus and Party Contributions

<u>Assembly Primary</u>	<u>Assembly General</u>	<u>Senate Primary</u>	<u>Senate General</u>
\$34,721	\$69,441	\$69,442	\$115,736

In addition, the bill placed no restrictions on contributions made to the caucuses. The Speaker and other legislators could solicit unlimited funds from the major interest groups so long as these contributions were made directly to the caucus.

Finally, the bill limited how much candidates could receive from PACs in the aggregate. Candidates could not receive more than one-third of their overall expenditure limitations from PACs. (These limitations were the same as the caucus-party limits in the chart above.)

**D. Wealthy Candidate Provisions**

The bill attempted to limit the impact of wealth in campaigns by placing limitations on wealthy candidates. Those candidates who accepted public money were limited to spending \$20,000 of their own money for Assembly contests and \$40,000 for Senate races. For those candidates who did not accept public money, the bill required candidates to provide advance notice to all opponents of their intention to spend more than \$20,000 (for Assembly candidates) or \$40,000 (for Senate candidates) of their own money in the campaign. Once this notice was given, all opponents were freed from the contribution and expenditure limitations, and were entitled to receive additional public funding as well.



## APPENDIX H

RECENT PUBLIC OPINION POLLS ON CAMPAIGN FINANCE REFORMS

A number of recent public opinion polls have surveyed public reactions to various campaign finance reform measures, including limitations on contributions, ceilings on expenditures, limited public financing and tax credits for small individual contributions. These polls indicate that a majority of the public will support a package of campaign finance reforms which includes contribution limits, expenditure ceilings and limited public matching funds.

**A. California Field Poll--February 1985**

A recent Field Poll surveyed California attitudes toward various campaign finance reform measures. It found that the public supported limits on individual or organizational contributions to candidates (76% to 22%), limits on PAC contributions (86% to 12%), aggregate limits on the amounts candidates can receive from PACs (81% to 14%), limits on transfers of money from one candidate to another (56% to 38%) and overall limits on campaign expenditures (81% to 18%).

The specific Field Poll questions and responses were as follows:

(1) "There shouldn't be any limit put on how much money any one individual or group can give to a political candidate in an election."

Agree - 22%  
Disagree - 76%

(2) "There ought to be limits on how much money a political action committee can give to a candidate in an election."

Agree - 86%  
Disagree - 12%

(3) "The amount of money which candidates should be allowed to receive from political action committees should be limited to a certain percentage of the candidate's campaign budget."

Agree - 81%  
Disagree - 14%

(4) "If a candidate for office in one district has raised more money than is needed for a campaign, it is all right for that candidate to donate the money to another candidate running in another district."

Agree - 38%  
Disagree - 56%

(5) "There should be upper limits put on the amount of money that political campaigns can raise and spend in an election."



Agree - 81%  
Disagree - 18%

(6) "Political campaigns should be funded entirely by the public using tax money."

Agree - 26%  
Disagree - 72%

(7) "There should be some minimum level of public financing of political campaigns using tax dollars."

Agree - 60%  
Disagree - 35%

The public drew a distinction between total and limited public financing of political campaigns. The public opposed total funding of campaigns by the use of tax money (72% to 26%), but agreed that a minimum amount of public funding should be supplied (60% to 35%).

B. Common Cause/USC Institute of Politics and Government  
Poll--June 1984

A recent Common Cause/USC poll reached conclusions that were similar to those of the Field Poll. The Common Cause/USC poll determined that a "sizable majority" of Californians support the idea of limited public financing for state legislative campaigns, but only if it is coupled with contribution and spending limitations.

Two relevant questions were asked:

(1) "Some people say that candidates for public office in California are too dependent on special-interest contributions to their campaigns and that the solution is to give qualifying candidates the option of accepting some government funding. Others say that giving government funds to candidates is an inappropriate use of public dollars and takes money away from other programs. Which comes closer to your opinion?"

Provide government funds - 27%  
Do not provide government funds - 61%  
No opinion - 13%

(2) "Would you support or oppose a law that placed a limit on how much money any individual or group could contribute to a political candidate, placed a limit on the amount of money a candidate could spend, and provided qualifying candidates with some public funds to help pay the costs of political campaigns?"

Support - 63%  
Oppose - 28%  
No opinion - 10%

**C. Gallup Poll--July 1984**

For the last 11 years, a national Gallup poll has asked Americans whether they think congressional campaigns should be publicly financed if private contributions are also barred. The first poll, conducted in June 1973 during the Watergate hearings, indicated that 58% of the public approved. In July 1984, 52% of the public approved--a fairly long-term level of support for public financing when coupled with other reforms.

The Gallup question and responses were as follows:

"It has been suggested that the federal government provide a fixed amount of money for the election campaigns of candidates for Congress and that all private contributions from other sources be prohibited. Do you think this is a good idea or a poor idea?"

Good idea	- 52%
Poor idea	- 36%
No opinion	- 12%

**D. Civic Service, Inc. Poll--February 1985**

A nationally conducted CSI poll indicates the public opposes public financing for congressional campaigns when it is not combined with other spending and/or contribution limitations.

One question was phrased as follows:

"It has been proposed in Congress that the federal government provide public financing for congressional campaigns for the U.S. House of Representatives and Senate. Would you approve or disapprove of the proposal to use public funds, federal money, to pay the costs of congressional campaigns and how strongly do you feel?"

Strongly approve	- 4.3%
Approve	- 23.3%
Disapprove	- 38.8%
Strongly disapprove	- 26.2%
No opinion	- 8.4%

**E. California Public Interest Poll--February 1985**

At the request of the California Commission on Campaign Financing, the California Public Interest Poll conducted a survey of California attitudes towards tax credits for political contributions. Respondents were asked whether they would take advantage of a proposal which would allow them to make up to a \$100 contribution to a political candidate and receive all of it back in the form of an income tax credit. Approximately 35% replied that they would either increase their current contributions or give for the first time if they could receive a 100% tax credit.

The questions and responses were as follows:

"Which statement would best describe respondent if a law were passed allowing individuals who contribute up to \$100 to get all of their money back as a tax credit?"

"I currently make campaign contributions and a tax reduction would not change my contribution level."--18%

"I currently make campaign contributions and would give more if I could get it all back in the form of a tax reduction."--14%

"I do not make campaign contributions but would if I could get it all back in the form of a tax reduction."--21%

"I do not make campaign contributions now and wouldn't even if I could get it all back in the form of a tax reduction."--43%

"Don't know/no answer"--4%

The demographic breakdowns were also noteworthy. Of those responding that they would either increase their contributions or give for the first time if 100% tax credits were available for \$100 contributions, 37% were Democrats and 31% were Republicans; 39% were liberals, 28% were moderates and 40% were conservatives; 35% earned under \$10,000, 39% earned from \$10,000-\$20,000, 33% earned from \$20,000-\$35,000 and 35% earned over \$35,000; and 30% were white, 57% were black and 49% were Hispanic.

#### F. Conclusion

Poll results often vary depending on the survey questions posed. Poll results also change after the public is exposed to the arguments for and against a specific proposition. Definitive conclusions based on polls are thus difficult.

Nevertheless, the polls discussed above suggest several conclusions. First, the public perceives campaign financing to be a problem and is willing to support a range of solutions including expenditure ceilings and contribution limits. Second, the public is willing to support limited public financing if it is part of a comprehensive package of reforms that includes contribution limits and expenditure ceilings. Third, a sizable minority (35%) would contribute for the first time or increase their contributions if they could receive a 100% tax credit for small contributions up to \$100.

## APPENDIX I

ISSUES FOR FURTHER STUDY

During the Commission's review of campaign financing in California, it became aware of a number of related issues which merit possible further research. The Commission takes no position on any of these issues. It lists them only for future investigation. These issues include the following:

**1. Ballot Measures**

In the opinion of many, ballot measures are seriously affecting the orderly passage of legislation in the state. Many ballot measures are poorly written, unconstitutional in whole or in part and contain clauses that, if fully understood by the voters, might never be adopted. Others are defeated by misleading campaigns which are financed by those most directly affected.

Between 1978 and 1982, spending on ballot measures increased 145%. In 1982, \$10 million was spent on one ballot initiative alone (Proposition 13, "Handgun Control"). Of 10 initiatives approved by the voters between 1964 and 1980, six were struck down by the courts in whole or in part for legal insufficiency. In 1984, two initiatives were invalidated by the courts before they could even be voted on by the electorate.

The Legislature is considering reforms of the initiative process. Various bills would attempt to improve the quality of the drafting of ballot measures, reduce one-sided spending and improve the information available to the voters before they make their ultimate decisions. An independent study of these bills and the ballot measure process might make a significant contribution toward increasing the quality of legislative and Constitutional amendments in this state.

**2. Local Elections**

Campaign expenditures in local elections vary widely. In some localities an expensive campaign may cost \$6,000 while in others it could cost \$1 million. Yet the average costs of local elections are rising around the state. Candidates for California city and county offices spent \$46 million between 1979 and 1981. These expenditures represented an 88% increase in just two years. Much of this campaign money is raised from local real estate developers, public employees, cable television companies and others who have a direct economic stake in the decisions made by the city council or county board of supervisors.

"[M]ore and more local entities are considering reforms now that the campaign spending arms race has invaded local elections," concludes Tom Houston, former Chairman of the Fair Political Practices Commission. About 50 cities and counties have adopted reform measures to date. A review of campaign spending in local elections could study the impact these ordinances have had on recent races and propose solutions for

those cities and counties which are considering ordinances. A model ordinance might be drafted for cities and counties throughout the state.

### 3. Statewide Races

During the 1982 California gubernatorial election, Tom Bradley and George Deukmejian, the two general election contenders spent more than \$18 million, a 120% increase over the gubernatorial campaign four years earlier. Candidates for other statewide offices--Lieutenant Governor, Attorney General, State Treasurer, State Controller, Secretary of State and Superintendent of Public Instruction--spent \$23 million. These high costs have not increased as dramatically as costs for legislative offices; however, statewide candidates complain about the constant need to raise funds in order to run a credible race. In most races incumbents are elected.

Statewide campaigns differ in their importance, visibility, costs and sources of funds. A study of each office could analyze the unique problems confronted by statewide candidates and officeholders. Solutions might differ significantly. For example, expenditure limits might be appropriate for gubernatorial candidates but inappropriate for state controller candidates; if adopted, expenditure ceilings might differ between offices; or limits might be placed on contributions from companies doing business with particular offices.

### 4. Legislative Salaries

California legislators are currently paid approximately \$33,000 per year, and they will be paid approximately \$37,000 per year in 1987. Legislators also receive a tax-free per diem, a car, a generous retirement plan and telephone privileges. Their total compensation package is thus worth approximately \$55,000 a year. The California Constitution allows legislators to raise their own salaries by no more than five percent a year, although the Legislature has frequently decided it would be politically unwise to do so.

Some observers believe legislative salaries are too low to compensate for the quality of work expected by the public. They point to salaries for superior court judges which are approximately \$73,000 a year, and they argue that legislators' salaries should be comparable. Many legislators today supplement their salaries with outside incomes (e.g., from law practices), and some observers believe these outside incomes place legislators in compromising positions. Legislative salaries might warrant review by an independent group unconnected with the Legislature. Consideration might be given to raising salaries and simultaneously prohibiting outside income.

### 5. Expense Reimbursements

Legislators have expenses such as weekly travel to their districts which are not reimbursed by the state. In many cases they draw on campaign funds to cover these non-reimbursed expenses. Some legislators believe the pressures to raise campaign money would ease if they were reimbursed for all

legitimate office-related expenses. A review of legislative expense reimbursements might be warranted.

#### 6. Personal Use of Campaign Funds

In 1981 the Legislature passed a bill prohibiting candidates and officeholders from using campaign funds to defray personal expenses. It also prohibited legislators from taking campaign funds with them when they retired. Enforcement authority for this bill was given to the Attorney General. Some observers believe the bill left loopholes which allow legislative candidates to use campaign funds for personal activities which have at least some arguably political or governmental purpose. A study of possible evasion of the law might be useful.

#### 7. Slate Mailings

The use of slate mailers endorsing legislative candidates has escalated dramatically. A slate mailing simultaneously endorses many candidates or measures in the same election. Candidates for Governor, the Legislature or school board, for example, may all be listed on one mailer. Voters are encouraged to take the mailer to the polls and vote for the entire slate.

Although slate mailers are often prepared by private organizations which charge candidates a fee for inclusion, in some cases the mailers may be labeled "Democratic Voting Guide" or "Republican Voting Guide." These mailers have been criticized as being misleading since they do not represent official Democratic or Republican Party positions.

Some observers have suggested that slate mailers should contain disclosures to lessen their potential for deception. The disclosures might identify the candidates, persons or organizations paying for the mailers or selecting the candidates or issues to be included in the mailer. Some observers would also require disclosure of all expenditures by slate mailer committees.

#### 8. Mail Debates

A mail debate would permit two or more candidates in an election to submit their campaign literature to the state. The state would then mail the candidates' literature in a single envelope to all voters in the district. The state would pay for postage but would have no power of censorship over the literature. Mail debates might save candidates significant postage costs and allow voters to compare competing candidates' views at the same time.

#### 9. Disqualification for Campaign Contributions

Orange County requires public officials to disqualify themselves if they have received a campaign contribution of over \$1,400 from any person appearing before them. Other local entities have similar requirements. In addition, the Political Reform Act requires non-elected officials to be disqualified if they have received or raised contributions of \$250 or more from any source appearing before their agency. This disqualification



remedy is sometimes used as an alternative to contribution limitations. Contribution limitations affect all contributors while disqualification requirements, such as those enacted in Orange County, only affect those contributors who appear before the official's agency. A study of the disqualification approach, particularly at the local level, would be useful.

#### 10. Reapportionment Commission

Many campaign experts believe that reapportionment is a prime reason for lack of competition in legislative races. In many districts, one party's registration is so overwhelming that it is virtually impossible for other parties' candidates to win. If districts are reapportioned to increase competition, however, then fundraising and overall campaign expenditures will rise.

Many observers argue that legislative reapportionment raises the ultimate conflict of interest, since reapportionment affects the personal future of every legislative incumbent. Some have called for a non-partisan commission to reapportion the state. Two attempts to adopt such a commission have been rejected by the voters. Reapportionment and campaign finance are clearly related, although reapportionment has been beyond the purview of this Commission's report. An independent study of the reapportionment process might be of significant benefit.

#### 11. Unicameral Legislature

State Treasurer Jesse Unruh has been a longtime advocate of a unicameral legislature. He believes it would be less costly and far more efficient than a bicameral legislature. Nebraska is the only state at present that has a unicameral legislature. A unicameral legislature in California might decrease overall campaign costs by eliminating overlapping State Assembly and Senate districts (e.g., by creating only 100 legislative districts instead of 80 Assembly and 40 Senate districts).

#### 12. Limited Terms for Legislators

Several political observers have suggested that limiting legislators to one or two terms would increase competition for political office. Challengers rarely unseat experienced incumbents. Limiting legislators' terms, however, would increase the turnover of seats and enhance competition. On the other hand, the public might lose experienced legislators who would be forced to retire, even though they might be highly regarded by their constituents. This issue might also warrant further analysis.

## APPENDIX J

SELECTED BIBLIOGRAPHYBOOKS AND PAMPHLETS

Adamany, David W., Campaign Finance in America, Duxbury Press, 1972.

Adamany, David W., and Agree, George E., Political Money: A Strategy for Campaign Financing in America, The Johns Hopkins University Press, 1975.

Alexander, Herbert E. (ed.), Campaign Money: Reform and Reality in the States, The Free Press, 1976.

Alexander, Herbert E., The Case for PACs, Public Affairs Council, 1983.

Alexander, Herbert E., The Federal Election Campaign Act: After a Decade of Political Reform, Citizens' Research Foundation, 1981.

Alexander, Herbert E., Financing Politics: Money, Elections, and Political Reform, 3rd ed., Congressional Quarterly Press, 1984.

Alexander, Herbert E., Financing the 1980 Election, D.C. Heath, 1983.

Alexander, Herbert E., White Paper on Public Funding of Political Campaigns, Public Affairs Council, 1984.

Alexander, Herbert E., and Frutig, Jennifer W., Public Financing of State Elections: A Data Book and Election Guide to Public Funding of Political Parties and Candidates in Seventeen States, Citizens' Research Foundation, 1982.

Alexander, Herbert E., and Haggerty, Brian A., PACs and Parties: Relationships and Interrelationships, Citizens' Research Foundation, 1984.

Bock, Betty et al. (eds.), The Impact of the Modern Corporation, Columbia University Press, 1984.

Campaign Finance Study Group to the Committee on Rules and Administration of the U.S. Senate, Financing Presidential Campaigns, John F. Kennedy School of Government, January 1982.

Center for Responsive Politics, Money and Politics: Campaign Spending Out of Control, 1983.

Clarke, Peter, and Evans, Susan, Covering Campaigns, Stanford University Press, 1983.

Common Cause, People Against PACs, 1983.

Cresap, Dean, Party Politics in the Golden State, Haynes Foundation, 1954.

Drew, Elizabeth, Politics and Money: The New Road to Corruption, MacMillan, 1983.

Harris, Joseph P., California Politics, 4th ed., Chandler Publishing Co., 1967.

Initiatives for Campaign Reform, Who Pays? Who Benefits?: California Campaign Finance Reform, 1984.

Jacobson, Gary C., Money in Congressional Elections, Yale University Press, 1980.

Jacobson, Gary C., The Politics of Congressional Elections, Little, Brown and Company, 1983.

Jacobson, Gary C., and Kernell, Samuel, Strategy and Choice in Congressional Elections, 2nd ed., Yale University Press, 1983.

Malbin, Michael J. (ed.), Money and Politics in the United States: Financing Elections in the 1980s, American Enterprise Institute/Chatham House, 1984.

Malbin, Michael J. (ed.), Parties, Interest Groups and Campaign Finance Laws, American Enterprise Institute, 1980.

Owens, John, Trends in Campaign Spending in California, 1958-1970: Tests of Factors Influencing Costs, Citizens' Research Foundation, 1973.

Sabato, Larry J., PAC Power, W.W. Norton & Co., 1984.

Samish, Artie, and Thomas, Bob, The Secret Boss of California: The Life and High Times of Art Samish, Crown, 1971.

Sorauf, Frank J., Party Politics in America, 4th ed., Little, Brown and Company, 1980.

Sorauf, Frank J., and the Twentieth Century Fund Task Force on Political Action Committees, What Price PACs?, Twentieth Century Fund, 1984.

Thayer, George, Who Shakes the Money Tree?, Simon and Schuster, 1973.

## ARTICLES

Adamany, David, "PACs and the Democratic Financing of Politics," 22 Arizona Law Review 569 (1980).

Adamany, David, "Political Action Committees and Democratic Politics," 1983 Detroit College of Law Review 1013 (1983).

Alexander, Herbert E., "The Obey-Railsback Bill: Its Genesis and Early History," 22 Arizona Law Review 653 (1980).

Baran, Jan, Remarks, "Attempted Regulation of Independent Group Speech," 10 New York University Review of Law and Social Change 87 (1980-1981).

- Bibby, John, "Campaign Finance Reform: Expanding the Government's Role or the Parties' Role?" 6 Commonsense 1 (1983).
- Buchsbaum, Andrew P., "Campaign Finance Re-reform: The Regulation of Independent Political Committees," 71 California Law Review 673 (1983).
- Budde, Bernadette A., "The Practical Role of Corporate PACs in the Political Process," 22 Arizona Law Review 555 (1980).
- Chiles, Lawton, "PACs: Congress on the Auction Block," 11 Journal of Legislation 193 (1984).
- Claude, Richard, and Kirchoff, Judith, "The Free Market of Ideas, Independent Expenditures, and Influence," 57 North Dakota Law Review 337 (1981).
- Colloquium, "Election Law in the Eighties," 10 New York University Review of Law and Social Change 1-178 (1980-1981).
- Comment, "Campaign Contributions and Expenditures in California," 41 California Law Review 300 (1953).
- Comment, "Independent Political Committees and the Federal Election Laws," 129 University of Pennsylvania Law Review 955 (1981).
- Cox, Archibald, "Constitutional Issues in the Regulation of the Financing of Election Campaigns," 31 Cleveland State Law Review 395 (1982).
- Deife, Mark D., "Campaign Expenditures--A Limitless Issue," 20 Willamette Law Review 376 (1984).
- Dunn, Matthew Joseph, Hofman, Kevin Dale, and Moynihan, Brian Thomas, "The Campaign Finance Reform Act: A Measured Step to Limit the PACs' Role in Congressional Elections," 11 Journal of Legislation 496 (1984).
- Elliott, Lee Ann, "Political Action Committees--Precincts of the '80s," 22 Arizona Law Review 539 (1980).
- Epstein, Edwin M., "The PAC Phenomenon: An Overview," 22 Arizona Law Review 355 (1980).
- Forrester, Ray, "The New Constitutional Right to Buy Elections," 69 American Bar Association Journal 1078 (1983).
- Hill, Kim Quaile, "Taxpayer Support of the Presidential Election Campaign Fund," 62 Social Science Quarterly 768 (1981).
- Ifshin, David M., Remarks, "The Demise of Grassroots Political Activity Under the Presidential Election Campaign Fund Act," 10 New York University Review of Law and Social Change 93 (1980-1981).
- Ifshin, David, M., "Resolving Constitutional Issues Under the Federal Election Campaign Act: A Procedural Labyrinth," 10 New York University Review of Law and Social Change 101 (1980-1981).

Kenski, Henry C., "Running with and from the PAC," 22 Arizona Law Review 627 (1980).

Lowell, Frederick K., "Laws Regulating Political Activity: Since Watergate, Political Activity Laws Have Burgeoned," 3 California Law Review 20 (1982).

Malbin, Michael J., "What Should Be Done About Independent Campaign Expenditures?" Regulation (January/February 1982).

Mayton, William T., "Politics, Money, Coercion, and the Problem with Corporate PACs," 29 Emory Law Journal 375 (1980).

Nelson, Frederick D., "Regulation of Independent Political Campaign Expenditures: Less is More and Wright is Wrong," 7 Harvard Journal of Law and Public Policy 261 (1984).

O'Connor, M., "Campaign Financing in Texas," 40 Texas Bar Journal 1029 (1977).

Panel Discussion (Dean Norman Redlich, Moderator): "Proposed Remedies for Perceived Defects in the Election Law Scheme," 10 New York University Review of Law and Social Change 163 (1980-1981).

Patton, Douglas J., "The Effect of the Federal Election Campaign Act Contribution and Expenditure Limitations on the Political Party Committees--A Prospect for Party Discipline?" 57 North Dakota Law Review 367 (1981).

Peck, Robert S., and McDowell, Barbara, "Dollar Democracy: An Analysis of Public Financing of State Politics," 15 Urban Lawyer 921 (1983).

Perry, Timothy S., "Campaigns on Credit: Financing by National Banks in Federal Election Campaigns," 29 Emory Law Journal 417 (1980).

Railsback, Tom, "Congressional Responses to Obey-Railsback," 22 Arizona Law Review 667 (1980).

Reaves, Lynne, "Campaign Financing Reform: Is Congress Ready?" 69 American Bar Association Journal 715 (1983).

Relman, John P., "Making Campaign Finance Law Enforceable: Closing the Independent Expenditure Loophole," 15 Journal of Law Reform (1982).

Richards, Eric L., "The Rise and Fall of the Contribution - Expenditure Distinction: Redefining the Acceptable Range of Campaign Finance Reforms," 18 New England Law Review 367 (1983).

Ross, James L., "Regulation of Campaign Contributions: Maintaining the Integrity of the Political Process Through an Appearance of Fairness," 56 Southern California Law Review 669 (1983).

Sorauf, Frank J., "Political Parties and Political Action Committees: Two Life Cycles," 22 Arizona Law Review 445 (1980).

Sproul, Curtis, C., "Corporations and Unions in Federal Politics: A Practical Approach to Federal Election Law Compliance," 22 Arizona Law Review 465 (1980).

Swillinger, Daniel J., "Federal Regulation of the Campaign Finance Activity of Trade Associations--An Overview," 29 Emory Law Journal 395 (1980).

Symposium, "Election Law," 57 North Dakota Law Review 327-514 (1981).

Symposium, "Federal Election Laws," 29 Emory Law Journal 313-436 (1980).

Symposium, "Money in Politics: Political Campaign Finance Reform," 10 Hastings Constitutional Law Quarterly 463-784 (1983).

Symposium, "Political Action Committees and Campaign Finance," 22 Arizona Law Review 351-674 (1980).

Uhlfelder, Steven J., Remarks, "A Decade of Election Law Reform," 10 New York University Review of Law and Social Change 81 (1980-1981).

Vandergrift, Benjamin M., "The Corporate Political Action Committee," 55 New York University Law Review 422 (1980).

Wertheimer, Fred, "The PAC Phenomenon in American Politics," 22 Arizona Law Review 603 (1980).

Wertheimer, Fred, and Huwa, Randy, "Campaign Finance Reforms: Past Accomplishments, Future Challenges," 10 New York University Review of Law and Social Change 43 (1980-1981).

Wright, J. Skelly, "Escape from Accountability: An Examination of Independent Expenditure PACs," People for the American Way (September 1982).

Wright, J. Skelly, "Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?" 82 Columbia Law Review 609 (May 1982).

#### NEWSPAPER SERIES

Cook, Gale, and Finefrock, James, "In Whose Interest?" San Francisco Examiner, February 1-5, 1982 (five-part series).

Lynch, Larry, "Big Bucks Cascade into Political Coffers in Non-Vote Years," Long Beach Press-Telegram, December 11-13, 1984 (three-part series).

Walters, Dan, "Money and the Legislature," Sacramento Union, January 2-5, 1984 (four-part series).



**CONFERENCE PAPERS/UNPUBLISHED MANUSCRIPTS**

Jacobson, Gary C., "Political Action Committees, Electoral Politics, and Congressional Ethics," prepared for the Project on Legislative and Representative Ethics of the Hastings Center, April, 1983.

Jones, Ruth, "Patterns of Campaign Finance in the Public Funding States," prepared for the annual meeting of the Midwest Political Science Association, Milwaukee, Wisconsin, April 28-May 1, 1982.

Jones, Ruth, "Public Campaign Finance: The Minnesota Experience," prepared for the annual meeting of the Western Political Science Association, Denver, Colorado, March 26-28, 1981.

Jones, Ruth, "Public Financing in the States: A Decade of Experience," prepared for the California Commission on Campaign Financing, July 23, 1984.

King, Elizabeth, and Wegge, David, "The Rules Are Never Neutral: Public Funds in Minnesota and Wisconsin Legislative Elections," prepared for the annual meeting of the Midwest Political Science Association, Chicago, Illinois, April 12-14, 1984.

**GOVERNMENT DOCUMENTS**

City of Seattle Office of Election Administration, An Analysis of Campaign Contributions in Closely Contested Seattle City Campaigns, 1975-1983 (June 1984).

Congressional Research Service, Political Action Committees: Their Evolution and Growth and Their Implications for the Political System (1981).

FPFC, The California PAC Phenomenon (May 1980).

FPFC, Campaign Costs: How Much They Have Increased and Why?, A Study of State Elections, 1958-1978 (January 1980).

FPFC, The Impact of Campaign Contribution Limitations and Public Financing on Candidates for the California State Legislature (1983).

FPFC, Proposition 40: The Johnson Campaign Finance Initiative (August 1984).

FPFC, Report on Transfers of Campaign Funds Among Candidates (March 1979).

FPFC, Sources of Contributions to California State Legislative Candidates (August 1981).

New Jersey Election Law Enforcement Commission, Public Financing Conclusions and Recommendations: New Jersey's 1981 Gubernatorial Elections (June 1982).

Philbrick, Legislative Investigative Report (1930).

State of Washington Public Disclosure Commission, The Increased Cost of Legislative Campaigns: 1974 to 1982 (February 1984).

#### COURT CASES

Buckley v. Valeo, 424 U.S. 1 (1976).

California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182 (1981).

Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981).

Democratic Party v. Estep, Okl. 652 P.2d 271 (1982).

FPPC v. Superior Court, 25 Cal. 3d 33 (1979).

Federal Election Comm'n v. NCPAC, 105 S. Ct. 1459 (1985).

Federal Election Comm'n v. NEA, 457 F. Supp. 1102 (D.D.C. 1978).

Federal Election Comm'n v. National Right to Work Comm., 459 U.S. 197 (1982).

First Nat'l Bank v. Bellotti, 435 U.S. 765 (1978).

Florida Police Benevolent Ass'n v. Florida Election Comm'n, 430 So. 2d 483 (Fla. Dist. Ct. App. 1983).

Members of the City Council of Los Angeles v. Taxpayers for Vincent, 104 S. Ct. 2118 (1984).

Mott v. Federal Election Comm'n, 494 F. Supp. 131 (D.D.C. 1980).

Republican Nat'l Comm. v. Federal Election Comm'n, 461 F. Supp. 570 (S.D.N.Y. 1980) 487 F. Supp. 280 (S.D.N.Y. 1980) (by a three-judge court), aff'd, 616 F.2d 1 (2d Cir. 1980), aff'd mem., 445 U.S. 955 (1980).

San Francisco County Democratic Central Comm. v. March Fong Eu, No. 83-5599 (N.D. Cal. 1983), stay granted, No. 84-1851 (Apr. 24, 1984).

Unger v. Superior Court, 37 Cal. 3d 612 (1984).

United States v. U.A.W., 352 U.S. 567 (1957).





The California Commission on Campaign Financing was formed in 1984 as a private, non-profit organization funded by a grant from the Weingart Foundation of Los Angeles.

The bipartisan Commission is comprised of 21 Californians from the state's business, labor, agricultural, legal, political and academic communities.

This is the final report of the Commission's 18-month study of campaign financing in the California State Legislature. The Commission hopes that its recommendations for improving California's system of campaign financing will contribute to public debate and encourage constructive change in the best interest of the citizens of this state.

#### **Co-Chairs**

Cornell C. Maier  
Rocco C. Siciliano  
Francis M. Wheat

#### **Members**

Warren Christopher	Melvin B. Lane
Robert R. Dockson	Vilma S. Martinez
Walter B. Gerken	Robert T. Monagan
Marvin L. Goldberger	Susan Westerberg Prager
Stafford R. Grady	William R. Robertson
Neil E. Harlan	Peter F. Scott
Ivan J. Houston	Jean Wentz
Michael Kantor	Samuel L. Williams
Donald Kennedy	Donald R. Wright

#### **Staff**

Tracy Westen  
Robert M. Stern  
Dennis M. Orfirer  
Catherine Rich  
Janice E. Lark