To Govern Ourselves

Ballot Initiatives in the Los Angeles Area

Report and Recommendations of the
California Commission on Campaign Financing

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Foreword

This report is the summation of two years of study by the California Commission on Campaign Financing into the impact of the initiative process on Los Angeles area politics and policy. It is the sixth in a series of Commission reports on important policy problems confronting the Los Angeles area.

The Commission, formed in 1984, is a non-profit, bipartisan, private organization. Twenty-four prominent Californians from the state's business, labor, agricultural, legal, political and academic communities, about equally divided between Democrats and Republicans, currently serve as its members.

The Commission's first report, *The New Gold Rush: Financing California's Legislative Campaigns* (1985), focused on the problems of campaign financing in the state legislature. The 353-page report, now in its second printing, served as the model for statewide Proposition 68 in the June 1988 election, as well as the campaign finance portions of Proposition 131 in the November 1990 election. The Commission's second report, an *Update* to *The New Gold Rush,* was published in 1987.

The Commission's third report, *Money & Politics in the Golden State: Financing California's Local Elections* (1989), focused on campaign financing in city and county elections. The Commission also published a fourth report, *Money and Politics in Local Elections: The Los Angeles Area* (1989), which addressed the problems of Southern California's most populous metropolitan area. These two reports were in part a catalyst for the landmark June 1990 Los Angeles City campaign finance ordinance, the most innovative in the nation.

The Commission's fifth report, *Democracy by Initiative: Shaping California's Fourth Branch of Government* (1992), focused on the financing of ballot measure campaigns in California.

The Commission wishes to express particular gratitude to its Executive Director Tracy Westen and Co-Director Robert M. Stern, who together oversaw the Commission's study and were responsible for the preparation of this report. Matthew Stodder created the Commission's computerized data base, managed the Data Analysis Project and co-coordinated the report's production. Craig Holman was the Commission's principal researcher. Janice Lark designed the report's layout and its cover and co-coordinated the report's production. Julie Epps and Gayle Sato assisted in the Commission's Data Analysis Project.

The Commission also wishes to acknowledge the special dedication of its Co-Chairman Francis M. Wheat, whose extra efforts in helping the Commission prepare its recommendations made a significant contribution to this report.

The Commission extends its warm appreciation to hundreds of public officials, reporters, political experts, academicians, political consultants and concerned citizens for their generous assistance. A list of these people appears in Appendix G to this report.

The Commission's study of the Los Angeles area's initiative process was funded by the John Randolph Haynes and Dora Haynes Foundation. The Commission wishes to thank the Haynes Foundation trustees for their generous support.

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Introduction and Summary

Democracy by Initiative in the Los Angeles Area

The ballot initiative has become a significant generator of local policy in the Los Angeles area. Although the idea of "direct democracy" by vote of the people is an ancient one, predating even the Greek city states, nowhere has it been applied earlier, as rigorously or with such sweeping results. If Los Angeles area trends help to predict future patterns in other cities and counties, then local governments throughout California and the nation will also begin to see the emergence of "democracy by initiative" as a new form of 21st century local governance.

Ballot initiatives bypass the normal institutions of representative government and place legislative power directly in the hands of the people. During the past decade, citizens of the Los Angeles area have used this power to write, circulate, debate and adopt important local policies. Zoning, growth-control, business development, gambling, environmental standards, coastal oil drilling and even term limits for city officials have been addressed by local electorates through the initiative process. On many of these issues, local officials failed to act or respond in a manner that would satisfy interested parties.

Many local initiatives have directly altered the structure of governance in a city. Other issues addressed by local initiatives tend to be over-arching in nature and affect the "quality of life" in a municipality. Such broad initiatives impose *de facto* regulations on a variety of individual policy categories such as the environment, housing and transportation.

When early 20th century Progressives designed the ballot initiative for state and local governance in California, they envisioned a process that would act as a safety valve, enabling the citizens "to supplement the work of legislative bodies" when they failed or refused to act. Today's local initiative process in the Los Angeles area, however, has outstripped the Progressive's vision. Voters now exercise many of the legislative and executive powers traditionally reserved for the representative branches of government.

Some thoughtful observers have expressed concern that ballot initiatives are undermining the traditional forms of representative government, discarding checks and balances and deliberateness in favor of ill-conceived, rash and poorly drafted schemes. Initiatives, they fear, have shifted the policymaking burden to the voters, leaving them, confused by poor drafting, deceived by misleading campaigns, bewildered by counter initiatives and frustrated by court rulings declaring provisions unconstitutional.

At the same time, defenders of the ballot initiative argue that the public remains firmly committed to the process. The ballot initiative, they contend, represents a rare and precious flowering of democracy, a remedy of last resort for a public frustrated by an unresponsive government. Ballot initiatives allow the people to circumvent a legislative body blockaded by special interests, to enact needed reforms ignored by the government and even to limit the basic powers of government itself.

Effective initiative reform must begin with accurate identification of key problems. The Commission has concluded that the following critical problems confront the local initiative process in the Los Angeles area:

- *Qualification procedures are inconsistent and confusing:* the state legislature has made it harder to qualify city initiatives for the ballot than county-wide initiatives.
- *Some initiatives are too long and complex:* many voters lack the capacity, education, reading skills or time to understand them.
- *Initiative language is too inflexible:* proponents cannot correct errors or omissions once circulation begins; legislative bodies often cannot make amendments, enact improvements or eliminate oversights once an initiative is adopted.
- *Local legislative bodies play an insignificant role in the process:* proponents with take-it-or-leave-it initiatives discourage public officials from participating with proponents in the negotiation of compromises or improvements that might obviate the need for expensive elections.
- *The circulation and qualification process are in danger of abuse:* money can guarantee access to the ballot through paid circulators and direct mail and oftentimes electors are unaware of the real intent behind an initiative.
- *The local initiative process does not recognize the supremacy of charter law:* initiative charter amendments and initiative ordinances are inappropriately treated as identical forms of law.
- *Counter initiatives which conflict with and supersede each other are used as a tactic to confuse voters:* existing statutes which allow one initiative to invalidate another encourage the use of such measures.
- *Media campaigns disseminate incorrect or deceptive information:* misleading slate mailers and campaign advertising are widespread.
- *Ballot pamphlets often fail to communicate information accurately and concisely:* voters frequently struggle to make informed decisions.
- *Money plays too important a role in initiative campaigns:* high-spending, one-sided campaigns dominate and distort the electoral process.
- *The courts have not yet struck the proper balance in initiative review:* recent decisions have invalidated some popularly enacted initiatives but left other equally complex initiatives in place.

The critical question confronting Los Angeles area localities is whether the initiative process can be improved to allow the electorate to function as a more responsible branch of government. The Commission believes it can. To accomplish

this, the Commission has proposed a comprehensive and interrelated set of innovative reforms which will enable the electorate, acting through the initiative process, to function as a more effective and mature part of local governance in the Los Angeles area.

Outline of the Commission's Recommendations

A number of proposed solutions have been advanced to remedy perceived problems with the initiative process. Initiative opponents—often those who have been initiative targets—have called for its abolition. Initiative supporters—often those who regularly circulate initiatives to support a cause or generate funding support—have strenuously argued for its inviolate retention without any changes.

The Commission believes a comprehensive package of immediate constitutional and statutory reforms to the local initiative process in California is necessary. In brief outline, the following should be implemented:

- Require the number of signatures to qualify an initiative to be based on the last gubernatorial vote in the jurisdiction;
- Limit the number of words in any ballot measure to 5,000;
- Identify major contributors on signature petitions, simplify verification procedures and explore the feasibility of alternative qualification methods which are less dependent on money;
- Require local legislative bodies to hold a public hearing on each initiative within 30 days after it has qualified for the ballot;
- Allow the proponent to amend the initiative after the public hearing—to correct errors or make improvements before it is placed on the ballot—so long as the amendments are consistent with the initiative's original "purposes and intent";
- Create a 60-day "cooling-off" period in which the proponent and local legislative body can negotiate compromise legislation;
- Allow the local legislative body to enact an amended initiative into law and the proponent to remove the original initiative from the ballot during the "cooling-off" period;
- Require the legislative body to vote on any initiative reaching the ballot, and require the clerk's office to publicize individual officeholder's votes in the ballot pamphlet or sample ballot;
- Require the submission of additional financial reports during the circulation and campaign periods;
- Require media advertisements and slate mailers to disclose the true identities of initiative sponsors and their principal funding sources;
- Encourage the federal government to reinstate the Federal Communications Commission's "fairness doctrine" as it applies to ballot measures and consider additional remedies to redress lopsided advertising campaigns;
- Require the clerk's office to include a new, short, summary ballot pamphlet in chart form as an insert in the ballot pamphlet or sample ballot;
- Improve the format, clarity, readability and design of the existing ballot pamphlet or sample ballot;
- Require all amendments *adding* language to a charter to pass by either a 60% vote in one election or a majority vote in two immediately consecutive elections;
- Allow the local legislative body to amend any initiative or ordinance after passage, so long as the amendments are approved by a 60% vote of the

council or board and are consistent with the initiative's original "purposes and intent";

- Encourage the courts to modernize First Amendment rulings to allow contribution limits, expenditure ceilings, independent expenditure limitations and other remedies to address the distorting impact of high-spending, one-sided campaigns; and

The background to these recommendations appears below under the heading, "Summary of Recommendations," along with cross-references to the text of the full report. A complete checklist of the Commission's recommendations appears in Appendix A to the full report. The "Statutory Language" to implement the proposed reforms appears in Appendix B.

The Initiative's Colorful History

In the 1800s, before direct democracy was enacted in California, only one kind of politics took place in California: "corrupt politics," according to a leading newspaper reporter of the time. The Southern Pacific Railroad, called "The Octopus," controlled almost everything in the state—the legislature, local governments, the courts, even the press.

In response to this rampant corruption, Los Angeles adopted the ballot initiative process in 1903. Responding to the leadership efforts of Dr. John Randolph Haynes, Los Angeles became the fourth city in the state to enact the initiative and referendum and the first in the nation to adopt the recall. Los Angeles' form of direct democracy subsequently became the model adopted by other localities.

Working with the Direct Legislation League of California, Haynes continued his crusade through the next decade and successfully helped the state adopt the ballot initiative in 1911. The statewide reform movement was aided by the corruption and bribery trials of several prominent labor leaders and corporate executives that began in 1906. With the election of Hiram Johnson as governor and a Progressive slate of state legislators, the three components of direct democracy—initiative, referendum and recall—were offered to the voters on the 1911 special election ballot, and they were approved overwhelmingly. Californians also amended the constitution to make these instruments of direct democracy available to all cities and counties in the state.

Ballot initiatives at the local level function according to an "indirect" initiative process. That is, once proponents gather the requisite number of signatures for ballot qualification, the initiative is first presented to the local legislative body for consideration. The city council or board of supervisors must either adopt the proposal exactly as it is written or submit the measure to the voters for approval at the next special or regular election.

How Local Initiatives Qualify for the Ballot Today

Before circulating an initiative petition for qualification signatures, the proponent must first submit the measure to the local jurisdiction's legal counsel for titling. The counsel writes a caption and brief summary of the measure (known as the "official title") which must be placed at the top of each initiative petition. When the official title is returned to the proponents, the petition circulation period begins. Proponents are further required to publish the caption and summary along with a notice of intention to circulate a petition in the local newspaper or three public places, or both.

Petition circulation periods vary in length depending on whether the initiatives are ordinances or charter amendments and whether they are circulated in general

law jurisdictions or charter communities. In most Los Angeles area cities, initiative proponents are given 180 days after titling to gather sufficient signatures to qualify an initiative ordinance to the ballot and 200 days after publication of the notice of intent to circulate to qualify an initiative charter amendment. Charter municipalities may set their own circulation time periods but most follow the state guidelines for general law communities.

Most local jurisdictions in the Los Angeles area have two different signature thresholds for ballot qualification: one for qualification of initiatives for a *special* election, and another for qualification for a *regular* election. Proponents in both charter and general law municipalities must collect signatures amounting to 10% of the city's registered voters to qualify an initiative for the next regularly scheduled election ballot. If proponents gather signatures amounting to 15% of the city's registered voters, the measure must be submitted to voters at a special election to be held not less than 88 days nor more than 103 days after ballot qualification. In charter cities, qualification of charter amendments also requires signatures of 15% of registered voters; initiative charter amendments may be placed on either a special election or general election ballot.

Qualification thresholds for county measures are based on percentages of the last gubernatorial vote in the county rather than total registered voters. A petition drive for an initiative ordinance to be placed on a regularly scheduled ballot as well as an initiative charter amendment must gather signatures amounting to 10% of the county's last gubernatorial vote or 20% of the last gubernatorial vote for a special election ballot.

Previously, procedures for amending municipal charters were reasonably consistent with amending county charters. Petitioners only had to collect signatures amounting to 15% of ballots cast for Governor in the last election in the city. (The qualification threshold for municipal initiative ordinances were still based on total registered voters.) In 1988, however, the state legislature, reportedly as an oversight, changed the signature base for municipal charter amendments to the more difficult standard of total registered voters. It is interesting to note, however, that the legislature has since defeated every effort to correct this alleged mistake.

All initiatives which qualify for the ballot require a simple majority of those voting on the measure to be enacted (unless the initiative falls under the restrictions of Proposition 13, in which case it requires a two-thirds vote). If two measures cover the same subject and some of their provisions are in conflict, the measure receiving the most votes prevails in its entirety, and none of the provisions of the other proposition, even though not in direct conflict, go into effect.

The Sweeping Impact of Ballot Initiatives in the Los Angeles Area

While initiatives at the state level have dealt with a myriad of policy issues, the primary focus of Los Angeles area initiatives has been land use and local development. The rapid rate of growth in the cities of Los Angeles County has driven much "ballot box planning." Between 1970 and 1980, the county's population increased 6% (from 7 million to 7.5 million). In the 1980s, however, the growth rate tripled to 18%, pushing the population to nearly 9 million in 1990. Simultaneously, the number of land-use initiatives in the cities of Los Angeles jumped from none in the 1970s to 22 in the 1980s. These initiatives have reshaped local planning procedures. Larry Orman, executive director of People for Open Space, comments, "[L]ong the exclusive province of city councils and boards of supervisors, land use planning and regulation has become 'community property'—a power to be exercised by both elected officials and citizens" (Land Use Policy, Jan. 1990). Ballot initiatives

have become "the main way to get big things done" in California, says Sacramento political consultant David Townsend (California Business, Feb. 1990).

While initiatives are prominent players in the local policymaking process, they have not grown as rapidly as statewide initiatives. Local initiatives are more common today than in previous decades, but their numbers are not unmanageable. Among the 86 cities within Los Angeles County, 34 initiatives have made it to local ballots from 1983 through 1990. In all of Los Angeles County in 1990, proponents circulated 12 local initiatives. This stands in contrast to 69 statewide initiative proposals circulated in the same year.

One of the more pronounced trends at both the state and local levels is the reluctance of voters to approve initiatives. From 1912 through 1990, voters approved only 32% of all initiatives on the state ballot. From 1983 through 1991—the Commission's database—voters approved only 35% of all local initiatives in the Los Angeles area.

Ballot Initiatives Are Exerting a Major Impact

Ballot initiatives have had a significant impact on the life in the Los Angeles area. Since 1983, voters have used the initiative process to:

- restrict commercial development in Los Angeles, Pasadena and San Gabriel;
- prevent coastal oil drilling in Pacific Palisades;
- regulate railroad right of way in Hermosa Beach;
- lease government facilities in San Fernando;
- reduce housing and parking density in Culver City, Paramount and South Pasadena;
- impose term limits on local officials in Cerritos; and
- regulate councilmembers' salaries in Westlake Village.

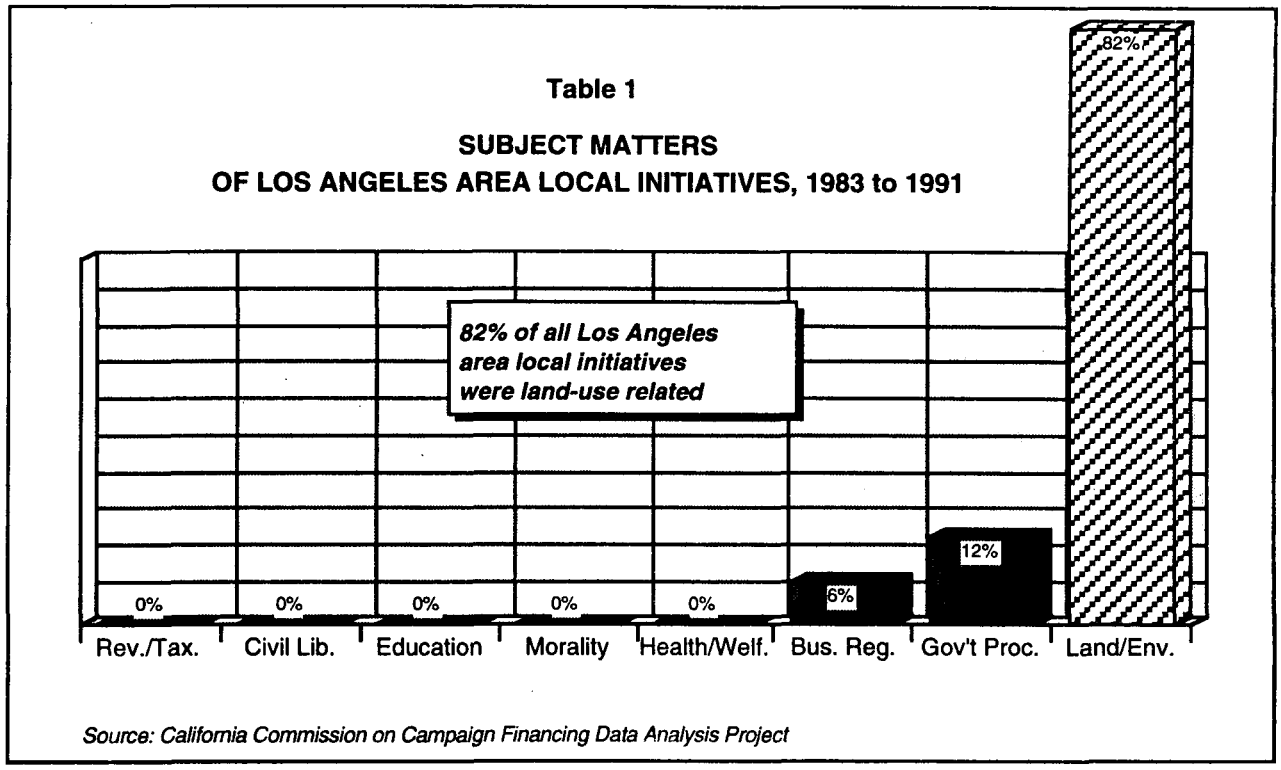
In recent years, Los Angeles area residents have used the initiative process most frequently to address questions of land use and local development. (See Table 1.) Complex local planning mechanisms have been superseded or seriously redirected toward greater citizen control. Building has been considerably curtailed in some communities, thus significantly impacting local economies.

Legislative Deadlock Has Been a Principal Cause of the Growth in Initiatives

Many initiatives can be traced to stalled legislative efforts and governmental inaction. Inattention by local governments to rapid commercial development and the communities' quality of life has ignited growth control initiatives in several cities in the Los Angeles area. In Pasadena, for example, the city government's inability to address simmering public resentment over increasing local commercial development prompted two growth control initiative drives over two years (Proposition G in 1988 and Proposition 2 in 1989). Supporters of the successful slow growth Proposition 2 wrote in the *Pasadena Star-News* that the coalition supporting the initiative (PRIDE) "was organized by citizens from all over the community who were fed up with the failure of city hall to face up to the issue of growth management."

Similarly, the number of initiatives at the state level has increased in part because of California's politically divided government—a Republican Governor and a Democratic-controlled legislature from 1967 to 1975 and from 1983 to the present. Democratic legislation vetoed by a Republican Governor has reappeared as a ballot initiative at the polls. Legislation proposed by Republican Governors but defeated in Democratic-controlled legislatures has also qualified for the ballot. Proponents find

it easier to obtain a simple majorities at the polls than both legislative and gubernatorial approval. Without a legislative forum for compromise, interest groups have increasingly battled each other via initiatives.



Easy Access to an Initiative Industry Has Also Stimulated the Use of Ballot Measures

The emergence of a support industry to qualify and campaign for initiatives has also increased the use of initiatives. For a hefty fee, political consultants plus a small army of paid circulators can "guarantee" the qualification of almost any initiative. For hundreds of thousands more, they will conduct a vigorous campaign for or against any initiative of their client's choosing. The easy availability of these powerful resources has encouraged many individuals and organizations to promote initiatives and bypass the local legislative process altogether.

Critical Issues in the Ballot Initiative Process

Ballot initiatives in the Los Angeles area and other communities suffer from a number of critical problems. These are particularly significant when they distort law and public policy for decades without the possibility of effective relief.

Inconsistent Qualification Procedures Generate Suspicion Among the Public

Recently, the California legislature amended the local initiative process by raising the signature threshold for qualification of municipal charter amendments. The previous threshold had been signatures amounting to 15% of the *last gubernatorial vote* in the city. The legislature raised the threshold to 15% of *total registered voters*—a much larger number which was consistent with the qualification required for initiative municipal ordinances (also based on registered voters) but inconsistent with that required for state initiatives, initiative county charter amendments and initiative county ordinances (all based on the last gubernatorial vote). Coupled with other incongruities in the local initiative process—such as different qualification time periods and petition formats between

initiative charter amendments and initiative ordinances—many citizens have become puzzled, angered and suspicious of the legislature's true intent.

Poorly Drafted Initiatives Reap Confusion Among Voters and Courts

Many problems with initiatives stem from poor initial drafting. Initiatives are too often ambiguous, vague, overreaching, under-inclusive, contradictory and even unconstitutional. These defects cause unexpected interpretations, unforeseen consequences, misleading electoral campaigns, litigation, legislative inaction, judicial invalidation and voter confusion and resentment.

Proposition 13, for example, the 1978 property tax measure, was so poorly drafted that UCLA law professor Donald Hagman charged its authors should be arrested for "drunken drafting" (*Los Angeles Times,* Aug. 11, 1982). The measure contained over 40 "ambiguities" (according to the Governor's office), spawned dozens of court cases and stimulated 16 clarifying ballot measures. Proposition 8, the 1982 "Victims' Bill of Rights," lacked such "care in drafting" and was "so loosely worded" as to "defy clear interpretation" (Assembly Committee on Criminal Justice, Analysis of the Victims' Bill of Rights, 1982).

In some cases, complicated initiative wording has confused voters and caused them to vote "no" instead of "yes" at the polls, defeating measures that could have won. Poor drafting has also caused invalidation by the courts on statutory or constitutional grounds.

Initiative Texts Are Growing Too Long and Too Complex

Local initiatives in the Los Angeles area have not yet emulated the trend of state ballot measures toward becoming excessively wordy and long. Most local initiatives to date have remained reasonable in length. Nevertheless, there have been increasing instances of local initiatives exceeding 5,000 words in length.

Ballot measures are increasingly inflated because proponents fear legislative tampering and try to close every loophole. Some initiatives add provisions (such as the state initiative protecting specific park lands, for example) in exchange for pledges of financial support. Not only do excessively long initiatives have a greater chance of rejection at the polls, but they damage voter confidence in the initiative process and jeopardize the underlying integrity of the system itself. (See generally Chapter 3, "Initiative Drafting and Amendability.")

The Initiative Process Is Inflexible and Prevents Proponents From Correcting Errors Once Circulation Begins

Unlike many other states, California requires no formal review of the wording, substance, legality or constitutionality of ballot initiatives at the state or local levels before signature circulation begins. Proponents draft an initiative without any meaningful scrutiny. Proponents cannot even correct their own mistakes or oversights once circulation begins. Once circulation begins, for tactical reasons proponents are thus forced to deny knowledge of errors or omissions they have discovered. (See generally Chapter 3, "Initiative Drafting and Amendability."

Even After Enactment, California Law Blocks Amendments

California is the only state in the nation which prohibits local legislative bodies from amending initiatives without the proponent's permission. Unless an initiative specifically allows for amendments, only another ballot measure placed on the ballot by the body or by petition circulation and approved by the voters can correct errors or address new concerns—a time consuming and costly procedure. Many initiatives in the state—and some local initiatives—allow for legislative bodies to make amendments to initiative legislation without subsequent voter approval.

At the state level, a 1922 statewide initiative allowing chiropractors to practice in California, for example, did not allow legislative amendments. Several technical changes to the law have required voters to consider seven different ballot measures in the past 70 years. By contrast, all other states allow their legislatures to amend initiatives after enactment. Some require super-majority votes (up to three-fourths) of their legislatures; some allow simple majority votes after a several-year waiting period; and some place no limit on legislative amendments at all.

In recent years, most statewide initiatives in California have allowed the legislature to make amendments, provided that at least two-thirds of the legislature approves them and the amendments further the "purposes and intent" of the measure. Of the 55 measures between 1976 and 1990 that qualified for the ballot, 38 (or 61%) had language authorizing amendments, and 13 of the 14 statutory initiatives on the 1990 ballots allowed legislative amendments. Many proponents permit legislative amendments because they know that all initiatives sooner or later will need modification, no matter how well drafted.

The California legislature has generally been respectful of initiatives, not amending them without the tacit approval of proponents. The 1974 Political Reform Act (Proposition 9), for example, permitted legislative amendments, and the legislature has since amended it 150 times without significant public objection. However, one recent legislative amendment to Proposition 103 (automobile insurance) is being challenged by its proponents, who claim that the legislature's exclusion of sureties from the measure does not further its "purposes and intent." (See generally Chapter 3, "Initiative Drafting and Amendability.")

In Many Cities Qualification by Signature Petition Is Too Easy With Money and Too Difficult Without

Every jurisdiction with an initiative process requires proponents to gather enough signatures to demonstrate the measure's popular support. The architects of the initiative process assumed that volunteers and grassroots organizations would circulate petitions, explain measures to potential signatories and obtain signatures backed by thoughtful consent. In the Los Angeles area's smaller cities, petition circulation has remained largely volunteer based. In larger cities, however, petition circulation has become so professionalized and dependent on financial resources that it is difficult to defend it as a true test of popular support. In the city of Los Angeles, for example, where virtually any initiative can be qualified if the backer has enough money to pay for paid circulators, signature collection by volunteers has become an antiquated method of qualification. Although a few states have tried to prohibit the use of paid signature gatherers, the United States Supreme Court has deemed these efforts unconstitutional.

Although the overall median cost of $2,300 to qualify a local initiative pales in comparison to the expense of qualifying a statewide initiative, several local initiative drives spent far more to earn a place on the ballot. The land zoning initiative in Claremont (Proposition A) cost $77,000 to qualify. A growth limitation measure in Los Angeles (Proposition U) made it to the ballot at a cost of $248,000. And proponents of the coastal oil drilling measure in Los Angeles spent a whopping $1.8 million during the qualification period.

In the Los Angeles area's smaller cities, it is still possible to qualify a local initiative without spending vast financial resources. Proponents of several local initiatives placed their measures on the ballot at only the cost of printing petitions. For example, nothing was spent beyond printing petitions to qualify the controversial Mobil oil refinery initiative in Torrance (Proposition A), a view preservation initiative in Rancho Palos Verdes (Proposition L) and a building height

limit measure in Culver City (Proposition 1). Money may guarantee ballot access for some, but as long as the ballot also remains accessible to dedicated volunteer organizations, the initiative process will continue to be accessible to lesser funded groups as well.

One-Sided and Deceptive Media Campaigns Often Distort Election Outcomes

Voters have fewer sources of objective information available to them in initiative campaigns. Initiatives lack the voting "cues" associated with political candidates—such as personality traits, incumbents' records or candidates' personal histories. Initiatives are often more difficult to comprehend than candidates.

Initiative voters are particularly dependent on paid advertising. The tendency to use misleading advertising is exacerbated by unbalanced campaign spending. Many campaigns use deceptive advertising simply because they can get away with it—the other side is unable to finance adequate rebuttals.

In 53% of the statewide cases studied in California from 1960 to 1986, public opinion reversed from "yes" before election day to "no" on election day. In only three of 38 cases did the "no" side decline by the election. Los Angeles area initiative campaigns have witnessed similar trends. Long ballots and voter skepticism also contribute to initiative defeats.

Slate mailers are a potent source of voter information in local campaigns. But instead of allowing like-minded groups to inform voters of initiatives that are in harmony with their pre-existing political philosophy, slate mailers "sell" endorsements to the highest bidder or give free endorsements to popular candidates with or without their knowledge in order to reap a benefit from their association. One "Democratic Voter Guide," for example, endorsed Republican candidates who were prepared to pay more for their inclusion than their Democratic opponents. Many mailers mislead voters who believe they represent official party endorsements.

Endorsements by political and community leaders have a considerable impact on election outcomes—particularly when initiatives are difficult to understand, objective information is inadequate or choices are complicated by unbalanced campaign advertising. Newspaper editorial endorsements, however, appear to have less effect. They are persuasive when the voters have few other sources of information but ineffective on controversial measures in which the voters are keenly interested.

The broadcast news media are, unfortunately, a minor source of voter information especially in local campaigns. Broadcasters believe that a thorough substantive discussion of most measures is not "salable" to a public thought to be more interested in "lighter" stories, and ballot measures are not placed high on the list of newsworthy stories. A recent newspaper practice of using "truth boxes" to analyze the accuracy of television campaign advertisements may begin to check misleading advertisements. (See generally Chapter 6, "News Coverage and Paid Advertising.")

Ballot Pamphlets Are Important Sources of Voter Information but Fail to Communicate That Information Concisely

California law requires every jurisdiction holding an election to prepare and distribute a ballot pamphlet or sample ballot containing election information. Most general law cities in Greater Los Angeles issue a standard sample ballot written in complex, hard-to-read language and short on graphics or other visual aids that help highlight issues.

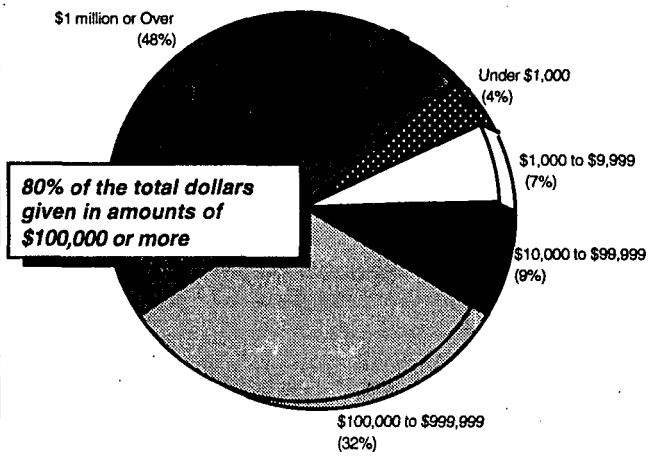
Local ballot pamphlets or sample ballots typically consist of the official caption and summary of each initiative and pro and con arguments. Actual texts are not included in most pamphlets. Frequently, even fiscal impact analyses and lists of endorsements are not included.

Large Campaign Contributions Dominate Elections

Large contributions and expenditures, once primarily characteristic of statewide initiative contests, now dominate local ballot measure campaigns in Los Angeles area cities. Approximately 80% of all the money given to local ballot measure contests was contributed in amounts $100,000 or more. Nearly half (48%) of all local initiative money came in amounts $1 million or more. (See Table 2.)

Table 2

THE DOMINANCE OF LARGE CONTRIBUTIONS IN LOS ANGELES AREA LOCAL INITIATIVE CAMPAIGNS



Source: California Commission on Campaign Financing Data Analysis Project (data for 1983 to 1991)

Los Angeles area local initiative contests also host some of the highest spending per vote figures anywhere in the state. One local initiative campaign in Claremont (pro-development Proposition A in 1986) spent $139 per vote and lost; another in Azusa spent $105 per vote promoting two unsuccessful initiatives (land use Propositions A and B in 1987); and in Torrance, Mobil Oil spent $53 per vote to defeat an initiative which would have curtailed the use of a hazardous chemical at Mobil's local refinery. By comparison, the highest spending per vote figure found by the Commission in statewide initiative contests was $16 (spent in the $37 million insurance industry-backed campaign for "No-Fault" Proposition 104 in 1988).

The Commission's Data Analysis Project analyzed over 4,000 individual contribution and expenditure records from 40 measures in 20 cities amounting to over $30 million from the years 1983 to 1991. The cities studied ranged from the smallest in population, La Canada-Flintridge (20,166), to the largest, Los Angeles (3.3 million). In addition to high contribution and expenditure patterns, the study also revealed additional trends:

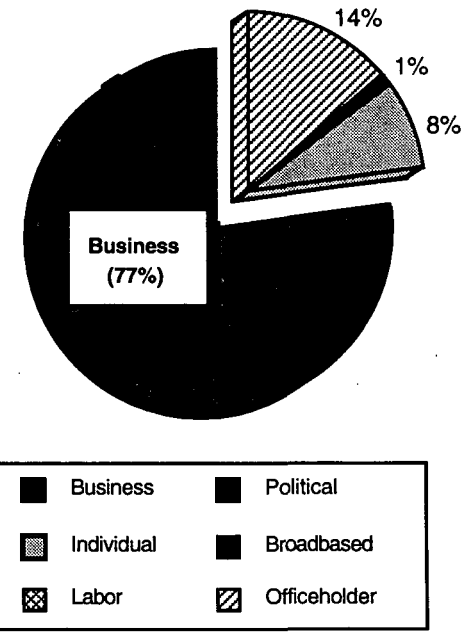
- Ballot measure committees now often spend more money than do local candidates. In the city of Los Angeles, for example, four initiative campaigns spent more money over a two-year period ($12.5 million from 1986 to 1988) than 50 candidates spent running in city council races over a six-year period ($10.4 million from 1979 to 1985). Even in smaller cities with quieter and less expensive candidate elections, initiatives tend to spur uncharacteristically large campaign contributions and spending.
- Local initiatives are frequently qualified by a single contributor. Hermosa Beach local activist Parker R. Herriott, for example, single-handedly funded and qualified two initiatives in two years (Proposition C in 1989 and Proposition G in 1990) advocating development restrictions on a beachside

vacant lot. The median number of contributors to initiative qualification drives in Los Angeles area cities surveyed was just *three*. Since 1983, only the city of Los Angeles (with a signature requirement that now exceeds 123,000) has witnessed more than 100 contributors to a single local initiative qualification effort.

- Business contributions dominate Los Angeles area local initiative campaigns. Corporate funding of local initiative campaigns has apparently become a part of the "cost of doing business" in the Los Angeles area. (See Table 3.) Indeed, the percentage of total business contributions (77%) to local ballot measure campaigns exceeded the level of business contributions to Los Angeles area local candidate races (58%). By contrast, officeholders gave 14%, individuals gave 8%, broadbased organizations 1% and political parties less than 1%. Labor also contributed less than 1% of the total dollars raised.

Table 3

SOURCES OF CONTRIBUTIONS TO LOCAL INITIATIVE CAMPAIGNS IN THE LOS ANGELES AREA



Source: California Commission on Campaign Financing Data Analysis Project (data for 1982 to 1991)

- Businesses spend enormous amounts when they perceive their interests to be threatened. Occidental Petroleum contributed $8 million to the campaign against Los Angeles anti-drilling Proposition O and in favor of pro-drilling Proposition P in 1988, for example, and Mobil Oil waged a successful $740,000 campaign against a 1991 Torrance initiative which would have regulated their refinery's use of a hazardous chemical.
- Lop-sided spending imbalances in some Los Angeles area initiative campaigns are severe. In several local contests, spending differentials of over 5-to-1 occurred. In five campaigns (where there was spending reported on both sides), spending imbalances of over 30-to-1 occurred. One Burbank ballot measure contest (growth limits Proposition A in 1991) witnessed a spending gap of 130-to-1.
- Campaign tactics differ significantly between small and larger cities. In smaller cities, grassroots volunteers typically run local initiative campaigns. Small campaign treasuries are generally devoted to pamphlets (for hand-outs) and in some cases newspaper advertisements and outdoor signs. Campaigns in small to medium-sized cities spent the largest percentage of their voter contact dollars (61%) on campaign pamphlets and direct mail. In the area's largest city, Los Angeles, broadcast advertising has become the dominate focus of campaign strategies, amounting to three-fourths (75%) of all campaign period voter contact dollars. The Los Angeles City figure closely resembles statewide initiative patterns, where statewide

initiative campaigns in 1990 spent 76% of all campaign period voter contact expenditures on broadcast advertising.

- Most attempts to regulate the amounts of money given to, or spent by, initiative campaigns have been voided by the courts as unconstitutional abridgments of freedom of speech. Until the courts acknowledge the "corrosive and distorting effects of immense aggregations of wealth," *Austin v. Michigan,* 110 S. Ct. 1391 (1990), on the qualification and electoral phases of initiative campaigns and permit comprehensive campaign finance reforms, it will be difficult to address existing abuses. (For a full discussion of the impact of money on initiative campaigns, see Chapter 8, "The Influence of Money," and Appendix E, "Data Analysis Project.")

Court Decisions Invalidate Even Popularly Enacted Initiatives

Opponents of a successful measure often ask the courts to invalidate initiatives on constitutional or statutory grounds. The use of litigation, to paraphrase the German military tactician Von Clausewitz, is the continuation of political warfare against the initiative by other means. The courts have generally shown considerable deference to the initiative process. Three recent rulings, however, may suggest a greater willingness by the courts to invalidate popularly enacted initiatives.

Invoking the "single-subject" rule, a state constitutional doctrine which limits initiatives to one subject, an appellate court in 1991 struck down state Proposition 105 on the ground that it covered too many subjects—disclosures for household toxic products, seniors' nursing homes, initiative campaigns and companies investing in South Africa. The court invoked the traditional definition of "single subject" (all the provisions of a measure are "reasonably germane" to each other). Although some supreme court justices and legal scholars have called for a stricter definition of the single-subject rule—one, presumably, that would nullify a greater number of initiatives—the appellate court ruling may instead suggest that the courts will apply the existing test more rigorously. (For a detailed discussion of the role of the courts, see Chapter 9, "Judicial Review.")

The Need for Retention and Improvement of the Ballot Initiative in the Los Angeles Area

Californians cherish the initiative process. In the Los Angeles area, they now turn to the local initiative to address many problems—without first seeking a legislative solution.

The Government Problems That Triggered the Creation of the Initiative Process Still Exist

In a perfect or near-perfect system of representative democracy, ballot initiatives might be unnecessary. Local officials would be closely attuned to the public's needs and desires; voters would be well informed on the issues of the day; and representatives would be open to arguments on their merits. Local government would respond appropriately to public needs, temper rashness with deliberation and accommodate legitimate desires for change without the necessity of direct popular votes through ballot initiatives.

But such a legislative system does not exist today in Los Angeles area local governments—if it ever did. The financial demands of elected office force candidates and officeholders to raise ever-increasing sums of money from special interest contributors, leaving them susceptible to pressure and influence. The desire of incumbents for reelection has made them reluctant to develop bold new policy initiatives. And the complexity of governmental issues, together with the need of

many officials to shape or "control the spin" of media information, has left many voters without the ability to review critically the records of officeholders at election time.

The root causes of these problems have not disappeared—and in the Commission's view some have even intensified. For a detailed discussion of one such problem, see an earlier Commission report, *Money and Politics in the Gold State: Financing California's Local Elections* (1989). Until these problems are resolved, the need for the initiative process will remain. (See generally Chapter 2, "Impact of Ballot Initiatives.")

The Public Supports Retention and Improvement of the Initiative Process

Californians clearly wish to keep their right to decide public policy through the initiative process, although they acknowledge the need for change. Today, a strong two-thirds (66%) of the voting public hold a favorable view of the initiative process.

At the same time, 72% of voters agree that the initiative process has "gotten out of control." Voters complain about misleading political advertising, the dominance of moneyed special interests and the excessive complexity of ballot measures. Some want greater disclosure of financial contributors in initiative advertising. Others want contribution limits on donations to campaigns. (See generally Chapter 2, "Impact of Ballot Initiatives.") The time is clearly ripe to consider thoughtful and responsible modifications to the local initiative process in the Los Angeles area.

The Commission Urges Comprehensive Improvements to the Initiative Process

At the outset of the Commission's deliberations, some members were convinced that the initiative process had to be preserved as an essential part of California's democratic tradition and a necessary check against legislative inaction. Others were concerned that the initiative process had caused considerable harm and was damaging the more responsible and representative branches of government.

The Commission therefore initiated a detailed examination of the initiative process and all options for change. The Commission also examined the experiences of other states to determine whether improvements instituted elsewhere could be adopted here.

After two years of study, the Commission has unanimously concluded that the initiative process in the Los Angeles area should be retained but significantly modernized. Although the ballot initiative system has become significantly outmoded, its elimination is neither feasible nor desirable. The public would quickly reject the proposed elimination of a "right" which it now views as fundamental. And the Commission could not recommend the abandonment of a check on potential abuses of governmental power while the need for that safeguard remains. The Commission therefore believes it is necessary to integrate the initiative process with other branches of local government.

Nearly 90 years have passed since the city of Los Angeles first adopted the initiative process. During this time, Californians have seen the emergence of radio and television advertising, paid petition circulators, demographically targeted slate mailers, computers, professional campaign managers, modern fundraising techniques and a growing industry of specialists who will write, circulate, qualify and campaign for any initiative—if paid a suitably high price. Comprehensive reforms are necessary to update the initiative process and allow it to deal with the political exigencies of a more complex age.

Summary of the Commission's Recommendations

In formulating its recommendations, the Commission and its staff interviewed initiative proponents, circulators, campaign consultants, business leaders, academics, legislators and many other expert observers of the initiative process both inside and outside of California. The Commission carefully researched the history of local ballot initiatives and analyzed the laws of the District of Columbia and the 23 other states which utilize the initiative process. The Commission created a unique computer data base of 40 local ballot measures in 20 cities in the Los Angeles area. And it researched all the available scholarly, legal and current literature analyzing the initiative process.

The Commission believes that significant, long-term and sweeping improvements must be made to the Los Angeles area's local initiative process. The full package of Commission recommendations involves modifications to the processes of initiative drafting, circulation, public and legislative review, voting, dissemination of voter information, campaign financing and judicial review. Although some of the Commission's recommendations can be adopted individually, the Commission believes that true reform will require their adoption as an integrated package. (A detailed discussion of the recommendations appears in Chapters 3 — 9, and a "Summary of Recommendations" appears in Appendix A.)

(1) Qualification Procedures Should Be Standardized

Although recent legislative changes have made the qualification of municipal charter amendments consistent with the qualification of municipal ordinances (based on a percentage of *registered* voters), the change was done in a mischievous manner and under an aura of anti-initiative sentiment. Meanwhile, the qualification of county charter amendments and ordinances remains based on a percentage of the previous vote for governor rather than the tougher standard of registered voters. State law should be standardized so that municipal charter amendments and ordinances are also subject to a qualification threshold based on a percentage of the previous vote for governor. Similarly, circulation time periods and petition formats should be made the same for ordinances and charter amendments. This would alleviate fears among citizens that the legislature is attempting to derail their right of initiative and at the same time provide a comprehensible and consistent set of electoral procedures.

(2) Initiatives Should Be Limited to 5,000 Words

The Commission recommends that a reasonable limit of no more than 5,000 words of new language be placed on all ballot propositions—referred measures, initiatives and charter amendments. Strikeout language and existing law repeated in the texts of initiatives would not be included in the limit. A 5,000-word limit would encourage proponents to limit their causes and describe them in simpler language. Five thousand words are sufficient to address any public issue. If not, initiatives should be broken into separate measures that are more easily understood by the voting public.

In the past, local initiatives have attempted to restrict commercial development (Proposition A, Burbank), rezone land use plans (Proposition E, Manhattan Beach) and protect the coastline from oil drilling (Proposition O, Los Angeles)—all in less than 5,000 words. State initiatives have reduced property taxes (Proposition 13), controlled government spending (Proposition 24), regulated the insurance industry (Proposition 103), created "victims' rights" (Proposition 8), regulated toxic materials (Proposition 65) and limited campaign contributions (Proposition 73)—all in under 5,000 words.

A 5,000-word limit is admittedly not a perfect solution to excessively long and overly complex initiatives. Proponents may not be able to address every possible detail, and some matters may inevitably be left for future legislative action or judicial interpretation. Yet word limits, blunt as they may be, have been used successfully in other areas without affecting the substance of ideas communicated. State and federal appellate courts, including the U.S. Supreme Court, limit the length of legal briefs submitted to them, despite the complexity of the issues addressed. A word limit would encourage more straightforward and comprehensible ballot measures that are less likely to contain hidden agendas and more likely to be understandable to the average voter. (For further discussion, see Chapter 3, "Initiative Drafting and Amendability.")

(3) The Local Legislative Body Should Hold a Public Hearing on Each Initiative Qualified for the Ballot

The local governing body should be required to conduct a public hearing on each initiative within 30 days after it has qualified for the ballot. Under the Commission's proposals, proponents will be able to make limited modifications to their initiative immediately after the public hearing. The legislative body will be able to incorporate more sweeping changes in the initiative, so long as the changes are accepted by the proponent. This potential for amendability will make the hearing a critical component in an improved initiative process. (For further discussion, see Chapter 3, "Initiative Drafting and Amendability.")

(4) Proponents Should Be Allowed to Amend Their Initiatives Following the Hearing

Within four days after the public hearing, the proponent should be allowed to make amendments to the text of the initiative, so long as those changes are consistent with the initiative's original "purposes and intent." Amendments must be submitted in writing to the city attorney or county counsel, who then must issue a written determination within seven days stating whether the amendments comply with the initiative's original "purposes and intent." Proponents have two days to modify their amendments to the city attorney or county counsel's satisfaction or seek final review in the superior court.

Proponent amendability is critical to any reform effort. Proponent amendability will allow proponents to correct errors or omissions in the texts of their initiatives before they are placed on the ballot and will encourage the local legislative body to take its own hearings seriously. Most importantly, it will remove defects from initiatives that might otherwise become enshrined in law, and it will give proponents the same flexibility and opportunity to improve the texts of their measures as representatives have over legislation. Proponent amendability thus helps the initiative process become a more responsible branch of government.

The principal objection to proponent amendability is that it allows changes to the wording of the initiative text actually signed by petition qualifiers. Yet virtually no signatory reads the text of an initiative at the time of its signing. Instead, they endorse the general essence of a ballot proposal. Review by the city attorney or county counsel and the courts will provide safeguards to ensure that amendments serve the initiative's original "purposes and intent." (For further discussion of this recommendation, see Chapter 3, "Initiative Drafting and Amendability.")

(5) The Proponent and the Local Legislative Body Should Be Given a Cooling-Off Period to Negotiate a Compromise, Obviating the Need for an Initiative Campaign

Following the public hearing and any proponent amendments, the proponent and the local legislative body are encouraged to negotiate with each other and agree upon a substitute measure encompassing changes in the proposal which are consistent with or beyond its original "purposes and intent." If the legislative body enacts a modified version of the initiative into law which is acceptable to proponents and signed by the Mayor (if required), the proponent will withdraw the initiative from the ballot. Or, with the consent of the proponent, the legislative body can place on the ballot an amended version of the original initiative which could include modifications beyond the initiative's original "purposes and intent." If the legislative body fails to enact any acceptable ordinance at all, or enacts a version of the initiative that is unsatisfactory to the proponent, then the proponent can place the initiative in its original or proponent-amended form on the next ballot.

Under the Commission's proposal, both proponents and elected representatives have incentives to negotiate an acceptable compromise. Proponents can avoid a costly election which they might lose; the legislative body can avoid a measure which may seem extreme or restrictive of legislative discretion. At each step in the negotiations, proponents have complete control over changes to the initiative. Thus, the Commission's proposal will merge the legislative and initiative process for a brief period of give-and-take. It will give proponents and public officials the opportunity to improve the drafting and quality of initiatives. (For further discussion, see Chapter 3, "Initiative Drafting and Amendability.")

(6) The Local Legislative Body Should Be Required to Vote on All Ballot Measures Qualified for the Ballot

After the city or county clerk has certified an initiative as qualified for the ballot, the city council or board is given 60 days in which to conduct its hearing and negotiate with the proponent. If a compromise is not reached within this 60-day period, the council or board is required to take a final roll call vote on the measure in its finalized form before it is placed on the ballot. The clerk's office must place a chart in the voter's ballot pamphlet or sample ballot to indicate how each official voted on each ballot measure.

A mandatory vote will encourage officials to take their responsibilities seriously and negotiate with proponents in good faith. Public officials will not find it easy to abstain from voting or "duck" their obligation to take a position on the issues. A mandatory vote will inform voters of their representatives' positions. (For further discussion of this proposal, see Chapter 3, "Initiative Drafting and Amendability.")

(7) The Local Legislative Body Should Be Allowed to Amend Any Initiative After Enactment by a Super-Majority Vote of 60% (or by 80% If the Body Consists of Five Members)

California is the only state which prevents its legislative bodies from amending an initiative after enactment, unless the measure itself permits such amendments. The Commission believes that legislative bodies should be able to amend initiatives to correct errors, resolve ambiguities and address unforeseen contingencies. At the same time, the body should not be given carte blanche to repeal or drastically alter initiatives. The Commission therefore recommends that the council or board be allowed to amend any initiative after its enactment, so long as the amendment is approved by a 60% vote (or 80% if the council or board consists of five members) and is consistent with the measure's original "purposes and intent." Any proposed

amendment must be in print at least 12 days before final passage to permit public inspection.

The principal advantage of this recommendation is that it adds flexibility to the law and permits the people's elected representatives to respond to changing conditions. The principal objection comes from proponents who mistrust the legislative body's willingness to gut or undermine their initiatives. The Commission believes that the two safeguards attached to this proposal—the 60% super-majority and the "purposes and intent" requirement—will adequately prevent legislative abuse. (For further discussion, see Chapter 3, "Initiative Drafting and Amendability.")

(8) Some Circulation and Qualification Requirements Should Be Eased, Others Tightened

The principal problem plaguing the initiative circulation and qualification process is that any proponent can qualify virtually any initiative by hiring paid circulators. The screening mechanism designed by the drafters of the initiative process can now be circumvented by anyone with sufficient financial resources. Unfortunately, restrictions on the use of paid circulators have been invalidated by the U.S. Supreme Court on First Amendment grounds. The Commission nonetheless believes that important improvements can be made to the circulation process.

(a) Notice of Intent. Initiative proponents currently are required to publish in a newspaper or post in three places a "Notice of Intention" that an initiative petition is about to be circulated. This requirement does little to contribute to voter information and instead creates another bureaucratic barrier to the initiative process. The "Notice of Intention" requirement should be eliminated.

(b) Disclosures. The Commission recommends that signature petitions prominently identify at their top and in bold type the identities of the measure's two largest contributors. Clearer and more prominent financial disclosures will provide new and important information to potential signatories.

(c) Additional Statements. Proponents should file one additional disclosure statement listing contributions received and expenditures made during the circulation period.

(d) Later Amendments. Petitions should also disclose that the proponent may later amend the initiative so long as the amendments are consistent with the initiative's "purposes and intent."

(e) Signature Verification. Random sample signature verification procedures by the localities should be simplified. Initiatives should qualify if the random sample verification of signatures indicates that proponents have gathered at least 105% (currently 110%) of the valid signatures needed for qualification. No jurisdictions should be required to verify more than 1,500 signatures. Statistical probability sampling techniques indicate that a 1,500 sample size is more than adequate to provide accuracy. A reduced sample size will ease the financial burden on large communities and speed up the verification process.

(f) Alternative Methods. Finally, the Commission recommends that careful further study and public debate should be devoted to alternatives to the current signature gathering method for qualifying initiatives. Methods less dependent on financial wealth should be considered, such as the use of public opinion polls. (For further discussion of initiative qualification techniques, see Chapter 4, "Circulation and Qualification.")

(9) Local Charters Should Be Made Harder to Amend

California allows local citizens to amend both ordinances and charters by initiative. Charter amendments can be used as part of a counter initiative strategy to undercut competing ordinance initiatives. The Commission believes that initiative proponents should be encouraged to circulate ordinance initiatives, not charter amendments. It recommends that any charter amendment proposing to add new language to the charter only be enacted with the approval of 60% of those voting on the issue at any one election or, alternatively, with the approval of a simple majority in two successive elections. Deletions from the charter should require only a simple majority vote in one election.

If a charter amendment enjoys strong support (60% or more), it can be adopted immediately. If it enjoys only majority support, the burden of ratification at two successive elections will preserve the wishes of the majority, encourage a more deliberative process and discourage those who seek only to block competing initiatives. The Commission's proposal will also encourage proponents to draft ordinance initiatives which can be subsequently amended by the local legislative body. (See Chapter 5, "Voting Requirements.")

(10) Ad Hoc Super-Majority Votes Should Be Discouraged

The Commission recommends that no initiative or charter amendment should be allowed to require future ad hoc super-majority votes for passage unless the measure itself receives at least the same vote as its provisions dictate for future elections. This proposal would block such efforts as statewide Proposition 136 in the November 1990 election, which sought to require a two-thirds vote for all future state special tax increases. Proposition 136 could have been enacted by a bare majority vote, yet it would have disenfranchised future majorities of up to 66%. Simple majorities should not be permitted to disenfranchise larger future majorities. (For further discussion, see Chapter 5, "Voting Requirements.")

(11) Major Campaign Contributors Should Be Disclosed in Media Advertisements

The integrity of the initiative process depends substantially on the quality and quantity of the information on which the voters base their choices. Because paid broadcast advertising is a dominant sources of voter information, the Commission believes the disclosures in these communications need to be significantly improved.

The Commission recommends that each advertisement for or against an initiative should identify the campaign's two top funding sources. The identifications should disclose the industry affiliation behind the funding source—for example, "paid for by the tobacco industry." Late contribution reports should cumulate all contributions by individual contributors to facilitate easy identification. (See Chapter 6, "News Coverage and Paid Advertising.")

(12) Slate Mail Disclosures Should Be Improved

The Commission also recommends that slate mail disclosures be improved to identify more clearly the nature of the mailing, its true sponsors and whether the candidates and ballot measure committees it promotes paid for and authorized the endorsement. This recommendation will eliminate the current practice of for-profit campaign management firms identifying themselves on slate mailers with fictitious and deceptive titles. (For further discussion, see Chapter 6, "News Coverage and Paid Advertising.")

(13) The FCC's "Fairness Doctrine" Should Be Reinstated for Ballot Measures

The Federal Communications Commission recently held that its "fairness doctrine" would no longer require broadcast stations to cover both sides of ballot measure campaigns. The Commission is concerned that this repeal will result in one-sided discussions of ballot measures, allowing the side with the most money to dominate the debate. It therefore encourages the federal government to reinstate the "fairness doctrine" as it applies to ballot measures. The Commission also encourages the broadcast media voluntarily to apply the "fairness doctrine" to paid initiative advertising. (See Chapter 6, "News Coverage and Paid Advertising.")

(14) A New Summary Pamphlet Should Be Inserted in the Local Ballot Pamphlet or Sample Ballot

California voters deem the voter pamphlet as one of their most important sources of independent information. But they also report that it is too long, complex and time-consuming to read. The Commission recommends a number of improvements.

Of greatest importance, the city or county should prepare, in addition to the full-length voters' pamphlet, a shortened version of the pamphlet in chart form, similar to that printed in many newspapers, and insert it into the regular pamphlet. The abbreviated voters' pamphlet would contain a brief summary of the propositions, the key arguments for and against the measure, a list of major contributors to both sides, a list of leading supporters and opponents and the vote on the measure by party affiliation. The summary would enable voters to grasp the essential issues quickly. (See Chapter 7, "The Ballot Pamphlet.")

(15) The Existing Voters' Pamphlet or Sample Ballot Should Be Improved

The Commission recommends a number of changes to the ballot pamphlet or sample ballot.

(a) Better Information. Information in the pamphlet should be improved. Conflicting ballot initiatives should be grouped together in the pamphlet and on the ballot to allow voters to compare them more easily. The city attorney or county counsel should place an advisory notice in ballot pamphlets and on ballots indicating that only the measure receiving the most votes may go into effect. Proponents and opponents of each measure should be given up to one-half of a page to list the individuals and organizations endorsing their cause. Individual representative's votes on all ballot measures should be listed to inform voters of their elected representatives' views.

(b) Improved Design. The entire ballot pamphlet or sample ballot should be graphically redesigned to increase its readability. Color, graphics and charts should be used as in other states. (See Chapter 7, "The Ballot Pamphlet.")

(16) The Courts Should Be Encouraged to Modernize First Amendment Rulings Regarding Campaign Finance Restrictions

Campaign financing issues are among the most difficult and troubling in the entire study of Los Angeles area ballot initiatives. On the one hand, the Commission's research has revealed that large contributions and high spending can directly affect many aspects of the initiative process. With enough money, any individual or organization can single-handedly place an initiative on the ballot, and with massive amounts of money anyone can purchase enough "negative" television advertising virtually to doom any initiative to defeat. The Commission remains deeply troubled by a system of direct democracy which places vital issues before the public for a vote and then significantly determines the outcome on the basis of money.

On the other hand, most of the remedies explored by the Commission are problematical. A high contribution limit, for example, might prevent single individuals or corporations from buying their way onto the ballot and require them to seek smaller donations from a wider spectrum of supporters. Expenditure ceilings might reduce the pressures to raise huge contributions and diminish the disparities between well-funded and low-funded interests. But large contributors might circumvent these remedies through independent expenditure groups—spending their money directly on ballot qualification and initiative campaigns without funneling it through ballot measure committees to which limitations might apply. A comprehensive approach, therefore, including contribution limits, expenditure ceilings and restrictions on independent expenditures, might constitute the best and only workable "policy solution" in the long run.

In early cases, however, the U.S. Supreme Court ruled that contributions and expenditures to ballot measure committees cannot be limited without a showing of "corruption" but, unlike political candidates, ballot initiatives cannot be "corrupted." The courts have thus invalidated both limits on contributions to and expenditures by ballot measure committees. More recently, in the area of candidate campaigns, the Supreme Court has suggested a willingness to reconsider "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." See *Austin v. Michigan,* 110 S. Ct. 1391, 1397 (1990). The Commission believes the Court should seriously consider extending this analysis to initiative campaigns as well.

The Commission's research has led it to conclude that the effects of huge contributions and high one-sided spending on ballot initiative qualification and electoral campaigns are destabilizing and inherently corruptive of the democratic process. Although current Supreme Court rulings make it difficult for the Commission to make any concrete recommendations in this area, the Commission urges further study of workable initiative campaign finance reform. The Commission believes it strongly desirable to present the Court with carefully researched data and arguments so that it can consider upholding responsible limitations on certain initiative campaign financing practices. Additional research should also be conducted into new techniques to redress one-sided advertising campaigns. (For further discussion, see Chapter 8, "The Influence of Money," and Appendix E, "Data Analysis Project.")

(17) California Courts Should Reevaluate Decisional Rules for Invalidating Conflicting Initiatives

California courts have been understandably respectful of the initiative process and reluctant to overturn successful measures which have received a popular mandate. Recently, however, the California courts have invalidated initiatives using at least two state constitutional grounds: that an initiative contained more than a "single subject" and that an initiative conflicted with another measure receiving more votes in the same election.

Some critics argue that the courts should tighten the current judicial definition of a "single subject" (by which an initiative is invalidated when its provisions are not "reasonably germane" to each other) and more aggressively strike down initiatives which appear to address too broad a range of subjects. The Commission has concluded, however, that all proposed alternative definitions have unacceptable difficulties, and it consequently does not recommend a change in the current definition. The courts have demonstrated in recent decisions that they are able to apply the current definition in a manner which is neither too strict nor too tolerant.

Implementing the Commission's Proposals

Implementation of reforms to the Los Angeles area's local ballot initiative processes will not be easy. After many turbulent decades, the initiative has acquired a semi-sacrosanct status. Many of its defenders argue that it is inviolate and should not be touched. Even some opponents resist suggesting reforms for fear they will be branded as "enemies of the people." Yet most observers recognize that the initiative process can and must be improved, even though they differ over the improvements they believe necessary. Importantly, the voters still strongly support the initiative process, acknowledging at the same time that it has "gotten out of control" and needs "significant changes."

Piecemeal initiative reforms have recently been suggested, and some have been introduced in the legislature. Such reforms are politically tempting because they create the impression that a single solution can easily resolve a complex problem. The Commission has concluded, however, that the complexity and diversity of the current problems confronting the initiative process require a broad set of reforms.

Those with a vested interest in the status quo, those who feel the Commission's recommendations go too far and those who feel they do not go far enough—all may resist change. To anticipate these concerns, the Commission has been careful to devise a comprehensive package of reforms which, taken as a whole, can be implemented without tilting significantly in favor of either supporters or opponents of the initiative process. Presented individually, the Commission's recommendations might be perceived as one-sided or divisive.

Thus, for example, the Commission recommends both that proponents be able to amend and improve their initiatives before the election and that the local legislative body be able to amend initiatives after enactment—all under reasonable safeguards. If only one of these recommendations were adopted, it might be argued that either initiative supporters or opponents had been favored. Linking both recommendations together achieves a neutral result.

Other recommendations are similarly balanced. Proponents must submit their initiative to scrutiny at public hearings before their measure is placed on the ballot; but the local legislative body must vote on the initiative and see their individual votes placed in the ballot pamphlet or sample ballot for public inspection. Proponents will receive easier circulation requirements; but they must identify their principal funding sources on signature petitions and in ballot pamphlets.

The Commission believes the comprehensiveness of the reforms will address criticisms of the initiative process from both its opponents and supporters. Adopting them as a package will enhance the political feasibility of reform. Implementation of all the Commission's proposed reforms will help the initiative process become a responsible and effective part of California's local governance well into the next century.

The Commission's Report

CHAPTER 1

Origins and History of the Ballot Initiative in Los Angeles

"Even before coming to Los Angeles in 1887, I had long and seriously considered the problem of . . . the one great failure in American government—the cities. . . . This situation confronts us: a minority maintains corrupt control, while the majority of the electorate remains honest. . . . To secure honest and efficient government and the one truly representative, give the honest majority of the electorate the power to initiate and enact legislation which their legislative bodies representing them may refuse; this is the initiative."

— John Randolph Haynes, 1909[1]

Los Angeles began its life as a Spanish and later a Mexican pueblo. Almost 70 years later, with the conquest of California and other territories during the Mexican War of 1846, Los Angeles became an American village in 1847.[2] Los

1. Speech by John Randolph Haynes, before the University Club, Los Angeles, The John Randolph Haynes Collection, Special Collections Library, University of California, Los Angeles.

2. Although the war with Mexico broke out in May 1846, the news did not reach California for some time later. Without knowing that the United States was engaged in a war of territorial conquest against Mexico, a group of California settlers, led by explorer John C. Fremont and American naval officers, revolted against Mexican rule and declared California an independent territory. The "Bear Flag Revolt" earned its name from the rebel flag of a grizzly bear, a red star, and the legend

Angeles remained a predominantly rural community well into the latter part of the 19th century. As late as 1880, Los Angeles only had a population of 11,183.[3]

In the late eighties, an economic boom radically and abruptly changed the landscape of Los Angeles. The Southern Pacific railway had enjoyed a relative monopoly over rail transportation in the area after it extended its line southward from San Francisco in 1876. About a decade later, the Santa Fe Railroad entered the Los Angeles market when it completed a line to the city from the east. The two railroads battled for control of the market through a fierce rate war in 1887 that sparked a massive immigration into the region.

The railways slashed rates to incredibly low levels in that year, encouraging a huge influx of travelers, farm families and others to seek a new life on the west coast. Passenger fares reached unheard of levels on March 6, 1887, when Southern Pacific even underbid itself and cut its rate from Kansas City to Los Angeles to one dollar.[4] Southern Pacific Railroad further sweetened the temptation to move to Los Angeles by offering immigrants from the east the opportunity to buy, on an installment plan if necessary, millions of acres of land that it had acquired through government land grants. By 1890, the Los Angeles population had risen to 50,395—nearly a five-fold increase in one decade.[5]

In just a few years, the flood of immigrants had transformed Los Angeles from a relatively small town into a major urban center. But while its population had changed, the city's economic and political power structures had not.

A. Political Corruption in Los Angeles Grows with Early 20th Century Urban Development

Urbanization intensified the problems of corruption and inefficiency in city government. A variety of special interest groups had long exerted influence over Los Angeles government through the peddling of special favors or even outright bribery. When the Southern Pacific Railroad first entered Los Angeles, it secured its control over city government by improving upon these methods of corruption and political bossism. Public utility corporations, real estate developers, financial interests and the vice, liquor and gambling organizations joined the Southern Pacific "push" or "machine" that corrupted Los Angeles' complaisant city administrations.[6] The railroad company, the largest and wealthiest constituent in the machine, provided through its own employees the leadership for these diverse special interest groups.[7]

"Republic of California" juxtaposed. By autumn of 1846, the conquest of California was completed with the arrival of American troops under the charge of Colonel Stephen W. Kearny. Holman Hamilton, *Democracy and Manifest Destiny*, in The Democratic Experience 155 (L. Wright, et al., eds., 1968).

3. Glenn Dumke, The Boom of the Eighties in Southern California, at 21-22 (1944).

4. *Id.* at 24.

5. John Walton Caughey, California, at 473-475 (1940). The numbers of new immigrants into Los Angeles in the 1880s actually far exceeded the population that stayed in the city a decade later. Many immigrants found that advertising claims made to easterners about California were over-exaggerated and job opportunities lagged well behind the growth in population. Countless numbers of newly-arriving persons returned to the east after exhausting their luck on the west coast.

6. Albert Clodius, The Quest for Good Government in Los Angeles, 1890-1910, at 10-11 (1953), unpublished Ph.D. dissertation (Department of Political Science) Claremont Graduate School.

7. Letter from John Haynes to William Davis, Los Angeles, March 10, 1906, in the file "Direct Legislation—Los Angeles—Pfahler case," The John Randolph Haynes Collection, Special Collections Library, University of California, Los Angeles.

Walter Parker, chief lieutenant to the head of the statewide Southern Pacific organization, was the anointed boss of the "push" in Los Angeles.

The influence of the Southern Pacific machine was enhanced by the influx of immigrants who ignored or were unaware of existing political machinations. Few voters, for example, participated in caucus meetings, allowing the machine's bosses to control candidate nominations for both parties. The machine was also the primary source of campaign contributions and freely doled out special benefits and favors to compliant officeholders and bureaucrats.[8]

The corruption of Los Angeles government contributed toward rampant organized crime, especially gambling and vice. These illicit activities were often conducted under the tutelage of the liquor interests, which assured their protection by skimming profits and sharing them with the police department.

Criminal activities sanctioned by governmental authorities were so pervasive in the city's streets that some reformers on occasion sought remedies outside official channels. In 1899, for instance, a vigilante group of reform-minded citizens called the Committee of Safety attempted to track down and expose criminal activities. Headed by J.O. Koepfi, a respected manufacturer, the Committee hired Pinkerton detectives and staged illicit gambling activities at a saloon in the seventh ward. The private sting operation exposed a pay-off scam involving several officials in city departments, driving one police commissioner out of the city. The Committee's vigilante methods, however, subjected it to costly libel suits which eventually bankrupted the group and forced it to cease operations in January 1902.[9]

The Southern Pacific expanded its activities to scrutinize the appointment of minor public officials as well. Not even the appointment of hospital surgeons with oversight over claims filed by persons injured on company lines escaped the approval of the "machine."[10] Lucrative railroad franchises were regularly awarded by the city to Southern Pacific at little or no cost to the railroad.[11] Frequently, these franchises were drawn in such a way as to give Southern Pacific a monopoly on rail transportation. Government contracts in other fields also were issued for reasons of political favoritism. In 1904, for example, members of the city council awarded a contract for municipal advertising to the *Los Angeles Times*, despite the fact that the *Times'* bid was well above those of the city's other newspapers.

The dominance of Southern Pacific over machine politics in Los Angeles stemmed from the railroad's accumulation of wealth and power throughout the nation and the state. It used this power to dominate government, undermine competition and shape public policy to provide a favorable business climate for Southern Pacific. The extension of Southern Pacific's influence into Los Angeles was a natural outgrowth of its monopolistic development in national and state politics.

B. Southern Pacific Railroad Develops Its Ability to Dominate Politics Through Monopolistic Economic Practices in the State

The Southern Pacific's Railroad monopoly had its origins in the combined resources of some of the nation's wealthiest industrialists. When four businessmen formed the Central Pacific Railroad in 1861, they created a politically powerful

8. Clodius, *supra* note 6, at 16-17.

9. George Baker Anderson, *What the 'Cranks' Have Done*, Pacific Outlook, May 10, 1907.

10. Frederick Bird and Frances Ryan, The Recall of Public Officials, at 23 (1930).

11. Janice Jacques, The Political Reform Movement in Los Angeles, 1900-1909, 7 (M.A. thesis, Claremont Graduate School, 1948).

enterprise that was to endure for nearly half a century. The primary goal of the "Big Four" (Leland Stanford, Governor of California one year later, Collis Huntington, Charles Crocker and Mark Hopkins) was to link the east and west coasts by rail. The group sought and received massive government support to accomplish its expansive undertaking. Through the Pacific Railroad Act, amended in 1864, the federal government gave the Union Pacific in the east and the Central Pacific in the west federal bond financing and land grants of up to five miles on each side of track laid. The Central Pacific, based in California and later renamed the Southern Pacific Railroad, received almost $28 million in federal financing plus 10 million acres of public land all across the West. State and local governments contributed additional amounts. Governor Stanford, for instance, helped add to the financial wealth of the Central Pacific and later the Southern Pacific by securing outright monetary subsidies and loans for the company from the state legislature while he was in office.[12]

As the Central Pacific steamrolled across the country, it acquired smaller railroad companies unable to compete successfully. When shippers between Los Angeles and San Francisco shifted their freight business from train to steamship to cut costs, the railroad company simply acquired the steamship line and eliminated the competition. By 1869, the Central Pacific controlled 85% of the track in California, giving the company an economic stranglehold over the state.

Renamed the Southern Pacific Railroad, the railroad and its followers not only monopolized the economy of California but heavily entrenched themselves in all levels of government as well. Towns and cities found themselves obligated to railway lines for survival and hence to the Southern Pacific. It was no secret that the Southern Pacific virtually owned California's state government. Fremont Older, a leading newspaper reporter in 1896, described the situation as follows:

> *"In those days there was only one kind of politics and that was corrupt politics. It didn't matter whether a man was a Republican or Democrat. The Southern Pacific Railroad controlled both parties, and he either had to stay out of the game altogether or play it with the railroad."*[13]

The means for securing this control were many. The sheer abundance of the railroad's financial resources made the company not only a powerful lobbyist but an influential force in candidate elections as well. With its financial clout, the Southern Pacific dominated party conventions and nominations of candidates for major offices. Many people were on the company payroll and many companies found their livelihoods dependent on the railroad, including several of the state's major newspapers. Bribery and perks were regular tactics used by the railroad to acquire power. It was common, for example, for the railroad to hand out free passes for rail travel to officeholders and others who supported the company.

The reach of the "octopus," as author Frank Norris called the Southern Pacific in 1901, extended to the press, voting procedures and the judicial system.[14] It

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12. John Culver and John C. Syer, Power and Politics in California, at 36-37 (1984).

13. *Quoted in* Charles Bell and Charles Price, California Government Today: Politics of Reform, at 55 (1980).

14. In reference to the corrupting domination of the Big Four railroad monopoly over California politics, Frank Norris wrote in his book The Octopus (1901): "They own us, these taskmasters of ours; they own our homes; they own our legislatures. . . . We are told we can defeat them by the ballot box. They own the ballot box. We are told that we must look to the courts for redress; they own the courts. We know them for what they are—ruffians in politics, ruffians in finance, ruffians in law, ruffians in trade, bribers, swindlers, and tricksters." *Quoted in* Laura Tallian, Direct Democracy: An Historical Analysis of the Initiative, Referendum and Recall Process, at 6 (1977).

advertised in newspapers that supported its cause, withdrawing support from those that did not. While many newspapers strongly opposed the Southern Pacific, such as the *Sacramento Bee*, *Los Angeles Express* and all but one of San Francisco's dailies,[15] noteworthy supporters included the *Los Angeles Times, Oakland Tribune* and *San Francisco Chronicle.* Stanford's brother Phillip openly paid voters on the streets in San Francisco to cast ballots in favor of a municipal stock subscription that would provide construction capital for the railroad company.[16] While Governor of California (1862-63), Stanford named Charles Crocker's brother Edwin to the state supreme court. At the time of his appointment, Edwin was chief legal counsel for the Southern Pacific Railroad and did not step down from his position while on the court.

Popular historians have said that the monopolization of the economy by the railroads and related interests was one of the reasons the American economy nearly collapsed in the 1870s. The economic strain was felt most severely in the agricultural states of the west and midwest. Farm families found their livelihoods squeezed between two interrelated interests, the railroads and the financial industry. Railroad companies not only acquired many industries necessary for farming—such as seed and fertilizer companies—but they also owned the grain storage houses that purchased agricultural products and the railroads that transported them. Meanwhile, the banking industry set mortgage loan rates that increased the indebtedness of America's farmers. The farm crisis set in motion the Populist movement which, in California, spurred the drafting of a new state constitution.

California's first constitution of 1849 had been a simple document, containing few potential state remedies for the growing economic crisis. Disgruntled farmers and a mounting army of unemployed in the cities pressed public officials and the political parties to draft laws that would control monopolistic economic enterprises. After months of debate, a new constitution was ratified on May 17, 1879. The new constitution provided for a railroad commission to monitor and regulate the activities of the Southern Pacific. In a very short time, however, the railroad's spoils system bought the loyalty of two of the three commissioners. The Southern Pacific soon came to dominate the regulatory agency in much the same way that the railroad had previously dominated the rest of state government. The hoped for regulatory scheme collapsed, and reformers made no further headway for another 30 years.

C. "Progressives" Challenge the Railroad's Power

Despite the effort of the early Populists, railroad monopolies throughout the country remained a dominant force in state and local politics. In California, the Southern Pacific Railroad entered the 1900s with its economic and political power intact. The corporation had developed a strong affiliation with the state's ruling Republican Party.

From that same Republican Party, however, emerged a dissident group known as the Progressives. Largely a middle class, urban group, the Progressives focused on two major concerns: railroad monopolies and government corruption. The Progressive program for ending government corruption appealed to a broad range of the electorate, crossing party ties and socioeconomic status.

At the same time, early Populist reformers were moving to southern California from midwestern farm states, seeking prime agricultural land. They were committed to a highly moral society, devoid of such vices as gambling halls and

15. John McFarland, *Progressives and the Initiative: Protestant Reformers Who Thought Politics Was a Sin*, California Journal 388 (Oct. 1984).

16. Culver and Syer, *supra* note 12, at 39.

Sunday saloons.[17] California's Progressive movement eventually leapfrogged these rural Populist concerns to become a broad-based coalition targeting government corruption. While a specific Progressive agenda was never set down, historians generally agree that it included:

- Expanding citizen participation in politics (the initiative, referendum and recall, and the replacement of party nominating conventions with the direct primary);
- Taming unrestrained corporate influence over the political process (*e.g.*, expanding and strengthening the railroad commission);
- Protecting the environment (expanding conservation programs);
- Improving adverse living and working conditions (such as prohibiting child labor and establishing worker's compensation).

The reform movement was not without its critics. Political bosses and representatives of the Southern Pacific Railroad were determined to discredit the reputations of reformers in order to maintain political domination over the state. They attempted to paint the reformers as "communists" and "radicals" bent on undermining the established societal order.[18] But well-respected Progressives—like John Randolph Haynes, a Los Angeles doctor and real estate developer, David Starr Jordan, president of Stanford University, and James D. Phelan, former San Francisco mayor and United States Senator—kept the movement alive.

D. John Randolph Haynes Engineers the Reform of Los Angeles Government

While sudden urbanization provided fertile ground for political corruption in Los Angeles, it also provided the impetus for a comprehensive reform movement. Among the wave of immigrants to this land of opportunity came professionals, business people and others seeking a fair social climate in which entrepreneurship could prosper. Many were highly educated and well-to-do, able and willing to defend their principles of social justice and fair play. Most prominent among this pool of reform leaders was a physician who left Philadelphia with $75,000 in savings in search of an even-better life in Los Angeles: Dr. John Randolph Haynes.

In May of 1886, Haynes, his parents and three of his siblings packed up and moved to the booming city of Los Angeles. Haynes and two of his brothers had medical degrees, while his parents and wife were familiar with hospital administration. In Los Angeles, Haynes taught as an associate professor of gynecology at the University of Southern California while also helping found with his family one of the largest medical practices in the city. He invested some of his earnings in real estate, oil and mining ventures and proved to be a shrewd capitalist, amassing a multi-million dollar fortune that later financed his social reform causes.[19]

Haynes' career as a reformer stemmed from his association with William Dwight Porter Bliss, an Episcopal minister. Bliss had founded the Christian Socialist Society in 1889 and brought his crusade to San Francisco in 1897. The Christian Socialist Society advocated a fusion of socialism with liberal Christian thought in politics. Direct legislation, universal suffrage, graduated taxes and

17. McFarland, *supra* note 15, at 388.

18. *Government Directly by the People*, The John Randolph Haynes Collection, Special Collections Library, University of California, Los Angeles.

19. Tom Sitton, *California's Practical Idealist, John Randolph Haynes*, California History, at 4 (Mar. 1988).

public ownership of utilities were part of the Society's platform for political change. Haynes established and headed a "Committee of One Hundred" in Los Angeles to pursue the goals of Christian socialism. Of particular importance to Haynes were "the triplets of direct government" (initiative, referendum and recall), the direct primary and public ownership of utilities.

Haynes and W.D. Bliss first attempted to direct legislation into a proposed city charter for Los Angeles in 1898. They convinced the Los Angeles Board of Freeholders to include the initiative and referendum (but not the recall) into the document, but the proposed charter did not garner the necessary three-fifths voter approval required at that time by state law for charter amendments.[20]

A second attempt to revise the charter was initiated two years later as both major political parties and socialist and labor organizations joined in sending delegates to nominate a new Board of Freeholders. On July 27, 1900, Haynes, Harry Chandler (managing editor of the *Los Angeles Times*) and H. Gaylord Wilshire (wealthy socialist writer) were among those elected to the board. Dr. Haynes, who was supported by the major parties and labor organizations, received the greatest number of votes.[21] Haynes, N.P. Conrey and W.H. Colyear (both well-respected socialist lawyers) pushed the board into accepting the initiative, referendum and recall in its proposed charter revision. The initiative and referendum were accepted unanimously by the board; a majority agreed to the principle of the recall but differed on such details as the percentage of petition signatures needed.[22] Although the board eventually agreed on a final charter revision package that included all three components of direct democracy, the California Supreme Court voided the proposal on the grounds that the Constitution provided for only one Board of Freeholders and that the second board was an illegal body.[23]

Not all of the board's efforts were lost by the court ruling. For the first time in the nation's history, the concept of the recall had been articulated into a concrete policy proposal. The recall had been provided as an ambiguous right in Article V of the country's original Articles of Confederation but had never actually been formulated or exercised. Outside the United States, early Swiss cantons had occasionally invoked the recall until widespread use of the initiative and referendum rendered the recall unnecessary.[24]

The proposed Los Angeles charter revision, and particularly its direct democracy components, received considerable press attention until the courts took it off the ballot. Most discussion in the press was favorable toward the initiative and referendum; discussion of the recall was relatively scant but also appeared to be favorable.[25] Through the lobbying efforts of Haynes, the city's major newspapers—

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20. At that time in California history, initial creation of a municipal or county charter could only be proposed by an independent "board of freeholders" elected by the jurisdiction's voters.

21. Los Angeles Herald, July 28, 1900.

22. Los Angeles Times, Sept. 29, 1900.

23. The California Supreme Court reasoned that though the second Board of Freeholders was an illegal body unable to propose charter revisions, the city council was free at any time to submit charter amendments to the voters for approval. The Los Angeles City Council, under the control of the Southern Pacific machine, had resisted the charter revision from the beginning and had no intention of submitting any charter amendments to the voters. Los Angeles Times, Oct. 18, 1900.

24. Bird and Ryan, *supra* note 10, at 3.

25. A *Los Angeles Herald* editorial, for instance, applauded the initiative and referendum as well as the "imperative mandate or recall." The editorial further stated that ". . . the latter provision is something new. . . . The supporters of the innovation point out that there is no way in which the people themselves can secure the removal of any official before the expiration of his time, no matter

conservative and liberal alike—unanimously endorsed the direct democracy provisions of the proposed charter. The *Los Angeles Times* went so far as to highlight the initiative, referendum and recall as the "most salient feature" of the charter revision.[26] The Freeholders' Board of 1900 had crystallized the provisions of direct democracy into practical working form and promoted public awareness of the initiative, referendum and recall.

Agitation for a new city charter continued unabated as corruption in government flourished. Meredith Snyder, who became mayor in 1897 with the endorsement of the reformers, prodded the city council into establishing another board to revise the city charter in March of 1902. Because of the earlier court ruling, the new board was termed a "charter revision commission" and charged with submitting a package of charter amendments rather than drafting an entirely new charter.

Dr. Haynes was not appointed to the charter revision commission, but he nevertheless found a means to promote the initiative, referendum and recall provisions. Haynes organized an exclusive dinner party for all the charter revision commissioners at Levy's, a landmark Los Angeles restaurant, just prior to a scheduled meeting of the charter revision commission. Nothing was spared in conviviality as the dinner party stretched an hour into the scheduled meeting time.[27] The hospitable host persuaded the commissioners to have their minute books brought over from city hall and to convene the meeting in the banquet room. Haynes kicked the meeting off with a presentation on the merits of direct democracy by Eltweed Pomeroy, president of the National Direct Legislation League. Following Pomeroy's speech, Frank Finlayson, a member of the commission and an ally of Haynes, moved that the initiative, referendum and recall be referred to subcommittee for further study. The motion passed unanimously. On July 3, the charter revision commission adopted the provisions for the initiative, referendum and recall largely as drafted earlier by the 1900 charter board.[28]

The revision commission proposed 19 charter amendments to the city council for submission to the voters. On September 20, 1902, the city council approved 15 of the amendments, including the initiative, referendum and recall, and scheduled them for a separate vote at the next regular city election held on the first of December.[29]

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how bad his record might be. The plan is yet to be approved by the people and it is impossible to say how it will work until it is tried. It is not likely that there will be frequent removal of officials by this method, but the very fact that they could be so removed would doubtless have a salutary influence." Los Angeles Herald, Oct. 3, 1900.

26. Los Angeles Times, Oct. 14, 1900.

27. Bird and Ryan, *supra* note 10, at 28.

28. Jacques, *supra* note 11, at 18.

29. Jacques, *supra* note 11, at 23-24. The 15 charter amendments approved by the city council for submission to the voters on December 1, 1902, can be summarized as follows:

1. Defined city and ward boundaries;
2. Established a non-partisan water department;
3. Provided certain commissions with investigative powers;
4. Fixed city salaries, including those of police and fire departments;
5. Regulated Board of Education activities and provided a levy for education;
6. Established a library tax;
7. through 11. Regulated the departments of police, fire, health, parks and streets;
12. Provided for the initiative and referendum;
13. Provided for the recall;
14. Placed a $5 million cap on city indebtedness; and

Council approval of many of these reform measures, especially the provisions of direct democracy, surprised some observers. Most of the council members had submitted at one time or another to the corrupting influence of the Southern Pacific "push," leading many to believe that the railroad would seek to block charter reform. But the lobbying campaign against charter reform never materialized. Control by the machine over Los Angeles government was by no means absolute. Reform candidates enjoyed several victories over machine-endorsed candidates, including the mayoral contest. Nevertheless, the virtual absence of an opposition drive to charter reform in general, and direct democracy at the local level in particular, suggests that the machine did not fully appreciate the significance of the local initiative process to their political influence. Two scholars have commented: "It must be admitted that the council, in adopting this portion of the commission's report, had very little conception of its radical nature."[30]

Two organizations provided the thrust of support for the direct democracy provisions of the charter amendments: the Direct Legislation League and the Municipal League. The Municipal League was formed from the ruins of the bankrupted Committee of Safety. With a membership of about 600 persons, the Municipal League assumed the debt of the Committee of Safety and elected J.O. Koepfli its first president. Charles Dwight Willard, one of the "millionaire socialists" common to the Los Angeles political landscape, was appointed executive secretary. Willard was the real leader of the Municipal League until his death in 1914. For almost 40 years, the Municipal League was active in the city reform movement.[31]

The second and most important campaign organization behind the direct democracy movement was the Direct Legislation League of California. This statewide branch of the Direct Legislation League was a nonpartisan instrument comprised of Dr. John Randolph Haynes, president, George Dunlap, secretary, and an impressive letterhead. The array of vice presidents of the League listed in the letterhead included officers of major corporations, religious leaders and prominent professionals. Leaders of organized labor and socialist societies were also recruited, but their names were always offset by others representing business and the professions. Even a representative of the beer and liquor industry was displayed on the letterhead to disassociate the League from the "Drys."[32]

Together, the Municipal League and the Direct Democracy League engineered an aura of near-unanimous support for the initiative and referendum among the city's leaders. The recall also gained substantial approval among the city's leaders, but it was more controversial than the other instruments of direct democracy since the recall was a new concept largely unproven in real politics. Even the Municipal League shied away from endorsing the recall out of fear that the controversy might ensnare the initiative and referendum. The Direct Legislation League also avoided making the recall a central campaign theme.

All of the city's major newspapers endorsed the direct democracy and civil service provisions of the charter amendments with varying degrees of intensity.[33] Shortly before the election, the *Los Angeles Times* reevaluated its position and expressed doubts as to the merits of direct democracy. An article appeared in the

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15. Created a civil service system.

30. Bird and Ryan, *supra* note 10, at 30.

31. Clodius, *supra* note 6, at 31.

32. Winston Crouch, The Initiative and Referendum in California, at 27 (1950).

33. Los Angeles Herald, Nov. 17, 1902; Los Angeles Express, Nov. 30, 1902; Los Angeles Union Labor News, July 25, 1902; Los Angeles Record, Nov. 29, 1902; and the Los Angeles Times, Nov. 8, 1902.

Times that quoted a prominent lawyer, "too modest to permit the use of his name," who argued that direct legislation could put the city at considerable expense in conducting special elections and that the initiative process was of questionable legal standing.[34]

Instigated by the pro-direct democracy campaign organizations, the *Times* was deluged with letters and editorials proclaiming the pragmatism and constitutionality of the initiative process. Los Angelenos were engulfed in pamphlets, marked ballots and canvassing on behalf of direct democracy. The campaign themes remained the same, however, with the recall generally not being touted in the literature.

The election results were a landslide for all three forms of direct democracy as well as civil service reform. All the charter amendments carried except for placing police salaries in the charter and creating a new tax to finance education.[35] The initiative and referendum provision was adopted by a vote of 6-to-1, civil service by 5-to-1 and the recall by 4-to-1. Despite its lack of campaign attention, the recall received the third highest vote tally of all the charter amendments. With total votes cast for mayor of 19,342, the vote tallies for direct democracy and civil service reform were as follows:

	Yes	No	Total
Initiative and Referendum	12,105	1,955	14,060
Civil Service Reform	11,083	2,486	13,569
Recall	9,779	2,469	12,248

One final hurdle remained before Los Angeles could institute the charter reforms: the amendments had to be approved by the State Legislature. Typically, the legislature ratified municipal charter provisions automatically as a matter of local concern. Dr. Haynes and other advocates of direct democracy, however, expected to encounter stiff resistance at the state level. The somewhat diffused interests of the local machine may have been muted in the charter reform struggle, but Haynes expected that the Southern Pacific would take a stand against direct democracy and civil service reform in the legislative chambers. A report in the *Los Angeles Express* asserted that "ways and means were provided for hanging up the charter amendments. A large purse is said to have been raised, and an agent whose identity is known, will be dispatched at once to the state capitol."[36]

Once again, fears of well-organized opposition against direct democracy were unfounded. A group of Los Angeles police officers lobbied against legislative approval of the amendments because of the refusal of voters to codify a police salary schedule in the charter, but the city charter amendments appeared to be of little concern to the Southern Pacific machine. After a spirited but friendly floor debate, the State Senate approved the new charter for Los Angeles by a vote of 32-to-2 and the Assembly by a vote of 65-to-5.[37]

In 1903, Los Angeles had become the fourth city in California to enact the initiative and referendum and the first in the nation to adopt the recall.[38] In 1905,

34. Los Angeles Times, Nov. 16, 1902.

35. Los Angeles Herald, Dec. 2, 1902.

36. Los Angeles Express, Jan. 9, 1903.

37. Jacques, *supra* note 11, at 27.

38. The initiative and referendum in California were first incorporated into the city charter of San Francisco on May 26, 1898 (ratified by the legislature on January 8, 1900). Voters in Vallejo approved similar direct democracy provisions in their charter on December 8, 1898; and Fresno on October 19, 1899.

San Diego, San Bernardino, Pasadena and Fresno followed Los Angeles' example. In 1906, Seattle joined the list of direct democracy cities with the recall; and in 1907, Everett, Washington, and six other California cities joined the movement.[39]

E. Direct Democracy in Los Angeles Bridles the "Machine"

Los Angeles' form of direct democracy soon became the model favored by most other local jurisdictions subsequently adopting the initiative throughout California and the nation. Direct democracy as it was enacted in Los Angeles in 1903 operated substantially as follows:

Citizens could petition for a popular vote to adopt new ordinances, amend the city charter,[40] repeal laws approved by the city council or recall elected officials. Citizens would first have to submit the text of any proposed initiative ordinance to the city council for its approval or rejection. The proposed initiative would have to be supported by petition signatures of registered voters amounting to at least 5% of the total vote cast for all candidates for mayor at the last preceding general election. The council would either have to: (i) approve the proposed ordinance without alteration (subject to a mayoral veto); (ii) or submit the proposal to a vote of the people at the next municipal general election if the council did not enact it into law; or (iii) submit the proposal to a vote of the people at the next general election along with an alternative measure placed on the ballot by the city council. If the petition was signed by registered voters amounting to at least 15% of the last mayoral vote, the council would have to submit the proposal to a popular vote at an immediate special election, unless the proposal was adopted by the council and mayor. Voter approval was gained by a simple majority of votes cast on the measure.

The accompanying referendum powers provided that no act of the city council, with some exceptions, could go into effect before 30 days after its final passage.[41] During that period, citizens could petition the city council either to rescind the ordinance or submit it to a popular vote by collecting signatures equal to at least 7% of total votes cast for mayor in the preceding election.

Procedures for recalling elected officials required gathering signatures of 25% of the previous total vote for the particular office being targeted. When enough signatures were certified, the council would order a special election for the office to occur within 30 to 40 days. The names of all candidates running for the office, including the incumbent, were listed on the ballot and the highest vote recipient was elected for the remainder of the term.[42]

1. Recall of Davenport

The first test of direct democracy in Los Angeles came quickly. One year after the city adopted the initiative, referendum and recall, the council awarded a lucrative contract for all printed municipal advertisements to the *Los Angeles Times*, even though the paper offered a bid $10,000 to $20,000 above all other major

39. Clinton Rogers Woodruff, American Municipal Tendencies, Proceedings of the Pittsburg Conference on Good City Government, at 175 (C. Woodruff, ed., 1908).

40. The right of citizens to amend the city charter through the initiative was established by a state constitutional amendment approved by state voters in 1902. Cal. Const. art. 11, §8(a).

41. Exceptions to the 30-day delay for implementing acts of the city council included: any exceptions required by state law or city charter, street improvements and emergency ordinances approved by a two-thirds vote of the council.

42. Ellis Oberholtzer, The Referendum in America, at 456-457 (1912).

newspapers.[43] It was widely believed that the action of the council stemmed from a desire to curry favor with the politically powerful publishing family of the paper. Opponents of the contract, mobilized in part by a competing newspaper, decided to invoke a recall drive. Although a majority of the council supported the contract award, opponents decided to focus their recall on the most vulnerable incumbent, Frederick Davenport.[44]

The recall campaign against Davenport was launched in June 1904 when a group of union activists and reformers drafted and circulated the first petition in the nation for the recall of a public official.[45] Petitioners gathered enough signatures in a matter of weeks. The city clerk certified them and scheduled a special election for August 11 of that year. Davenport filed suit against the procedure. In the excitement of launching the first recall drive, the petitioners had cut off the headings of the petitions and pasted the names together in one long roll, which the courts deemed sufficient grounds to invalidate the scheduled election. On July 18, 1904, new petitions were circulated which gathered far more than the requisite number of valid signatures, and a new election date was scheduled for September 16. Another injunction filed by Davenport, this time on the ground that the instrument of recall was unconstitutional, was rejected by the courts.[46]

In the course of the recall campaign, Davenport's corrupt politics became evident. He promoted public policies that would produce financial rewards for his own business interests.[47] He also sided with a street railway company against the interests of his constituencies in a dispute over rates. The *Los Angeles Record*, *Los Angeles Express* and *Los Angeles Examiner* agreed that Davenport was a machine-backed politician. Davenport was defeated in the recall election and he replaced by Arthur Houghton, "formerly a spiritual 'medium.'"[48] The first use of the recall had successfully undermined the influence of the Southern Pacific "push" in city politics.

2. Counter Initiatives

The initiative also made its Los Angeles debut on the same general election ballot of 1904. The city had grown from a village environment into an urban center, and more and more citizens were bothered by the noxious operation of slaughter houses within the area. A group of citizens petitioned the city council to prohibit the slaughter of animals within city limits and close down several existing operations.

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43. On April 25, 1904, bids for the city contract for printing municipal advertisements were opened. The final bids were as follows: Los Angeles Times, 60 cents per inch; Los Angeles Express, 40 cents per inch; Los Angeles Herald , 38 cents per inch; and the Los Angeles Daily Journal, 30 cents per inch. On May 23, the contract was awarded to the Times. Jacques, *supra* note 11, at 7.

44. Labor unions played an important role in the recall drive. The Los Angeles Times was ardently anti-union, and Council Member Frederick Davenport, who supported the Times contract, represented the city's sixth ward, a heavily union district.

45. C.D. Willard, *A Political Experiment*, Outlook 473 (Oct. 22, 1904).

46. Jacques, *supra* note 11, at 32.

47. One example of Council Member Davenport promoting his own interests concerned the tobacco industry. In a letter to a local cigar company of which he was an agent, Davenport proposed to use his influence to allow the selling of cigars in saloons. Willard, *supra* note 45, at 474.

48. Jacques, *supra* note 11, at 36. Davenport did not give up the fight even after his defeat. He pressed for a ruling from the California Supreme Court on the legality of the recall election. The Court did not address the constitutionality of the recall. However, it did rule that election procedures were not properly conducted according to provisions of the Los Angeles charter. The ruling came after the council term would have expired and so Davenport could not be reinstated. Instead, he was awarded back salary from the day of his recall to the end of the term.

The council rejected the proposal and it was placed on the next general election ballot.

The general election of 1904 witnessed not only the first ballot initiative in Los Angeles history but also the first use of a counter-initiative strategy. Competing slaughter-house companies circulated three different proposals on the slaughter of animals within city limits. One slaughter house petitioned to prohibit operations within city limits except in the eighth ward where its business was located. Another company sought to prohibit operations everywhere except in the sixth ward where it was located. A third measure limited slaughter-houses to both the sixth and eighth wards. All three business proposals qualified for the same ballot along with the citizen-initiated measure.

The city charter did not specify what would happen if one or more of the counter measures were approved by voters. The *Los Angeles Times* pointed out that grave confusion and litigation would ensue and advised voting "no" on all but the measure that would allow operations in both the sixth and eighth wards.[49] The voters, however, were not confused, nor were they sympathetic to the slaughter-house interests. They approved only the measure that prohibited the slaughtering of animals anywhere within city limits.

One slaughter-house company, headed by Andrew Pfahler, refused to halt operations within the city and was subsequently arrested. In his legal defense, Pfahler challenged the constitutionality of the initiative process *per se*. The case was appealed to the California Supreme Court, where six of the seven justices held that the initiative process did not violate the nation's republican form of government and was therefore a constitutional means of enacting legislation.[50] A similar constitutional challenge to the initiative process at the local level was also rebuffed by the Oregon Supreme Court.[51] The initiative, referendum and recall had become firmly established methods of municipal governance.

3. Non-Partisan City Campaign of 1906

In the spring of 1906, members of the Los Angeles reform movement decided to pursue a comprehensive electoral strategy in ousting Southern Pacific's candidates and officials from city government. A "Committee of 100" Progressives, mostly from the Republican Party, decided that both major parties were dominated by the machine and that the only way to defeat political corruption would be through a non-partisan campaign organization. On July 2, 1906, the group of one hundred appointed a committee to draft plans for the organization and to recruit a slate of candidates for all city offices.[52]

The organization adopted the name of the Non-Partisan City Central Committee and laid out the following "Declaration of Principles":

> *"The funds to be used by this organization shall be raised entirely by voluntary contributions. . . . We are convinced that every member of our body desires and intends that this movement shall concern itself not at all with politics, but entirely with the securing of a business administration for the city of Los Angeles. We therefore recommend that the Non-Partisan City Central Committee shall declare at this time its intention to place in nomination by petition a full city ticket. . . . We*

49. Los Angeles Times, Dec. 5, 1904.
50. *In re* Andrew Pfahler, 150 Cal. 71 (1906).
51. Kadderly v. Portland, 44 Ore. 118 (1903).
52. Los Angeles Express, July 3, 1906.

further advise that your body shall place itself on record as opposed to any trade or bargain with any political party or faction."[53]

The central committee chose Lee Gates, a reform Republican, for its mayoral candidate along with a slate of 22 independent candidates for other city offices. Although the Non-Partisan City Central Committee and the Republican Party split the mayoral vote, allowing the Democratic candidate A.C. Harper to win, the Non-Partisans won a surprising victory over the machine by carrying 16 of 22 other offices, including four out of nine council seats.[54] Enheartened by this victory, the Los Angeles organization assisted non-partisan campaign movements in other cities around the state, including Sacramento, Oakland and San Francisco. Exposures of machine control of local government became so widespread in these campaigns that the reform movement took on an aura of a statewide movement. John Randolph Haynes tapped this reform energy to propel his quest for direct democracy at the state level.

F. Haynes Extends the Call for Direct Democracy to State Government

Working with the Direct Legislation League of California, a wing of a national nonpartisan organization committed to direct democracy, Haynes continued his crusade throughout the next eight years to assure that direct legislation was extended to the state through the California state constitution. His first attempt came in 1904 when the League gained the pledges of a majority of the state legislators elected that year to support the idea of the initiative and referendum. William F. Herrin, chief counsel of the Southern Pacific Railroad and a shrewd political lobbyist, altered the game plan when the legislature convened in 1905. When Haynes and his associates traveled to Sacramento to attend the scheduled meetings of the constitutional amendments committee, they found that the legislative schedule had been changed so that committee members were on vacation. Herrin used his influence to continue creating schedule conflicts effective enough to prevent a vote on the direct legislation proposal. Although frustrated, Haynes and his followers did not lose hope. They continued their struggle for the next seven years, encouraged by the fact that by 1907 many of the larger cities in the state had adopted some form of direct legislation.

1. Corruption and Bribery

California's Progressive movement gained considerable momentum from the corruption and bribery trials of several prominent labor leaders and corporate executives that began in 1906. The most renowned of these trials was that of Union Labor Party chief Abraham Reuf. Reuf had established an effective political machine that took over San Francisco's city government in 1901. His machine later branched out to control 20 votes in the state legislature. When Reuf's legislative votes were combined with those controlled by Herrin of the Southern Pacific, the two men could determine the fate of state public policy.[55] Reuf was later charged with

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53. Jacques, *supra* note 11, at 54-55.

54. *Id.*

55. In a public address in 1922, John Randolph Haynes described his experience of attempting to get a bill through the legislature. He had convinced a friend in the legislature to introduce the bill on his behalf and told the audience what followed: "Turning to me he said: 'The man who is acting as speaker pro tempore is a $2,500 man,' and he informed me of the facts connected with this man's getting a $2,500 bribe. He pointed to various other members as being $2,000, $1,500, $500, $50 men, and finally to one who purloined stationery, stamps, and other senate chamber appurtenances.

"He then said: 'Doctor, when I agreed to introduce your bill, I told you I would not double cross you, and I wish to say to you now that the measure has no show whatsoever unless you get the consent of

corruption and extortion. His trial climaxed with the brazen shooting of the prosecuting attorney by a witness in the courtroom. The witness was arrested and mysteriously died in his jail cell. A relatively unknown lawyer named Hiram Johnson stepped in as prosecutor and secured a conviction. The publicity and fame that surrounded this courtroom melodrama would later launch Johnson's political career and propel him into the governorship.

Several government officials were charged with various crimes of corruption over the next five years. Although few of these cases resulted in convictions, the public exposure of bribery, theft, kidnapping and even attempted assassination proved instrumental in igniting widespread support for the Progressives.

At the 1908 state Republican convention, many anti-railroad legislators were nominated and subsequently elected to the legislature. In 1909, the Progressives held a majority in both legislative houses. The reformers, however, still did not succeed in taming the Southern Pacific. They lacked organization while the Southern Pacific machine ran like clockwork. Knowing that it controlled only a minority of the legislature, the machine's strategy was to prevent bills from passing or at least to amend them into ineffectiveness. Newspaper reporter Franklin Hichborn recounts the machine politics of 1909:

> *"From the hour the legislature opened until the gavels fell at the moment of adjournment the machine element labored intelligently and constantly, and as an organized working unit, to carry its ends. There were no false plays; no waste of time or energy; every move was calculated. By persistent hammering the organized machine minority was able to wear its unorganized opponents out."*[56]

The reformers let opportunities for control pass, allowing, for example, a pro-railroad speaker to govern the assembly. The reform element also permitted the election of Senator Edward I. Wolfe, an admitted leader of the machine, as president pro tempore of the senate. The Lieutenant Governor, also machine affiliated, appointed committee positions as did the speaker. Political organization and strategy in both houses was under machine control. The Progressives would have to wait until 1910 to take control of the state's political agenda.

2. Hiram Johnson's Election as Governor

Despite repeated setbacks, the Progressives were able to create a framework for victory. As part of California's majority Republican Party, the state Progressives established the Lincoln-Roosevelt Republican League in 1907.[57] Anti-reform

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Abe Reuf and William F. Herrin, chief counsel of Southern Pacific. Reuf controls twenty votes in this legislature and Herrin enough more to give them control of both houses. Go to San Francisco, see these men, and if they promise to keep hands off, I believe I may get the measure through; but if they are opposed, go home as it is useless to come back here.'

"I went to San Francisco, saw Mr. Reuf, and stated my case. Mr. Reuf said that if he would consent to let the measure pass, he would so notify me at my hotel at ten o'clock the next morning. He failed to communicate with me and I went home. The next time I saw Mr. Reuf he was in San Quentin." *Quoted in* Tallian, *supra* note 14, at 34-35.

56. Franklin Hichborn, Story of the California Legislature of 1909, at 10 (1909).

57. The initial conference that created the Lincoln-Roosevelt League met on the evening of May 21, 1907 at Levy's Cafe in Los Angeles. The meeting was attended by many of the state's major newspaper editors and publishers and other prominent Republican party leaders. One prominent leader who declined to attend was U.S. Grant, Jr., son of President Ulysses Grant. Grant, Jr. held ambitions to run for U.S. Senate in California. Although Grant was known as rather independent and uncorrupted, he did not wish to seek an open quarrel with Southern Pacific boss Herrin. Ironically, had Grant joined the Lincoln-Roosevelt League, he probably would have received the

Republicans like Grove L. Johnson, a state legislator who called the reformists "goo-goos," viciously attacked the League. (Little did Johnson realize that his own son Hiram was to be elected Governor three years later as the League's standard-bearer.) In 1908, the League drafted and campaigned for a constitutional amendment that would change the method of nominating candidates from party conventions controlled by "party bosses" to direct primaries in which voters selected their party's candidates. Approved by the state legislature the following year, the amendment severely weakened the control of the Southern Pacific over the candidate selection process.[58]

Five Republican candidates entered the Republican primary for Governor in 1910 including Hiram Johnson, the lone Progressive. Johnson's "give-'em-hell" style landed him the nomination with 102,000 votes while the four other candidates split 113,000 votes among themselves.[59] Hiram Johnson went on to defeat Theodore Bell, the liberal Democratic candidate, in the general election, lashing out against the railroad "men in broadcloth" and the "poison press."[60] Throughout the campaign, Johnson refused to ride on a Southern Pacific train. Instead, he traveled from town to town in an automobile driven by his son. The victory was made all the more stunning when the Progressive ticket also carried a majority of seats in both the assembly and the senate.

3. Sweeping Changes in California's Government

Hiram Johnson's Progressive administration entered office relatively uncommitted to special interest groups. It ushered in a fundamental reshaping of state government during the first legislative session. The 1910 legislature approved a package of 23 constitutional amendments to be submitted to the voters in a special election the following year. These amendments embodied key elements of the Progressive platform: the initiative, referendum and recall (Senate Constitutional Amendment 22 and Senate Constitutional Amendment 23). (Senate Constitutional Amendments are hereinafter referred to as "SCA.") Interestingly, the national media focused its attention on the successful women's suffrage amendment (SCA 8), which made California the sixth state in the Union to give women the right to vote.[61]

Several measures addressed the regulation of railroads. One created an independent railroad commission. Another strengthened government regulation of all public utilities. Local governments were given greater authority to manage their own affairs. An employers' liability law was approved by the voters, along with a measure providing for government inspection of merchandise and food quality. The judiciary was reorganized to minimize the partisan nature of judicial elections and the selection of court clerks and to allow for the impeachment of judges. A biennial legislature was created and veterans were given a special tax break.

Twenty-two of the 23 ballot measures were approved by voters, with the direct legislation provisions receiving among the largest victory margins. Appropriately,

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group's endorsement for the Senate seat and have been swept into office with the rest of the ticket. As it was, Grant never realized his ambition to serve in the U.S. Senate.

58. Richard Harvey, The Dynamics of California Government and Politics, at 17 (1985).

59. Bell and Price, *supra* note 13, at 56.

60. George Mowry, The California Progressives, at 119-124 (1951).

61. California granted women the right to vote in the 1911 special election. The proposition was carefully worded to limit its political ramifications. For instance, persons of Chinese descent, along with "idiots" and others unable to read, were expressly prohibited the right to vote. California's amendment was heavily financed and supported by suffragette organizations throughout the country, especially from New York. Women were not allowed to vote in federal elections until a U.S. constitutional amendment was ratified in 1920.

the only defeated measure on the ballot would have allowed public officials to ride the trains with passes issued by the railroad.[62]

All this occurred despite a strong opposition drive championed by many of the state's major newspapers.[63] The *Los Angeles Times*, for example, ran a headline the morning of the election reading, "VICIOUS FIGHT ON FREAK LEGISLATION."[64] The day following the special election, a *Times* article stated, "Initiative and referendum, the recall, appointment to the railroad commission by the Governor—all the extreme fads proposed by the last legislature—were adopted by heavy leads in practically every precinct."[65]

John Randolph Haynes expressed a new optimism in the quality of the state legislature: "Let me say to you that [this] is the only legislature since I have been a citizen of the state that has truly represented the people of California. All other legislatures during all these long weary years have been creatures of special interests, more especially of the Southern Pacific Railway Company."[66]

SCA 22 on the 1911 ballot established a *direct* and an *indirect* initiative process in addition to the referendum. Under the *direct* initiative, electors equal to 8% of the total vote for Governor at the last general election could petition for a statute or constitutional amendment to be submitted for a popular vote at the next general election or at a special election called by the Governor. Under the *indirect* initiative, electors equal to 5% of the vote cast for Governor could petition for a statute to be submitted to the legislature and, failing legislative approval, then to a vote of the people. The legislature obtained the right to submit an alternative measure to the people on the same ballot. Neither initiative procedure allowed a veto by the Governor. Amendment or repeal of an initiative or legislative measure was forbidden, unless the measure itself allowed it. Under the referendum, electors equal to 5% of the last gubernatorial vote could petition, within 90 days after

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62. The measure on the 1911 ballot designed to allow railroad perks for elected officials (Assembly Constitutional Amendment 50) was written to appear as a Progressive reform amendment. The bulk of the text proposed government regulation of railroad rates and prohibited rates that discriminated between short-distance and long-distance transport. One provision, however, permitted the issuing of commute tickets at "special rates"—a clause intended to preserve the practice of free railroad passes for public officials. The ability of voters to ferret out this provision for rejection is even more noteworthy, given that the official ballot pamphlet offered no arguments against it.

63. Opposition to the Progressive reforms was not only echoed by California newspapers. The *New York Times* printed a scathing editorial against California's newly adopted initiative process, entitled "Anti-democracy in California." Following a paragraph of criticism of the readability of the ballot pamphlet, the editorial turned its barbs directly at the initiative and referendum: "This new method of handling the basic law of the state is advocated in the name of democracy. In reality it is utterly and hopelessly undemocratic. While pretending to give greater rights to the voters, it deprives them of the opportunity effectively and intelligently to use their powers. They receive the right to vote much oftener and on a larger number of matters than before, but the number and variety of the votes they are called on to cast does away with all chance of really using sense and discretion as to all of them. The new method is proposed as a check on the machines. But the strength of the machines lies in the inattention and indifference of the voters, and the voters are sure in the long run to be more inattentive and indifferent in proportion to the number of the questions forced upon them at one time. When the machine managers get familiar with the working of the new method, they will work it for their own ends far more readily than they work the present method." Editorial, *Anti-Democracy in California,* New York Times, Oct. 18, 1911.

64. Los Angeles Times, Oct. 10, 1911.

65. Los Angeles Times, Oct. 11, 1911.

66. Speech by John Randolph Haynes, The John Randolph Haynes Collection, Special Collections Library, University of California, Los Angeles.

adjournment of the legislature, to require voter approval of any measures enacted by the legislature before they became effective (except measures calling elections, providing tax levies and enacting urgency statutes).

In one swift and momentous year, the Johnson administration obtained the tools it felt necessary to clean up California politics. It gave citizens the techniques to check the influence of special interest groups, alter the state's political agenda and public policies and remove unresponsive or corrupt officeholders. The initiative process had dawned at both the local and state levels in California.

4. Early Uses of the Initiative

Even with its political clout significantly undercut, big business did not flee the state as some anti-Progressives had predicted. Business in California flourished despite the emergence of the Progressives and adoption of the initiative process.

The new Progressive legislators believed they had achieved the two primary objectives of their reform movement—cleaning up government and curtailing the legislative influence of well-endowed special interest groups. California's first initiatives, therefore, did not address these matters. Instead, early initiatives focused on taxation, prohibition, gambling, bond measures and similar concerns. These first initiatives were used to remedy legislative omissions and not to reform the governmental process itself.

In November 1912, the first year the initiative process was in existence, three citizen-initiated measures appeared on the ballot. One sought to allow the consolidation of city and county governments in large metropolitan areas; another proposed to outlaw bookmaking; and the third tried to establish a single tax to support local, state and federal government. The voters rejected all three propositions.

The next ballot, in November 1914, contained 17 initiatives in all—the largest number of initiatives ever to appear on a single California ballot.[67] As in the 1912 election, these initiatives were not concerned with government corruption or the regulation of monopolies. Instead, they addressed prohibition, an eight-hour work day, a six-day work week, prize fights and an assortment of bond measures and minor governmental matters such as procedures for absentee voting. All but five were rejected by the voters. Cleaning up the government was left to the legislature.

The early history of the initiative demonstrated a reluctance by citizens to make full use of this vehicle as an alternative legislative forum. But early experiences also revealed that the mere threat of being bypassed or repudiated by popular initiative or recall could be an important force in making public officials act honestly and responsibly. According to historian Spencer Olin, "Hiram Johnson played the game of politics to win, and win he did; and because he won, California benefited from strong, vigorous leadership during the years 1911 to 1917. The success of Hiram

67. From 1913 through 1914, 27 initiative petitions were circulated and 17 of these received enough signatures to qualify for the ballot. Only four petitions had been circulated in the previous election cycle (three qualified). There may be many reasons for this dramatic upsurge in initiative activity. Among them were the excitement of a new legislative process and the full two years for circulation of petitions between 1912 and 1914 (rather than one year from October 1911 to November 1912).

It should also be noted that while the 1914 general election ballot contained the largest number of initiatives in California history, initiatives at that time could only qualify for the general election ballot. In 1988 and 1990, more initiatives qualified for the ballot in a single election cycle (combining the primary and general elections) than ever before.

Johnson's administration is measured chiefly by the way it devised machinery to meet the pressing political, social, and economic problems of the day."[68]

G. Conclusion: Direct Democracy Is Made Available to All California Localities

In 1911, California voters amended the state constitution to adopt the initiative, referendum and recall in all state elections. Californians also amended the constitution to make these instruments of direct democracy available to all cities and counties in the state. For the first time, the ballot initiative in local government was not limited to chartered jurisdictions but to general law communities as well.[69] Procedures for direct democracy in general law communities spelled out in the constitution closely followed the indirect procedures at the state level. Charter cities and counties could depart from these rules somewhat as long as they did not violate state mandates.

The initiative process was originally intended by the Progressives as a means for the public to check the influence of special interest groups in government. Direct democracy at both the state and local levels has become a very expensive and professionalized activity, often resulting in the domination of the process by the special interest groups it was intended to regulate. Although smaller communities have not yet seen the domination of the initiative process by high-financed campaigns and wealthy special interest groups, initiative campaigns in some larger cities are already reflecting those trends. Local jurisdictions all over California should recognize the *potential* for such encroachments and take the appropriate remedial steps (discussed throughout the remainder of this report) before the integrity of citizen-initiated legislation is seriously undermined.

68. Spencer C. Olin, California's Prodigal Sons: Hiram Johnson and the Progressives, 1911-1917, at 170-171 (1968).

69. Cities and counties in California may choose to establish their own "mini-constitutions," known as charters, within the constitutional framework of state and federal government. Non-chartered communities are known as "general law" communities whose structure and activities are regulated by state law. Charter communities are given somewhat greater discretion than general law communities in regulating areas of strictly "municipal affairs." For further discussion, *see* Chapter 5, "Voting Requirements."

CHAPTER 2

The Impact of Ballot Initiatives in the Los Angeles Area

"The initiative is in essence a legislative battering ram which may be used to tear through the exasperating tangle of traditional legislative procedure and strike directly toward the desired end. . . . It is deficient as a means of legislation in that it permits very little balancing of interests or compromise, but it was designed primarily for use in situations where the ordinary machinery of legislation has utterly failed in this respect."[1]

When the Progressives designed the ballot initiative process, first for the city of Los Angeles in 1903 and nearly a decade later for the state of California in 1911, they envisioned a clear policymaking relationship between the electorate acting directly through the initiative and the representative branches of government. State and local government would retain the role of chief policy generator; the initiative process would act as a safety valve, enabling citizens "to supplement the work of the legislature by initiating those measures which the legislature either viciously or negligently fails or refuses to enact."[2]

While the growth of the ballot initiative has significantly reversed these respective roles of governance at the state level (with the statewide initiative process now becoming a principal generator of important policy[3]), they have largely

1. Key & Crouch, The Initiative and Referendum in California, 485 (1939), *quoted in* Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, 228 (1978).

2. California Special Election Ballot Pamphlet, Arguments in Favor of SCA 22, Oct. 11, 1911.

3. Columnist Dan Walters observes, "The legislature, at best, has become a political janitor, cleaning up the leavings of [statewide] ballot measures." Dan Walters, *Yeasty Ballot Being Brewed,* Sacramento Bee, Feb. 1, 1989.

maintained their intended relationship at the local level. Local government in the Los Angeles area still acts as chief policymaker, carrying out the basic functions of governance; the local initiative process functions as a vehicle for local citizens to step in when necessary "to supplement" the work of their local governing body.

Unlike traditional models of local government in which legislation is first enacted by the city council, in some cases signed by the mayor and then subject to review by the courts, the initiative process places legislative power squarely in the hands of the people. It allows the local citizenry to adopt legislation directly, circumventing the city and county government altogether. Even the courts have assumed a somewhat subdued attitude toward local ballot initiatives, expressing reluctance to overturn them and risk interfering with the will of the people.

The use of the initiative process at the state and at the local Los Angeles level has drawn both considerable criticism and support. Critics believe that ballot initiatives undermine normal governmental processes. Supporters argue that they correct the excesses and shortcomings of the legislative process. All agree that, the initiative process has significantly impacted California's quality of life at both the local level and the state level.

A. Ballot Initiatives Are Increasingly Shaping Local and State Public Policy

"The initiative remains . . . the prime generator of policy in California."

— Dan Walters, Sacramento Bee, 1991[4]

Measured by their numbers, ballot initiatives in the Los Angeles area appear to play a minor policymaking role as compared to statewide ballot initiatives. Between 1983 and 1990, only 20 of Los Angeles County's 86 cities saw initiatives placed on their ballots. And while statewide voters cast their ballots on 43 initiatives over the most recent *four-year* period (1988 to 1992), voters in Los Angeles County and its 86 cities voted on just 34 initiatives over the recent *seven-year* period (1983 to 1991). In addition, the number of initiatives circulated for local ballots pales in comparison to statewide trends. In 1990, initiative proponents circulated approximately 69 proposals for the statewide ballot but only 12 ballot measure proposals in all of Los Angeles County.[5]

Measured by impact, however, the local initiative process, like the statewide initiative process, is directly affecting many vital aspects of policy and governance, even though the policymaking approaches used in state and local initiatives are dramatically different. At the state level, the initiative process acts as a vehicle to form policy on a wide variety of issues—such as property taxes, insurance, education, income tax equity, the state lottery, transportation, environment, toxic chemicals, water, handguns, reapportionment, rent control, crime prevention, cigarette taxes, wildlife protection, government reform and drug abuse.

By contrast, the ballot initiative process in the Los Angeles area has been primarily utilized to influence over-arching issues of city growth and "quality of life," and thus such specific policy categories such as the environment, housing and transportation. Because of the "catch-all" nature of these local initiatives, many Los

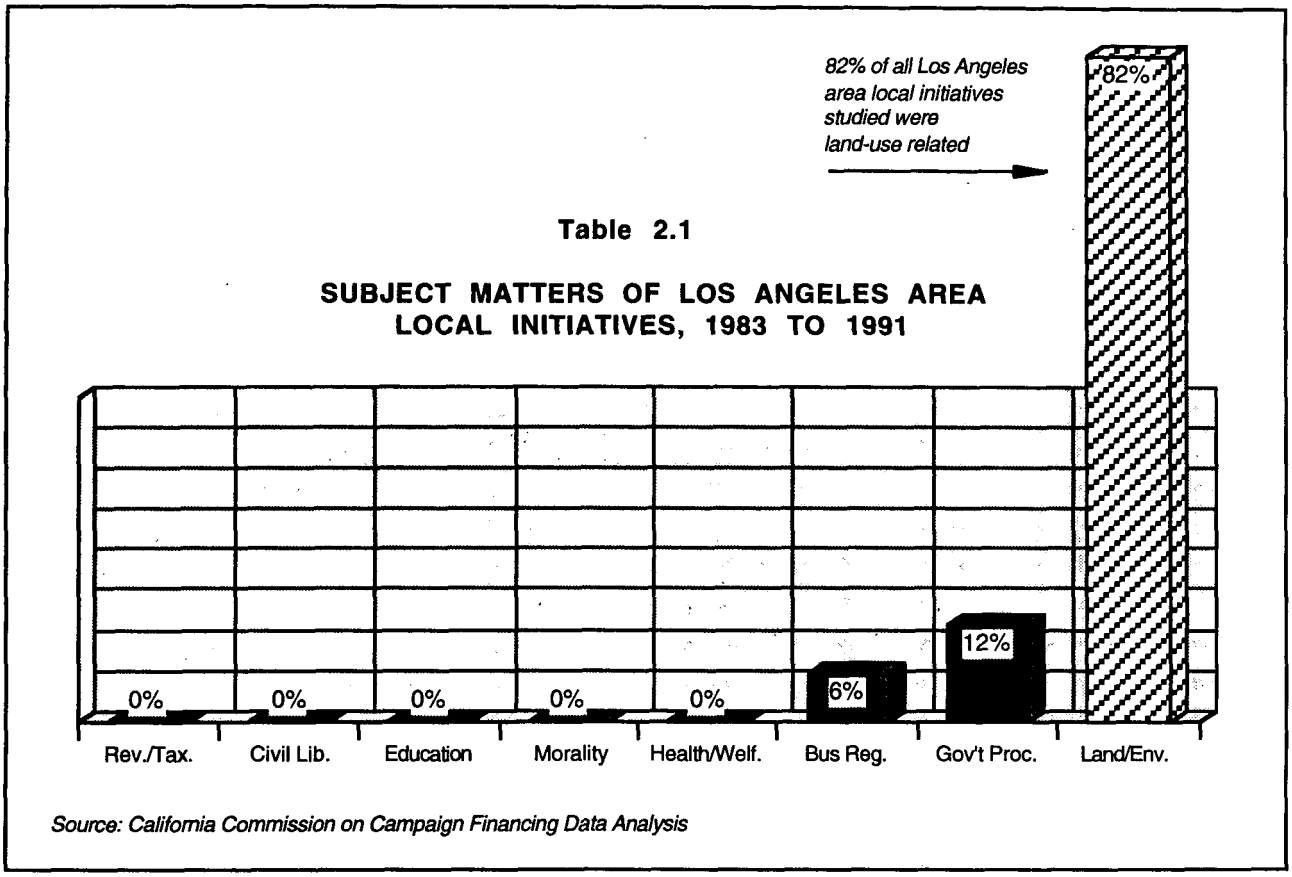
4. Dan Walters, *Ballot Driving Policy Wrangles,* Sacramento Bee, Aug. 29, 1991.

5. The California Secretary of State's office compiled local initiative circulation data for 1990 only. This figure thus does not reflect cities in Los Angeles County which hold municipal elections in odd-numbered years. The trends in these cities, however, are no doubt similar; only four initiatives actually qualified for local ballots in Los Angeles County in 1991.

Angeles area cities may see far fewer measures than at the state level. Yet although the state and local initiatives tend to address policymaking from distinctly different directions, their approval rates are nearly identical—32% at the state level[6] and 35% at the local level.[7]

1. Initiative Impact in the Los Angeles Area: Setting Land Use and City Growth Policies

The primary focus of ballot initiatives in the Los Angeles area has been land use and local development. (See Table 2.1) Local citizens impacted by the effects of rapid growth have used the initiative process to take the sophisticated matters of land use planning into their own hands.



Los Angeles County's frenetic rate of growth has driven the "ballot box planning" movement of the last decade. Between 1970 and 1980, the county's population increased by a modest 6% (from 7,041,980 to 7,477,517). In the 1980s, the growth rate tripled to 18%, pushing the population to nearly 9 million.[8] (In 1980, the state department of finance had projected that the population of Los Angeles County would rise to just over 8 million in 1990.[9]) At the same time, the number of land-use initiatives in Los Angeles County cities jumped from zero in the 1970s to 22 in the 1980s. In 1990 and 1991 alone, eight land-use measures appeared on city ballots in Los Angeles County. Columnist Dan Walters comments, "[T]he growth and

6. This percentage is derived from all balloted statewide initiatives from 1912 to 1990.

7. This percentage is derived from all balloted Los Angeles area local initiatives from 1983 to 1991.

8. The actual Los Angeles County population figure reported by the state department of finance in 1990 was 8,863,164.

9. The population figure projected for Los Angeles County in 1990 was 8,127,400. Dan Walters, The New California: Facing the 21st Century, at 24 (1986).

development pressure being experienced in many California communities is the direct result of a statewide population growth that is nothing short of phenomenal."[10]

Los Angeles area local citizens, in disagreement with their city governments' response to these growth pressures, have attempted to supersede or seriously redirect local city planning mechanisms. Notes Larry Orman, executive director of the San Francisco-based People for Open Space, "long the exclusive province of city councils and boards of supervisors, land use planning and regulation has become 'community property'—a power to be exercised by both elected officials and citizens."[11]

In Pasadena, for example, two citizen initiatives in two years (Propositions G in 1988 and Proposition 2 in 1989) proposed strict citywide growth limits. The unsuccessful Proposition G proposed a two-year ban on large office building construction and residential buildings containing 25 or more units. Circumvention of these bans would have required unanimous city council approval. The successful Proposition 2 (which passed with 58% of the vote) limited new construction of office buildings to 250,000 square feet per year for 10 years and placed limits on residential construction.[12] The *Pasadena Star-News* characterized Proposition 2 as the culmination of a movement formed "as a populist revolt against what was seen by many citizens as runaway, outsize commercial development left unchecked by elected officials and city staff."[13]

In the city of Los Angeles, slow growth advocates led by City Councilmember Zev Yaroslavsky qualified the sweeping anti-growth measure Proposition U in 1986. The initiative, which instituted strict controls on commercial development and altered the city planning process, passed with 69% of the vote. One observer of "ballot box planning" says, "[Proposition U was] the first growth measure enacted in this city of 3 million residents, famous for its unmitigated sprawl and titanic expansion."[14] Voters in San Gabriel, Paramount and Culver City also adopted tough growth control measures. (See generally Table 2.2.)

In addition to overall growth controls, Los Angeles area citizens employ the initiative process to affect or halt specific development projects. In Santa Monica, for example, local activists used the ballot to stop a controversial beachside hotel development proposal. The original city-approved hotel plan, backed by restaurateur Michael McCarty, would have allowed the construction of a luxury hotel and restaurant on five acres of prime beach property formerly leased to the exclusive Sand and Sea Club. Environmentalists successfully pressured the city council to put the hotel proposal to a public vote as Proposition Z. (A "yes" vote would have repealed the hotel plan.) In addition, owners of the Sand and Sea club qualified Proposition S, which attempted to ban all future beach hotel/restaurant development. Proposition T, a counter initiative backed by McCarty, would have halted "all" hotel development citywide for three years—except for the McCarty beach hotel. City residents

10. Dan Walters, *New Emotional Political Move*, Sacramento Bee, May 1, 1988.

11. *Quoted in* Richard Caves, *Determining Land Use Policy Via the Ballot Box: The Growth Initiative Blitz in California,* Land Use Policy, Jan. 1990.

12. Proposition 2 was vigorously challenged in court by the Pasadena Chamber of Commerce and Civic Association. As part of a city director-approved settlement of the suit, the measure will appear again on a special election ballot in November 1992. Editorial, *A Loss of PRIDE,* Pasadena Star-News, Mar. 24, 1991.

13. Editorial, *id.*

14. T.J. Lasser, "Ballot Box Growth Control California Style," 46 Urban Land, 26-27 (Mar. 1987).

completely rejected the McCarty plan by passing Proposition Z and enacting the Sand and Sea initiative (Proposition S) to ban all future beach hotel development.[15]

Table 2.2

VOTER APPROVED LOS ANGELES AREA LOCAL INITIATIVES

1983 to 1991

City/Measure	Subject	Election Year
South Pasadena ("1")	Height and Parking Limit Variances	1983
Cerritos ("H")	Term Limits for City Officials	1986
Los Angeles ("U")	City Growth Limitations	1986
San Fernando ("L")	Lease of Police Facility	1986
Hermosa Beach ("J")	Use of Railroad Right of Way	1987
San Gabriel ("1")	City Growth Moratorium	1987
Westlake Village ("Z")	City Council Compensation/Expenses	1987
Los Angeles ("O")	Ban Pacific Palisades Oil Drilling	1988
Paramount ("FF")	Reduction in Housing Density	1988
Pasadena ("2")	City Growth Controls	1989
Culver City ("1")	Building Height Limits	1990
Santa Monica ("S")	Beachside Hotel Development	1990

Source: California Commission on Campaign Financing Data Analysis

Many Los Angeles area city officials decry the use of ballot initiatives to set land use policy, saying that local growth control initiatives have greatly endangered their city's survival. Strict curtailment of growth by initiatives (which can only be altered by another vote of the people) closes vital avenues for city revenues, not only hurting existing city businesses but discouraging out-of-city businesses from moving to what they perceive to be a severely restricted or volatile economic climate lacking effective local government control.

2. Initiative Impact Statewide: Setting a Variety of Agendas

Since 1978, when the adoption of Proposition 13 (property tax limits) triggered the surge toward greater reliance on ballot initiatives, Californians have used the initiative to decide a host of important statewide policy questions. (See Table 2.3.) While these initiatives have affected virtually every aspect of California life, their most far-reaching impact has been on the governmental process. Initiatives have addressed almost every aspect of governance—from the formulation of the state budget to term limits on state officeholders. "It's now the main way to get big things done here," notes Sacramento political consultant David Townsend.[16]

Legislative control over state fiscal matters, for example, has been substantially diminished by three initiatives. *Proposition 13* in 1978 curtailed property taxes and imposed strict requirements for future tax increases. *Proposition 4* in 1979 restricted the growth of the state budget, greatly reducing the legislature's ability to fund new state programs. *Proposition 98* in 1988 mandated that at least 41% of the state's total budget be spent on education. "Proposition 13 ushered in an era of fiscal policymaking by initiative which has reduced the Governor and the legislature to

15. *See* generally Louise Yarnall, *Voters Evict Beach Hotel Plan*, Santa Monica Evening Outlook, Nov. 7, 1990

16. *Quoted in* Bill Bradley, *Initiatives Become a New Political Tool—and a Big Business,* California Business, Feb. 1990.

bystander roles in shaping California's fiscal policy," notes Sherry Bebitch Jeffe, a senior associate of the Center for Politics at the Claremont Graduate School.[17]

Table 2.3

VOTER APPROVED STATEWIDE INITIATIVES

1978 to 1990

Initiative	*Subject*	*Election*
Proposition 13	Property Tax Reduction	1978 Primary
Proposition 7	Capital Punishment	1978 General
Proposition 4	State Budget Restrictions	1979 Special
Proposition 5	Gift and Inheritance Taxes	1980 General
Proposition 6	Gift and Inheritance Taxes	1980 General
Proposition 7	Income Tax Indexing	1982 Primary
Proposition 8	Victims' Bill of Rights	1982 Primary
Proposition 12	Nuclear Freeze	1982 General
Proposition 24	Legislature's Rules, Powers, Budget	1984 Primary
Proposition 37	State Lottery	1984 General
Proposition 38	"English Only" Voting Materials	1984 General
Proposition 51	Tort Damage Limitation	1986 Primary
Proposition 62	Local Government Taxation	1986 General
Proposition 63	English as Official Language	1986 General
Proposition 65	Toxic Materials Regulation	1986 General
Proposition 68	Legislative Campaign Finance Reform	1988 Primary
Proposition 70	Wildlife, Coastal, and Park Land Bonds	1988 Primary
Proposition 73	Campaign Contribution Limitations	1988 Primary
Proposition 96	AIDS Testing	1988 General
Proposition 97	OSHA Refunding	1988 General
Proposition 98	School Funding Guarantee	1988 General
Proposition 99	Tobacco Tax	1988 General
Proposition 103	Insurance Regulation	1988 General
Proposition 105	Disclosure to Consumers, Voters, Investors	1988 General
Proposition 115	Criminal Justice Reform	1990 Primary
Proposition 116	Rail Transportation Bond Act	1990 Primary
Proposition 117	Wildlife Protection Fund	1990 Primary
Proposition 132	Ban on Gill Net Fishing	1990 General
Proposition 139	Prison Labor Program	1990 General
Proposition 140	Officeholder Term Limitations	1990 General

Source: California Commission on Campaign Financing Data Analysis

Proposition 140, adopted in November 1990, may have the greatest impact on legislative power. By determining how long officeholders can keep their jobs, it will require state assembly incumbents to step aside after three two-year terms and state senators after two four-year terms. Thus, three-fourths of the current California State Legislature will be replaced by 1996 and the remaining one-fourth by 1998.

Throughout the history of statewide ballot initiatives in California, the topics of reform have shifted in accordance with the needs of the times. As shown in Table 2.4, government and the political process was a primary target of initiatives from 1912 through 1939. Interest dropped from 1940 through 1979, but matters of government again received considerable attention in the 1980s and in 1990. Issues of government revenue and taxation followed a similar pattern, drawing considerable attention from initiatives in the first two decades of direct legislation and renewed interest in the 1980s. These were the periods of greatest voter dissatisfaction with government. In the earlier decades, Californians were preoccupied with corruption

17. Sherry Bebitch Jeffe, *California's Budget Lotto: Sacramento Now Forced to Spend by the Numbers,* Los Angeles Times, July 2, 1989.

in government; in the 1980s, government inefficiency and unresponsiveness became central themes.

Table 2.4

SUBJECT MATTERS OF CALIFORNIA STATEWIDE INITIATIVES

By Decade, 1912 to 1990

Subject	*1912-19*	*'20s*	*'30s*	*'40s*	*'50s*	*'60s*	*'70s*	*'80s*	*'90**	***Total***	*% of Total*
Government and Political Process[1]	7	7	11	1	1	2	3	12	7	**51**	*23%*
Revenue, Taxation and Bonds	6	10	4	2	3	1	5	8	4	**43**	*19%*
Business/Labor Regulations[2]	6	2	6	6	2	2	2	7	1	**34**	*15%*
Health, Welfare and Public Housing[3]	2	7	6	5	2	0	1	7	0	**30**	*14%*
Public Morality[4]	9	6	7	3	1	1	3	2	0	**32**	*14%*
Environment and Land Use[5]	0	1	0	0	0	0	4	4	6	**15**	*7%*
Civil Liberties and Civil Rights	0	1	0	1	0	3	3	3	0	**11**	*5%*
Education	0	1	1	1	1	0	1	1	0	**6**	*3%*
Total	**30**	**35**	**35**	**19**	**10**	**9**	**22**	**44**	**18**	**222**	—
% of Total	*14%*	*16%*	*16%*	*9%*	*5%*	*4%*	*10%*	*19%*	*8%*	—	*100%*

1. Includes voting, reapportionment, initiative process, executive organization, local government, judicial process and campaign financing.
2. Includes insurance industry regulation and prison labor program.
3. Includes veterans' benefits, smoking regulations and AIDS programs.
4. Includes liquor, gambling, boxing, racing, the lottery and the nuclear weapons freeze.
5. Includes nuclear power.

*Includes just one election year.

Source: California Secretary of State, "A History of the California Initiative Process," December 1989. Data was updated for 1988 and 1990 by the Commission.

Another revealing trend is the shift from statewide initiatives concerning public morality to an emphasis on civil liberties and environmental protection. Civil rights, for example, were all but ignored in the first half century of the initiative, but interest began to build in the 1960s. Though few initiatives qualified for the ballot during that period, one-third of the measures that did appear pertained to civil rights, and this level of concern remained constant in the following decades.

Environmental measures also reflect recent public concern. During the first 60 years of the initiative, only one measure could be categorized as an environmental protection proposal. Between 1970 and 1990, however, 14 such proposals appeared on the ballot.

Regulation of business and labor was relatively heavy during the first four decades and then dropped off during the 1950s through the 1970s. The sudden reemergence of business regulation initiatives in the 1980s may explain in part why

ballot initiative spending has recently risen so dramatically. (For further discussion, see Chapter 8, "The Influence of Money.")

B. A Variety of Political Developments Has Spurred the Growth of Initiatives

"[I]ncreasingly, in recent years, our political structures have generated something less than compromise, or perhaps, the ultimate in compromise—no action at all. . . . The result has been government by stalemate, failure to deal with critical issues and, ultimately, public frustration."

— *Walter Zelman,*
Former Executive Director
California Common Cause[18]

Many trace the use of initiatives to state and local governments' inability or reluctance to address the major issues of the day. Interest groups and citizens are increasingly abandoning their attempts to enact legislation through the normal governmental processes in favor of the initiative process. Even officeholders are choosing the initiative process as an arena to launch their proposals. And business groups, which have traditionally sought to advance their interests in the state and local legislative processes, have now transferred substantial resources to both the state and local initiative process, funding costly campaigns to back initiatives and counter initiatives.

This movement toward ballot initiatives at the both the state and local levels parallels a steady decline of public confidence in government's ability to govern. A recent poll conducted by the Gallup Organization asked, for example, "Who has the responsibility to guarantee health care access to all Californians?" By a 56% margin, respondents said the issue should be resolved *by the voters in the initiative process.* Only 37% felt the state legislature should handle the matter.[19]

1. Governmental Inaction

Governmental inaction stands as a prime cause of increased initiative activity. In the Los Angeles area, supporters of development control measures rail against city government growth policies which have impacted their "quality of life" by increasing congestion, creating environmental hazards and driving down property values. They see the initiative process as their basic weapon of defense against encroaching development unchecked and sometimes encouraged by their local elected officials. "Where local legislatures can act to meet development problems head on, there will be no need for turning to ballot measures," says Larry Orman. "Where they can't, citizens will have available their constitutionally protected right to reclaim the legislative mantle and have a shot at those problems themselves."[20] San Diego State University Associate Professor Richard Caves observes, "As cities grow, area residents are going to demand strong growth control policies. If officials fail to listen to citizen desires for growth control, then the initiative route will be open for them to take action."[21] Burbank local activist and initiative proponent Carolyn

18. Walter Zelman, *California's Stalemated Government,* Sacramento Bee, Aug. 5, 1990.

19. Irene Weilawski, *Public Angry at Lawmakers' Health Care Record, Poll Finds,* Los Angeles Times, May 15, 1991.

20. *Quoted in* Caves, *supra* note 11.

21. *Quoted in* Caves, *id.*

Berlin explains, "[Initiatives are used due to] a combination of citizens' frustration and lack of representation by elected officials at all levels of government. "[22]

At the state level, many initiatives can also be traced directly to stalled legislative efforts. Property tax relief, for example, languished in the legislature before Howard Jarvis and Paul Gann sought reform with Proposition 13 in 1978. The $80 million automobile insurance reform battle in 1988 was the result of the legislature's inability to forge a compromise between competing consumer, trial lawyer and insurance interests.

A number of structural and political reasons exist for the deepening gridlock in both local city halls and the state capitol. At the local level, with the 1978 passage of Proposition 13, local government's ability to raise local taxes to provide necessary services to address exploding population growth and declining state assistance has been severely limited. Any local tax increase must be now enacted with a two-thirds voter approval. Without the ability to raise taxes, local governments have been induced to expand their tax base through residential and commercial development. Such a focus on development as a source of city revenues has created a citizen backlash and consequential rush to use the initiative process to slow growth.

In some Los Angeles area cities, local pro-growth policies have spawned attempts at restructuring government itself. In Burbank, for example, a small group of homeowners dissatisfied with the pro-development direction of their city government qualified an initiative (Proposition A in 1985) to change the election of city council members from at-large (where all city voters chose each city councilmember) to a district-by-district system. Such a change, in the homeowners' view, would have made city leadership more responsive to homeowners in small districts and therefore less apt to favor massive citywide development. The initiative, bitterly opposed by the city's leadership, was decisively defeated.

At the state level, California has been ruled by a divided government—a Republican Governor and a Democratic-controlled legislature—from 1967 to 1975 and from 1983 to the present. During each period the number of ballot initiatives surged. The recalcitrance of each branch and each political party to work together has defeated compromise on many important issues. Disappointed supporters of those interests have sought recourse at the ballot. Supporters of initiatives know a gubernatorial veto can only be overridden by a two-thirds legislative vote. Obtaining a simple majority vote at the polls may be perceived as simpler.

Procedural restraints also thwart legislative solutions at the state level. California, for example, is one of only a few states whose constitution requires the state legislature to adopt fiscal measures by a two-thirds vote, and the constitution requires the vote to be of the total legislative membership, not just those members voting. This archaic procedural obstacle has allowed minority factions in either house to block legislative measures desired by clear majorities. In frustration, proponents of such measures have turned to the initiative process.

In addition, some changes in state law require constitutional amendments. The legislature can only place such amendments on the state ballot by a two-thirds vote. Some proponents may conclude that a two-thirds legislative vote might be more difficult to obtain than circulating and qualifying a constitutional amendment themselves.

The explosive growth in state and local campaign costs and the need of elected officials to raise ever-increasing sums has also contributed significantly to governmental inaction. Incumbents seeking to discourage challengers now raise

22. Karen Denne, *Initiatives Attract Big Spending*, Los Angeles Daily News, Aug. 13, 1992.

massive campaign war chests in non-election years largely from contributors interested in affecting particular pieces of legislation. At the local level, a Commission study of city council races in the Los Angeles area revealed that candidates received 58% of all their contributions from business and 52% of all their moneys during non-election years. At the state level, legislative incumbents in 1977 raised $5.7 million during the non-election year. By 1989 this figure had increased more than 450% to nearly $26 million, the largest percentage of which came from PACs, businesses and labor organizations.

Incumbents who are raising money from parties on both sides of pending legislative controversies are often reluctant to resolve those controversies for fear the campaign contributions will dry up.[23] Ironically, while some state and local elected officials decry the emergence of the initiative process in statewide policymaking, their unwillingness to support serious campaign finance reform has contributed to a growth in of initiatives.

The backdrop to these structural problems has been a sharp increase in battles between special interests in recent years. Starting in the early 1980s, President Ronald Reagan's "New Federalism" shifted a number of key governmental programs to the states. "In some cases," comments Fred Silva, chief fiscal advisor to state Senate President David Roberti, "the federal government dumped whole programs" (such as health care) on state governments.[24] The dedication of most state resources to these new burdens has seriously diminished the flow of state assistance to California's cities and counties, throwing many localities into fiscal crisis. Local interests have thus been forced to compete over smaller and smaller local resources.

These competing interest groups—using campaign contributions and lobbyists—have grown in strength to a point where they can exert a *de facto* "veto" over many pieces of legislation at both the state and local levels. At the state level, important bills stall in committee and never reach the assembly or senate floor for a vote. "I think you have to lay it at what I'd call 'lobbylock'—the balance of contending forces that keeps the legislature from dealing with major controversies," says former assemblymember and now state Republican Party chair Robert Naylor. "Pretty soon you have a deadlock that is solved at the ballot box—maybe not solved, just dealt with."[25] On insurance, transportation, taxation, environment and government reform, competing groups found themselves in legislative standoffs. "Each [group] seems to have enough power to thwart the designs of others, but not enough to enact designs of its own," notes former California Common Cause executive director Walter Zelman.[26]

2. Conflicting Business and Special Interest Agendas

In Los Angeles area cities, the competition between slow-growth and pro-business forces has also led to more intense initiative battles. Homeowners groups

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23. For a further discussion of the connection between campaign contributions and legislative inaction at the local level, *see* California Commission on Campaign Financing, Money and Politics in Local Elections: The Los Angeles Area, 29-34, 336 (1989). For a discussion of the influence of campaign money at the state level, *see* California Commission on Campaign Financing, The New Gold Rush: Financing California's Legislative Campaigns, 117-118, 127-141 (1985). *See* also California Commission on Campaign Financing, The New Gold Rush 1987 Update (1987).

24. Telephone interview with Fred Silva, chief fiscal advisor to state Senator David Roberti (Oct. 7, 1991).

25. *Quoted in* James Sweeney, *Ballot-Box Democracy Restyled State Politics During Decade*, Los Angeles Daily News, Dec. 29, 1989.

26. Zelman, *supra* note 18.

concerned about property values and "quality of life" have pitted themselves against businesses fighting for a "fair rate of return." Local governments, unable in many cases to act as referee between these competing groups, have deferred to the initiative process. This was clearly the case in Santa Monica, when the city council in 1990 chose to place on the ballot a controversial measure regarding the construction of a luxury beach hotel. Environmentalists, slow-growth advocates, backers of the hotel and the hotel's competition all went to battle—not in the city council chambers but on the citywide ballot. And in Los Angeles, a controversial city-approved plan to drill for oil in the upscale Pacific Palisades turned into one of the most expensive local initiative battles in California history. Slow-growth advocates and environmentalists led by two West Los Angeles city councilmembers (Zev Yaroslavsky and Marvin Braude) qualified an initiative to prohibit the drilling (Proposition O). Occidental Petroleum, the owner of the drilling site, countered with an initiative to allow the drilling (Proposition P). Approximately $11 million later ($3 million spent by the anti-drilling advocates and $8 million spent by Occidental Petroleum), the voters resolved the issue, overwhelmingly opposing Occidental.

At the state level, conflicts between businesses and special interest organizations (such as environmental groups) have also fanned the initiative fires. Stifled by legislative inaction, many lesser-funded groups have taken their issues to the ballot, only to be confronted with business-backed counter initiatives. In 1990, for example, voters witnessed an expensive battle over the state's environmental agenda. Representatives of several environmental organizations constructed the massive "Big Green" initiative (Proposition 128) and attempted to set the state's environmental agenda on a variety of different levels—from water quality to auto emissions. Business groups countered with their own initiative (Proposition 135), offering a far milder pesticide regulatory option. At the same time, redwood preservationists backed a forest protection measure (Proposition 130), which business and agricultural interests countered with their own initiative (Proposition 138). In the end, all the measures were rejected by the voters, but the struggle significantly increased by a substantial margin the number of initiatives presented to the electorate.

3. Candidate Campaign Strategies

In the Los Angeles area, officeholders have used the initiative process for political gain. In the city of Los Angeles, Councilmember and potential mayoral candidate Zev Yaroslavsky has played a key role in to two major initiative battles in the last six years. In 1986, attempting to contrast his record with pro-growth mayor Tom Bradley and clearly align himself with the slow-growth movement, Yaroslavsky orchestrated the successful citywide anti-development initiative Proposition U, pouring over $100,000 of his own campaign money into the effort. Two years later in 1988, with the mayoral race less than a year away, Yaroslavsky sponsored another initiative, this time to halt the controversial Occidental Petroleum drilling plan in the Pacific Palisades. Yaroslavsky, who contributed over $800,000 to the effort, was joined by State Controller Gray Davis (who had ambitions to run for higher office) and Councilmember Marvin Braude. Davis contributed $900,000 to the successful campaign, while Braude gave over $200,000. (Yaroslavsky ultimately chose not to run for mayor in 1989, but may run in 1993. Davis ran unsuccessfully for the U.S. Senate in 1992.)

In Torrance, Councilmember Dan Walker sponsored a 1990 initiative to curtail the use of a deadly chemical at the local Mobil Oil refinery. Walker contributed over $46,000 to the unsuccessful initiative which was thwarted by Mobil's $740,000 campaign in opposition. The highly controversial campaign gave significant exposure to Walker who ran (unsuccessfully) for U.S. Congress two years later.

At the state level, perhaps further demonstrating the growing importance of ballot initiatives and the diminishing relevance of the state legislative process, a growing number of officeholders have themselves chosen to take their policy proposals to the ballot. In 1990, for example, officeholders including two candidates for Governor sponsored *over one-half* (11 out of 18) of all the initiatives on the ballot. Officeholders have begun to sponsor initiatives for three principal reasons. First, they hope to derive public support by visibly affiliating themselves with a popular issue. Second, they hope to tap additional sources of money by asking their contributors to give extra contributions to their initiative campaigns. And third, they hope to motivate voters to go to the polls. As Los Angeles media consultant Sidney Galanty observes, "Initiatives are becoming a candidate's issue papers."[27]

Rather than offering generalized themes in his race for Governor, for example, former state Attorney General John Van de Kamp sponsored three specific initiatives on the November 1990 ballot—Proposition 128 (environmental reform), Proposition 129 (criminal justice reform) and Proposition 131 (campaign finance/term limits). While the strategy attracted widespread praise for bringing substance to the gubernatorial campaign, the initiatives depleted Van de Kamp's organizational resources. Van de Kamp's three initiatives appeared on the November ballot, but Van de Kamp did not. He lost the Democratic primary battle to former San Francisco Mayor Dianne Feinstein. And all three of his initiatives were eventually defeated. Nevertheless, other officeholders have announced their intent to circulate initiatives for 1992—including Assemblymember Ross Johnson (contribution limits),[28] former Los Angeles County Supervisor Pete Schabarum (congressional term limits) and Governor Pete Wilson (welfare reform).[29]

4. The Successes of Initiatives

Successful initiatives encourage more and more of individuals and organizations to circulate additional measures. In the Los Angeles area, successful slow-growth local initiative campaigns, especially in the city of Los Angeles in 1986, have encouraged others to try them. In the period before Proposition U (from 1970 to 1985), only four land use measures appeared on Los Angeles area ballots. Since 1986, 22 development-related initiatives have qualified for the ballot. San Diego State University Professor of City Planning Richard Caves suggests, "[Citizens] want to take a more active role in deciding the fate of their communities. The success of some earlier ballot box growth control measures has spurred them on to create even more ballot measures."[30]

At the state level, the passage of toxics regulation (Proposition 65 in 1986) and a wildlife bond act (Proposition 70 in 1988), for example, encouraged environmental activists again to use the initiative process for further wildlife bonds (Proposition 117) and the sweeping environmental plan (Proposition 128, "Big Green") in 1990. The strong voter approval of the tobacco tax (Proposition 99 in 1988), despite a tobacco industry-funded $22 million opposition campaign, inspired proponents of an alcohol tax to go to the ballot in November 1990 (Proposition 134).

The converse is also true. Voter disapproval of initiatives can create hesitance in using the initiative process and encourage advocates to reconsider the legislative process. At the state level, for example, this may have happened as a result of the November 1990 election. The sound defeat of 10 out of 13 statewide initiatives on the

27. Los Angeles media consultant Sidney Galanty, *quoted in* Bradley, *supra* note 5.

28. *Ballot Front,* California Journal, Oct. 1991.

29. Calpeek, Nov. 18, 1991.

30. *Quoted in* Caves, *supra* note 11.

November 1990 ballot could possibly have had a chilling effect on the number of measures attempting to qualify for the ballot in 1992. While initiative proponents circulated approximately 25 initiative proposals for the June 1990 ballot, just 10 measures were circulated for the June 1992 ballot. Only one proposal—a forest practices measure sponsored by investor Harold Arbit—appeared to have enough signatures for ballot qualification in June 1992. After the legislature and Governor tentatively agreed to back a compromise forest protection bill, however, Arbit withdrew his initiative. Thus, no initiatives appeared on the primary ballot in 1992. The November 1992 ballot, however, will contain seven initiatives.

C. Opponents Advance a Number of Arguments Against the Initiative Process

From its very inception, California's state and local initiative process has drawn substantial criticism. Some critics charge that the ballot initiative fundamentally undermines the system of governance by circumventing the more responsible state and local legislative process with ill-conceived or poorly drafted schemes. Former state Assemblymember John T. Knox comments, "[The initiative process] is a kind of loose cannon on the deck. Any group can be attacked, from the American Civil Liberties Union to the oil industry, you name it. It's not a very good way to make laws."[31] Brigham Young University political science professor David Magleby suggests the ballot initiative process in California is disruptive of normal political institutions and represents single issue politics at its worst.[32]

Others argue that the growing number of initiatives has shifted the enormous burden of complex policymaking to the voter, generating confusion and overload. Columnist John Spevak says, "Trying to understand each of the propositions is a trying experience. I feel like throwing up my hands (or maybe just throwing up) and just forgetting the whole thing."[33] Another critic writes, "Californians are apt to view [Hiram] Johnson's handiwork as an inspired but inevitable evolution in democracy toward a higher plateau. That's twaddle and bosh. That's balder and dash. That's bull and feathers."[34]

1. Undermines Legislative Power and Procedures

Some argue that the initiative process itself, not the gridlock of competing special interests, has triggered the stalemate and legislative impotence that has descended over state and local government. In the Los Angeles area, they point to growth control measures like Pasadena's Proposition 2 in 1989 or San Gabriel's citywide growth moratorium Proposition 1 in 1987 as examples of initiatives which have diminished the ability of local governments to raise needed revenues to accommodate exploding growth. At the state level, critics cite Proposition 13 (approved in 1978) which substantially reduced the ability of state and local governments to raise needed revenues, Proposition 4 (approved in 1979) which placed a cap on how much state government could spend, and Proposition 98 (passed in 1988) which automatically allocated 41% of the state's budget to education. These

31. *Quoted in* Kenneth Jost, *Initiatives: True Democracy or Bad Lawmaking?,* Congressional Quarterly: Editorial Research Reports, Aug. 17, 1990, at 464.

32. William Endicott, *What!? No Initiatives?,* Los Angeles Daily Journal, Jan. 14, 1992.

33. John Spevak, *Propositions Are Like Pretzels,* Dos Palos Star, Oct. 13, 1990.

34. Joe Vanacore, *State's Initiative System Is a Failure,* Sacramento Business Journal, May 28, 1990.

and other initiatives, they say, have placed at least 75% of the state's general fund beyond the legislature's control and reduced the legislature to fiscal impotence.[35]

Elected officials are often the most critical. Burbank Councilmember Tom Flavin, who strongly opposed a 1991 anti-growth initiative (Measure A), commented, "It's obviously being put forward by a handful of people intent on stopping progress regardless of the facts or consequences."[36] Assembly Speaker Willie Brown comments, "The initiative process has no place in government. In a democracy there really should not be the availability of the initiative."[37] Assemblymember Sam Farr says, "We in the legislature . . . have not been very excited about initiatives because they bypass everything we're trying to do."[38] Over a dozen legislative proposals to curtail the use of initiatives in fiscal and other matters were introduced in the senate and assembly in 1991.

State Legislative Analyst Elizabeth G. Hill comments that it has been "difficult to rationally set priorities" when a substantial portion of the state budget (41%) is already earmarked for education by Proposition 98. "As a result of this ballot box budgeting, the budgetary process has become more complicated and arbitrary, potentially making it more difficult, not less, for the state to respond to changing conditions and circumstances." "In short," Hill says further, "we run the risk of losing a statewide vision of California."[39] Pasadena City Director Kathryn Nack, commenting on the implications of Pasadena slow-growth Proposition 2, feared that the measure would "lock ourselves in right now [while] not knowing what the future will bring."[40]

The *Sacramento Bee* has editorialized, "[I]n the past decade, more often than not, [ballot] measures have exacerbated the problems as much as they've solved them. With every generation of new initiatives, the ability of state government to function has been further constrained. . . . And yet California's government is now so enmeshed in restrictions—restrictions unknown in any other state—that it is barely functioning."[41]

2. Too Often Generates Poorly Drafted or Ill-Conceived Proposals

At the local level, the use of the initiative process to implement complex policies has come under considerable criticism. Said one observer, "Ballot box planning is not a form of participatory planning. It co-ops the process of participation. Ballot box

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35. The legislative analyst concludes that approximately 75% of the state's general fund is beyond the legislature's control. From a speech given by Legislative Analyst Elizabeth G. Hill on Sept. 26, 1990, at the Fall Forum sponsored by Cal-Tax, *reprinted in* EdSource newsletter (Dec. 1990). A Joint Legislative Budget Committee staff report approximates that up to 90% of the state's general fund is beyond legislative control. California Legislature Joint Legislative Budget Committee, *The California Budget Process: Problems and Options for Change,* A Staff Report Prepared Pursuant to Assembly Concurrent Resolution 188 (Nov. 28, 1990).

36. *Quoted in* Richard Swearinger, *Burbank Group to Seek Cap on Development,* Van Nuys Daily News, Apr. 27, 1990.

37. Interview with Willie Brown, *Intelligent Debate Needed, Not Initiatives,* USA Today, Apr. 4, 1991.

38. *Quoted in* Chela Zabin, *Farmers, Food Processors Get Lesson in Politics,* Watsonville Register-Pajaronian, Mar. 12, 1990.

39. Hill, *supra* note 35.

40. *Quoted in* Michael Gougis, *PRIDE Wins Place on Spring Ballot*, Pasadena Star-News, Nov. 24, 1988.

41. Editorial, *Agenda for the 1990s,* Sacramento Bee, Apr. 1, 1990.

planning is another form of tyranny, a tyranny of the few who are sloganeers clever enough to get our signatures on a petition and our vote on the ballot."[42]

The frequent involvement of the courts in reviewing initiative proposals at the state level has drawn considerable attention to deficiencies in drafting. Of the 21 voter approved statewide initiatives since 1980, the courts have completely invalidated three[43] and partially invalidated eight.[44] Some initiative proponents simply overlook legal incongruities, while others deliberately add popular (and constitutionally questionable) provisions and terminology to increase the likelihood of passage. "[Proposition 115 in 1990 contained] enough code words—'crime victim,' 'speedy trial,' 'Night Stalker'—[to] overwhelm its complex and dangerously uncertain effects on local budgets, civil liberties and criminal justice," says columnist Peter Schrag.[45] Even state Supreme Court Justice Stanley Mosk has warned, "If we conjure up a sufficiently enticing title—like 'for cheaper and better government'—we can easily procure enough signatures to get the measure on the ballot and win approval by the electorate, which wants cheaper and better government along with the flag, mom and apple pie."[46]

Several critics have called for a process of drafting review to stave off potential court involvement. Insurance Commissioner John Garamendi says, "This points to the greatest flaw in the initiative process: There is no provision for systematic analysis, in-depth research or critical compromise. . . . Amateurish and often deliberately confusing draftsmanship leads to interpretation difficulties and expensive litigation, which could have been avoided through the legislative process; many initiatives are finally declared unconstitutional."[47] Legal writer Sigfredo Cabrera adds, "Subtle, legal issues that initiative promoters failed to detect (or simply ignored) become the subject of protracted court challenges. Meanwhile, elected representatives are insulated from accountability for poorly drafted laws the people have imposed on themselves."[48] (For a thorough discussion of initiative drafting, see Chapter 3, "Initiative Drafting and Amendability.")

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42. R. Bundy, *Ballot Box Planning is Clear Evidence of Planning Failure,* San Diego Planning Journal 6 (Dec. 1988), *quoted in* Richard Caves, *Determining Land Use Policy Via the Ballot Box: The Growth Initiative Blitz in California,* Land Use Policy, Jan. 1990.)

43. The three statewide initiatives completely invalidated by the courts were: Proposition 6, approved in 1982 (a repeal of the state's inheritance tax); Proposition 68, approved in 1988 (campaign finance reform); and Proposition 105, also approved in 1988 (disclosure of advertisers). (For a more thorough discussion of court actions regarding these initiatives, *see* Chapter 9, "Judicial Review.")

44. The eight statewide initiatives partially invalidated by the courts were: Proposition 9, approved in 1974 (campaign finance/campaign disclosure); Proposition 7, approved in 1978 (the death penalty); Proposition 24, approved in 1984 (reform of legislative procedures); Proposition 62, approved in 1986 (local tax regulations); Proposition 73, approved in 1988 (campaign finance); Proposition 103, approved in 1988 (auto insurance reform); Proposition 115, approved in 1990 (criminal justice reform); and Proposition 140, approved in 1990 (pensions of state officials). (For a more thorough discussion of court actions regarding these initiatives, *see* Chapter 9, "Judicial Review.")

45. Peter Schrag, *Absurdly Crowded Ballots Induce Voter Apathy,* Los Angeles Daily Journal, May 16, 1990.

46. *Quoted in* Jonathan Kirsch, *Initiatives Cutting Up the Constitution?,* California Lawyer, Nov. 1984.

47. John Garamendi, *California's Ballot Industry,* New York Times, May 7, 1990.

48. Sigfredo Cabrera, *Voters Must Be Concerned About Ballot Complexity,* Sacramento Daily Recorder, July 16, 1990.

3. Attracts Massive Amounts of Campaign Money

Some critics contend that the initiative process attracts excessive amounts of special interest campaign dollars to otherwise small contributor-based local elections. In the Los Angeles area, the Commission found that 80% of all contributions to local initiative campaigns came in amounts $100,000 or more. Nearly half (48%) of all Los Angeles area local initiative money came in amounts $1 million or more. By contrast, 82% of contributions to *candidates* in Los Angeles area local jurisdictions previously studied by the Commission came in amounts $1,000 or less.

In the city of Torrance, for example, Mobil Oil contributed over $740,000 in successful opposition to an initiative (Proposition A in 1990) which would have curtailed the use of a specific chemical at Mobil's local refinery. In the city of Los Angeles, Occidental Petroleum gave the fourth largest contribution ($8 million) to a *state or local* campaign in California history in its unsuccessful attempt to defeat anti-oil drilling Proposition O in 1988. Los Angeles City Councilmember Zev Yaroslavsky commented, "Occidental Petroleum has spent enough to win a statewide election. . . ."[49] (For a further discussion of the role of campaign money in Los Angeles area local initiative campaigns, see Chapter 8, "The Influence of Money.")

4. Permits Excessive Special Interest Influence

Some critics charge that the initiative process has become the special interest's *alternative* to state and local governmental processes rather than the people's safeguard. "The [initiative] process was long ago co-opted by politicians and well-heeled special interests and bears little resemblance to the grass roots democracy envisioned by Hiram Johnson and its other turn-of-the-century founders," writes columnist William Endicott.[50] "The initiative process was adopted as an anti-corruption measure for the 'little guys,' but they've been priced out of the market," says Insurance Commissioner John Garamendi, who ironically was elected insurance commissioner because of an initiative sponsored by Voter Revolt, an organization of "little guys."[51] San Diego State University Professor of City Planning Richard Caves notes, "The question becomes: is the measure designed to benefit the entire city or just a small group of individuals?"[52]

Los Angeles area residents have witnessed several attempts at special interest initiatives. In West Hollywood, for example, a small group of card club investors qualified Proposition AA for the 1990 ballot which attempted to establish a maximum of *one* card club within city limits. (The measure contained a provision which allowed one card club per 50,000 residents; West Hollywood's population is approximately 38,000.) To attract more votes, proponents of Proposition AA added to their proposal a provision mandating that three-quarters of all tax revenues generated by the club be used to supplement existing funding levels of law enforcement and social services. A spokesman for Proposition AA, Mark Vandervelden said, "Proposition AA is an exciting opportunity to garner additional resources to fulfill [the city's] dreams."[53] Proposition AA opponent Bronwen McGarva of the West Hollywood Safety Commission responded, "I think the card

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49. *Quoted in* Ted Vollmer, *Oil Drilling Fight War Chests Pass $8.7 Million Total,* Los Angeles Times, Oct. 29, 1988.

50. Endicott, *supra* note 32.

51. Garamendi, *supra* note 48.

52. Caves, *supra* note 11.

53. Staff, *Players in Gambling Dispute Display Their Winning Hands,* West Hollywood Post, Oct. 5, 1990.

club would cause more problems than a whore house."[54] Yet the opposition's campaign was funded (with a $24,000 contribution) by a card club operator in Bell Gardens concerned about the diversion of business to West Hollywood. While the measure was easily defeated (receiving only 23% of the vote), card club backers are circulating another measure for the November 1992 ballot.

At the state level, the lottery initiative (Proposition 37 in 1984) stands as the most celebrated instance of a successful statewide "special interest" initiative. Lottery ticket manufacturer Scientific Games of Atlanta virtually funded the entire initiative campaign, putting up the money to qualify it and the money to win the campaign (a total of $2.3 million). Their investment has since paid off. In 1990 alone, Scientific Games made $2.1 million on the manufacturing of California lottery tickets. Lottery equipment manufacturer G-Tech collected over $20 million in 1990.[55] U.C. Berkeley political science professor Eugene Lee comments, "The lottery is the most explicit example of an industry seeing an opportunity out there and funding an initiative to take advantage of it."[56]

The *San Jose Mercury News* editorializes, "Reforms of the initiative process are often rejected on the grounds that initiatives—in their writing, qualifying for the ballot, and passage or failure—are the voice of the people. The expenditure [disclosure] reports wilt that argument. Initiatives are usually just as much big money politics as is legislative lobbying in Sacramento."[57]

5. Increases Professionalization of the Process

Several critics in decrying the subversion of the initiative process by special interests have pointed to its growing professionalization. In the Los Angeles area, though most initiative campaigns have remained predominately grass roots efforts, there are signs of growing professionalization, especially in larger cities where direct mail has fast become the main campaign tool. In Pasadena, for example, the battle over anti-growth Proposition 2 was fought mail box by mail box. Proponents of the successful anti-growth Proposition 2 spent two-thirds of their total campaign budgets on direct mail; opponents spent almost half of their resources on mail. Growing use of professional campaign consultants has surfaced in local initiative contests as well.

At the state level, since 1978, large-scale grassroots initiative campaign strategies have given way to paid circulators, professional consultants, marketing advisors and media buyers. Proponents of a 1978 smoking regulation initiative (Proposition 5), for example, spent less than $1,000 on professional signature gatherers. Ten years later, proponents of a 1988 anti-smoking measure (tobacco tax Proposition 99) spent nearly $470,000 on professional paid circulators. And two years after that, proponents of a 1990 alcohol tax measure (Proposition 134) paid over $900,000 to petition circulation firms.

Columnist Jay Mathews says, "Both [Howard Jarvis and Paul Gann] are dead, but they have left a cottage industry in initiative writing, fundraising, signature gathering and advertising—a new career path for young Californians that seems to

54. Staff, *Top of the News: 'Better a Bordello Than Card Club'*, West Hollywood Post, Oct. 12, 1990.

55. Michelle Quinn, *The Lottery Lemon: Have Californians Soured on Their Games of Chance?*, California Journal, Dec. 1991.

56. *Quoted in* Jerry Roberts and Susan Yoachum, *Some Say Initiative Process Is a Mess,* San Francisco Chronicle, Aug. 10, 1990.

57. Editorial, *Big-Bucks Initiatives,* San Jose Mercury News, Nov. 23, 1990.

have no end in sight."[58] Today, anyone with enough money can hire one or several organizations to conduct public opinion polling to determine popular receptivity to an initiative, draft the initiative, circulate it for signatures and conduct a full-blown campaign on its behalf.

Jonathan Kirsch notes, "In its pristine form, the initiative process appears to be an expression of pure democratic will. The reality, however, is that the initiative has become an expensive blend of art and science, psychology and old-fashioned politics, all practiced by experts on behalf of their paying clients."[59] (For discussions of the professionalization of the initiative process, see Chapters 4 and 8, "Circulation and Qualification" and "The Influence of Money," respectively.)

6. Encourages Single-Issue Politics

Some observers of the initiative process complain that proponents are not worried about the impact of the initiative on public policy as a whole but rather are concerned only with implementation of their own interests. Likewise, voters presented with single-issue choices may be unaware of how their votes will impact the overall future of their locality or of California as a whole. Critics say that some voters, for example, did not foresee the substantial impact of property tax reduction Proposition 13 on the degree and quality of state government services and education. In the Los Angeles area, critics argue that voters cannot grasp the full implications of ballot initiative moratoriums on growth or development.

Political science professor Eugene Lee concludes, "To meet California's problems of the '90s, much less the next century, requires an extraordinary amount of political skill—compromise, balancing and negotiation. The initiative process is a single-shot approach to problem solving, which totally frustrates an effort of looking at the overall picture."[60] Columnist Dan Walters suggests, "Deciding so many matters via the ballot is a terrible way to make policy. Initiatives are written in private, without public input and often contain language that benefits narrow economic interests to the detriment of the larger public."[61]

7. Weakens Political Process

As well as creating a "safety valve" for the people, some critics argue that the initiative process has created an "escape valve" for state government to avoid its normal responsibilities. Patrick McGuigan, executive editor of the *Daily Oklahoman,* comments, "[I]t becomes a way for legislators to avoid doing what we elect them to do."[62]

Several critical issues in recent years have landed on state and local ballots after languishing in legislative inertia. In the Los Angeles area, the explosive 1988 contest over Propositions O and P settled a 22-year dispute over Occidental Petroleum's bid to drill for oil on a small strip of beachside property in the Pacific Palisades.[63] At the state level, the legislature's inability to forge a tort reform

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58. *Quoted in* Jay Mathews, *Ballot's 222-Page Pamphlet Will Discourage Voters,* Sacramento Daily Recorder, Oct. 30, 1990.

59. *Quoted in* Jonathan Kirsch, *Initiatives Cutting Up the Constitution?,* California Lawyer, Nov. 1984.

60. *Quoted in* Jerry Roberts and Susan Yoachum, *Some Say Initiative Process Is a Mess,* San Francisco Chronicle, Aug. 10, 1990.

61. Dan Walters, *Ballot Will Be Crowded Again,* Jan. 22, 1990.

62. *Quoted in* Mike Feinsilber, *The Right of Initiative, Referendum Is Mixed Blessing,* Sacramento Daily Recorder, July 13, 1990.

63. Ted Vollmer, *Many Battles But No Winners,* Los Angeles Times, Sept. 19, 1988.

compromise between the insurance industry and the trial lawyers led to a multimillion dollar ballot battle over Proposition 51 in 1986. In 1988, the legislature's unwillingness to resolve the automobile insurance crisis directly resulted in an $80 million campaign over five competing insurance regulation initiatives including successful Proposition 103. In 1990, the legislature's reluctance to address the state's deteriorating emergency medical care system prompted several health organizations to qualify the ultimately unsuccessful alcohol tax initiative (Proposition 134). And in 1992, after years of legislative inaction, a health insurance reform plan will go before the voters. Andrew McGuire, chief proponent of Proposition 134, notes, "It is horrible that we have to go through the initiative process, but there is no guts in the legislature to fund the programs that have to be funded."[64]

8. Generates Voter Confusion and Overload

Some charge that the increasing numbers of issue choices reaching the ballot are overwhelming the average voter. Columnist Peter Schrag concludes, "With so many measures on each ballot, some tens of thousands of words long, many of them conflicting with, or similar to, others, how on earth can voters know what they're voting for?"[65] Legal writer Sigfredo Cabrera comments, "If most voters are unable to figure out for themselves the consequences of proposed initiatives, they become susceptible to manipulation by misleading political advertisements sponsored by those special interest groups directly affected by the election outcome."[66] Commenting on the complex contest between 1989 Pasadena growth limitation initiative Proposition 2 and its city council rival measure Proposition 1, City Director Rick Cole observes, "[The campaigns for both propositions] will come down to bumper stickers. It will be reduced to four or five words, and that is the exact process we were trying to avoid."[67]

Critics argue that the prevailing methods for informing the voters are thought to be insufficient. Law professor Julian Eule notes, "Sometime in mid-October, a massive booklet arrived in my mailbox. At first I thought it was the local phone directory. Closer examination revealed it to be the ballot pamphlet from California's secretary of state."[68] The *Watsonville Register-Pajaronian* editorializes, "This November's sample ballot and voter pamphlet will make up a voter package only a little less heavy than a Sunday edition of the *New York Times*."[69] Voters at both the state and local level clearly find it difficult to sort through a mass of complicated information and make informed choices when confronted with so many decisions.

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64. *Quoted in* Vlae Kershner, *Big Battle Coming Up in Tax Revolt,* San Francisco Chronicle, Aug. 30, 1990.

65. Peter Schrag, *The 'No' Presumption,* Fresno Bee, Oct. 19, 1990.

66. Cabrera, *supra* note 49.

67. Michael Gougis, *Who Will Win When Slow Growth Measures Collide*, Pasadena Star-News, Nov. 28, 1988.

68. *Quoted in* Ted Rohrlich, *Court Role in Initiatives Is Reasonable,* Los Angeles Times, Sept. 26, 1990.

69. Editorial, *Ballot Initiatives: Time to Just Say No,* Watsonville Register-Pajaronian, Sept. 25, 1990.

D. Supporters Cite a Number of Arguments in Defense of the Initiative Process

"The initiative allows for new ideas to be placed on the political agenda. Through the initiative, the people can play a direct role in making policy, joining legislators, judges and the media in defining public debate."

— *Bill Owens,*
Colorado State Senator[70]

To its staunch defenders, the initiative process is the "true sense of democracy."[71] For them the initiative process stands as the last resort for the people, an opportunity to circumvent an unresponsive and gridlocked state and local government. The initiative also brings ordinary citizens into the political process. David Schmidt, author of *Citizen Lawmakers: The Ballot Initiative Revolution*, asserts that the initiative is the "rare and precious flowering of democracy" and that it is "controlled neither by Right, Left, nor special interests, but by the people."[72]

1. Allows the Public to Circumvent an Unresponsive Government

The initiative process was created to serve as a "safety valve" for outraged citizens confronted with a gridlocked and stubborn state government, and initiative supporters believe it is still needed to fulfill this vital function. As supporters of Pasadena's successful slow growth Proposition 2 wrote in the *Pasadena Star-News*, the coalition supporting the initiative (PRIDE) "was organized by citizens from all over the community who were fed up with the failure of city hall to face up to the issue of growth management."[73]

"The initiative allows for political choices that are stymied in the normal legislative process. In fact, the problem is not the initiative process but the lack of political leadership," says former Governor Jerry Brown.[74] Republican strategist Steven A. Merksamer says, "almost all major advances in state policy since the early 1970s have come through the initiative, not the legislative process."[75]

Commenting on the state legislature's inability to deal with the insurance crisis, Voter Revolt's Harvey Rosenfield observes, "The message is [that] people need pocketbook reforms and if the legislature is unwilling to bite the bullet, the people will write their own laws."[76] And in response to Assembly Speaker Willie Brown's criticisms of the initiative, political commentator Joe Scott replies, "But the speaker forgets that contrary to his rhetoric, much too often the legislature ignores issues that are brought to their attention. . . . That's why the initiative process lives."[77]

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70. Bill Owens, *Is the Initiative Process a Good Idea: Counterpoint,* State Government News, July 1991.

71. Planning and Conservation League General Counsel Corey Brown, *quoted in* Barbara Reynolds, *'Initiatives Are the True Sense of Democracy,'* USA Today, Apr. 16, 1991.

72. *Quoted in* Jost, *supra* note 31, at 464.

73. Michael Salazar and Shirley Mauller, *The Real, Crucial Differences Between PRIDE and the City*, Pasadena Star-News, Dec. 11, 1988.

74. *Quoted in* Roberts and Yoachum, *supra* note 61.

75. *Quoted in* Ronald Brownstein, *The Voters Are Restless in California,* Los Angeles Times, Dec. 25, 1988.

76. *Id.*

77. Joe Scott, *Initiative Allows Voters to Bypass Legislative Impasse,* Santa Monica Evening Outlook, Apr. 25, 1991.

2. Neutralizes Power of Special Interests

Supporters argue that the initiative process adds a critical counterweight to a state and local government that frequently is driven by special interests. At the state level, proponents of an increased tobacco tax, for example, tried to persuade the legislature to adopt legislation in the mid-1980s, but they were thwarted at every turn. As the legislature began to debate an increase in tobacco taxes, campaign contributions from the tobacco industry to legislators started to flow at an accelerated rate.[78] In the 1985-1986 election cycle, for example, tobacco company contributions to state legislators totaled just over $256,000. By the 1987-1988 election cycle, tobacco contributions more than doubled to just under $600,000. Out of 120 legislators, all but five received contributions from the tobacco industry. Tobacco industry lobbying expenditures also increased considerably during the same period—from $235,000 in the 1985-1986 election cycle to over $2 million during the 1987-1988 election cycle.[79]

One of the cigarette tax bill's major sponsors, Assemblymember Lloyd Connelly, recalls, "When the bill reached the Assembly Revenue and Taxation committee, I couldn't even get one member to put it forth as a motion—let alone get seven-to-nine votes required for passage. So we went to the people."[80] The people passed the measure by a compelling 58% vote—dramatically demonstrating the degree to which the legislature had failed to reflect the public will. The successful Proposition 99, appearing on the November 1988 ballot, added a 25-cent tax to each pack of cigarettes.

Political commentator Joe Scott notes, "One reason for having the initiative as the people's tool is that special interests have mushroomed out of control in the capitol, filling the war chests of pliant politicians."[81] Thomas Cronin, political scientist and author of *Direct Democracy: The Politics of the Initiative, Referendum and Recall,* points out, "If we have no turnover, no real competition, then the people with a grievance have two choices—form a PAC if they have lots of money, or get their issue on the ballot if they don't."[82] "What the public is truly fed up with is its elected officials who spend so much time catering to special interests that important legislation cannot be passed, making it necessary for citizens to resort to the initiative process," say initiative supporters Joel Fox and Harvey Rosenfield.[83]

3. Makes Governmental Reforms Possible

Many initiative supporters believe that major government and political reforms would simply not occur if left to elected officials. The inherent interest in self preservation of governmental bodies and elected officials would make effective reforms virtually impossible. Indeed, the history of the California ballot measure process clearly illustrates that citizens have sought recourse from ballot initiatives most frequently for governmental reforms. In the Los Angeles area, citizens have used the initiative process to retool land-use planning processes, establish district-by-district elections and enact term limits on local officials. At the state level, the

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78. Michael Evens Begay, Ph.D., and Stanton A. Glantz, Ph.D., *Political Expenditures by the Tobacco Industry in California State Politics,* Institute for Health Policy Studies (University of California, San Francisco, Mar. 1991).

79. *Id.*

80. *Quoted in* Harold Meyerson, *The Year of the Initiative*, LA Weekly, May 11-May 17, 1990.

81. *Id.*

82. *Quoted in* Feinsilber, *supra* note 63.

83. Joel Fox and Harvey Rosenfield, *The People's Initiatives Are Under Heavy Assault,* Los Angeles Times, Aug. 8, 1991.

number of initiatives affecting the government and the political process outnumbers initiatives in all other categories. Term limits Proposition 140, arguably one of the most sweeping government reforms in California history, was passed by the voters in November 1990. In California, where the median length of service is 10 years for an assembly incumbent and 12 years for a state senator, many believe that the legislature would *never* have seriously considered a term limits measure. Indeed, legislative leaders put up the principal opposition to, and most of the money against, Proposition 140. The initiative process was the only possible avenue for advancing this proposal.

4. Stimulates Public Involvement in Important Issues

Initiative process supporters say that ballot measures are also instrumental in raising greater public awareness of, and interest in, important public policy issues. Hermosa Beach Mayor Robert Essetier said that initiatives draw voters to the polls, and they inspire interest in issues. "It's an important part of democracy. Even if the initiatives lose, they highlight important issues."[84]

At the state level, voter drop-off rates for initiatives in recent years have been consistently low. In November 1990, for example, more voters voted on Proposition 134 (alcohol tax) than on the contest for state insurance commissioner. And a number of initiatives have drawn higher vote totals than gubernatorial candidates. Colorado state Senator Bill Owens says, "Initiatives also lead to a better-informed electorate as well as to greater voter participation. Surveys show that the voter has a better understanding of most initiative proposals than of the platforms of the candidates they elect."[85]

Some have likened the initiative process to a "town hall" meeting in which all members of the community are given an opportunity to participate. "In this age of electronic advertising and impersonal politics, the initiative process is as close as we can get to an old-fashioned town meeting," write Joel Fox and Harvey Rosenfield. "The people gather in their voting halls after a period of debate and express their feelings about what their fellow citizens have proposed. The tradition is a long and trusted one. And it works."[86]

5. Exerts Pressure on Government to Act Responsibly

Supporters of the initiative process maintain that the threat of a ballot measure is often necessary to pressure elected officials to respond to particular public needs in a meaningful way. "A properly structured initiative process results in increased responsiveness by government to the will of the people, greater citizen participation and a better-informed electorate," says Colorado state Senator Bill Owens. "[Elected bodies] recognize this by passing legislation under the threat of an initiative. This fear of being bypassed by the people was at least partially responsible for the passage of acid rain legislation in Massachusetts, abolition of the sales tax on food in Arizona and Wyoming's minimum stream flow legislation."[87]

In 1973, for example, after the California legislature voted down an ethics and campaign finance reform measure, a coalition of citizens groups began circulating a sweeping campaign finance and ethics regulation initiative (the "Political Reform Act of 1974"). Soon after petition circulation commenced, the legislature suddenly revived its interest in reform legislation. It enacted a tough campaign finance law

84. Telephone interview with Robert Essetier, Mayor of Hermosa Beach, May 29, 1992.

85. Owens, *supra* note 71.

86. Joel Fox and Harvey Rosenfield, *The People's Initiatives Are Under Heavy Assault,* Los Angeles Times, Aug. 8, 1991.

87. Owens, *supra* note 71.

(the Waxman-Dymally Act) containing language taken directly from the wording of the reform initiative and a mild ethics law (the Moscone Act), but it failed to pass a lobbying registration bill.

Despite these legislative actions, California Common Cause (by a narrow vote of its board) continued to circulate its reform initiative—in large part due to the legislature's inability to pass lobbying reforms. Though the initiative was opposed by several legislators, including Assemblymember Willie Brown, voters approved the measure by a 70% vote in the 1974 primary election.

In 1991, the threat of an initiative also spurred the legislature and the Governor to agree on a new forest preservation plan. After losing a close initiative battle over "Forests Forever" Proposition 130 in 1990,[88] investor Harold Arbit coordinated and Disney Company president Frank Wells funded a major petition circulation effort to qualify an even tougher forest practices initiative for the June 1992 ballot.[89] During the signature-gathering drive, intense negotiations took place between environmentalists, lumber companies, the legislature and the Governor in hopes of defusing the need for another expensive ballot battle. For months, a negotiated settlement seemed out of reach; the legislature and the Governor each produced incompatible bills.

Once the environmentalists completed their signature-gathering drive in November 1991, however, compromise came more quickly. With qualification of his initiative seemingly imminent, Arbit withheld submitting his nearly 800,000 signatures to the secretary of state for ballot qualification while the legislature and Governor again attempted to reach an agreement. In mid-December 1991, Governor Wilson tentatively agreed to a legislative plan supported by Arbit. Arbit agreed not to file his petitions, and withdrew his initiative from possible qualification for the ballot.[90] The compromise reached by the Governor and legislature subsequently broke down.

E. Despite Its Flaws, the Commission Believes the Ballot Initiative Process Should Be Retained—But Significant Improvements Are Needed

Conceived for Los Angeles in 1903 as an innovation in modern government, allowing the people to enact laws directly whenever their elected representatives lost sight of the public will, the ballot initiative is no longer solely a measure of last resort. Californians and Los Angeles area residents now turn to the initiative almost routinely—to launch state and local debates over new issues and to trigger shifts in policy—sometimes before the legislative body has had a chance to address the issues involved. (The planned 1992 "right to die" statewide initiative on medically-assisted suicide, for example, will attract enormous public attention, as it has in other states, yet the issues have never been squarely presented to, or discussed by, the legislature for resolution.) Initiatives today are frequently used as offensive weapons—to bypass the legislature and local government altogether, to immunize laws against future amendments and to crystallize public opinion into defined state policy in compressed periods of time.

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88. Proposition 130 received 48% of the vote in the November 1990 election.

89. Virginia Ellis, *Investor to Back Another Forest Protection Bill*, Los Angeles Times, Sept. 19, 1991.

90. Other environmental groups reportedly unhappy with the compromise have since vowed to qualify another forest practices measure for the November 1992 ballot. Without their major funding source (Arbit) aboard, however, successful qualification appears uncertain.

Although the ballot initiative system in the Los Angeles area has significant flaws, the Commission has concluded, after much thought and deliberation, that the process itself should be retained but also considerably improved. At the outset of the Commission's deliberations, some members were convinced that the initiative process had to be preserved as an essential part of the democratic tradition in the Los Angeles area. Others were concerned that the initiative process had caused local governments considerable harm and was damaging the more responsible and representative branches of government. The Commission therefore initiated a lengthy and detailed examination of the initiative process in which it debated every conceivable option—from complete elimination of initiatives altogether, to retention of initiatives without change, to a host of possible modifications and improvements. In the course of this examination, the Commission thoroughly studied the experiences of other states, attempting to ascertain whether improvements instituted elsewhere could be adopted in the Los Angeles area. Based on its research, the Commission has concluded that the local initiative process should be significantly improved and modernized—transformed from an increasingly impractical system of direct democracy conceived at the beginning of the 20th century into one capable of sustaining efficient and effective government into the 21st century.

1. The Need for Retention

In a perfect or even near-perfect system of representative democracy, ballot initiatives might be unnecessary. Local elected officials would be closely attuned to the public's needs and desires; voters would be well-informed on the problems and issues of the day; and local legislative bodies would be open to arguments on their merits—free from the need to raise campaign contributions to assure reelection. Such a legislative system would quickly respond to public desires and at the same time inform and temper the public's opinions through the deliberations and advice of elected representatives. Such a system could accommodate legitimate desires for change without the need for direct popular votes through ballot initiatives.

But such a legislative system does not exist—if it ever did—in California's local governments today. Elected officials, everywhere and increasingly, are subjected to a diversity of pressures which make it difficult for them quickly to respond to problems as they arise. The financial demands of elected office and the need of candidates and officeholders to raise ever-increasing sums of money frequently make them more responsive to the demands of special interest and major contributors than to the average voter.[91] Incumbent officeholders' desire for reelection often makes them reluctant to take the lead on bold policy initiatives. And the complexity of governmental issues, together with the need of many local officials to shape or "control the spin" of information available to the public, has left many voters without the knowledge they need critically to review the records of officeholders at election time. The result is a legislative process in the Los Angeles area which is often incapable of resolving critical problems, which is resistant to new candidates and ideas and which has discouragingly low rankings in public esteem.

The ballot initiative was conceived as an antidote to such a state of affairs. After lengthy study, the Commission believes that the need for this remedy has not dissipated since its inception. As in the early part of this century, California state and local government is still subject to special interest influence, important policies are not addressed and needed legislation is derailed or blocked by unproductive battles. Until this structural situation significantly changes, Californians will need

91. *See, e.g.,* California Commission on Campaign Financing, *supra* note 23.

to retain the initiative power as a safeguard against governmental inaction and an implement for legitimate change.

The ballot initiative process may also be needed to make changes to the *structure of government itself*—changes which elected officials themselves find inherently difficult to make. Campaign finance, ethics and limits on terms of office, for example, are all reforms that elected bodies typically resist. In California, as in other states, the initiative process is still necessary to trigger reforms in these areas.

2. The Need for Significant Improvement

The initiative process in the Los Angeles area today has virtually become partner in local policymaking. The simple apparatus set up almost 90 years ago however, remains virtually unchanged. The Commission believes that the initiative process in the Los Angeles area—and hence in other cities and counties as well—must be improved and updated to reflect its importance as an integral part of government.

The local initiative process in the Los Angeles area suffers from a number of major defects:

- Initiative texts are inflexible; once drafted and circulated they cannot be amended either before or after adoption;
- The initiative process discourages local governments from entering into negotiations to strike compromises over initiatives' content;
- Initiatives are too easy to qualify with paid circulators and too difficult to qualify with unpaid volunteers;
- Initiatives are too easily used to amend city charters, leaving them unwieldy and excessively long;
- Voters are too easily misled with incorrect or deceptive information in media advertisements and slate mailers;
- Ballot pamphlets often fail to communicate concise and accurate information to voters to enable them to make informed decisions about the lengthy and complex initiatives; and
- High-spending, one-sided campaigns often dominate and distort the electoral process.

The remainder of the Commission's report addresses these problems. Each chapter addresses a major problem area and discusses proposed solutions. The reforms proposed are designed to make the initiative process in Los Angeles area communities work more easily, fairly and flexibly. They assume that the initiative will continue to be a part of the local political landscape well into the distant future. The reforms are therefore designed to retain the initiative process while adjusting it to the exigencies of modern political life in the next century.

CHAPTER 3

Initiative Drafting and the Need for Amendability

"Donald Hagman, the late UCLA law professor, observed in 1978 that the authors [of Proposition 13] might reasonably be arrested for 'drunken drafting.'"

— Edward Hamilton, Los Angeles Times[1]

Local ballot initiatives are rarely enacted without flaws. Like the laws passed by local legislative bodies, initiatives can be ambiguous, vague, overreaching, under-inclusive or even contradictory. They can overlook entire problem areas, become outdated by unanticipated developments and violate both the state and the federal constitutions.

Yet under California law, not one word of a local initiative's text can be changed after the city attorney gives it a caption and returns it to the proponent to begin signature collection—at least not without the proponent withdrawing that initiative, redrafting it and starting over again. Any errors, omissions or oversights it might contain must go uncorrected, even if the proponents later discover them and wish to make changes. Despite flaws or unintended consequences that might surface during the course of the qualification drive and campaign, the proponents have no choice but to push on doggedly, denying that any problems exist, or to give up and withdraw the initiative altogether.

Even after an initiative has been enacted into law, no one, not even a unanimous city council and mayor acting together, can amend that law to correct a single word, no matter how erroneous, flawed or outdated that initiative may be,

1. Edward Hamilton, *California's Sloppy Ballot Measures*, Los Angeles Times, Aug. 11, 1982.

unless the text of the initiative itself permits such amendments. Initiatives, in other words, remain eternally fixed in the law as they are drafted—unless they are amended by other ballot measures or themselves allow subsequent amendments.

By contrast, the legislative process at the local level is almost infinitely flexible and is expressly designed to catch and correct errors in ordinances before, during and even after their enactment. When a council member introduces an ordinance, council staff analyze it for problems. The author may then redraft and resubmit it. Public hearings are then usually scheduled, allowing experts and the general public to comment. At any point up to final action, the proposal can be amended by the council to accommodate criticisms or suggestions. If the proposed ordinance is enacted into law and errors later discovered, the council may amend and correct the law at any time.

The contrasts between the local legislative and initiative processes are vivid. The legislative process is highly flexible, encouraging scrutiny, criticism and accommodation both before and after proposals become law. The initiative process, however, is rigid and inflexible, discouraging scrutiny and prohibiting change both during circulation and after enactment.

The Commission believes that California's local initiative process must be reformed to incorporate greater flexibility in drafting and amendments. Under suitable safeguards, proponents should be allowed to make limited changes to the text of their initiatives before placing them on the ballot. Proponents and local legislative bodies should also be permitted, if they mutually desire it, to negotiate with each other over possible compromise solutions to problems addressed by an initiative proposal. The city council or board of supervisors should be vested with suitably limited authority to amend initiatives after their enactment.

A. Poorly Drafted Local Ballot Initiatives Reap Confusion Among Voters and the Courts

Many of the problems in the life of an initiative stem from its initial drafting.[2] A poorly drafted initiative can undermine a proposed reform in any number of ways. Ambiguities or omissions in language can produce unintended consequences. Administrative agencies and the courts may find a different intent in the measure than anticipated by its proponents. Excessively complicated or confusing terminology can be exploited by opponents to foster voter reluctance to accept the measure. And constitutional weaknesses or other legal deficiencies may render an initiative void in whole or in part upon review by the courts.

Poorly drafted initiatives not only hurt proponents but confuse voters as well. Voters may feel justifiably betrayed by initiatives that, because of ambiguous or unconstitutional provisions, are unable to deliver on ballot box promises. Improperly

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2. Critics of initiatives often point to "bad" citizen-initiated measures as evidence that the voters are prone to produce dangerous and anti-democratic policies. Voter approval of California's 1920 Alien Land Law, restricting property ownership based on citizenship, and the 1964 voter repeal of the Rumford Fair Housing Law, prohibiting discrimination in housing based on race, are frequently cited in support of this argument.

Defenders of the initiative process respond that similar problems plague legislation by elected representative bodies. The Alien Land Law was preceded by various state statutes enacted by the California legislature that had similar discriminatory objectives. Indeed, one of the most reprehensible abuses of civil liberties was the internment of Japanese-Americans during World War II, an action supported by representative bodies. *State Experience With the Initiative Process and Senate Joint Resolution 67, Before the Subcomm. on the Constitution of the Senate Committee on the Judiciary,* U.S. Senate (Dec. 13, 1977) (testimony of Larry Berg).

drafted initiatives also subject the courts to political pressures, forcing judicial involvement in questions of constitutionality, scope of subject matter, procedures, administrative interpretations and conflicts with other initiative measures. Local governments are often forced to enact additional legislation to raise funding for measures enacted but not financed by the voters. And the local governments must pay many of the costs of the resulting legal disputes.[3]

Problems that arise from poorly drafted initiatives can be grouped into five specific categories. Ambiguous or imprecise terminology can make the implementation of initiatives problematic as administrative agencies and courts wrestle with problems of interpretation. Omissions and oversights can result in unintended consequences and faulty legislation. Excessive length can overwhelm voters with too many issues or subjects. Complicated wording in the text and titles of initiatives can promote voter confusion. And constitutional deficiencies can frustrate voters and force proponents to start the enactment process all over again.

1. Ambiguous or Imprecise Terminology

Poorly drafted initiatives can shape public policy in undesirable or unanticipated ways. A glaring example of how local governance has been thrown into disarray by ambiguous initiative legislation is Proposition 13, the popular limit on some property owners' taxes, which became part of the California constitution after its passage in 1978. It has generated intense confusion and debate ever since. At the time of its passage, an analysis by the governor's office stated that the measure contained at least 40 ambiguities in the language.[4] Court adjudications have confirmed this judgment.

In the first legal challenge to Proposition 13, *Amador Valley Joint Union High School District v. State Board of Equalization,*[5] the California Supreme Court called its language "imprecise and ambiguous" but nonetheless held that the initiative met the single-subject requirement (for further discussion of the single-subject rule, see Chapter 9, "Judicial Review") and that proper procedures had been followed for an amendment to the state constitution. However, several of the justices predicted that future problems for local governments would inevitably arise as administrative agencies and courts attempted to define the measure's imprecise terminology.

As predicted, several lawsuits challenged the provisions of Proposition 13.[6] The Howard Jarvis Taxpayers Association, which drafted Proposition 13, concluded that

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3. Local governments are required to administer and defend in court, if necessary, any initiative approved by the voters.

4. *See* League of Women Voters, Initiative and Referendum in California: A Legacy Lost?, at 40 (1984).

5. Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208 (1978).

6. In County of Fresno v. Malmstrom, 94 Cal. App. 3d 974 (1979), an appellate court ruled that "special assessments" were not to be construed as "taxes" under the provisions of Proposition 13 and therefore were not subject to the two-thirds voter approval requirement for levies by a local government. One year later, in Board of Supervisors of San Diego v. Lonergan, 27 Cal. 3d 855 (1980), the California Supreme Court had to clarify another provision in Proposition 13 by holding that the initiative's 1% tax rate was not intended to apply to unsecured property for the tax year 1978-1979. In Los Angeles County Transportation Comm'n v. Richmond, 31 Cal. 3d 197 (1982), the court ruled that "taxes" as defined by Proposition 13 did not encompass sales and use taxes, and for this reason a use tax did not require two-thirds voter approval. The court commented that the language of Proposition 13 was "'imprecise and ambiguous' in a number of particulars." *Id.* at 201. In Carman v. Alvord, 31 Cal. 3d 318 (1982), the court ruled that the tax ceilings in Proposition 13 were not intended to apply to current taxes resulting from public employee retirement plans approved prior to the initiative's

these court rulings contradicted the original intent of the measure and hence it was forced to sponsor three subsequent initiatives to reverse these decisions. Proposition 36 on the November 1984 ballot sought to reverse the court's decision as to when the annual increase in property assessments should begin under Proposition 13.[7] Proposition 62 on the November 1986 ballot attempted to reverse another court decision and redefine "special taxes" to require two-thirds voter approval. Proposition 136 on the November 1990 ballot tried to reverse other court interpretations. The voters rejected two of these Jarvis Association-sponsored initiative constitutional amendments (Propositions 36 and 136).

Proposition 13 not only burdened the court system with the problem of deciphering the intent of the measure, but it also sparked a wave of "friendly" ballot measures to clarify its ambiguous terminology. Between 1978 and 1990, 16 ballot measures were proposed to clarify or amend Proposition 13. Some of these measures sought to preserve certain exemptions that the authors of Proposition 13 said they never intended to eliminate; others tried to adjust the tax-cutting initiative to changing social needs.[8]

2. Omissions and Oversights

Some initiatives are drafted with no clear concept of the consequences of the measure as a local ordinance. Myron Moscowitz, a proponent of rent control in Berkeley and author of that city's successful rent control initiative, concedes that the quality of initiative ordinances has not always been very high because "things are often left out."[9]

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passage. In City and County of San Francisco v. Farrell, 32 Cal. 3d 47 (1982), the court concluded that Proposition 13's two-thirds vote requirement did not apply to tax revenues utilized for general governmental purposes. And in Armstrong v. County of San Mateo, 146 Cal. App. 3d 597 (1983), an appellate court spent considerable time debating when the initial application of the measure's 2% annual inflation cap was to occur.

7. Howard Jarvis argued that the 2% annual inflationary increase in property assessments was to begin upon enactment of Proposition 13 in 1978. However, noting that the initiative rolled back property values to 1975 levels, the court ruled that the 2% inflationary increase could be applied retroactively to 1975.

8. The ballot measures that addressed aspects of Proposition 13 were: Proposition 8 (November 1978: approved)—excluded reconstructed property after a natural disaster from value reassessment; Proposition 7 (November 1980: approved)—excluded solar energy systems from value reassessment; Proposition 3 (June 1982: approved)—excluded eminent domain actions from "change of ownership" provisions; Proposition 23 (June 1984: approved)—excluded seismic safety improvements from value reassessment; Proposition 31 (November 1984: approved)—excluded fire protection systems from value reassessment; Proposition 33 (November 1984: approved)—allowed property tax postponement for senior citizens; Proposition 34 (November 1984: rejected)—excluded historic structures from value reassessment; Proposition 36 (November 1984: rejected)—clarified provisions of property assessments; Proposition 46 (June 1986: approved)—allowed higher tax ceiling when approved by voters; Proposition 50 (June 1986: approved)—allowed transfer of value assessment to comparable property in the event of a disaster; Proposition 58 (November 1986: approved)—family transfers of property; Proposition 60 (November 1986: approved)—excluded replacement residences for the disabled from value reassessment; Proposition 62 (November 1986: approved)—defined special taxes; Proposition 90 (November 1988: approved)—excluded replacement residences for persons over 55 years of age in other counties from value reassessment; Proposition 110 (June 1990: approved)—property tax exemption for the severely disabled; and Proposition 136 (November 1990: rejected)—a Jarvis organization initiative to define various concepts in Proposition 13. Three of these measures, Propositions 36, 62 and 136, were initiative constitutional amendments.

9. Jim Knox, Claire Landry and Gavin Payne, Local Initiative: A Study of the Use of Municipal Initiatives in the San Francisco Bay Area, at 36 (1984).

A blatant example of poor drafting caused an embarrassing omission in the text of a local initiative in Dade County, Florida. A group petitioned for an initiative to cut property taxes in the county by 50%. The initiative's sponsors wanted to reduce property taxes from 8 mils to 4 mils per $1,000. In drafting the petition, however, the proponents inadvertently omitted the words "per $1,000," resulting in a proposed property tax reduction of 99.95%. The mistake was not discovered until the measure qualified for the ballot. A court ruled that the initiative could not be changed and that it must be submitted to the voters as written. No one campaigned for the measure, including the proponents, and it was defeated, a waste of the proponents' time and money.

Unintended consequences from an ambiguously drafted initiative led to the defeat of a 1988 anti-growth measure (Proposition G) in Pasadena. The city council's approval of a 184-unit Rose Townhomes project in a vacant field near Pasadena High School prompted neighbors to organize the Northeast Pasadena Residents Association (NEPRA) to oppose the development. NEPRA evolved into an organization which advocated slowing the pace of development throughout the city. NEPRA drafted an initiative (Proposition G) that would have imposed a two-year moratorium on major commercial and residential development projects unless approved unanimously by the Pasadena Board of City Directors.

Proponents of Proposition G intended to place a moratorium on all developments except for very popular or necessary projects that would receive unanimous approval by the Board. Several popular projects which NEPRA had no wish to obstruct had already been slated for development—including reconstruction of the Huntington Hotel, renovation of the Huntington Hospital and construction of a new YWCA/YMCA facility. But the text of Proposition G neglected specifically to exempt these projects from its restrictions; the proponents apparently assumed that they would be unanimously approved and therefore permitted even if the initiative passed.

This uncertainty became a focal point of doubts about the initiative. The possibility that the measure could derail these three popular development projects turned the tide of public opinion against Proposition G. Efforts by initiative proponents to minimize the political fallout by obtaining assurances from the Board that unanimous approval of the projects would be forthcoming were rebuffed.[10] The measure was defeated by a vote of 20,411 against to 8,971 in favor.[11]

3. Excessive Length

A recent problem encountered with greater frequency at the state level in California is excessively long propositions. Before 1988, California voters rarely faced excessively long initiatives. Initiatives were as brief as 77 words of new language to be added to the statute books.[12] Typically, initiatives in the early half of the 1980s contained anywhere between 1,000 and 3,000 words. Before 1988 only two initiatives in the 1980s exceeded 5,000 words—a gun control measure on the November 1982 ballot (Proposition 15, 5,556 words) and the state lottery measure on the November 1984 ballot (Proposition 37, 7,282 words).

In the 1988 and 1990 elections, however, voters had to wade through 13 separate initiatives which each surpassed 5,000 words in length. Several of these measures exceeded 10,000 words, with one, the 1990 ethics and campaign finance reform

10. John Fleck, *Initiative Advocates Rebuffed on Exemption*, Pasadena Star-News, Apr. 19, 1988.

11. Mike Ward, *2 Slow-Growth Measures Win Spots on Ballot in Pasadena*, Los Angeles Times, Nov. 24, 1988.

12. Proposition 9 ("Taxation. Income") on the June 1980 ballot was 77 words in length.

measure (Proposition 131) at 15,633 words.[13] Indeed, a large number of initiatives came close to matching Proposition 131 in length. An environmental protection initiative (Proposition 70) on the June 1988 ballot—which consisted of a conglomeration of unrelated acquisition projects throughout the state—amounted to 12,655 words. An industry-sponsored no-fault insurance reform measure (Proposition 104)—which originally included a hidden clause exempting the insurance industry from political contribution limits—contained 12,336 words.

The November 1990 ballot, which included Proposition 131, was also fattened by pro- and anti-environmental protection measures of exorbitant length. "Big Green" (Proposition 128) encompassed everything from timber harvesting to protection of the ozone layer in a 13,655-word treatise. It was accompanied by a timber industry-sponsored measure (Proposition 138) that proposed little more than preserving the status quo in a meandering 9,735-word document. Altogether the ballot pamphlet totaled 222 pages of analysis, arguments and texts.

Local ballot measures, however, have generally not followed the trend toward excessive wordiness. In most instances, local initiatives are appropriately brief—but not always. A 1988 initiative proposal in San Francisco, for example, detailed a rather simple concept in a verbose treatise. Proposition U—which the city clerk could describe in one clear phrase: "Shall the City's rent control ordinance be amended to apply to vacant residential units?"—comprised 6,040 words of meandering text.

Several major factors tend to make ballot propositions tediously long. First, some initiative proponents are apparently so mistrustful of their legislative body that they draft the initiative to address every conceivable contingency and close every potential loophole. Second, some authors apparently feel that if they are going to take the effort to push an initiative through the entire costly and time-consuming process, then they had better include everything possibly relevant to their cause out of fear that they might have to return to this burdensome process again. Third, some measures are overly long because they seek to incorporate a wide array of pet projects in trade for money and volunteer support from special interest groups. Whether the proponents' concern was for distrust of governing bodies, comprehensiveness or campaign strategy, long and complex initiatives are the result at the expense of voters being able to understand the proposals.

Long initiatives, perhaps because they are perplexing, tend to be rejected at the polls. A computer analysis by the Commission indicates a moderately negative but statistically significant relationship between word length and votes received. The longer an initiative, the fewer votes it will generally receive on election day.[14] It

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13. Propositions placed on the ballot by the legislature usually do not exceed 5,000 words, presumably because they concern less controversial and less sweeping issues. From 1976 through 1990, only seven of 161 legislative ballot measures exceeded 5,000 words. One exception was Proposition 148, a water resources bond act placed on the ballot by the legislature in November 1990 and the longest measure during this time period.

The following legislative ballot propositions exceeded 5,000 words (not including a constitutional revision package, Proposition 14, on the June 1976 ballot): Proposition 148 (Water Resources Bond Act, Nov. 1990)—17,666 words; Proposition 149 (Park and Wildlife Enhancement Act, Nov. 1990)—13,500 words; Proposition 122 (Earthquake Bond Act, June 1990)—6,028 words; Proposition 44 (Water Conservation and Quality Bond Law, June 1986)—5,030 words; Proposition 18 (Park and Recreational Facilities Act, June 1984)—6,564 words; Proposition 1 (Parklands Acquisition and Development Act, Nov. 1980)—11,600 words; and Proposition 2 (Nejedly-Hart Urban and Coastal Parks Act, Nov. 1976)—6,148 words.

14. The Pearson Correlation between ballot proposition word length and votes received is -.2621 (P=.05). A much stronger statistical relationship emerges between word length and qualification

should come as no surprise that 11 of the 15 state propositions in excess of 5,000 words since 1980 have been rejected by the voters—a substantially higher rejection rate than for all initiatives over the same time period.

Possibly the greatest damage inflicted by excessively wordy initiatives is to voter confidence in the initiative process. Many persons have expressed frustration with the growing number of lengthy propositions which overreach in scope, attempt to sow confusion or resemble pork-barrel legislation.

4. Complicated Wording

Poor drafting often takes the form of overly complicated wording. While complicated wording can help to overcome ambiguities in the text of an initiative and thus rarely contributes to "bad" legislation, it can frequently generate voter confusion. The comprehensive ethics and campaign finance reform measure put on the 1990 general election ballot by the Los Angeles City Council (Proposition H) may illustrate this problem. So detailed and complicated was this measure that in all likelihood some voters who supported ethics reform did not understand the measure also contained a 40% pay raise for council members.

Ballot measures written in complicated and confusing terminology tend to fare poorly at the polls. The cause of this pattern is not as evident as first appears. It is indeed the case, as Baus and Ross contend, that "what the voter does not understand he [or she] may reject. The confused voter votes 'no.'"[15] But voters are not only reluctant to pass judgment on something they do not understand; voters tend to vote against complicated and confusing measures because opposition campaigns against such initiatives are especially effective.[16]

One recent study has sought to test the relationship between clarity and rejection rates for 133 ballot propositions from four states.[17] It devised a simple three-point clarity scale to describe the length of the measure, its readability and its inherent complexity. Each proposition was rated either high, medium or low in clarity and then noted for approval or rejection by the voters.

As Table 3.1 demonstrates, the study revealed a noticeable relationship between a measure's lack of clarity and its chances of rejection by the voters. Propositions rated high in clarity were somewhat more likely overall to be accepted by the voters. In California, however, this pattern did not hold true. Of the 58 propositions examined in this state, the rejection rate for high- and low-clarity measures were roughly equivalent.

Further analysis of the 38 low-clarity propositions revealed that 14 had triggered high-spending, usually negative, opposition campaigns. Thirteen of these 14 proposals were rejected by voters.[18] This is a rejection rate of 93% for low-clarity propositions involved in high-spending campaigns. In cases of low-clarity

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costs. The longer an initiative, the more it will generally cost to qualify it for the ballot—that is, the more apparent resistance it encounters from signatories (Pearson Correlation is +.4486 at a significance level of .01).

15. H.M. Baus and W.B. Ross, Politics Battle Plan, at 61 (1968).

16. A 1985 statewide telephone survey of 503 likely voters in California asked respondents: "Are you more likely to vote yes or no on a ballot issue you do not feel well acquainted with?" Nearly 6% of respondents said they are more likely to vote 'yes,' 17% indicated they are more likely to vote 'no,' and 70% responded that they would not vote at all. Institute of Politics and Government, University of Southern California, *California Public Interest Poll* (Feb. 1985).

17. Betty Zisk, Money, Media, and the Grass Roots, at 168-169 (1987).

18. The one low-clarity proposition involved in a high spending "no" campaign that was not rejected was California's 1978 Proposition 13, the tax-cutting initiative.

propositions in which no high spending occurred, fewer than half the low-clarity propositions were rejected.

Table 3.1

RELATIONSHIP BETWEEN CLARITY OF MEASURE AND REJECTION BY VOTERS IN MASSACHUSETTS, MICHIGAN, OREGON AND CALIFORNIA

	Level of Clarity			
	High (n=43)	*Medium (n=52)*	*Low (n=38)*	*All Measures (n=133)*
	Percentage Voting No			
Massachusetts (n=21)	29%	33%	60%	38%
Michigan (n=22)	38%	75%	83%	64%
Oregon (n=32)	54%	73%	63%	63%
California (n=58)	53%	38%	53%	47%
TOTAL	***47%***	***50%***	***61%***	***52%***

n = Number of measures, including propositions put on the ballot by the legislature.

Source: Betty Zisk, Money, Media, and the Grass Roots, at 169 (1987).

The conclusion that can be drawn from this data is that complicated and confusing ballot measure language will not guarantee failure at the polls, but it can increase the measure's vulnerability to opposition campaigns. An initiative that causes confusion among the voters is unlikely to become law if there is any concerted opposition.

The true costs of poorly drafted measures, however, fall on more than the proponents. Financial resources are wasted by all affected parties on expensive campaigns and subsequent court challenges. Government resources expended in preparing the ballot measure and conducting the election are for naught. And voter disenchantment increases toward a policymaking system that nurtures confusion and doubt.

5. Unconstitutional Provisions

In precisely the same manner as other forms of legislation, all initiatives are subject to review by the courts for compliance with constitutional and procedural requirements. Courts can invalidate initiatives on one of three general grounds: (1) whether the substance of the measure conflicts with a federal or state constitutional provision, a federal statute or a city or county charter; (2) whether the subject of the measure is beyond the defined boundaries for direct legislation; or (3) whether procedural requirements for ballot measure qualification have been violated.[19] Depending on circumstances, the courts can remove a measure from the ballot prior

19. James Gordon and David Magleby, "Pre-Election Judicial Review of Initiatives and Referendums," paper presented before the 1988 annual meeting of the American Political Science Association, Washington, D.C.

to an election or rule against the propriety of the voter-approved legislation after the election.

Throughout the history of the initiative process, most federal and state courts have expressed reluctance to interfere with the initiative power of the people. In 1912, the United States Supreme Court set the tone of judicial deference toward initiatives in *Pacific States Telephone and Telegraph Co. v. State of Oregon*, declaring that the laws passed in a sovereign state as the result of proper initiative and referendum clauses in a state's constitution did not violate the U.S. Constitution's guarantee of a republican form of government.[20]

Through most of the ballot initiative's history in California, state courts have followed this lead of minimal intervention in the initiative process. Paralleling court decisions in several other states, the California Supreme Court has ruled that a city's or county's initiative and referendum provisions should be liberally construed to preserve maximum legislative power for the people.[21]

Judicial deference toward initiatives in California, however, may be diminishing. Judicial involvement in the legislative power of the people has become so common in recent decades that legal challenges are now a staple in the arsenal used by opposition groups in their attempts to defeat measures. Indeed, opposition groups are no longer inclined to wait for passage of a measure before pursuing legal recourse. And the courts today seem more willing to review measures prior to the election. The more carefully an initiative is drafted, the more likely it is to avoid judicial challenge both before and after adoption.

B. Little Drafting Assistance Is Provided to Initiative Proponents at the Local Level

None of the chartered or general law cities in Los Angeles County provide a program of assistance to proponents in drafting initiative proposals. Neither charter laws nor state laws regulating local procedures furnish initiative proponents with the right to seek help from governmental officials in writing their proposals. Furthermore, local jurisdictions offer no systematic review of the form or substance of initiative proposals at the early stage of drafting an initiative. Initiative proponents at the local level are entirely left to their own resources in drafting their proposals and detecting and correcting any mistakes or omissions. And once their proposals are written and titled by the appropriate local authorities, they cannot be changed.

Growth-control advocates in Pasadena learned the value of submitting an initiative proposal to independent review for ambiguities and omissions. After the voters soundly rejected one growth-control initiative (Proposition G) in 1988 because the measure contained drafting errors, a second growth-control group exercised much greater caution in drafting a subsequent initiative. Pasadena Residents in Defense of their Environment (PRIDE) took the unusual step of circulating their initial proposal for public comment and revising the draft before titling. They dropped from the measure a population cap that would have sharply limited development after that provision encountered public criticisms. But the final draft still contained a yearly limit on residential and commercial development that would

20. Pacific States Telephone and Telegraph Co. v. State of Oregon, 223 U.S. 118, 151 (1912). The court has often deferred to the states on "political questions." *See, e.g.,* Luther v. Borden, 48 U.S. 1 (1849). For the argument that the courts should modify the "political question" doctrine and declare the initiative process unconstitutional, *see* Cynthia Fountaine, *Lousy Lawmaking: Questioning the Desirability and Constitutionality of Legislating by Initiative,* 61 So. Cal. L. Rev. 735-776 (1988).

21. *See* Bayless v. Limber, 26 Cal. 3d 463 (1972).

cut to one-half the average for the previous decade.[22] PRIDE's initiative qualified for Pasadena's March 7, 1989, ballot and was approved by 57% of the voters.

Under state law, once an initiative drive collects a sufficient number of signatures for ballot qualification, the proposal must then be submitted to the city council or board of supervisors for approval. The local legislative body must either adopt the proposal *as written* or submit it to the voters for final action.[23] The text of the original initiative cannot be changed, even if so desired by the proponents themselves. Nor can the proposal be removed from consideration. If the governing board refuses to enact the initiative, it must be passed onto the voters for approval or rejection; proponents are not entitled to withdraw the measure after the petitions have been submitted for certification.[24]

Once presented with a certified initiative, the local legislative body may conduct a public hearing on the issue or order a study of the measure. The study must be conducted by governmental authorities and can include the testimony of experts in the field or any other interested parties. Research emphasis may be placed on any or all of the following matters: (1) fiscal impact; (2) consistency with general and specific plans for the locality; and (3) any other matters requested by the body. The study must be completed within 30 days, and the council or board must take action on the initiative within 10 days of receipt of the report.[25]

Any findings or conclusions of the study, however, are for the benefit of the local legislative body only. The initiative under consideration cannot be amended by the proponents or withdrawn. Instead, the council or board may propose an alternative measure in light of the study and submit it to the voters along with the original initiative. Whichever measure is approved by the greater number of votes becomes law. Once an initiative is approved by the voters and becomes law, it cannot be amended by the council or board. Initiative legislation may only be amended by another vote of the people—through either another initiative or a measure placed on the ballot by the governing body—unless the initiative itself allows amendments without a popular vote.[26] Occasionally, local initiatives will permit the council or board to amend a measure after it is enacted into law by a simple- or super-majority vote of the body.

Although local initiative procedures are quite inflexible and offer little assistance to proponents for improving the drafting quality of their measures, a number of drafting assistance procedures exist at the state level in California and in other states. Procedures used in California and elsewhere for improving the wording and content of initiative legislation—both prior to petition circulation as well as after ballot qualification and enactment—can be useful guides for developing new procedures at the local level.

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22. Michael Ybarra, *Amended Slow-Growth Draft Unveiled*, Pasadena Star-News, Sept. 7, 1988.

23. Cal. Elec. Code §§ 3709, 3711 (West Supp. 1989) (county); Cal. Elec. Code §§ 4010, 4011 (West Supp. 1991) (municipal).

24. Unlike citizen petitions, measures placed on the ballot by a city council or board of supervisors may be removed from the ballot upon reconsideration. Local legislative bodies can remove their own referred measures from the ballot if all parties involved in submission of the measure are also involved in its removal. Clark v. Patterson, 68 Cal. 3d 329 (1977).

25. Cal. Elec. Code §3705.5 (West Supp. 1991) (county); Cal. Elec. Code §4009.5 (West Supp. 1989) (municipal).

26. Cal. Elec. Code §§3719, 4013 (West 1977).

C. California Offers Limited, Although Substantially Unused, Drafting Assistance to Proponents at the State Level, But It Lacks Effective Procedures to Detect and Correct Initiative Errors Either Before Circulation or After Adoption

California requires no formal review of the wording, substance, legality or constitutionality of ballot initiatives. Proponents can draft, circulate and qualify an initiative without ever receiving an independent analysis of the measure—save for a perfunctory legislative hearing just before the election.[27]

1. Before Circulation: Unused Drafting Assistance

California provides optional drafting assistance to initiative proponents upon their request, but proponents rarely seek such help. Two avenues exist for proponents who desire aid. One is through the legislative counsel, who can actually assist in writing the measure. A little-known second avenue is through the secretary of state, who upon request is required to provide an analysis of a written proposal prior to titling.

a. Legislative Counsel

By far the greatest proportion of initiative proposals in California have been privately drafted by their sponsors with no outside review or assistance. Yet California law entitles a proponent to seek drafting assistance from the legislative counsel before receiving an initiative title. The request must be signed by 25 or more electors. The legislative counsel must assist at no charge in drafting the proposal if the counsel determines that there is a reasonable probability the measure will be submitted to the voters.[28] The legislative counsel has rarely refused. In 1989, however, the legislative counsel turned down three requests because they were "off the wall."[29]

Although assistance is sought more often today than 10 years ago, the legislative counsel is asked only about six or eight times a year to help draft an initiative proposal. Substantial assistance was provided in drafting some of the insurance initiatives on the November 1988 ballot. Usually such assistance is requested by non-professional citizens with limited organizational resources. These are the initiative proposals least likely to qualify for the ballot. Major organizations that stand the best chance of placing a measure on the ballot can afford to pay for private drafting assistance and are the least inclined to request it from the legislative counsel.[30]

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27. After an initiative is titled but before it qualifies for the ballot, the attorney general forwards copies of the text and summary to the senate and assembly. The appropriate committees of each house may hold hearings on the measure at any time. California Elections Code §3506 permits optional legislative hearings on any titled initiative prior to ballot qualification. A new section was added to the Elections Code in 1980 requiring legislative hearings for all initiatives certified by the secretary of state as qualifying for the ballot (§3523.1). As a result, the legislature generally does not hold hearings until after an initiative proposal actually qualifies to the ballot. No changes or amendments to the proposal may be made by either the legislature or the proponents after titling, and the initiative will appear on the ballot as written regardless of any action taken by the legislature. Consequently, these legislative hearings have little meaning. Proponents sometimes do not bother attending them and they generate very little, if any, press attention.

28. Cal. Gov't Code §10243 (West 1992).

29. Telephone interview with Jack Horton, Chief Deputy, California Legislative Counsel's office (Feb. 8, 1990).

30. Telephone interview with Jack Horton, Chief Deputy, California Legislative Counsel's office (Jan. 26, 1990).

b. Secretary of State

A little-known provision in the state's Government Code establishes an optional review process for initiative measures under the auspices of the secretary of state.[31] After an initiative measure is prepared and prior to its circulation, proponents may request a review of the measure by the secretary of state and seek recommendations on how to improve the initiative's form and language. This review has been requested only a few times in the history of the initiative process, in part because so few have realized such an option exists. The review procedures in the handbook prepared by the secretary of state's office and other materials made available to initiative proponents make no mention of this potential help. The statutory provision itself is not contained in the body of laws addressing initiative procedures. Instead, it is hidden under "Duties of the Secretary of State."

As discussed in Chapter 4 ("Circulation and Qualification"), prior to circulation of an initiative the proponent must submit the language to the attorney general for a title, summary and fiscal analysis. The attorney general's analysis is not meant to assist proponents in writing a better law. It is a cursory synopsis of the measure, not an in-depth analysis of the flaws associated with the proposal.

2. After Qualification of State Ballot Initiatives: Inability of the Legislature and Proponent to Negotiate a Compromise

Once the California secretary of state has certified that an initiative has qualified for the ballot, the proponent and the legislature are powerless to amend, improve or withdraw it—or even to eliminate errors. By law, a qualified initiative must be placed on the ballot exactly as written. The legislature cannot enact a *substitute law* and withdraw the initiative from the ballot—even if the proponents agree that such a substitute is desirable. Even if the legislature enacts a law which is *identical* to the initiative, the initiative as drafted must still appear on the ballot. At most, the legislature can place its own proposal on the ballot in addition to the initiative—thus confronting the voters with *two* initiatives and increasing the risk of confusion.

As a result of these legal barriers to amendability, the proponents of initiatives and legislators have no incentives to negotiate with each other—to improve an initiative, eliminate some of its unrealistic aspects or otherwise reach a compromise. While the legislature can draw on its experience, staff and resources to resolve complex pieces of legislation, these resources and skills are inaccessible as a matter of law to the participants in the initiative process.

Between 1911 and 1966, California had a two-track system of initiatives in which proponents could choose to pursue one of two courses. Proponents could place their measures directly on the ballot by gathering signatures amounting to 8% of the last gubernatorial vote for both statutory initiatives and constitutional amendments. Alternatively, proponents could file an "indirect initiative" proposal and gather signatures amounting to 5% of the last gubernatorial vote for ballot qualification. Before being placed on the ballot, however, the initiative would be presented to the legislature for consideration—just as local initiatives are presented to local governing bodies for possible adoption. If the legislature did not approve the measure, the original measure would then be placed on the ballot.

California's alternative indirect initiative system was finally ended in 1966 for lack of use. In the entire history of the state's direct democracy, only 19 titled initiatives had attempted the indirect route, and only four of these gathered enough

31. Cal. Gov't Code §12172 (West 1980).

signatures to qualify for the ballot and a legislative hearing. Only one was actually approved by the legislature; the other three were defeated at the polls.[32]

One reason why the indirect initiative was used so seldom in California was that it took at least two-and-a-half years to complete the process, and few proponents were willing to wait that long.[33] A second reason for the disuse of the indirect initiative was its "take-it-or-leave-it" aspect. If an initiative qualified for the ballot through the indirect procedure, the legislature's only option was to adopt it in its entirety or reject it altogether. The legislature was unable to change a single word, and the proponent was similarly prohibited from accepting even minor corrections. As a result, the proponent and the legislature had a substantially lessened incentive to negotiate with each other over the substance of the initiative. It is little wonder that California's indirect initiative procedure was little used and ultimately repealed.[34]

Some have urged California to reinstate the indirect initiative and make it more attractive by offering a lower signature threshold.[35] Experience in other states indicates, however, that even these inducements might not be successful. In every state that allows proponents to choose between the direct initiative route or an indirect route, the direct initiative is overwhelmingly preferred, despite a significantly higher signature threshold.[36] (See discussion in Section C (3) below.)

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32. In 1937, a Fishing Control indirect initiative was approved by the legislature and therefore not placed on the ballot. The three indirect initiatives that were passed on to the voters by the legislature were: Reorganization of Building and Loan Associations (1942); Old Age Assistance (1952); and Prohibition of Cross-Filing in Elections (1952). All three were rejected by the voters.

33. Before 1966, the California legislature only met in *odd-numbered* years to consider such general matters as indirect initiative proposals. Proponents wishing to use the indirect initiative had to gather enough signatures to qualify their measure for the ballot and have them counted and ready for presentation to the legislature by January 1st of an odd-numbered year. That required the proponents to begin circulating their initiative at least six-and-a-half months before the January 1st odd-year deadline—if they were to take the needed time for circulation and give the secretary of state an additional 45 days to count and verify the signatures. The legislature then had to consider the measure during its odd-year session and the initiative could not be presented to the voters until the ensuing even-numbered year. The legislature also met in even-numbered years but only to consider the state budget. Other matters, such as proposals, could not be addressed.

34. The indirect initiative procedure was repealed in 1966 as part of a general revision of the State Constitution. The signatures required for statutory initiatives were reduced from 8% to 5% of the vote in the last gubernatorial election. Signatures required for constitutional initiatives were left at 8%.

35. AB 1450 and ACA 16 by Assemblymember Sher (D-Palo Alto) (1991 legislative session) proposed to restore the indirect initiative and require proponents to submit their certified signatures and initiative to the legislature by February of odd-numbered years (for the June ballot in even-numbered years) or March of even-numbered years (for the November ballot of even-numbered years). Under these bills, proponents would have between fourteen-and-a-half to twenty-seven-and-a-half months between circulation and the ballot—compared to about twelve-and-a-half months for the current direct initiative process. Assemblymember Sher's bills were not adopted in the 1991 legislative session.

36. In interview after interview across the nation, initiative proponents were hostile to the notion of presenting their proposals before their legislatures. Sallie Debolt, an Assistant Elections Counsel in Ohio, who was once involved in an initiative statute drive, summarized this hostility: "The system of appealing to the legislature is really perfunctory, since it is legislative inaction on the issue that caused the problem in the first place. . . . We go before the legislature and grow furious in the course of the hearing. . . . The inconvenience is having to put up with the legislature." Telephone interview with Sallie Debolt, Ohio Assistant Elections Counsel (Jan. 15, 1991). Other interviews support this feeling. In all states that offer the option of either indirect or direct initiatives, the direct route is overwhelmingly preferred.

3. After Adoption of State Ballot Initiatives: Limited Power of the Legislature to Amend

California law expressly forbids amendments to initiatives at the state as well as local level after their adoption unless the text of the initiative itself expressly permits amendments.[37] No other state in the nation carries the concept of initiatives "written in stone" to such lengths as to forbid their legislatures from updating or amending initiative legislation. (See Section C, "Other States," below.) In California, any initiative that does not expressly allow the legislature to make amendments can only be changed by voter approval of another ballot proposition. Although ballot measures amending previously adopted initiatives can be placed on the ballot by the legislature, a statewide election must be held to seek voter approval of such changes, no matter how trivial.

Until relatively recently, California initiative proponents have been reluctant to allow the legislature to amend their voter-approved measures. In 1974, however, the Political Reform Act (Proposition 9) broke new ground by expressly permitting the legislature to amend its provisions on three conditions: the amendment had to "further the purposes" of the Act; the amendment had to be in final form 40 days (now 12 days) before the final vote of each house;[38] and two-thirds of the members of each house had to approve the amendment.[39] A similar trend toward allowing legislative bodies to amend initiative legislation is not evident at the local level. Most local initiatives fail to mention amendability, which means that the state law prohibiting amendments by the city council or board of supervisors prevails.

Since 1974, many initiatives at the state level have followed the example of Proposition 9 and voluntarily permitted the legislature to amend their provisions, although none has allowed the legislature to repeal the measure. Of the 55 measures between 1976 and 1990 which qualified for the ballot, 38 (61%) had language authorizing amendments. Only three of these initiatives allowing legislative amendments have authorized the legislature to act with less than a two-thirds super-majority. Two of these were sponsored by the same group: GASP, the nonsmoking predecessor to Americans for Nonsmokers Rights. These two smoking regulation initiatives, Propositions 5 (1978) and 10 (1980), allowed the legislature to make amendments by a majority of each house, provided the amendments were consistent with the intent of the measure. Both initiatives were rejected by the voters.

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37. Cal. Const., art. II, §10(c) and Cal. Elec. Code §4013 (West 1977).

38. Eleven of the 38 initiatives between 1976 and 1990 which authorized amendments by the legislature have required the legislature to have the amendments in print a certain number of days (between 12 and 20) before final passage. The Political Reform Act of 1974 (Proposition 9) was the first initiative to insert such a provision. It was added out of concern that the legislature would attempt to weaken the Reform Act in the last minutes of a session. The drafters of the Political Reform Act were quite familiar with legislative proceedings. They had seen bills on the last day of the session gutted and passed by large majorities with no notice being given to outsiders (and some legislators) of the proposed changes. The proponents of the Political Reform Act wanted to permit technical amendments to the act but were fearful that amendments weakening the act would be passed without public scrutiny. They thus mandated that the Fair Political Practices Commission be provided with the language of any amendments a certain number of days before a floor vote of the legislature. The courts have upheld this Political Reform Act requirement.

39. Cal. Gov't Code §82013 (West Supp. 1990). In California, all vote requirements refer to a vote of all the members in the body, not just the members voting on the issue. Thus, a two-thirds vote requirement means two-thirds of the 80 member assembly, or 54 votes, and two-thirds of the 40 member senate, or 27 votes. In Congress, on the other hand, vote requirements refer to the number voting on the particular issue, provided a quorum is in attendance.

The third measure was Proposition 8, the 1982 Victims' Bill of Rights. This initiative, which was approved by the voters, authorized the legislature to *increase* prison sentences by a majority vote. Any other change to the measure required a two-thirds vote of each house.

The vast majority (29) of the 38 initiatives since 1976 which have authorized amendments by the legislature require that such amendments must "further the purposes" of the measure. No appellate court in California has interpreted the meaning of this language, and no other state has similar constraints on legislative amendments. A recent lower court decision, however, addressed this issue.[40]

In November 1988, voters approved Proposition 103, an insurance reform initiative which established (among other things) regulation of rates for "property-casualty" insurance. The text of Proposition 103 further specified that the initiative could be amended by the legislature if the amendment "furthers its purpose" and is ratified by a two-thirds vote of each house.

In the following session, the legislature unanimously approved AB 3798, an amendment to Proposition 103 that excluded surety insurance from two provisions of the insurance regulation scheme: the automatic 20% rate rollback and prior administrative approval for future rate increases.[41] Under the amendment, the insurance commissioner would retain the authority to file legal actions to roll back unfair surety rate increases. Although surety coverage had generally not been considered to be in the same category of insurance as property-casualty, the focus of Proposition 103's regulatory scheme,[42] Proposition 103 nevertheless listed a number of types of insurance coverage exempted from the rate rollback and did not mention surety insurance. The legislature exercised its amending authority, claiming that no compelling state interest was served by regulating surety insurance.[43] The preamble of AB 3798 declared that the exemption "furthers the purpose of Proposition 103 by clarifying the applicability of the proposition to surety insurance."

Voter Revolt and the state insurance commissioner challenged the legislative amendment as undermining the purposes of Proposition 103 and thereby constituting illegitimate legislative action. The issue presented was not whether Proposition 103 applied to surety insurance (it had previously been held to be included by not being specifically excluded[44]), but whether the legislative amendment could be deemed as "furthering the purposes" of the initiative.

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40. Amwest Surety Insurance Co. v. Wilson, Case No. C-704-879 (Los Angeles Super. Ct. 1991).

41. Voting for AB 3798 was then-state Senator John Garamendi, who later, as Insurance Commissioner in 1991, joined proponents of Proposition 103 in attempting to strike down AB 3798 as inconsistent with the purposes of the initiative. The brief filed by Amwest Surety Insurance Company in favor of the surety exemption made extensive use of Garamendi's contradictory position by beginning many of its sections with a quote from the state Senator pointing out the flaws of Proposition 103 and criticizing the initiative process as a poor method for creating public policy.

42. Casualty insurance covers accidental injury to both persons and property. Surety insurance "promises to answer for the debt, default, or miscarriage of another, or hypothecates property as security therefore." Cal. Civil Code §2787 (West 1974). *See* Somers v. United States Fidelity and Guarantee Co., 191 Cal. 542 (1923).

43. The Senate Insurance, Claims and Corporations Committee legislative analysis of AB 3798 argued: (1) there was no opposition to the bill; (2) differences exist between surety and casualty-property insurance; (3) Proposition 103 did not originally intend to apply to surety insurance; (4) surety rates have been relatively stable and competitive, making rate regulation unnecessary; and (5) the Insurance Commissioner would retain oversight over unfair surety insurance rates.

44. Prior to the legislative exemption, several surety insurers filed suit in Los Angeles County superior court claiming that surety insurance should not be included in the scope of Proposition 103's regulatory scheme. The court ruled that Proposition 103 applies to surety insurance, whether or not

The proponents of Proposition 103 argued that the courts must "narrowly construe" the "limited authority" of the legislature to amend the initiative and only accept "technical amendments" as "furthering the purposes" of an initiative. Exempting a line of insurance from the regulatory scheme impermissibly repealed substantive portions of the initiative.

In rebuttal, an insurance company litigant argued that the legislature's authority to amend the initiative extended beyond mere technical changes. Substantive changes should be permissible if they addressed "unwanted or unintended consequences." Neither initiative proponents nor the voters intended that Proposition 103 apply to surety insurance, but the general language used in the measure included sureties like "dolphins caught in a tuna fisherman's net . . . ." Correcting these drafting oversights, the insurer claimed, is why legislative amendability was included in the initiative. "This grant of power to the legislature must not be so narrowly construed as to render it meaningless."[45]

The court's ruling went far beyond the contentions of either the plaintiffs or defendants. A Los Angeles County superior court ruled that "the legislature's power to amend or repeal is plenary."[46] In the court's view, if an initiative grants the legislature the authority to amend it, that authority cannot be constrained by such limiting standards as "furthering the purposes." The legislature must be given either complete power to amend or none at all. It is not the role of the judicial system, argued the court, to second-guess the legislature whenever it determines that a certain amendment is appropriate.

This ruling is on appeal as of this writing. Whether or not an exemption of surety insurance from Proposition 103 actually furthers the purpose of the initiative is not the critical issue. Clearly, the concept of legislative amendability to correct oversights and update initiative legislation must extend beyond technical matters and into substantive improvements. The superior court's ruling, however, undermines the will of the electorate as expressed through the initiative process. If this decision is upheld on appeal, the consequences will be profound. Proponents may no longer allow the legislature to effect *any* amendments to their initiatives, fearing that the legislature will exercise carte blanche to amend, add or even repeal major portions of the initiative.

D. Other States Have Procedures to Detect and Correct Deficiencies in Ballot Initiatives, but Many of These Would Present Problems in California

Some states, such as Illinois and Nebraska, provide no assistance whatsoever in drafting a measure, even if requested by proponents. (See Table 3.2.) Ten states (Alaska, Arizona, Arkansas, Maine, Missouri, Nevada, North Dakota, South Dakota, Utah and Wyoming) require the secretary of state or the attorney general's office to review proposals for proper "form" only. Oklahoma requires certification of a measure's ballot title by the superintendent of public instruction for readability at the eighth grade level. Maine, Nevada, and Utah either require or allow some form of legislative hearing on a proposed measure, but the measure cannot be amended

deliberately intended to do so. Surety Company of the Pacific v. Deukmejian, Case No. C-704-902 (Los Angeles Super. Ct. 1990).

45. Plaintiff's Memorandum of Points and Authorities at 3, Amwest Surety Insurance Co. v. Wilson, Case No. C-704-879 (Los Angeles Super. Ct. 1991).

46. Amwest Surety Insurance Co. v. Wilson, Case No. C-704-879 (Los Angeles Super. Ct. 1991).

and must be accepted or rejected as is. Thus, in these states proponents of initiatives are given little drafting help.[47]

Table 3.2

STATE PROVISIONS FOR INITIATIVE DRAFTING ASSISTANCE

Alaska	Lieutenant Governor reviews form and legal restrictions on content.
Arizona	Secretary of State reviews form only.
Arkansas	Attorney General reviews and approves proposed title. Attorney General may reject confusing title and summary and instruct petitioners to redesign proposal.
California	Optional assistance from Legislative Counsel and optional review by the Secretary of State.
Colorado	Mandatory review by Legislative Council.
Florida	Supreme Court review for constitutionality and compliance to single subject after petitioners gather 10% of the signature requirement.
Idaho	Mandatory review by Attorney General.
Illinois	None.
Maine	Secretary of State reviews form only.
Massachusetts	Petitioners may "perfect" draft after the indirect initiative legislative hearing.
Michigan	Optional public hearing on draft before the Board of State Canvassers.
Missouri	Attorney General reviews form only.
Montana	Mandatory review by Legislative Counsel.
Nebraska	None.
Nevada	Secretary of State reviews form only.
North Dakota	Secretary of State reviews form only.
Ohio	Petitioners may revise draft after the indirect initiative legislative hearing.
Oklahoma	Ballot title certified by Superintendent of Public Instruction for readability.
Oregon	Mandatory review for single subject. May request draft assistance from the Legislative Counsel.
South Dakota	Secretary of State reviews form only.
Utah	Lieutenant Governor reviews form only.
Washington	Mandatory review by Code Reviser.
Wyoming	Secretary of State reviews form only.

Source: California Commission on Campaign Financing Data Analysis

In Arkansas, the attorney general has the additional authority to scrutinize a measure for misleading terminology in the way proponents have written the proposal and title. For instance, if a measure is written in such a way that a "yes"

47. Maine and Nevada permit the legislature to submit to the voters an amended version of the proposal placed side-by-side with the original measure on the same ballot. Utah provides for both the direct and indirect initiative. In order to qualify for the ballot, a measure under either system must garner the signatures of 10% of the last gubernatorial vote. Since the signature requirements are the same, the indirect initiative process in Utah has only been used once in recent history, and that one attempt failed to qualify for the ballot. Proponents of that measure are now working for the same measure through the direct initiative process.

The state of Utah, however, vests considerable veto power with the attorney general. The attorney general analyzes an initiative proposal prior to circulation and, if it is deemed unconstitutional, rejects the proposal for petition circulation. The proponent may revise the measure and resubmit it to the attorney general. According to Deputy Lieutenant Governor Dave Hansen, between 1987 and 1989 as many as five proposals have been rejected, including three tax proposals that eventually wound up on the 1988 ballot after being revised by proponents. Telephone interview with Dave Hansen, Utah Deputy Lieutenant Governor (Jan. 8, 1990).

vote really means a "no" vote on the particular issue, the attorney general can reject the measure and require proponents to reword the proposal and title so as to be less confusing. Proponents may apply directly to the state supreme court for review of the attorney general's ruling.

Even among states that have no statutory or regulatory provisions that establish a process of drafting assistance, some state officials may provide unofficial assistance to initiative proponents. For instance, in the state of Alaska, the attorney general has discussed constitutional matters with initiative proponents and negotiated revisions in their proposals.[48]

The following is a discussion of the more meaningful drafting assistance programs offered in other states. Mandatory review is an essential component of many good drafting assistance programs. It comes in many forms. Some states require a review of all initiative proposals by an administrative officer prior to circulation; others strengthen the review process by conducting it through a full-time professional staff or, better yet, through a public hearing managed by a full-time staff. Two states have made use of the indirect initiative process in an effort to enhance the drafting quality of initiatives *after* petition circulation, with rather limited success.

1. Mandatory Drafting Assistance by State Officials Before Circulation

The state of Oregon requires review of all initiative proposals prior to circulation for compliance with the single-subject rule. Proponents are given a chance to amend their proposal to accommodate the single-subject rule early in the course of mandatory review procedures. Once a proposal is drafted, the "prospective petition" is sent to the secretary of state's office. The secretary of state seeks professional and public comments on whether the proposed law or amendment embraces one-subject-only as required by the Oregon constitution. At the same time, the secretary of state publishes a statewide notice seeking comments from the legislative assembly and any concerned persons about the draft ballot title as written by the attorney general. Initiative proponents are free to make limited changes in the proposal as long as the amendment is completed prior to the deadline for submitting written comments and it is deemed within the spirit of the original proposal by the attorney general.

a. Advice and Comment on Policy Implications

Several states have established mandatory review of initiative drafts by a specified elections officer that goes beyond compliance with a single-subject rule. Idaho, Montana and Washington all require initiative proponents to submit their proposals for review and recommendations concerning both form and substance. The recommendations are advisory only and need not be accepted by the proponents. If the proponents agree with the advice, they may elect to modify the original draft of the initiative. In Idaho the review is conducted by the attorney general's office. The attorney general has 10 working days from receipt of an initiative proposal to review it for form and substance and to transmit the findings and recommendations in writing to both the proponents and the secretary of state's office for public disclosure.

Montana requires initiative proponents to submit their measures to the legislative counsel for review and advice in drafting. The counsel staff analyzes each measure for clarity, consistency, and any other matters of concern. The counsel has 14 days to complete its review and put its recommendations in writing for both the proponents and the public.

48. Telephone interview with Linda Edgeworth, Alaska Elections Officer (Feb. 28, 1989).

Mandatory review procedures have been fairly well received in the states where they are required. In Montana, for example, mandatory review of both substance and form of an initiative proposal has helped proponents delineate their intentions and remain within constitutional restraints. Initiatives in Montana have rarely been challenged in court, despite the fact that the initiative process has been used frequently and has addressed such complicated issues as recycling and taxes.[49]

Mandatory review has also been helpful in Idaho where the attorney general's office provides advice ranging from corrections in technical language to matters of constitutionality. The situation in Idaho, however, highlights the limits to usefulness of many mandatory review programs. State officers are often viewed as adversaries by initiative proponents. When the entire review process is completed in a matter of days or even a few weeks, distrust between proponents and state officers may cloud judgments and minimize the advice proponents are willing to accept. When the recommendations from the attorney general deal with minor language problems, proponents usually make the corrections in their draft. But when the advice is substantive or suggests that the initiative is unconstitutional, proponents have frequently ignored the suggestions for improvement. One initiative approved by the voters was recently ruled unconstitutional by the Idaho Supreme Court after the attorney general had earlier warned the proponents with a similar opinion.[50]

b. Use of an Official Drafting Arm

The state of Washington provides extensive mandatory review and drafting assistance through the office of the code reviser. All proposals must be submitted to that office, which is staffed by 10 lawyers and 25 support personnel and which constitutes the official bill drafting arm of the legislature.[51] The code reviser is responsible for making advisory recommendations on both the substance and form of all initiative proposals. In addition, the code reviser is obligated to conduct the actual drafting of a measure when requested to do so by proponents.[52]

The secretary of state's office rarely receives a fully drafted initiative proposal. In fact, it is not uncommon for proponents of an initiative idea to submit little more than a sketchy note to be drafted in legal form by the code reviser (see Exhibit 3.A). Following the review, the petitioner has 15 days to make any desired modifications in the measure and submit the proposal to the secretary of state's office, accompanied by the code reviser's certificate of review. The secretary of state and attorney general prepare the initiative measure for petition circulation following the review process.

2. Mandatory Public Hearing Before Petition Circulation

Colorado has taken drafting assistance one step further—it conducts the review process in a public hearing. Through a hearing process, initiative proponents receive criticisms and advice from sources outside state government as well as from state officers. Suggestions for improving an initiative from non-governmental persons and entities will sometimes carry greater credibility with proponents than advice from governmental representatives.

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49. Telephone interview with Jamie Rogers, Administrative Assistant, Elections Division, Montana Secretary of State's office (Feb. 16, 1989).

50. Telephone interview with Penny Ysursa, Elections Officer, Idaho Secretary of State's office (Jan. 18, 1990).

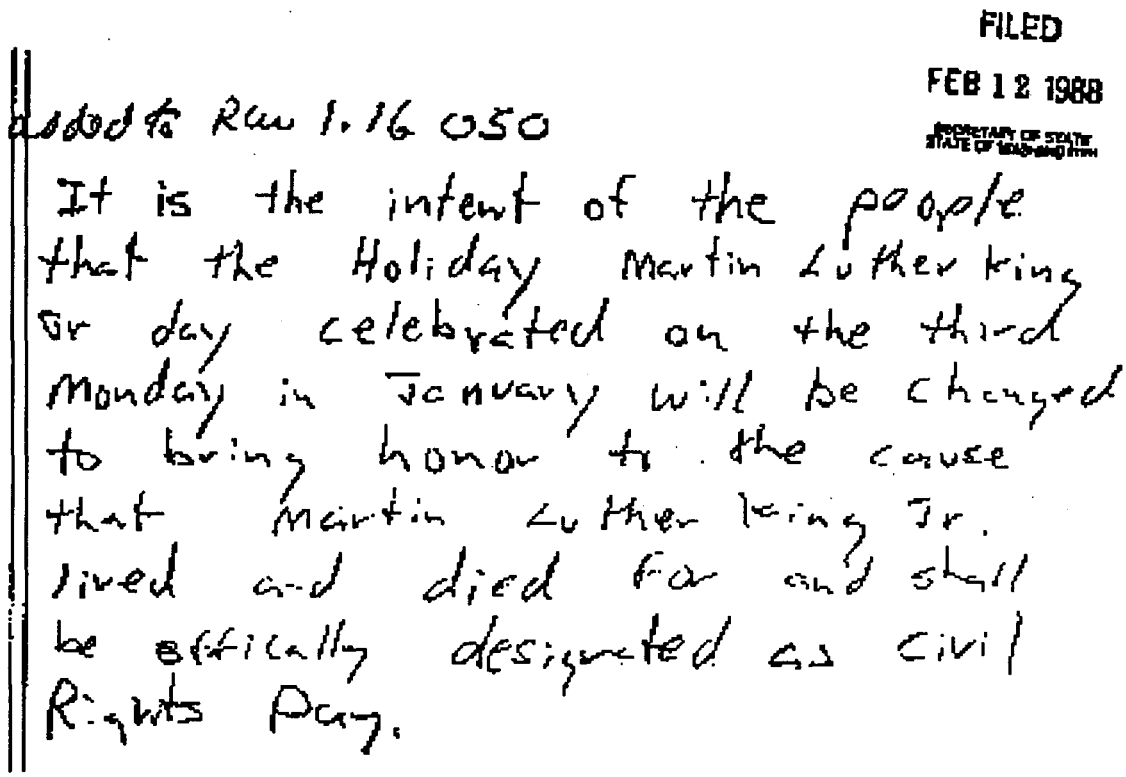
51. Telephone interview with Dennis Cooper, Washington State Code Reviser (May 5, 1989).

52. In Washington, the secretary of state's office rarely receives fully drafted measures. Extensive drafting assistance is expected completely free of charge. Telephone interview with Jean Womer, Administrative Aide, Washington State Office of Elections (Feb. 8, 1989).

In Colorado, a legislative council—composed of representatives from the attorney general's office, the secretary of state's office and the legislative drafting office—reviews every initiative proposal before it is submitted for a title and before signatures are collected. It usually takes the council two weeks to research and review an initiative proposal, after which the findings are aired in a public hearing.[53] The council does not actually draft or revise an initiative; instead, it raises questions and offers advice to proponents in a public forum, after which they may opt to change any facet of their initiative.

Exhibit 3.A

INITIATIVE PROPOSAL SUBMITTED TO THE WASHINGTON SECRETARY OF STATE FOR REVIEW AND TITLING (1988)


FILED

FEB 12 1988

SECRETARY OF STATE
STATE OF WASHINGTON

Added to Rcw 1.16 050

It is the intent of the people that the Holiday Martin Luther king Or day celebrated on the third Monday in January will be changed to bring honor to the cause that Martin Luther king Jr. lived and died for and shall be officially designated as Civil Rights Day.

Source: Secretary of State's Office, Olympia, Washington

Nearly *every* initiative proposal in Colorado has had problems in its original draft form. Most often these problems have involved improper use of legal terminology. Sometimes an initiative may conflict with existing statutes or the constitution. Roughly 70% to 80% of original initiative drafts are revised by proponents, based on the council's advice and recommendations from the public. Initiatives are still challenged in the courts, but the review process gives sponsors a public record to assist in determining the proponents' legislative intent. Furthermore, the press has tended to be active in the public review of controversial initiatives, and this has encouraged early public dialogue on initiative issues.[54]

53. Telephone interview with Earl Thaxton, Principal Analyst, Colorado Legislative Council (Feb. 12, 1990).

54. Telephone interview with Earl Thaxton, Principal Analyst, Colorado Legislative Council (Jan. 12, 1990).

Since initiative proposals in Colorado are not titled until after the public hearing by the legislative council, proponents may make any changes they like to the substance or form of their measure and resubmit it for titling. One example of the extent of the changes sometimes made by proponents is the term limits initiative that was eventually placed on Colorado's November 1990 ballot. The proposal as first submitted to the legislative council encompassed campaign finance reform, reapportionment and term limits. After an exhaustive hearing, the proponents decided that the measure was too complicated for the general public and might be rejected. Campaign finance reform and reapportionment were dropped from the initiative, leaving a term limits proposal. The measure qualified for the ballot and was approved by the voters.[55]

3. The "Indirect Initiative": Advisory Legislative Hearings After Ballot Qualification

Several states have integrated the legislature into the initiative process. This is commonly known as the "indirect initiative," in which an initiative proposal is submitted to the legislature for action prior to a vote of the people. If the legislature enacts the initiative into law exactly as drafted, the initiative is automatically withdrawn from the ballot.[56] If the legislature refuses to act, the original initiative then is placed on the ballot for ratification by the voters.[57] In some states, such as Maine, Michigan, Nevada and Washington, if the legislature adopts a law which differs from the initiative in any respect, then both the initiative and the law are placed on the ballot. In two states, Massachusetts and Ohio, the legislature may suggest amendments; if the proponent accepts them, the initiative must be circulated for additional signatures before it can be placed on the ballot.

Alaska and Wyoming have established a variant of the indirect initiative process. Instead of requiring that a qualified initiative proposal be submitted to their legislatures for action, these two states only require that a qualified initiative cannot be placed on the ballot until after a legislative session has convened and adjourned.

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55. Telephone interview with Shari Williams, Executive Director, Americans Back in Charge (Feb. 1, 1991). In the November 1990 California election, voters rejected one term limits initiative that also contained a complicated campaign finance reform scheme (Proposition 131) and approved a different straightforward term limits proposal (Proposition 140). *See* text in Section A-3 of this chapter.

56. The law adopted by the legislature, however, is subject to a referendum vote of the people if enough petition signatures are raised. In Wyoming the attorney general can withdraw an initiative from the ballot if a law enacted by the legislature is "substantially the same" as the initiative.

57. States employing one form or another of the indirect initiative process are: Alaska, Maine, Massachusetts, Michigan, Nevada, Ohio, Utah, Washington and Wyoming. South Dakota ended the option of an indirect initiative in 1988 and California ended it in 1966.

South Dakota was the first state to adopt the initiative process in 1898. The state established a form of *indirect* initiative for statutory initiatives; the constitution could not be amended via initiative prior to 1972. Oregon was the first state to adopt the *direct* initiative process in 1902.

South Dakota's indirect initiative procedures had been so inflexible that there was really very little difference between Oregon's direct route and South Dakota's indirect system. The only distinguishing feature was that South Dakota required the legislature officially to put the measure onto the ballot. However, the legislature could not vote the measure into law as is and remove it from the ballot, and it was questionable whether the legislature could go on record voting against the measure. The legislature could not even propose an alternative measure to be placed on the same ballot. South Dakota's indirect system simply consisted of an initiative passing through the legislature for a perfunctory "yes" vote to place the measure on the next general election ballot. The practice was finally ended in 1988 as unnecessary and replaced with the direct initiative process for both constitutional amendments and statutes.

If the legislatures enact legislation that is "substantially the same" as the initiative proposal, the initiative is removed from the ballot.[58]

In California, the indirect initiative has been eliminated at the state level but retained in local elections. Experience in other states with the indirect initiative process, therefore, has the potential to provide useful guidance to local California governments in considering ways to improve initiative drafting.

In almost every state that uses the indirect initiative process, however, the system is designed to provide little, if any, drafting assistance to proponents. The principal shortcoming of existing indirect initiative systems is their lack of amendability. By the time an initiative proposal reaches the legislative hearing, it cannot be changed by the proponents. Even in Alaska and Wyoming where an initiative proposal may be amended by the legislature and removed from the ballot, the *proponents* are given neither the authority nor an incentive to negotiate improvements in the proposal with the legislature.

The intent behind the indirect process is fourfold. First, it allows a legislature to enact the original initiative (or, in the case of Alaska and Wyoming, a substantially similar measure) as a law and remove the initiative from the ballot—thereby eliminating a costly election and avoiding an initiative statute that is difficult to amend. Second, it allows the legislatures in some states to enact their own version of the initiative and place both measures on the ballot. Third, it subjects initiative proposals to the public scrutiny of a legislative hearing. And fourth, by involving the legislature in the initiative process, it increases the legislature's accountability to public needs.

a. Legislative Negotiations

Legislatures in any state that use either the direct or indirect initiative process may propose substitute measures. This is true at the local level in California as well. The indirect process therefore brings the legislature and initiative proponents together for a hearing and thus creates a *potential* environment for legislative negotiations. Unfortunately, states that employ the indirect process have generally failed to make constructive use of this potential for improving initiative legislation through negotiations between proponents and the legislature. The legislature in indirect initiative states may suggest that an initiative be replaced by a substitute measure, but given the typically adversarial relationship between initiative sponsors and the government, legislative substitute measures are usually seen as unacceptable by proponents and voters alike. Most indirect initiative states further diminish the possibility of legislative negotiations by requiring that all qualified initiatives be placed on the ballot unless they are approved by the legislature in the original form. States that use the direct initiative process, such as California, require that all qualified initiatives be submitted to the voters *even if* enacted into law by the legislature. If a proposition cannot be voluntarily removed from the ballot by proponents no matter what the legislature does, little incentive exists for the proponents to negotiate changes with the legislature.

The key element to meaningful drafting assistance, in the Commission's judgment, is *proponent amendability*—allowing proponents voluntarily to revise their proposal in light of additional information that may surface in the course of the review process. Only two states that employ the indirect initiative allow for a degree of proponent changes in the form and content of initiatives. These states,

58. In Alaska, the Lieutenant Governor, with formal concurrence of the attorney general, determines whether a legislative act is substantially the same as an initiative proposal. Alaska Stat. §15.45.210 (1988). In Wyoming, this determination is made by the secretary of state. Wyo. Stat. §22-24-119 (1988).

Massachusetts and Ohio, do not assist proponents in the initial drafting of their proposals. Instead, once proponents gather a certain threshold of signatures, the proposal is submitted to legislative hearings for review.

Review procedures differ between the two states. Massachusetts tends to be quite restrictive toward citizen-initiated legislation. After gathering signatures amounting to 3% of the number of voters who participated in the last election, an initiative proposal (either statutory or constitutional amendment) is sent to the attorney general for certification. If the measure is certified by the attorney general, it goes before the legislature for review and a vote. At any time during the review, a majority of the listed proponents may make limited adjustments in the wording of the measure as long as the revisions are accepted by the attorney general as "perfecting in nature." Such revisions are very rarely made. John Cloonan, a director in the Massachusetts secretary of state's office, could recall only one instance in which proponents modified their proposal in the course of legislative hearings. The revision was later nullified by the attorney general for being substantive in nature.[59] A proposal eventually becomes law if passed by the legislature and signed by the Governor. If the measure is rejected or amended to the dissatisfaction of proponents, collection of an additional one-half percent of voters' signatures will place the original (or "perfected") initiative on the ballot.[60]

The system of indirect initiatives in Ohio could provide proponents with considerable drafting assistance. After collecting signatures of 3% of the number of votes cast in the last gubernatorial election, a statutory initiative is given a hearing before the state legislature.[61] The legislature may amend initiative proposals by majority vote with the consent of proponents. Proponents cannot offer their own changes to the initiative proposal, but they can accept any amendments offered by either branch of the legislature. Consequently, the indirect initiative system of Ohio allows for substantive changes in content and form following expert and public scrutiny of any flaws or disadvantages in a measure. However, proponents must then gather signatures of another 3% of the voters on a supplementary petition that expresses the original or modified version of the proposal. Only then is the measure placed on the ballot.[62]

b. Two-Track Initiative Option

A few states have established a two-track system of initiatives in which proponents may choose to pursue *either* an indirect *or* a direct initiative. Michigan, Nevada and Ohio, for example, have established an indirect system for initiative statutes and a direct system for initiative constitutional amendments. The two-track system in all three states was designed to encourage proponents to press for initiative statutes rather than constitutional amendments. Yet it has failed to work.

Despite a lower signature threshold for indirect statutory initiatives in Michigan (8% of the last gubernatorial vote for indirect statutory initiatives versus 10% for direct constitutional initiatives), the direct constitutional amendment route

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59. Telephone interview with John Cloonan, Director, Elections Division, Massachusetts Secretary of State's office (Feb. 12, 1990).

60. Initiative constitutional amendments in Massachusetts must be approved by at least a quarter of the members of the legislature in two successive sessions to be placed on the ballot. If the measure fails to get the 25% approval from the legislature, it is not presented to the voters. Statutory initiatives are not subject to this special requirement of receiving minimal approval from the legislature.

61. Initiative constitutional amendments in Ohio require signatures amounting to 10% of the last gubernatorial vote before the measure is submitted directly to the voters.

62. The Ohio secretary of state's office has no record of how often initiative proponents accept amendments to their proposals.

has been chosen more than twice as often as the easier indirect route from 1980 to 1990: 42 direct constitutional amendments were titled, as contrasted with 20 indirect initiative statutes. In Nevada, the penalty for choosing the direct route is even more severe. Constitutional amendments (direct) must be approved by voters at two consecutive statewide elections, while initiative statutes (indirect) are immediately ratified by a simple majority vote. Nevertheless, of the seven initiatives that qualified for the ballot between 1980 and 1990, only two were indirect initiative statutes.

Ohio offers a rather substantial incentive for proponents to pursue indirect initiative statutes rather than direct initiative constitutional amendments. The incentive is that 40% fewer signatures need be gathered to qualify an indirect initiative statute as opposed to a direct initiative constitutional amendment. Even so, between 1913 and 1987, 58 initiatives were presented to Ohio voters, 50 of which were direct initiative constitutional amendments.

Washington provides a two-track system only for initiative statutes. Proponents may circulate a direct initiative petition for six months in an effort to gather signatures amounting to 8% of the last gubernatorial vote, or circulate an indirect initiative petition for 10 months in an effort to raise the same number of signatures. Since inception of Washington's initiative process through 1989, proponents have titled 532 direct initiatives and 108 indirect initiatives, and qualified for the ballot 84 direct initiatives and 19 indirect initiatives.

Utah also provides a two-track system for initiative statutes but fails to offer any incentive to choose the indirect route. Proponents must gather signatures amounting to 10% of the last gubernatorial vote for a direct initiative, or for the indirect initiative 5% of the gubernatorial vote for a legislative hearing and another 5% for ballot qualification. Of the six initiatives on Utah's ballot between 1980 and 1990, none were indirect initiatives. An officer with the secretary of state's office could recall only one indirect initiative being attempted in recent history, and that attempt failed to qualify for a legislative hearing.[63]

4. Vetoes and Amendments

In addition to or instead of state-sponsored programs designed to assist proponents in drafting a better initiative, many jurisdictions impose official review procedures in which poorly drafted or unconstitutional initiatives may be removed from the ballot, voided by the courts or amended by the legislature after enactment.

a. Administrative Veto of Improper Provisions

In every state, the courts have final jurisdiction to determine whether the substance of an initiative violates subject limitations or other constitutional norms. A handful of states, however, empower administrative officers to scrutinize the substance of initiative proposals and refuse to certify initiative petitions if the subject matter is not appropriate for direct legislation. An "administrative veto" is a very convenient and efficient means for state authorities to regulate certain aspects of drafting initiative legislation, but the potential for arbitrary abuse is great.

Six initiative states and the District of Columbia specifically permit administrative veto of initiative proposals on grounds of subject matter. (Most states, of course, allow administrative scrutiny of petition format.) The most common basis for refusing to certify an initiative proposal is that it treads upon subject matters prohibited for direct legislation by the state constitution. The constitutions or state statutes of Alaska, Illinois, Massachusetts, Nebraska and Wyoming forbid initiatives from dealing with a variety of subject matters, such as the dedication of

63. Telephone interview with Thayre Dennis, Information Officer, Utah Secretary of State's office (May 2, 1990).

state revenues or reorganization of the courts, and they vest a designated state officer with authority to terminate any initiative proposal that violates such subject restrictions.[64] The District of Columbia additionally allows its board of elections to refuse certification of any initiative petition that authorizes discrimination prohibited under the Human Rights Act of 1977.[65] In Oregon, the secretary of state need not approve for circulation a proposed initiative measure that is deemed in violation of the single-subject rule.

The attorney general's office in Massachusetts has used its authority to void initiative measures. One particularly controversial occasion involved a 1982 measure to reform the legislature. Legislation was tied in knots on the floor of the legislature, in part because of extensive arbitrary powers granted to the speaker of the house. This legislative logjam prompted a sweeping reform initiative to alter legislative procedures that easily gathered the requisite signatures. It was later disallowed by the attorney general and never sent to the legislature for a hearing.

More often than not, however, state officers are reluctant to invoke their administrative powers to veto initiatives due to the seemingly arbitrary nature of this authority. In Oregon, for instance, the secretary of state has refused to certify only one initiative petition for violation of the single-subject rule in the last three years.

Several states have no specific constitutional or statutory provisions forbidding an administrative veto of allegedly unconstitutional initiative proposals, leaving the issue to be clarified by the state courts. In California, Colorado and South Dakota, state supreme courts have ruled that elections officers only have ministerial duties in the initiative process and thus lack authority to assess the substantive merits of initiatives.[66] In California, for instance, the attorney general may not refuse to title a ballot initiative even if he or she believes the proposed measure violates the state constitution. California's attorney general once refused to prepare a title for an initiative measure that would have prevented teachers from striking, prohibited teachers' organizations from making campaign contributions and required that tax revenues could not be used to provide transportation to balance schools racially. The attorney general's staff argued that the measure violated the single-subject requirement. However, the California Supreme Court overruled the attorney general on the ground that his office has no such discretionary authority.[67]

b. Judicial Review Before Qualification

Virtually all initiative states permit pre-election judicial review of initiatives for compliance with proper qualification procedures, such as certification disputes. Most states also allow for pre-election review of initiatives by the courts for proper subject matter.

Only Florida, however, *requires* automatic court review of initiatives after the circulation of petitions has begun but before the measure actually qualifies for the ballot. Following a series of last-minute court challenges to a number of initiatives from 1982 through 1984, Florida voters ratified a 1986 constitutional amendment requiring state supreme court review of all initiatives which collected 10% of the

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64. Alaska Stat. §15.45.070 (1988); Ill. Rev. Stat. ch. 46, §28-5 (1988); Mass. Const., amend. art. 74, §1 (1988); Neb. Rev. Stat. §32-704.01 (1988); Wyo. Stat. §22-24-101 (1988).

65. D.C. Stat. chap. 10, §1001.2(d) (1988).

66. California—Schmitz v. Younger, 21 Cal. 3d 90 (1978); Colorado—City of Rocky Ford v. Brown, 293 P.2d 974 (1956); South Dakota—Coon v. Morrison, 61 S.D. 339 (1933).

67. Schmitz v. Younger, 21 Cal. 3d 90 (1978). The initiative proposal was eventually titled "Pupil Transportation to Alter Racial Ratios: Use of State and Local Revenue," but the petition drive failed to gather the requisite signatures for ballot qualification.

requisite signatures.[68] The 10% threshold is designed to avoid burdening the court with frivolous initiative proposals. The state supreme court analyzes the initiative proposals for compliance with the single-subject rule and other statutory criteria. The court then issues an advisory opinion on the measure's validity.

Although proponents have four years to circulate petitions and gather the requisite signatures for ballot qualification in Florida, signature gathering stops at the 10% threshold, pending supreme court certification.[69] After the court issues its advisory opinion on the initiative's compliance with the single-subject rule, proponents may modify the proposal to accommodate the advisory opinion and start all over again to raise signatures, or refuse to alter the proposal and risk a final judicial reversal. The court's advisory opinion is thus not binding, but it is to be viewed as "extremely persuasive" in a later court challenge.[70]

c. Legislative Amendments After Enactment

California is the only state which prohibits its legislature at the state level and local legislative bodies at the local level from amending the text of an initiative after its enactment by the voters—unless the text of the initiative itself permits such amendments.[71] States that allow legislative amendments after enactment either specify the vote requirements needed by the legislature to amend a measure or provide a time delay before amendments are permitted. Unlike California, none of these states restricts the extent of amendments, such as requiring that legislative amendments "further the purposes" of the measure, and none requires that a bill be in print a certain number of days before a final vote on any amendment.

After California, Michigan has the toughest amendment requirement: it takes a three-quarters vote of both houses of the legislature to amend an initiative (although the initiative may specify lesser requirements). Arkansas mandates a two-thirds vote of the legislature for any amendments to an initiative. North Dakota specifies that two-thirds of the legislature must approve any amendments within seven years of passage of the initiative. Washington also requires a two-thirds vote but only in the first two years after the passage of the measure. Both states allow simple majority votes after the time period expires. Initiatives have not been repealed or drastically amended in Washington.[72]

Several states permit legislative amendments with no super-majority: Massachusetts, Alaska (but no amendments in the first two years), Arizona (but

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68. The purpose of Florida's court review in the early stage of the initiative process is not so much to reduce lawsuits as to ensure that legal challenges will be heard in a timely fashion. Prior to 1986, several Florida initiatives faced pre-election lawsuits challenging their compliance with the single-subject rule. The slow process of lower court hearings and eventual appeals to the state supreme court left some of the cases unresolved just weeks before the election. One measure was even printed on the ballot and in the ballot pamphlet and later stricken from the election.

69. Telephone interviews with Eric Taylor, Elections Division, Florida Attorney General's office (Jan. 18, 1990 and Jan. 30, 1990).

70. Staff Analysis of House Joint Resolution 71, Florida House of Representatives, Committee on Judiciary (Feb. 18, 1986).

71. Arizona prohibits legislative amendments or repeal of any initiative legislation that receives approval of a majority of all registered voters in the state. According to the Arizona Elections Division, however, this has never happened. Initiatives have passed but only by a majority of all those voting. Consequently, all initiative legislation in Arizona is subject to legislative amendment or repeal. Telephone interview with Linda Lairson, Projects Programs Specialist, Elections Division, Arizona Secretary of State's office (Jan. 30, 1991).

72. Telephone interview with Graham Johnson, Executive Director, Washington State Public Disclosure Commission (Jan. 30, 1991).

only if less than a majority of all registered voters in the state voted for the measure, otherwise no legislative amendments are allowed), Nevada (but only after three years have elapsed since passage of the initiative), Utah (may amend but not repeal initiative legislation) and Wyoming (but no repeal in the first two years after enactment of the measure).

A number of states have no provisions specifying whether or how the legislature may amend or repeal an initiative. Court rulings in all of these states have permitted legislatures to amend the measures.[73]

E. The Commission Believes That Amendability and Other Procedures Must Be Added to Improve the Drafting Quality of Local Initiatives

The quality of public policy contained in local ballot initiatives can depend significantly on their drafting. Ambiguously worded measures or proposals are subject to varying interpretations by enforcement agencies and the courts, oftentimes resulting in policies not intended by the proponents or voters. The authors of an initiative can sometimes overlook and omit important aspects of their proposed reforms from the proposal. Inadequate consideration of legal parameters in drafting an initiative can result in treading on constitutional rights and requirements. Poorly drafted initiatives often confuse the voters and randomize electoral outcomes.

When a poorly drafted initiative causes voter confusion, unintended consequences, constitutional violations or unintended omissions, everyone loses. Initiative proponents find their objectives thwarted, voters feel betrayed by unintended policies or court rulings that limit or reverse the popular will, and the local government and the courts feel burdened by the costs of defining and implementing a badly drafted measure.

A constructive program to improve the drafting quality of local initiatives must attempt to meet six general objectives:

- To provide some limit to the length of and hence the complexity and number of potentially confusing issues contained in initiatives;
- To provide a thorough review of both the form and substance of initiative proposals in an atmosphere which is taken seriously by the public and press and which does not unduly intimidate initiative proponents;
- To engage the local legislative body in the process of drafting and negotiating the content of initiatives;
- To offer advisory recommendations to initiative proponents for improving their proposals and adapting them to established statutory and constitutional constraints;
- To allow proponents to amend their proposals accordingly; and
- To permit some flexibility in amending initiative legislation after enactment to satisfy changing social conditions and needs.

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73. Colorado, Idaho, Maine, Missouri, Montana, Ohio, Oklahoma, Oregon and South Dakota have no constitutional provisions addressing legislative amendments, but court rulings or "common practice" have established the right of their legislatures to amend and/or repeal initiative legislation. By common practice it is meant that legislatures have simply assumed the authority of amending initiative legislation without such authority clearly vested by state law or court determination. Montana is one state in which the legislature has amended initiative legislation without any specific statutory or judicial authorization. An initiative failed to qualify to Montana's 1990 ballot that would have prohibited legislative amendments to initiative legislation. Telephone interview with Nancy Hart, Montana Elections Bureau Chief (Jan. 8, 1991).

California's initiative process at the local and state levels lacks all these elements. A model law designed to enact a balanced and mature initiative process can be developed by combining certain innovations with modifications from other states.

The Commission's recommendations include a 5,000-word limit on the length of initiative proposals, mandatory public review of the form and content of initiatives *after* the measure qualifies for a hearing before the local legislative body, a procedure allowing proponents to amend their proposals under certain constraints *before* placing them on the ballot, and provisions for limited amendment of initiative ordinances by the council or board after enactment.

1. 5,000 Word Limit

The Commission recommends that a reasonable limit be imposed on all ballot propositions of no more than 5,000 words of new language.[74] Strikeout language and existing law repeated in the text of the initiative would not be included in the word limit. The Commission believes that a word limit would offer some encouragement for proponents to delineate their cause and to write it in plain, concise language, allowing the electors to understand better the issues upon which they are asked to vote. At the same time, a 5,000-word limit is sufficient to permit proponents to address squarely *any* public issue, no matter how small or how big.

Although excessively long ballot propositions have not been much of a problem at the local level, the Commission recommends extending the 5,000 word limit to local jurisdictions to remain consistent with its proposed reforms for statewide initiatives. Furthermore, as the practice of ballot-box zoning becomes increasingly popular, the potential for abuse also increases. Excessively wordy and confusing initiatives are not justifiable at either the local or state level.

There appear to be three reasons for excessively wordy propositions. First, some initiative proponents seek to cover too much ground in a single proposition. Second, initiative opponents draft long and complicated *counter* initiatives to make the entire subject matter appear too complex for ballot-box legislation. Third, some initiative proponents attempt to gain volunteer and financial support by logrolling related pet projects into a single measure. Whatever the reasons for excessively wordy propositions, voter confusion is typically the unfortunate result.

Initiative proponents were not better drafters before 1988 when they kept their proposals under 5,000 words; they were more straightforward in describing their policy objectives. The Commission believes that any single major policy objective can be achieved within this limit. California voters have slashed property taxes (Proposition 13), controlled government spending (Proposition 24), regulated the insurance industry (Proposition 103), established a "Victims' Bill of Rights" (Proposition 8), regulated toxic discharges in the waters (Proposition 65) and imposed campaign contribution limitations (Proposition 73) all with initiatives written in less than 5,000 words.

A 5,000-word limit is far from a perfect solution. Some of the most ambiguously worded initiatives have been brief. Proposition 13, for example, comprised only 350 words and yet its terminology is still being debated in the courts and on the ballot. But the Commission believes that a word limit is a constructive step toward minimizing voter confusion and logrolling. Word limits have been used successfully in other areas, yet the substance of the ideas communicated has not been affected. The state and federal appellate courts, for example, place page limits on all legal

74. Of course, original charters and charter "revisions" (in which charters are written in their entirety) as opposed to charter "amendments" should be exempt from a word limit.

briefs and pleadings submitted to them, despite the complexity of the issues addressed.[75] The federal rules of judicial procedure limit interrogatories in civil cases to no more than 100 questions.[76] These procedures force authors to compress and distill their ideas. The result is a more concise form of communication.

No system that calls upon the electorate to vote directly on important pieces of legislation can be defended if the measures themselves are so complex and lengthy that they defy understanding by the average voter. A word limit would tend to promote straightforward and comprehensible ballot measures that are less likely to contain hidden agendas and more likely to be comprehensible to the voters. To be sure, a word limit might require that proposals for sweeping changes either be subdivided into two or more initiatives or be written to allow a certain degree of legislative discretion in implementing the measure. But that tradeoff is a small price to pay for greater clarity at the ballot box. Voter confusion undermines the integrity of the initiative process itself.

2. After Qualification: Public Hearing and Vote

After an initiative is certified by the city clerk or county registrar as having qualified for the ballot, the city council or board of supervisors should be required to hold a public hearing on the initiative within 30 days. The council or board must publicize the existence of the hearing with three days advance notice. A final vote on the measure would be scheduled to be taken within 60 days after certification of ballot qualification.

Thirty days should provide sufficient time for the council or board to complete a study on the proposed measure and to schedule and conduct hearings on qualified initiatives. The proponent's submission of signatures for verification will give the local legislative body several weeks advance warning that a serious initiative proposal is about to qualify for the ballot. Prior to the hearing, the council or board would refer the measure to an appropriate agency or agencies for analysis as to its fiscal impact, consistency with general and specific plans, and any other matters deemed important. This report would be made public at the hearing. The council or board would also invite and receive written reports and oral testimony from experts on the issue and from any other interested parties.

Throughout the hearing, initiative proponents could respond to criticisms and seek further clarification of submitted testimony. Promptly after conclusion of the review, all analyses and testimony, including any recommendations for improving the proposal, would be compiled by the city or county and given to the proponents, press and the public within three days.

The proponent—and only the proponent—would have the authority for a short period of time after the hearing to make changes to the text of the initiative, as long as such changes are consistent with the "purposes and intent" of the original proposal. Within four days after receipt of the hearing transcripts, but before the final vote of the local legislative body, initiative proponents may decide either (i) not to revise the original proposal or (ii) to deliver an amended version of the measure in writing to the office of the city attorney or county counsel, who would have seven

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75. *See, e.g.*, Fed. R. App. P., 9th Circuit Court of Appeals, Rule 28(g) (limits briefs to 50 pages of typographic printing or 70 pages of any other form of printing or typing). In the state of Minnesota, a 40-page word limit on briefs was vigorously enforced by U.S. District Judge David Doty, who penalized both the plaintiff's and defendant's law firms in a class-action age-discrimination case with a $50,000 fine each for exceeding the word limit. Both law firms had submitted briefs longer than 600 pages. Margaret Zach, *2 Law Firms Each Fined $50,000 for Wordy Briefs,* Minneapolis Star and Tribune, June 26, 1991.

76. Federal Practice and Procedure, Civil, Rule 33(a).

days to issue an opinion on whether the amendments are consistent with the "purposes and intent" of the original proposal. Proponents would then have two days to renegotiate their amendments with the city or county legal staff if an adverse opinion is issued or seek final review of that opinion in court.

Alternatively, proponents could negotiate with the local legislative body and agree upon a substitute measure encompassing changes beyond its original "purposes and intent." If, after such negotiations, the council or board enacts into law a modified version of the initiative which is acceptable to proponents, the proponents can withdraw the original initiative from the ballot. Or, with the consent of the proponent, the council or board can place on the ballot an amended version of the original initiative which could include modifications that might go beyond the measure's original "purposes and intent." If the council or board fail to enact any comparable legislation at all, or enacts a version of the initiative that is unsatisfactory to proponents, the proponents would place the initiative in its original or proponent-amended form on the next ballot.

a. Possible Local Legislative Actions

Through this system of legislative review, the proponents and local legislative body may take the following possible actions:

- The local body may enact the proposal as originally drafted and the proponents would withdraw it from the ballot.
- The proponents may make amendments to the measure consistent with its "purposes and intent" and place the measure on the ballot, if the amended version is not adopted by the council or board.
- The council or board may enact the proposal as amended by proponents in a manner consistent with its "purposes and intent" and proponents would withdraw it from the ballot.
- The local body may enact an amended version negotiated with the proponents' consent, whether or not it is consistent with the original initiative's "purposes and intent," and the proponents would withdraw the original initiative from the ballot.
- The local body may propose amendments which go beyond the initiative's original "purposes and intent" and place this amended version on the ballot to let the voters decide; the proponents may then withdraw their initiative.
- The local body may reject the proposal, or offer an amended version which is unacceptable to the proponents, and the proponents can then place the original or proponent-amended (consistent with "purposes and intent") version of the measure on the ballot.
- Both the proponents' original or proponent-amended measure *and* a competing referred measure can be placed on the ballot. Whenever the city attorney or county counsel concludes that only one of the measures can become law, the voters must then be alerted by placing a notice to that effect in the voters' pamphlet and on the ballot.

At each step in the negotiations with the local legislative body, the proponents have the final say on what does and does not happen to their initiative proposal.

Objections to this concept of proponent amendability generally come from those who distrust initiative proponents. The primary argument from those who are suspicious of proponent amendability involves the concept of a "signature contract." They argue that signing an initiative petition is like signing a contract between the signatory and the petitioner in support of the precise proposal printed on the

petition. Hence, it may be seen as a violation of this contract to use a person's signature to place any different proposal on the ballot, regardless how minor the changes may be.

It seems a gross exaggeration, however, to view a signature on an initiative petition in terms of a contract exclusively supporting the exact text of the original proposal. Very few people actually read the text of an initiative when signing a petition. Their signature does not bind them to vote for the measure—it signifies that they would like to see it on the ballot, when in the context of an actual election they can analyze it more carefully and make a decision whether or not to vote for it. To put the matter somewhat differently, a person signs an initiative petition in support of the *essence* of the proposal, often giving his or her signature on the basis of an assessment of the circulator's credibility and the importance of the general subject. Registered voters may, for instance, sign a petition on behalf of "campaign finance disclosures," but in doing so they typically do not intend specifically that campaign reporting forms be filed by candidates for any contribution over $100 (as opposed to $50 or $250). In most instances, signatories neither know nor care that the initiative affects the specific reporting threshold. The details are assumed to be adequately researched and planned by the proponents. To the extent that a "contract" is implied, it is that proponents will pursue the essential "purposes and intent" of the initiative.

Proponent amendability under the Commission's proposal is limited to "furthering the purposes and intent" of the original initiative or obtaining the consent of the legislature to additional changes. Modifications to the text of an initiative that remain true to the concrete policy objective should not be seen as undermining the will of the signatories but as *furthering* it in a manner that would be supported by the signatories.

b. Flexibility by Local Governing Body

A hearing is a fundamental component of the Commission's package of recommendations for enhancing the drafting quality of initiatives. It comes at a time when the city council or board of supervisors is most likely to give an initiative serious consideration and at a time when proponents can make amendments to the measure. Proponents are therefore able to make changes on their own or negotiate with the council or board in an attempt to reach a compromise that will avoid the initiative being placed on the ballot. Both the proponents and the local legislative body have the flexibility to consider alternative legislation in lieu of a ballot measure. The local body is encouraged to consider a compromise to avoid an initiative which may seem extreme. The proponents have a strong incentive to compromise to avoid a costly election battle they may lose.

In short, the Commission's proposal will merge the legislative and initiative processes for a brief period to provide the opportunity for give-and-take which will serve to enhance the drafting and quality of initiative legislation. The local authorities will be less likely to wash their hands of initiatives altogether but instead will have the opportunity to address the merits of the issues raised. The proponents will be more likely to participate in the process and use the information and views received to improve the drafting of their measure.

c. Important Differences Between the Commission's Proposal and the "Indirect Initiative"

At least two major differences exist between the Commission's proposal and the standard indirect initiative used in local jurisdictions. First, the Commission's proposal emphasizes negotiations and legislative flexibility. In contrast, indirect initiative processes have woefully missed the opportunity of using the local government body's involvement as a sophisticated form of drafting assistance. None

of the indirect systems currently in existence allow proponents to make any substantive improvements in the initiative, and proponents are rarely allowed to correct obvious errors in the drafting of the text. This being the case, proponents are not even encouraged to negotiate with the local governing body.

Second, the Commission's proposal permits the proponent to retain full control over drafting the initiative. Most indirect systems in other states implicitly cast the legislature in the role of a caretaker, overseeing and, in some cases, even checking the people's right to make policy through initiatives. Alaska and Wyoming go so far as to empower state authorities to remove an initiative from the ballot without the proponent's consent if they enact legislation that is "substantially the same" as the original proposal.

Policymaking through a deliberative body like a city council or county board of supervisors has considerable merit. The Commission's proposal includes the deliberative legislative process as part of the initiative process, but it gives the initiative proponent the final word in legislative negotiations. The proponent decides which, if any, amendments are appropriate and can make the changes in the text of an initiative with or without approval of the local legislative body. All final decisions must be made with the consent of the proponent. Ballot access is guaranteed unless the proponent wishes otherwise.

3. Cooling-Off Period

After an initiative qualifies for the ballot, as certified by the clerk's office, a hearing must be held within 30 days and the public must be notified. The council or board, however, must take a final vote on the measure up to 60 days after notification from the clerk's office. This 60-day delay provides a time for proponents and public officials to negotiate before the local legislative body takes final action.

Initiative processes in all states have been marked by considerable hostility between initiative proponents and legislatures. This hostility can hinder meaningful policy analysis and constructive dialogue between proponents and legislative representatives for amending initiative legislation. It is imperative that each side be given some time to contemplate the criticisms and suggestions of the other. A reasonable delay improves the chances for rational insight to supersede anger.

4. Mandatory Vote

The Commission recommends that, regardless of the outcome of negotiations between proponents and the council or board, the local legislative body be required to take a roll call vote on every initiative proposal in its finalized form before it is placed on the ballot. Individual officials' votes will be recorded and will appear in the ballot pamphlet, along with their names and districts of residence.

A publicly recorded vote of the council or board will help provide voters with an additional source of useful information about each ballot initiative. Voters will be able to consult a simple chart in the ballot pamphlet to see how their own representative voted and how officials voted whose opinions they value. The media also would be encouraged by a vote to expand their news coverage of ballot propositions.

A mandatory vote would additionally require the local legislative bodies to take ballot initiatives seriously. Representatives will not find it easy to abstain from voting and "duck" their responsibility to take a position on the issues. This feature of the proposal will encourage public officials to negotiate seriously and in good faith with proponents during the cooling-off period.

5. Amendment After Enactment

As noted earlier in this chapter, California is the only state in the nation which flatly prevents its representative bodies from amending an initiative after enactment, unless the measure itself specifically permits amendments. The Commission believes that, as circumstances change, local legislative bodies should be able to amend the language of any ordinance, including initiative ordinances adopted by the people, to address new or unanticipated problems. At the same time, the council or board should not be given carte blanche to repeal or drastically alter an initiative adopted by the electorate. Appropriate conditions should restrict the ability of the elected officials to amend initiatives, but such conditions should not be so prohibitive as to make changes exceedingly difficult. The Commission therefore recommends that local legislative bodies be allowed to amend any initiative after its enactment, so long as the legislation amending an initiative "furthers the purposes and intent of the law," proposed in final form for at least 12 days and is approved by a 60% vote of the council or board (or by an 80% vote if the body is composed of only five members). The text of an initiative, of course, could allow the these bodies to make amendments by a lower (but not a higher) percentage, down to a simple majority.

With a "purposes and intent" standard and a super-majority vote requirement, the council or board will thus be unable to repeal or gut an initiative but *would* be permitted to perfect a measure by adding provisions, clarifying language and making both substantive and technical changes so long as these changes do not thwart the purposes of the law.

Opposition to the concept of permitting legislative amendments stems from those who fear governments will radically change or gut controversial initiatives, especially measures that restrict or curtail the political process. It is because of this fear that the Commission's recommendation imposes tough "purposes and intent" requirements on local legislative bodies for amending initiative ordinances and specifically allows the courts to determine if the amendments meet this standard. In order to ensure compliance with the "purposes and intent" standard, the Commission further recommends that any proposed amendment to initiative ordinances be in print at least 12 days prior to final passage by the council or board, so that it may be subject to public inspection. Although these proposals give local legislative bodies enhanced flexibility to amend initiatives, they would still comprise the most restrictive amendment criteria in the nation.

6. Expedited Court Review

The Commission believes that the superior court of each county should be granted exclusive jurisdiction over challenges emerging from the proposed drafting assistance program. Any qualified elector who is not satisfied with a determination by proponents concerning amendments to an initiative proposal, or any initiative proponent not satisfied with a ruling or action by city or county officials, may petition directly to superior court for an immediate *de novo* hearing. The case should be placed at the head of the court's calendar and decided as quickly as feasible. The court's decision would be considered final.

F. Other Local Initiative Reforms Have Been Suggested Which the Commission Believes Unnecessary or Undesirable

The Commission considered many other solutions to the drafting problem that have been utilized in other states or proposed but as yet unused. The Commission's final recommendations are based on careful analysis of other states' experiences and California's and local jurisdictions' somewhat unique political circumstances.

The following is a discussion of potential reforms, both tried and untried, that the Commission does *not* recommend for California's local jurisdictions.

1. Optional Drafting Assistance

Even though several states strongly encourage initiative proponents to seek assistance in drafting their proposals, *exclusive* reliance on optional drafting assistance programs is inadequate. Because many initiative proponents view official review and criticism of their proposals as a major inconvenience and one that can sometimes be usurped for political purposes, they typically refuse to participate in optional review programs. Outside review of an initiative proposal, especially if that review is conducted by city or county staff and open to the public, could, they fear, serve as a forum for attack on the measure by its opponents. Even supporters of an optional drafting assistance program concede that review procedures may be open to political opportunism.

At the same time, public policies that affect all persons in a jurisdiction should not be drafted by any single individual or organization without the scrutiny and advice of experts in the field, affected interest groups and the general public. Invariably, authors of legislation overlook some of its ramifications, omit important contingencies in the law or write the policy in language that may seem ambiguous to others. It may be inconvenient for initiative proponents to have to submit their proposals for review. And there is no guarantee that an official review will produce constructive suggestions. But the benefits of *requiring* review of all initiative proposals outweigh the inconveniences to initiative proponents.

It is difficult to prod the authors of initiatives into seeking the opinions of others if they are not required to do so. If proponents are not required to submit their proposals to scrutiny and criticism to root out these problems, they normally will not do so. The experience in California and in other states is clear: *optional drafting assistance programs are too often ignored by initiative proponents to be useful as a major remedy for inadequate drafting.*

2. Compulsory Recommendations and Administrative Veto

If such substantive issues as constitutionality and single subject were as easy to determine as proper petition format, giving an administrative officer the power to veto an initiative petition based on substance could be justifiable. That, however, is not the case. A concrete formula to determine what is constitutional and what addresses a single subject has never been established. The ultimate authority to rule on these substantive issues rests with the courts—and that is where the determination belongs.

Initiatives represent the right of citizens to challenge and change the public policies that have been established by government. To allow government representatives to alter or veto an initiative proposal—either through compulsory recommendations made by a reviewing agency or through the certification powers of a designated officer—would be unwise in the Commission's judgment.

3. Mandatory Review Without a Public Hearing

Several states require that all proposals be subject to review by a state officer or board of experts who can then offer suggestions for improving the form and substance of the measure. These procedures can be helpful but cannot, in the Commission's judgment, substitute for opening the review process to the public.

For example, mandatory review by the city attorney may highlight legal or constitutional problems with an initiative proposal to curtail real estate development, but it may overlook such policy ramifications as its impact on real estate values, local property tax revenues or the quality of life in the city. A

comprehensive review that includes a public hearing would require not only a legal analysis by an attorney but also scrutiny by real estate developers, economists, neighbors and other interested parties.

A public hearing not only diversifies the perspectives given to initiative proponents, it also enhances the information dispersed to voters. If all else fails and initiative proponents and lawmakers refuse to learn from each other in the course of these hearings, the public and press will still be listening.

4. Mandatory Review Prior to Petition Circulation

Some states with limited initiative activity can properly manage procedures for conducting a public hearing on the form and content of initiative proposals prior to petition circulation. A public hearing prior to the official titling of an initiative has the added benefit of allowing proponents to make wholesale changes in the substance of the initiative before submitting it for an official title and petition format. Colorado has perhaps the most extensive and useful public review process prior to the titling of an initiative. The state's legislative council is presented with 10 to 20 initiative proposals per year on which to conduct hearings and analyses. Although this caseload is beginning to tax the resources of the council, Colorado can still provide a comprehensive analysis for each measure.

While mandatory review of initiative proposals prior to petition circulation could be practical at the local level because of limited initiative activity, it would be a redundant procedure in California's local initiative process if the Commission's reform package is adopted. Initiatives at the local level must be presented to the city council or board of supervisors for consideration after ballot qualification. Under the Commission's reform program, this form of an "indirect" initiative process provides an ideal opportunity to conduct a comprehensive public hearing in the latter stages of a petition drive and to make appropriate amendments to initiative proposals, rendering a review prior to petition circulation unnecessary.

G. Conclusion

The drafting of initiative legislation is perhaps the most critical step in the process of formulating public policy via the initiative. Yet, no jurisdiction provide proponents with any significant scrutiny and assistance.

An ideal drafting assistance program should emphasize public scrutiny, flexibility and amendability. The Commission recommends a mandatory hearing, followed by an opportunity to revise the original proposal in negotiations with local legislative bodies.

Californians cherish the initiative process. It provides a valuable means for citizens to exert their will over public policy. But the problems generated by poorly drafted initiatives can undermine any popular mandate. Procedural techniques to improve the quality of drafting an initiative, without violating the voluntary nature of initiatives, should be adopted for all local governments.

CHAPTER 4

Petition Circulation and Ballot Qualification

"Why try to educate the world when you're [just] trying to get signatures?"

— *Ed Koupal,*
Signature Gatherer[1]

Ballot initiatives allow citizens to shape the state's political agenda by directly placing issues on the ballot and deciding them by popular vote. But procedures must be established to discern which issues are of sufficient importance to warrant submission to the electorate. Only one selection process has thus far been developed: collection of a specified number of signatures through the circulation of petitions.

Every jurisdiction—state, county or city—with an initiative process requires petitioners to collect a certain number of signatures to qualify an issue for the ballot. Signature collection has two related purposes: reaching a signature threshold presumably demonstrates both the *breadth* as well as the *intensity* of popular support for the initiative. Some people may be willing to sign even a frivolous petition so long as the proposal is not offensive, but a frivolous petition is not likely to stir enough intensity of interest to produce a large cadre of volunteer circulators willing to collect those signatures. In theory, a wide spectrum of the community must find the proposal acceptable and be willing to sign a petition, and a significant number of citizens must find the proposal so pressing as to warrant their efforts to collect the signatures. The signature threshold as a test of significance was developed at a time when other means of evaluating public sentiment, such as advanced public opinion polling, were not available.

1. Carla Lazzareschi Duscha, *Interview with Ed Koupal*, California Journal (Mar. 1975).

A. Initiative Proponents Must First Leap Preliminary Hurdles Before Circulating Petitions

The California Elections Code governs the initiative process for all of Los Angeles County's 66 general law cities. The remaining 20 charter cities have the option of crafting their own election procedures to serve their own local needs. (For further discussion of general law versus charter law authority, see Chapter 5, "Voting Requirements and Electoral Restrictions.") However, most local jurisdictions—general law as well as charter law communities—tend to follow the procedures dictated in the state Elections Code.

According to the Elections Code, once initiative proponents have drafted their proposal, it must be submitted to the clerk of the city or county along with: (i) a request that a ballot caption and summary by prepared by the local counsel; (ii) the names and addresses of at least one proponent but no more than three;[2] (iii) a notice that proponents are intending to circulate the submitted measure;[3] and (iv) at the proponents' discretion, a statement not in excess of 500 words that explains the reason behind the initiative drive.

1. $200 Filing Fee

Recent amendments to the Elections Code also allow localities to assess a fee of no more than $200 to any proponent submitting a measure for titling.[4] The purpose of the fee presumably is to minimize trivial submissions, and it is refunded to the proponent only upon successful ballot qualification.

California's filing fee was originally set at $200 in 1943 to cover some of the administrative costs of titling initiative petition, verifying signatures and discouraging frivolous proposals. A 1984 study estimated, however, that actual administrative costs to the state for a single initiative drive about $1,500. Moreover, the $200 fee has done little to reduce the number of frivolous submissions. The state has experienced record-breaking numbers of titled but unqualified initiatives in recent decades.

In contrast with state ballots, local ballots are not being overwhelmed with initiative proposals in any Los Angeles County jurisdictions, since initiatives at the local level tend to be serious proposals with a high likelihood of qualifying for the ballot, most jurisdictions have accordingly declined to charge any filing fee.

Since 1990, state law has required local jurisdictions to compile records of all titled and qualified local initiatives and report them to the Secretary of State.[5] According to these records, only 58 out of California's 435 incorporated cities reported any initiative activity. In almost every instance, no more than one or two initiatives were titled in each of these cities. Only four municipalities had three or more initiatives filed. Colton and Morgan Hill each had three, and Santa Monica

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2. For county initiatives, as many as five persons may be declared as official proponents. Cal. Elec. Code §3702(a) (West Supp. 1992).

3. Notice of Intent to Circulate shall be substantially in the following form:
"Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City (or County) of _____ for the purpose of ____. A statement of the reasons of the proposed action as contemplated in the petition is as follows: . . . ." Cal. Elec. Code §§3702.1, 4002 (West Supp. 1992).

4. Cal. Elec. Code §§3702(b), 4002(b) (West Supp. 1992).

5. Cal. Elec. Code §§3705.6, 4009.6 (West Supp. 1992).

and San Francisco had five. Of the 86 cities within Los Angeles County, six municipalities had at least one initiative submitted for titling in 1990.[6]

Unlike initiatives at the state level—in 1990 only 26% of titled initiatives qualified for the ballot in 1990—most initiatives submitted for titling at the local level are serious efforts. Of the 74 local initiatives submitted for titling across the state in 1990, 54 (or 73%) eventually qualified for local ballots. Among the cities of Los Angeles County, the qualification rate for local initiatives was even higher. Nine of 12 initiative drives within the county (or 75%) in 1990 qualified for municipal ballots.

The lack of many frivolous ballot measures at the local level is not due to a prohibitive filing fee. Los Angeles County imposes no filing fee on initiative proponents. Only five municipalities within the Commission's database—Azusa, Culver City, Hermosa Beach, Manhattan Beach and Paramount—charge initiative proponents $200 to submit their proposals for titling, a fee which later is refunded upon successful ballot qualification.[7] The remaining cities in the data base, including the city of Los Angeles, levy no such charges.

2. Public Notice

Within 15 days of submitting of the original initiative proposal, the petition is returned to proponents with an official caption and summary prepared by the city attorney or county counsel. (For further discussion of the titling process, see Chapter 7, "Voter Information and the Ballot Pamphlet.") Before the petition circulation process can begin, proponents in any general law county or city must notify the public that an initiative drive is about to get underway.[8] Prior to petition circulation, initiative proponents must publish or post their notice of intention and official ballot caption and summary of the proposed measure according to one the following three procedures: (i) if there is a newspaper of general circulation in the jurisdiction, the notice, caption and summary must be published in at least once; (ii) if there is a newspaper of only peripheral circulation in the city but general circulation in the county, the notice, caption and summary must be published at least once in the newspaper *and* posted at three public places; or (iii) if there is no relevant newspaper, the notice, caption and summary must be posted in at least three public places.[9]

Immediately after the public notification requirement has been fulfilled, petition circulation may commence. However, proponents must provide proof of publication and/or posting to local authorities within 10 days. This verification is to consist of an affidavit by a representative of the newspaper in which the notice was published or an affidavit by a voter who witnessed the posting.

B. Initiative Qualification Procedures Have Become More Difficult at the Local Level

Signature thresholds for ballot qualification often vary widely between counties, general law cities and charter cities. Most local jurisdictions in California have at

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6. Cities in Los Angeles County with initiatives submitted for titling in 1990 were: Bellflower—1; Culver City—1; Santa Clarita—1; Santa Monica—5; Torrance—1; and West Hollywood—1.

7. The Commission's data base consists of the 20 cities in Los Angeles County with some activity in the initiative process between 1983 and 1990. For a list of these cities, see Chapter 8, "The Influence of Money."

8. Any charter law city may also require public notice of intent to circulate petitions similar to the requirement among general law cities. Los Angeles City, a charter municipality, has opted not to impose a public notification requirement on initiative proponents.

9. Cal. Elec. Code §§3702.5, 4003 (West Supp. 1992).

least two different signature thresholds for ballot qualification: one for qualification of initiatives for a *special* election, and another for qualification for a *regular* election. Some localities may also offer different signature thresholds for initiative charter amendments as opposed to initiative ordinances. A few jurisdictions in Los Angeles County have no distinctions between qualifying a charter amendment versus ordinance or even between qualifying an initiative for a special versus regularly-scheduled local election.

1. Variations in Signature Thresholds

The state legislature sets initiative procedures for local governments must be strictly adhered to by general law jurisdictions and which serve as a minimum standard for charter law communities. While state law has fixed the signature requirement for ballot qualification of charter amendments, charter communities may set their own standards for qualification of ordinances. Recently, however, the state legislature has made it more difficult to amend a city charter than a county charter. According to state law, proposals to change county charters must be submitted to the voters with petition signatures representing 10% of the votes cast in the county for governor at the last election.[10] Proposals to change city charters, however, must be submitted to the voters with petition signatures representing 15% of the city's *total registered electorate,* not just active voters.[11] In real numbers, an initiative charter amendment would require 186,190 valid signatures for Los Angeles County and 186,635 for Los Angeles city. County charter initiative drives must collect their signatures within 180 days after receipt of the official caption and summary, whereas municipal charter initiatives can be circulated for 200 days following publication of the notice of intent.[12]

Previously, procedures for amending city charters were reasonably consistent with procedures for amending county charters. Petitioners amending city charters only had to collect signatures amounting to 15% of ballots cast for governor in the last election within the city. Since voter turnout in many cities has traditionally been less than 60%, the recent legislative amendment, in effect, nearly doubled the number of signatures needed to qualify a city charter measure. Although this change in law appears to have been a deliberate objective of the League of California Cities and the County Clerks Association, the legislative analysis of the measure responsible for such a drastic increase in the signature threshold (AB 4074) suggests that the legislature was unaware of its impact. The analysis of the Assembly Elections, Reapportionment and Constitutional Amendments Committee indicates that the bill was merely a technical restructuring of code sections, transferring textual language from the Government Code to the Elections Code.[13] It is interesting to note, however, that the legislature has since defeated every effort to correct this oversight.

Local initiatives—other than charter amendments—are subject to the *indirect* initiative process. Once a petition drive collects the requisite number of valid

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10. Cal. Gov't Code §23720 (West Supp. 1992).

11. Cal. Elec. Code §4080 (West Supp. 1989). One exception to the requirement that city initiative charter amendments be proposed by 15% of the total registered electorate is the city of San Francisco. San Francisco is both a city and a county government. A provision of the state law sets the signature threshold at 10% of registered voters to qualify an amendment or repeal of a charter specifically for a "city and county" charter—a provision which applies only to San Francisco. Cal. Elec. Code §4080(a)(4) (West Supp. 1992).

12. Cal. Elec. Code §§3705, 4090 (West Supp. 1992).

13. Michael M. Reyna, Analysis of AB 4074, prepared for the Assembly Committee on Elections, Reapportionment and Constitutional Amendments, Apr. 13, 1989.

signatures, the local governing body must first consider the measure before it appears on the ballot. Approval without amendment of the initiative without amendment by the governing body removes the measure from the ballot. Both general law and charter communities are legally bound to comply with indirect initiative procedures.

As shown in Table 4.1, charter counties provide two different signature thresholds for qualifying an initiative ordinance to the ballot. Petitioning for signatures amounting to 20% of the last gubernatorial vote in the county qualifies an ordinance to a *special* election ballot held within 88 to 103 days (if the initiative is not adopted by the board of supervisors), unless the county is conducting a general election within six months, at which point the initiative is submitted to voters at the general election.[14] Petitioning for signatures amounting to 10% of the last gubernatorial vote places an initiative ordinance on the next *statewide* primary or general election ballot.[15] Petition drives for qualification of county measures to either a special or primary or general election ballot must be completed within 180 days from receipt of the official caption and summary; in contrast, statewide petitions must qualify within 150 days of the summary date.

The signature threshold for qualifying a municipal initiative ordinance has always been based on a percentage of registered voters and thus is as difficult to qualify as a municipal charter amendment—a point that highlights some of the inconsistent and, perhaps, arbitrary procedural rules that regulate the local initiative process. At least 15% of the registered voters of the city must petition for an ordinance to be approved by the council or submitted to the voters at a *special* election. The special election is to be held not less than 88 days nor more than 103 days after council consideration.[16] If valid signatures on an initiative petition amount to not less than 10% of registered voters, the ordinance must be approved by the council or submitted to voters at the next *regular* municipal election held at least 88 days after certification.[17] Again, initiative proponents have 180 days to collect these signatures after receipt of the official caption and summary.[18]

Although a charter community is entitled to establish many of their own standards for the conduct of the initiative process, most have deferred to the procedures dictated in state law. It is very common among charter cities in Los Angeles County to offer only one brief paragraph in their charters to the initiative process simply reaffirming state procedures for the city. The provision for the initiative in the charter of Arcadia is typical:

"There are hereby reserved to the voters of the City the powers of the initiative and referendum and recall of municipal elective officers. The provisions of the Elections Code of the State of California, as it exists or is amended, governing the

14. Cal. Elec. Code §4010 (West Supp. 1992).

15. Cal. Elec. Code §4011 (West Supp. 1992).

16. The time period of not less than 88 nor more than 103 days after council consideration for the conduct of a special election can be delayed another 30 days if the council chooses to order a report on the measure's potential impact.

17. The 15% and 10% signature thresholds for initiative ordinances apply only to cities with a population in excess of 1,000 persons. In cities with 1,000 residents or less, petitioners must gather signatures amounting to 25% of registered voters or 100 signatures, whichever is less, to qualify an initiative ordinance for an immediate special election (if so requested in the petition itself) or the next municipal general election. Cal. Elec. Code §§4010, 4011 (West Supp. 1992).

18. Cal. Elec. Code §4006 (West Supp. 1992).

initiative and referendum and the recall of municipal officers shall apply so far as the same are not in conflict with this Charter."[19]

Table 4.1

REQUIREMENTS FOR QUALIFYING INITIATIVES FOR THE BALLOT IN LOCAL JURISDICTIONS

Signature Base Requirement	Number of Signatures (in 1991)	Circulation Period	Filing Deadline Prior to Election	Signature Verification Procedures
County: Charter Amendment				
10% LGV (Gov't §23720)	186,190	180 days (Elec. §3705)	88-103 days unless general election within 6 months (Elec. §3710)	At least 500 or 3%, whichever is greater; threshold 95%-110% (Elec. §3708)
County: Ordinance Amendment				
20% LGV (Special) (Elec. §4010)	372,380	180 days (Elec. §3705)	88-103 days unless general election within 6 months (Elec. §3710)	Same
10% LGV (Regular) (Elec. §4011)	186,190	180 days (Elec. §3705)	Next statewide election (Elec. §3711)	Same
Charter City: Charter Amendment				
15% RV (Elec. 4080)		200 days (Elec. 4090)	At least 88 days (any election)	Same (Elec. 4091)
Charter City: City and County Charter (S.F.) Amendment				
10% RV		200 days	At least 88 days	Same
General Law City: Ordinance Amendment				
15% RV (Special) (Elec. §4010)		180 days (Elec. §4006)	88-103 days (Elec. §4010)	Same (Elec. §4009)
10% RV (Regular) (Elec. §4011)		180 days	Next regular election after 88 days (Elec. §4011)	Same
Los Angeles: Ordinance Amendment				
15% RV (Special or General) (Ch. §274)	47,000	120 days (Ch. §273)	160 days (L.A. Elec. §335)	At least 5% Threshold: 90%-110% (Ch. 273(c))

LGV—Last Gubernatorial Vote; RV—Registered Voters

Source: California Commission on Campaign Financing Data Analysis

19. Arcadia City Ch. art. XI, §1103.

Not all municipal charters in Greater Los Angeles, however, follow state procedures for local initiatives. The city of Los Angeles, for example, had previously established its qualification signature based upon total *mayoral* vote in the last election, rather than total gubernatorial vote or total registered voters.[20] Furthermore, an initiative drive for a Los Angeles ordinance must be completed in 120 days.[21] Alhambra, Long Beach and Los Angeles have made extensive use of their charter authority in other matters beyond signature thresholds. These cities have tailored other aspects of the local initiative process to meet their individual needs, such as petition design, qualifications of petition circulators, circulation time periods and format and content of city ballot pamphlets.

2. Signature Collection for Statewide Initiatives

Two different signature thresholds also exist at the state level: one for constitutional initiatives and one for statutory initiatives. In order to qualify an initiative constitutional amendment, signatures of registered voters equaling 8% of the number of votes for Governor at the last general election must be certified.[22] In the 1990 gubernatorial election, 7,699,417 votes were cast for nine gubernatorial candidates including write-ins. Eight percent of that total is 615,953. Ironically, the number of valid signatures needed to qualify initiatives has declined, since fewer Californians voted for Governor in 1986 and 1990 than in 1982 when George Deukmejian first defeated Tom Bradley. While the number of signatures required to place an initiative amending the constitution on the ballot has declined by nearly 20,000 signatures, the number of persons eligible to sign petitions has increased by over 3 million during this eight-year period.

In contrast to the 8% total necessary to amend the state constitution, initiative statutory amendments require valid signatures amounting to 5% of the last gubernatorial vote—currently 384,971 valid signatures—until the vote totals change in the 1994 gubernatorial election. The number of signatures needed today for ballot qualification is about 10,000 signatures less than was needed before 1986 due to the recent decline in voter turnout. For both initiative constitutional amendments and initiative statutes, proponents have 150 days to circulate petitions and gather signatures.

It is important to emphasize that these signature thresholds are the numbers of *valid* signatures needed. Depending on the issue, method of petition circulation and integrity of signature gatherers, a significant percentage of all signatures collected are deemed invalid in every petition drive. Although petition drives vary in their degree of signature invalidation, it is common at the local and state levels in California for initiative proponents to lose up to 40% of gross signatures they have collected in the verification check.

3. Circulation Procedures in Other States

States vary widely in the time allotted by law to circulate petitions. As shown in Table 4.2, Oklahoma allows the shortest amount of time to circulate direct initiatives (90 days), while Massachusetts gives circulators 90 days to gather signatures for indirect initiative drives. In Massachusetts, if the legislature does not pass an

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20. Los Angeles City Ch. 274. (This provision has now been repealed and replaced with an initiative signature threshold to qualify ordinances to either a municipal, general or special election of 15% of total registered voters.)

21. Los Angeles City Ch. §273. The 120-day circulation period is calculated as 120 days prior to the date the petitions were submitted for signature verification. Any signature on the petition obtained earlier is not counted.

22. Cal. Const. art. 2, §8(b).

initiative proposal that has qualified, circulators then have 30 more days to gather the remaining signatures needed for ballot qualification. Although the circulation periods are similar, the signature requirements are much stiffer in Oklahoma (8% of the total vote in the previous election) than in Massachusetts (3.5% of the last gubernatorial vote).

Table 4.2

STATE-BY-STATE REQUIREMENTS FOR QUALIFICATION OF INITIATIVES

	Signature Requirement			
State	*Initiative Statutes*	*Initiative Constitutional Amendments*	*Circulation*	*Geographic Distribution*
Alaska	10% LTV		1 Year	No
Arizona	10% LGV	15% TV-LGE	20 Months	No
Arkansas	8% TV-LGE	10% TV-LGE	Unlimited	Yes
California	5% LGV	8% LGV	150 Days	No
Colorado	5% SV	5% SV	180 Days	No
Florida	8% LPV		4 Years	Yes
Idaho	10% LGV		2 Years	No
Illinois	8% LGV	10% Advisory	2 Years	No
Maine	10% LGV		1 Year	No
Mass.	3% LGV + 1/2% LGV		90 Days + 30 Days	Yes
Michigan	8% LGV	10% LGV	180 Days	No
Missouri	5% LGV	8% LGV	11 Months	Yes
Montana	5% LGV	10% LGV	1 Year	Yes
Nebraska	7% LGV	10% LGV	1 Year	Yes
Nevada	10% LTV	10% LTV	Unlimited	Yes
N. Dakota	2% VAP	4% VAP	1 Year	No
Ohio	3% LGV + 3% LGV	10% LGV	Unlimited	Yes
Oklahoma	8% TV	15% TV	90 days	No
Oregon	6% LGV	8% LGV	Unlimited	No
S. Dakota	5% LGV	10% LGV	1 Year	No
Utah	5%	+ 5% LGV (I), 10% LGV (D)*	Unlimited	Yes
Washington	8% LGV		6 Mos.(D); 10 Mos.(I)	No
Wyoming	15% LTV		18 Months	Yes

KEY:
- LTV — Percentage of total votes cast in last election
- LGV — Percentage of votes cast in last gubernatorial election
- TV-LGE — Percentage of total vote in the last election with gubernatorial candidates
- SV — Percentage of votes cast for secretary of state in last election
- LPV — Percentage of votes cast for President in the previous presidential election
- VAP — Percentage of the voting age population
- D — Direct initiative process
- I — Indirect initiative process

*Initiative statutes only

Source: California Commission on Campaign Financing Data Analysis

California has the third shortest circulation time period (150 days) of any state, followed by Colorado (180 days), Michigan (180 days) and Washington (6 months). California and Colorado have similar signature requirements to qualify statutory initiatives (5% of the previous gubernatorial and secretary of state's election, respectively), while Michigan and Washington require 8% of the previous gubernatorial election vote to qualify an initiative. Seven states provide up to one year to circulate petitions and 11 states have circulation times of one year or more. Five

states (Arkansas, Nevada, Ohio, Oregon and Utah) allow an unlimited circulation time period.[23]

Longer circulation periods in themselves do not necessarily mean more initiatives qualify for the ballot. For example, Wyoming has one of the longest circulation periods, but only one initiative has ever qualified. California, on the other hand, has a comparatively short circulation period and qualifies the largest number of initiatives for the state ballot.

The degree of difficulty in qualifying an initiative for the ballot in each state is largely a product of the interplay of several procedural factors. Length of the circulation period is one such factor, but other factors include the percentage of registered voters and the absolute number of signatures needed for qualification, geographic distribution requirements for the signatures, whether the particular state utilizes a direct or indirect initiative process and any other procedural restrictions a state may choose to impose. For example, while Wyoming has a long circulation period, it also requires initiative proponents to gather a number of signatures equivalent to 15% of the total votes cast in the last general election (the highest percentage of any state), distributed proportionately throughout at least two-thirds of the state's counties.[24]

4. Procedural Factors Affecting Ballot Qualification

Although procedural factors affect the difficulty of qualifying an initiative to the ballot, they apparently have very little impact on the degree and scope of a state's initiative activity. Often changes in the qualification signature threshold or the time period allotted to initiative proponents to circulate qualification petitions are advocated as a means either to encourage or discourage initiative activity. An analysis by the Commission suggests such procedural changes would have little impact on the number of proposed initiatives and the rate of ballot qualification.

In order to analyze the impact of different procedural requirements on qualification efforts, the signature qualification threshold for all states employing the initiative process was standardized at the base year 1982 for comparison purposes. The absolute number of signatures needed for ballot qualification in each state has been converted into a percentage of that state's voting age population. Alaska requires petitioners to gather signatures amounting to 10% of total votes cast in the last election, for example, which totaled 19,936 signatures in 1982. That number of signatures is equivalent to 6.9% of Alaska's voting age population. California required 393,835 signatures for statutory initiatives and 630,136 for initiative constitutional amendments following the 1982 gubernatorial race, equivalent to 2.2% and 3.4% of the state's voting age population at that time. Petition circulation periods in each state are measured in terms of number of months. By

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23. Until 1943, California also permitted an unlimited time period for circulation of initiative petitions.

24. Wyoming imposes such strict qualification procedures, especially an extremely high signature threshold, that it would appear the state is not serious about providing direct democracy. In the brief history of Wyoming's initiative process, only 14 initiative proposals have been filed with the secretary of state. Of these, only one initiative has gathered the requisite signatures for ballot qualification—and even this measure needed legal intervention to obtain ballot access. An initial verification of petitions by the secretary of state in January 1984 determined that the "Instream Water Flows" measure failed to garner a sufficient number of signatures. A ruling by the attorney general permitted sponsors additional time to gather more signatures, which they submitted on November 5, 1984, to qualify the initiative for the 1986 general election ballot. However, the state legislature approved legislation in 1985 that was determined to be substantially the same by the attorney general, who then removed the issue from the election.

standardizing the signature base and circulation periods, the impact of higher and lower signature thresholds and longer and shorter circulation periods on initiative activity can be compared across states.

The results, shown in Appendix F, are revealing because neither signature threshold nor the length of the circulation period alone appear to have a significant effect on the degree of initiative activity within a state. There is no clear statistical relationship between the percentage of voting age population signatures required for ballot qualification and the number of initiatives that are actually placed on the ballot. Arizona, Michigan, Nevada, Washington and Maine, for example, all have a comparatively high voting age population signature threshold and all have a large number of initiatives on their ballots. Massachusetts and Missouri, which have less than a 2% voting age population signature threshold, have relatively few initiatives on their ballots—roughly the same number as Arkansas which has a signature threshold nearly double in proportion.

The number of titled initiatives in circulation, the number of initiatives qualifying for the ballot and even the qualification rate appear not to be related to the percentage of voting age population signatures required for ballot qualification. The same is true for the circulation period. Statistically, it does not appear to matter whether a state allows four months or an unlimited amount of time to gather the requisite signatures. States with unlimited circulation periods, such as Arkansas and Utah, have the least number of initiatives on their ballots, while some states with brief circulation periods, such as California and Colorado, are comparatively high-use states.

Paradoxically, these results suggest that a positive relationship exists between initiative activity and the absolute number of signatures required to qualify an initiative for the ballot. In other words, the data indicates that the more signatures required for qualification, the greater the number of titled initiatives in circulation as well as the number of initiatives actually qualifying for the ballot. This figure is deceptive, however. The dominant factor influencing initiative activity appears to be the size of a state's voting age population. The voting age population has a very strong correlation with the number of titled initiatives and the number of qualified initiatives. The variable of absolute number of signatures required for qualification is merely a reflection of a state's voting age population; as population increases, so does the absolute number of signatures needed to place a measure on the ballot. It would appear that as population increases, so does the number of people attempting and succeeding to place initiatives on the ballot, thereby generating more initiative activity.

This finding, that the level of initiative activity is primarily the result of size of population, is further confirmed at the local level. An analysis of initiative activity in municipalities across the state verifies that cities with a larger population experience a greater amount of initiative activity. As David Hadwiger concluded:

> *"Population was a stronger factor than signature requirements in determining the number of ballot measures. Los Angeles had five; San Diego had four. Only Berkeley had more. The other [smaller] cities with signature requirement variations had only one or zero measures each."*[25]

In order to understand the true impact of the signature threshold on initiative activity, the element of voting age population must be factored out of the analysis. Otherwise, the signature threshold is merely a reflection of the size of population,

25. David Hadwiger, The Initiative Comes to Town: Local Initiative Rules for Initiatives. Paper presented before the City Clerks New Law and Election Seminar (Dec. 7, 1989).

which is positively associated with initiative activity. When the influence of voting age population is removed, a negative relationship emerges between the absolute number of signatures required for qualification and the actual number of qualified initiatives. Apparently a point exists at which the number of signatures needed for qualification can get so high as to limit the number of initiatives that succeed in qualifying. Nevertheless no significant relationship develops between the other procedural variables and initiative activity. Neither the percentage signature threshold nor the time period allowed for petition circulation have a discernible impact on the absolute number of titled and qualified initiatives or the qualification rate of initiatives.

Clearly, the extent of initiative activity within a state is determined largely by factors other than procedural requirements. Most importantly, the size of a state's population directly affects initiative activity. Populous states experience more initiative attempts and see more initiatives reach the ballot. Other qualities unique to each state also appear to play a role in determining the frequency of initiative activity. Political culture, partisan deadlock in state government and the development of an initiative industry may be more important than restrictive qualification procedures in affecting use of the initiative process. However, the absolute number of signatures needed to place a measure on the ballot can become an important factor in discouraging ballot qualification when that threshold becomes excessive.

It is interesting to contrast the results for the percentage signature threshold and the absolute number signature threshold. While a relationship exists with initiative activity for the latter, no such relationship can be found for the former. One might conclude, therefore, that the real barrier to initiative qualification activity is a high number of required signatures which become so massive as to make grassroots petition drives impractical. It does not matter whether a state requires signatures of 2% or 5% of the voting age population. What matters is whether the requisite signatures are above or below a numerical threshold that excessively taxes the resources available to most initiative proponents.

C. Signatures Can Be Collected Through Five Different Means

Proponents use several different standard procedures for circulating initiative petitions. In the early days of mostly volunteer petition circulation, signatures frequently were collected through large membership organizations distributing petitions door-to-door, at church and at social gatherings. Temperance leagues, churches, unions, farm organizations and teacher associations would put their members to work collecting signatures in their neighborhoods and among their relatives.[26] Such grassroots activities were quite feasible in an era when 50,000 signatures or so would qualify a measure to the ballot.

The door-to-door method is the most time-consuming means of gathering signatures. Initiative sponsors have increasingly avoided this method as the number of requisite signatures for qualification has risen to exceed several hundred thousand. It is estimated that a circulator can only get about 10 signatures per hour by this method.[27] As a result, door-to-door petition circulation has become impractical. This method of circulation can be useful, however, when initiative proponents want to solicit funds for the campaign as well supplemental signatures. Activist groups such as Voter Revolt and Campaign California make extensive use

26. Thomas Cronin, Direct Democracy: The Politics of Initiative, Referendum, and Recall, at 62 (1989).

27. Initiative News Report, Feb. 8, 1982, at 7.

of door-to-door solicitation for both money, petition signatures and the distribution of informational leaflets.

1. Table Method

The People's Lobby, under the direction of Ed and Joyce Koupal, developed a far more efficient means of gathering signatures, especially for volunteer drives. Known as the "table method," a group of two volunteers sets up a folding table in a public place with a steady stream of slow-moving pedestrian traffic. A shopping mall is an ideal location.[28] One study of shopping mall patronage in the late 1970s showed that during any given month, 87% of all adults living in the metropolitan area of San Jose, California, made one or more visits to the city's shopping malls.[29]

Using the Koupal method, one person works in front of the table, approaches adults who walk by and asks whether they are registered to vote. If the answer is "yes," the circulator then asks if they would like to sign the petition and briefly describes the measure's intent using 10 or fewer popular catch-words. If the voter is hesitant, they are told to help "just put the measure on the ballot so the voters can decide." The voter moves over to the table where the second circulator oversees the actual signing and says, "Sign your name and address as you are registered to vote." Circulators are trained to avoid any extensive discussion or debate. If the voter wants more information before signing, they are guided to the side of the table outside the flow of pedestrians and handed a full petition and/or informational pamphlet to read.

Ed Koupal candidly summed up his technique:

"Generally, people who are getting . . . signatures are too god-damned interested in their ideology to get the required number in the required time. We use the hoopla process.

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28. The People's Lobby won a court battle that upheld the right of citizens in California to petition in privately-owned malls. This legal opinion arose from the expulsion of a volunteer circulator for the organization from the Inland Center shopping center in San Bernardino County, owned by Homart Development Company. Inland Center was the largest complex in the county, housing three major stores, and visited by about 24,000 people daily. In Diamond v. Bland, 3 Cal. 3d 653 (1970), the California Supreme Court ruled that a shopping center is a "quasi-public" place in which normal public activities, such as petition circulation, are protected by the First Amendment in the U.S. Constitution.

The U.S. Supreme Court in the early 1970s denied any federal right to free speech in shopping malls, but later upheld the right of individual states to guarantee free speech access in shopping malls. Pruneyard Shopping Center v. Robbins, 447 U.S. 74 (1980). Petition circulators in the state of Washington won access to the malls in Alderwood Associates v. Washington Environmental Council, 69 Wash. 2d 230 (1981). Similar rulings have been issued by the courts in Oregon, Massachusetts, and Bergen County, New Jersey. Petitioner access to shopping malls has been denied by the state supreme courts of Connecticut, Michigan, New York and North Carolina. The supreme court of Pennsylvania ruled that malls that permit access to charitable solicitors, such as the Salvation Army, must also permit access to political petition circulators. Shopping malls, however, have the right to deny access to all solicitors.

Before the advent of shopping malls, the U.S. Supreme Court held that the federal constitution guarantees the right of petition on public property, such as streets, sidewalks and parks. Hague v. CIO, 307 U.S. 496 (1939). The *Hague* decision was expanded by the California Supreme Court to include door-to-door solicitation. In Van Nuys Publishing Company v. City of Thousand Oaks, 5 Cal. 3d 817 (1971), the court invalidated a local ordinance requiring the consent of individual homeowners for door-to-door solicitation.

29. David Schmidt, Citizen Lawmakers: The Ballot Initiative Revolution, at 295 (1989).

> *"First, you set up a table with six petitions taped to it, and a sign in front that says: SIGN HERE. One person sits at the table. Another person stands in front of it. That's all you need—two people.*
>
> *"While one person sits at the table, the other walks up to people and asks two questions. We operate on the old selling maxim that two yeses make a sale. First, we ask them if they are a registered voter. If they say yes to that, we ask if they are registered in that county. If they say yes to that, we immediately push them up to the table where the person sitting points to a petition and says, 'Sign this.' By this time, the person feels, 'Oh goodie, I get to play,' and signs it. If the table doesn't get 80 signatures an hour using this method, it's moved the next day."*[30]

A variation of the table method is to set up the table at the entrance or exit of a fair, racetrack or other event where people pass by slowly. Sports events are not good places to gather signatures since everybody enters and leaves at once. In Ohio, innovative initiative proponents set up tables outside polling places on election day in November 1980. Paid circulators were stationed at over a thousand locations around the state and collected over a half million signatures in a single day to qualify an initiative for the next general election ballot. Nearly all of the signatures were valid since all signers were registered voters. (California prohibits any electioneering within 100 feet of a polling place.)

2. Clipboard Method

Another favorite technique of paid circulators is the "clipboard method." It allows the circulator with a financial incentive to work alone, but the clipboard method can also be used by volunteers who do better with the morale boost they get from working in teams. The most effective version of this technique is for a single circulator to work long, slow moving lines of people waiting to get into a movie, play, concert or other event. People waiting to board buses or trains oftentimes are good targets for circulators. On one occasion, a paid circulator for the Kimball Petition Management firm gathered 700 signatures in a single day by approaching people who were waiting in line to see the King Tut exhibit at the Los Angeles County Museum of Art.[31]

Frequently paid circulators using the clipboard method will carry more than one petition—perhaps as many as three at a time. In one instance, a professional circulator carried 11 clipboards at the same time.[32] Earnings for the circulator increase accordingly. Kelly Kimball believes that the days of a single clipboard by a professional circulator are over.[33] The approach used by a clipboard circulator is similar to that used by the table method. First they identify registered voters and then introduce them to the petition with a brief and appealing sentence. Keeping discussions to a minimum, a person with a single clipboard can get about 30 signatures an hour when conditions are favorable.

3. Bulletin Board Method

Some states do not require that signatures on a petition be witnessed by the circulator, thereby allowing petitions to be unattended. Alaska, Arkansas, Colorado,

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30. *Quoted in Interview with Ed Koupal, supra* note 1, at 83.

31. Charles Price, *Seizing the Initiative: California's New Politics*, 3 Citizen Participation 19-20 (Sept./Oct. 1981).

32. Interview with Mike Arno, American Petition Consultants, in Sacramento, California (May 8, 1989).

33. Interview with Kelly Kimball, President of Kimball Management, in Los Angeles, California (May 3, 1989).

Florida, Maine, Massachusetts, Montana, Oklahoma and Washington have no statutory provisions requiring that a petition be signed in the presence of the circulator. In these states it is perfectly legal to pin a petition onto a bulletin board in a store, church, office or school, or even tape a petition to a counter top in a retail establishment, and allow any interested persons to sign their name. A circulator returns a few weeks later to pick up the signed petitions. The potential for fraudulent signatures and other abuses is greater in a petition circulation system that does not impose some form of accountability. Consequently, most states (including California and its local jurisdictions) require circulators to sign an oath that they witnessed all signatures placed on a petition.[34]

The bulletin board method can be effective if a clerk or store owner takes an active role in getting people to sign the petitions. Eye-catching signs or oral appeals by the people working in the establishment help prompt customers into signing. Grocers have used this technique in several states to qualify initiatives designed to legalize the sale of beer or wine in grocery stores.[35] Overall, however, this is an inefficient method of petition circulation. Few workers take an active role in soliciting signatures, and unattended petitions tend to have a high rate of invalid signatures.

4. Newspaper Insert Method

A very uncommon technique for raising signatures is known as the "newspaper insert method." The legal standing of such a practice is not yet established in most states. Washington is one of a few states that specifically addresses newsprint petitions in its state statutes. The state allows initiative sponsors to have their petition printed as advertisements in newspapers for interested persons to clip, sign and mail back. While most states have not statutorily prohibited this form of petition circulation, standards for petition format specified by state law frequently make it impossible.[36]

The newspaper insert is not a cost-effective petition circulation technique. Newspaper advertisements are expensive, and many localities within California require that petitions be printed in a particular format that may be incompatible with newspaper print. For example, the City of Los Angeles requires that the paper used for a petition be not less than 16-pound substance and made of No. 1 white sulfite or better paper. This far exceeds the quality of newspaper materials.

Furthermore, nearly all readers of a general newspaper discard petition inserts. No initiative proposal has successfully qualified for the ballot by exclusively using this method of signature collection, although one petition drive in 1981 in the state of Washington came close. The Washington chapter of Common Cause sponsored a redistricting initiative but did not start the petition drive until about 40 days prior to the deadline. Realizing that there was not enough time to pursue

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34. Even in states that require a petition to be signed in the presence of the circulator, it is not uncommon to see an unattended petition affixed to a counter top or refrigerator door in the lounge area of an office or business. But the total number of signatures gathered through such passive abuses of petition circulation laws can be assumed to be negligible.

35. Initiative News Report, *supra* note 27, at 8.

36. States that specify a certain quality of paper for printing petitions, for example, would not allow newsprint petitions. In most states, however, the issue of newsprint petitions has never been addressed. There does not appear to be any provision in California state statutes that would prohibit the circulation of petitions through newspapers. It has been done on at least one occasion in California. Lacking clear statutory guidance, the courts in most states must be the ultimate arbiter in determining whether the newspaper insert method is a permissible means for the distribution of initiative petitions.

normal circulation procedures, it placed petition advertisements throughout the state's major newspapers. Common Cause received 135,000 signatures in three weeks, just shy of the signature threshold.[37]

5. Petition Circulation Through the Mail

Although the direct mail method of raising signatures was most visibly used in Howard Jarvis' 1980 statewide income tax initiative, it was first employed in the state's 1978 general election death penalty measure. The Butcher-Forde firm had been conducting direct mail fundraising for state Senator John Briggs who was running for Governor in California. At a staff meeting, the idea emerged of using the mails to gather signatures for the Briggs'-sponsored death penalty initiative designed to catapult the candidate into the public limelight. No one was sure if the idea would work. In fact, some questioned whether direct mail signature solicitation would even be legal in California (research showed that it was).[38]

The firm subdivided the state's electorate into 20 different demographic groups and sent test mailings of the initiative petition to each group. Within two weeks, it became evident that several demographic groups were highly responsive to the petition, sending back funds as well as signatures. The responsive groups were further targeted for about 1.5 million mailings, which collected more than 400,000 signatures and $300,000 in contributions—nearly offsetting the costs of the direct mail drive.[39]

The direct mail method was used with much bigger fanfare to qualify Jarvis' income tax cutting initiative (Proposition 9) for the state's June 1980 ballot. Butcher-Forde obtained a statewide voter registration list and sent it to the R.L. Polk firm in Detroit for the most updated addresses, reducing the list size by 10%. People who had indicated that they did not want to receive unsolicited mail also were removed from the list. Likely voters were broken down into different demographic groups, and different styles of petition mailers were sent out to targeted groups on a test basis. Eventually six million mailings were sent to targeted groups. The petitions were mailed under the government subsidized mailing rate available to nonprofit organizations. The response was 400,000 replies with 820,000 signatures and $1.8 million in contributions. The returns were then processed into the Butcher-Forde computer for future mailings and list rentals.[40]

The success rate of a direct mail petition drive depends on several factors. Most important is the quality of the mailing list. A mailing list that accurately pinpoints the appropriate target groups for a particular issue will result in a faster and less expensive direct mail effort. The degree of popular support for an initiative proposal also impacts the success rate. An issue with narrow appeal will have a harder time finding voters willing to sign a mailed initiative petition. Finally, the design of the mailer is important in influencing the response rate. A carefully crafted mailer stands a better chance of being opened and read.[41] In order to be cost-effective, a direct mail signature drive needs about a 5% response rate.[42]

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37. Initiative News Report, *supra* note 27, at 8.

38. Larry Berg and C.B. Holman, The Initiative Process and Its Declining Agenda-Setting Value. Paper presented to the annual meeting of the American Political Science Association, New Orleans (Aug. 30, 1985).

39. Robert Fairbanks and Martin Smith, *There's Gold in Them Thar Campaigns*, California Journal (Dec. 1984).

40. Maureen Fitzgerald, *Computer Democracy: An Analysis of California's New Love Affair With the Initiative Process,* California Journal (June 1980).

41. Design considerations of effective petition mailers will often begin with the envelope. In 1980, California police and firefighters sponsored a direct mail petition drive in which the envelope stated

Direct mail is clearly the most expensive means of petition circulation. Charles Price has estimated that a direct mail petition drive would cost about $2 per signature on average, compared to an average of 53 cents for signatures collected by paid circulators.[43] Some of the mailing cost can be recovered by issuing a fundraising appeal along with the petition. Howard Jarvis in his 1980 direct mail petition drive actually made a profit from mailing petitions accompanied with fundraising appeals. More frequently, however, a well-targeted direct mail drive will recover only a portion of the expenses. Today, direct mail signature gathering is common in California for statewide initiatives at a cost ranging anywhere between $500,000 and $1 million or more, depending on how extensively the mail system is used.[44]

Conversely, direct mail signature gathering is rarely used at the local level. It is simply a far too expensive and inefficient means of gathering signatures for most local initiative drives. One notable exception concerned coastal oil drilling initiatives. In 1988, the city of Los Angeles witnessed an initiative battle between a coalition of environmentalists and Occidental Petroleum Corporation over oil drilling on or near the coast of Pacific Palisades. A proposal by environmentalists to ban any oil drilling (Proposition O) on the coast was countered by an oil industry proposal to allow drilling but with certain restrictions and safeguards (Proposition P). Occidental Petroleum enlisted the signature-gathering services of both Kimball Petition Management and American Petition Consultants with the clear understanding that neither firm would assist the qualification efforts of the anti-oil drilling initiative. Unable to engineer a sufficient volunteer and paid circulation drive, proponents of Proposition O had to resort to the expensive method of direct mail petition circulation—a very uncommon means of signature gathering at the local level.[45]

D. Volunteer Petition Circulation Is Still the Norm at the Local Level

When the initiative process was first created, its founders envisioned a system of direct democracy in which concerned citizens could coalesce into a team of volunteers to work on behalf of a crucial political issue. These volunteers would then set out with petitions to demonstrate sufficient popular sentiment to submit the issue for a vote of the general electorate.

The first firm in California to pay persons to gather signatures was Joe Robinson of San Francisco in the late 1930s.[46] Robinson's firm remained alone for

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that the enclosed letter was "in reference to a police matter" at the household address. The cover letter then said the matter was referred by Sergeant Mike Tracy with the word "urgent" appearing several times on the envelope and letter. Other direct mail petition drives have packaged their mailers on the stationery of a popular political official, a famous actor and a well-known consumer advocate.

42. Mike Males, Be It Enacted by the People: A Citizens' Guide to Initiatives (1982).

43. Initiative News Report, *supra* note 27, at 7.

44. *See* Fitzgerald, *supra* note 40, at 234.

45. Citizens for a Livable Los Angeles, the principal proponents of Proposition O, spent $227,999 to gather signatures through the direct mail method. Another $50,100 was spent on a circulation drive conducted by Poffenberger and Associates and the League of Conservation Voters which complemented petition circulation through the mail.

46. One of the founders of the initiative process in the state of Oregon, W.S. U'Ren, was perhaps the first to use paid petition circulators. As early as the turn of the twentieth century, U'Ren frequently paid circulators for signatures and saw nothing wrong with the practice. John Houser, Early History of Paid Petition Circulators (Memo to the Oregon House of Representatives, State and Federal Affairs Committee, Apr. 2, 1987).

years in the business of petition circulation because the market was limited. His teams of professional circulators were usually employed as a complement to a volunteer petition drive; they rarely replaced volunteer efforts altogether.

In the late 1970s, the petition circulation market became sufficiently lucrative to attract a number of competing signature-gathering businesses. One of the first and most successful competitors was Fred Kimball, father of Kelly Kimball.[47] In 1968, Los Angeles County Assessor Phil Watson hired the Robinson firm to qualify a property tax relief measure for the state ballot (a forerunner of the Jarvis-Gann Proposition 13). When the Robinson petition circulation effort began to fail, Fred Kimball, a real estate agent and active participant in the campaign, reorganized the signature-gathering drive and placed the measure on the ballot.[48]

Watson hired Kimball to qualify another tax relief measure in 1972, and Governor Ronald Reagan employed Kimball to help qualify his tax reform proposal in 1973. Kimball formally established the Kimball Petition Management company in 1978. A year later, Tom Bader, a college student, and Mike Arno, previously employed by Kimball, answered a newspaper advertisement to gather signatures for a gambling initiative proposal. They founded their own firm in 1979, currently known as American Petition Consultants. As the market has since expanded, several other signature-gathering businesses have also come into existence.

1. Volunteer Activities at the State Level

The process of ballot qualification has developed along two different tacks in California: an expensive "initiative industry" has engulfed petition circulation at the state level, while local qualification drives have more or less remained volunteer efforts. The era of the volunteer-run initiative has not entirely ended in state politics, although its death knell can be heard in California. In many states, it is not uncommon to have a volunteer petition drive. One study examined petition drives of initiatives that qualified for the ballot across the nation in the first half of the 1980s. Circulation efforts were classified into three distinct categories: petition drives in which more than one-third of the signatures were gathered through paid means and which otherwise could not have qualified for the ballot; petition drives in which one-tenth to one-third of the signatures were gathered through paid means and whose ballot status without such outlays would have been in doubt; and petition drives in which less than one-tenth of the signatures were gathered through paid means.

Nationwide, qualification of roughly two-thirds of all state initiatives in the five-year period of 1980-1984 was accomplished predominantly through volunteer efforts. An additional 8% of state initiatives qualified with less than a third of their signatures raised through paid means. The remaining 26% of qualified initiatives utilized paid methods to collect more than a third of their signatures.[49]

Initiatives that qualified largely through volunteer activities were far more likely than other initiatives to receive voter approval at the ballot box. Initiatives falling within the volunteer category were passed into law by the voters 51% of the time. Initiatives falling within the 10%-33% paid signature category had a voter

47. Fred Kimball had hired two young entrepreneurs to assist in his petition circulation drives, his son, Kelly, and a friend, Mike Arno. Kelly Kimball later took control of the business. Eventually, Mike Arno broke away from the Kimball firm and established his own signature-gathering business.

48. Charles Price, *Experts Explain the Business of Buying Signatures*, California Journal, July 1985. The property tax relief measure was rejected by the voters.

49. Initiative News Report, Nov. 30, 1984, at 1-2.

approval rate of 33%. Only 28% of the initiatives that qualified through predominantly paid methods were approved by voters.

An initiative proposal that can attract a pool of dedicated volunteers to place it on the ballot tends to deal with issues that have broad popular appeal. The more an initiative needs to purchase its place on the ballot, the less likely it is to be a popular measure. In many cases, the paid initiative effort is a proposal designed to meet the narrow objectives of special interest groups.

Not surprisingly, the study also found that populous states that require the highest absolute number of petition signatures for ballot qualification—California and Ohio—also had the greatest reliance on paid methods of petition circulation. More than 85% of all successful petition drives for these two states paid circulators for a substantial portion of their signatures. This was almost exactly the opposite of the rest of the nation, where only 23% of successful petition drives relied heavily on paid means of signature collection.

a. California

Volunteer activities have continued to decline among California's statewide initiative drives. The last truly volunteer qualification efforts at the state level occurred in the November 1982 election. The Water Resources Conservation Act (Proposition 13) and the Bilateral Nuclear Weapons Freeze initiative (Proposition 12) were almost exclusively qualified for the ballot by volunteer signature gatherers. The Bottle Bill (Proposition 11) utilized extensive volunteer labor, with supplemental signatures collected by paid circulators. Prior to that, two of the three initiatives on the 1978 general election ballot qualified because of volunteer effort: Regulation of Smoking (Proposition 5) and School Employees—Homosexuality (Proposition 6).

After the 1982 California elections, no initiative has qualified for the state ballot exclusively by using volunteer signature gatherers. Occasionally, however, initiative proponents have made use of both volunteer and paid circulators. The first "English Only" initiative (Proposition 38) on the November 1984 ballot spent $143,566 on paid circulators to supplement the signatures brought in by volunteers. And both of Lyndon LaRouche's AIDS measures—Proposition 64 (1986) and Proposition 69 (1988)—combined volunteer and paid petition circulation.

Using both volunteer and professional circulators allows a large-membership organization with an army of volunteers to keep qualification costs relatively low while still standing a reasonable chance of making the signature threshold within the specified time limit. Volunteers gather as many signatures as possible. The shortfall is estimated by initiative proponents, and professionals are hired to fill the signature gap. The fact that no initiative has relied exclusively on volunteers since 1982, and that very few have used volunteers at all, indicates the difficulty in organizing and sustaining a grassroots movement capable of collecting several hundred thousand signatures.

An interesting new development in paid petition circulation has been pioneered by the signature-gathering firm of Masterton & Wright. This firm favors working on behalf of particular social causes that have widespread popular appeal. It employs regional coordinators on a salaried basis who recruit, organize and train petition circulators. Usually their circulators are paid for signatures collected. Occasionally, however, grassroots support is available, allowing Masterton & Wright to recruit volunteer petition circulators who serve under the employed coordinators. The

"Wildlife Protection" initiative qualified for the 1990 primary election ballot using this blend of volunteer circulators and employed coordinators.[50]

b. Meyer v. Grant: Invalidating Prohibitions on Paid Signature Gathering

A handful of states sought to protect the integrity of the initiative process by prohibiting the payment of petition circulators. Colorado, Idaho, and Nebraska each made it illegal to accept financial reward for signatures raised.[51] The United States Supreme Court overturned these laws in the 1988 decision, *Meyer v. Grant.*[52] Relying on the reasoning behind the landmark 1976 *Buckley* decision,[53] the Court struck down Colorado's law prohibiting the use of paid circulators on the grounds that it violated freedom of speech.

The case arose out of an initiative proposal sponsored by a group known as Coloradans for Free Enterprise, which wanted to remove motor carriers from the jurisdiction of the Public Utilities Commission. Proponents had to raise 46,737 signatures to qualify the initiative. Because they lacked the necessary resources for a volunteer circulation effort, they filed suit seeking an injunction against enforcement of the state's criminal statute prohibiting paid signature gathering. A federal district court upheld the Colorado statute but its decision was reversed by the U.S. Supreme Court.[54] In a unanimous decision, the Court concluded that the circulation of petitions is political expression of either dissent with existing public policy or a desire to create new policy. Justice Stevens buttressed the point with a description of the petition process that assumes extensive political discussion between solicitors and the public. The prohibition against paid circulators, Stevens wrote, is a violation of free speech because it curtails the "number of [circulators'] voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach."[55]

c. Payment per Signature

North Dakota is experimenting with a new tack in restricting money in the petition circulation process while attempting to remain within the constitutional

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50. Telephone interview with Ken Masterton, Masterton & Wright (Mar. 22, 1990). Masterton's concept of a "volunteer qualification drive" clearly is at odds with common understanding of volunteer efforts. Total qualification expenditures for the Wildlife Protection initiative (Proposition 117) amounted to $544,586, of which nearly half was spent on coordinator salaries and other expenses associated with the operations of Masterton & Wright. An additional estimated amount of $129,876 was spent on direct mail petition circulation.

51. Colo. Rev. Stat., art. 40, §1-40-110 (1988); Idaho Code, Ch. 18, §34-1821 (1988); Neb. Rev. Stat., art. 7, §32-705 (1988).

52. Meyer v. Grant, 486 U.S. 414 (1988).

53. Buckley v. Valeo, 424 U.S. 1 (1980).

54. The district court did not publish its decision. However, District Judge Moore's opinion was incorporated by a three-judge panel of the tenth circuit court of appeals, which also upheld the Colorado ban. The lower courts ruled that the prohibition did not impose an unreasonable burden on the right to free speech (Colorado was the fourth most active state in utilizing the initiative despite the ban) and that the plaintiffs were not restricted in their personal communication of their ideas on the proposition; that spending money on paid circulators is more like a contribution to the cause than an expenditure, and thus is subject to restrictions within the constitutional framework. The courts also ruled that the state had a valid interest in protecting the integrity of the initiative process. Grant v. Meyer 741 F.2d 1210 (1984). A strong dissenting opinion by Judge Holloway on the panel prompted a review by the entire tenth circuit court, which subsequently struck down Colorado's law as unconstitutional. Grant v. Meyer, 828 F.2d 1446 (1987). The court's final decision formed the basis of the opinion of the U.S. Supreme Court.

55. Meyer v. Grant, 486 U.S. at 1892.

boundaries of the Supreme Court's decision. Instead of prohibiting payment for the collection of signatures *per se*, the state regulates the *form* of payment for signatures. Following criminal convictions of five paid circulators for petition fraud on a 1986 lottery initiative, the state banned the system of payment per signature, though not payment of salaries to circulators.[56] Thus, initiative proponents can hire circulators on an hourly or daily basis at a predetermined wage or salary. The intent underlying North Dakota's law is to remove the pressure for circulators to obtain a maximum number of signatures, a pressure that could encourage petition fraud. It is hoped that a regular wage system will make signature gathering a more reasonable enterprise, minus the desperate sense of collecting huge volumes of signatures for greater financial gain. Whether this law will withstand court scrutiny is unclear.[57]

Ken Masterton of Masterton & Wright, the California signature-gathering firm, has suggested that a similar regulation on payment of circulators could encourage volunteer activity in the petition process. The Masterton firm frequently conducts signature-gathering drives for grassroots organizations with salaried supervisors recruiting and organizing teams of volunteer circulators. A prohibition against payment per signature increases the attractiveness of a system in which a full-time staff directs a semi-volunteer effort.[58]

2. *Volunteer Activities at the Local Level*

Petition circulation at the local level has not undergone the same sort of metamorphosis into a business enterprise evident at the state level. Judging from the experiences of municipal initiatives within Los Angeles County, few initiative drives employ professional signature-gathering firms or direct mail houses to

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56. N.D. Cent. Code §6.1-01-12 (1988).

57. Daniel Lowenstein and Robert Stern argue that it is unlikely the North Dakota law will survive a constitutional test. They suggest that the courts found the problem of abuse insufficient to support a ban. Lowenstein and Stern, *The First Amendment and Paid Initiative Petition Circulators: A Dissenting View and a Proposal,* 17 Hastings Const. L.Q. 175 (1989).

Others have argued that such a prohibition on payment per signature may survive a constitutional challenge. The opinion of the Court in the *Meyer* decision was that the potential of abuse is not sufficient to warrant a broadly encompassing prohibition on paid circulators. Rather than banning paid circulation, the North Dakota law regulates the payment of circulators—a distinction that legislators in both North Dakota and Florida (where the legislature recently approved a ban on payment per signature but was vetoed by the Governor) argue may be permissible. Precedents exist that could support such a distinction. For example, while the courts in California have ruled that petition circulation in shopping malls is a constitutional right, it is permissible for shopping malls to regulate the time and location of petition circulation on their premises.

In 1991, a bill was introduced into the Florida legislature that proposed establishing a second test case by violating the Meyer v. Grant decision and banning all payment for signature gathering. A compromise measure eventually was approved by the legislature that prohibited payment per signature but not the payment of wages or salaries for signature gatherers. Governor Lawton Chiles vetoed the measure on May 29, 1991, stating in his veto message: "I object to this additional burden that would be placed upon a person who wishes to propose a constitutional amendment to the citizens of this state. I am unaware of any abuse of the current initiative petition procedure that would warrant more stringent regulation. . . . House Bill 1809 represents a remedy without a problem."

58. Telephone interview with Ken Masterton, Masterton & Wright (Mar. 26, 1990). The Masterton firm qualified the "Wildlife Protection Act" (Proposition 117) using this blend of salaried coordinators and volunteer circulators. Masterton's concept of a "volunteer qualification drive" clearly is at odds with common understanding of volunteer efforts. Total qualification expenditures for the Wildlife Protection initiative amounted to $544,586, of which nearly half was spent on coordinator salaries and other expenses associated with the operations of Masterton & Wright. An additional estimated amount of $129,876 was spent on direct mail petition circulation.

qualify for the ballot. Most efforts to qualify local initiatives are truly grass-roots movements that neither pay petition circulators nor pour vast amounts of resources into the qualification drive. Volunteer signature gathering appears to be the norm at the local level.

Despite the fact that local jurisdictions have a higher *percentage* signature threshold for ballot qualification than the state (*i.e.*, 15% of registered voters at the local level versus 8% of the last gubernatorial vote for a state constitutional amendment), the lower *absolute* number of signatures required to qualify a local measure has kept the process within the realm of volunteer activity. The median number of signatures required for ballot qualification in the 20 cities surveyed by the Commission is 2,999 to qualify an ordinance for a special election ballot and 1,999 for a regularly-scheduled election ballot. (The city of Los Angeles requires 42,875 signatures for ballot qualification to either a special or general election ballot—more than four times the number of the second largest active city (Torrance) in the Commission's database).

Collecting several thousand signatures (as opposed to several hundred thousand to one million for a statewide initiative) is well within the means of a cadre of concerned citizens working out of their homes, churches or schools. Unlike statewide initiative drives, legions of petition circulators are not necessary for local campaigns, nor are bureaucratic layers of proponents, consultants, managers, staff and workers. Offices need not be rented; phones and office equipment need not be purchased. A local qualification drive can be launched by a concerted group of individuals using hard work and modest resources.

a. Median Qualification Expenditures

The difference between waging a qualification drive at the local level versus the state level is readily apparent when comparing qualification expenses. For all municipal initiatives in Los Angeles County, the median amount spent to get on the ballot since 1983 was just over $2,100. This contrasts sharply with the median expenditure of over $1 million for qualification to the state ballot in 1990.

Six local initiative drives in the Commission's database spent absolutely nothing beyond the cost of printing petitions in their qualification efforts.[59] One of these efforts included a controversial measure to ban certain chemicals at the Mobil oil refinery in Torrance; the city of Torrance requires 6,665 valid signatures for qualification to a general election ballot. Several other local drives spent just a few hundred dollars in their quest to get on the city ballot. Proponents of a 1986 term limits measure in Cerritos (Proposition H) spent $247 in gathering sufficient signatures for ballot qualification. A 1989 open zoning initiative in Hermosa Beach reached the ballot at a minimal cost of $451.

Pasadena is another prime example of how the initiative process at the local level remains the domain of volunteer activity. A 1988 slow-growth initiative in the city (Proposition G) reported expenditures of only $48 beyond the cost of printing petitions to earn a place on the ballot. Proposition G's qualification organization consisted primarily of five committed individuals and their families volunteering

59. Local initiative drives that reported making no expenditures for ballot qualification include: Burbank's 1985 Propositions A/B (At-Large District Elections); Rancho Palos Verdes' 1989 Proposition M (Height Limits); San Fernando's 1986 Proposition L (Police facility); Santa Monica's 1990 Proposition Z (Beach Hotel Plan); Torrance's 1990 Proposition A (Mobil Oil Refinery); and Westlake Village's 1987 Proposition Z (Council Pay).

their time and legwork to gather in excess of 6,000 valid signatures. "We qualified by the skin of our teeth," conceded one proponent, "but we *did* qualify."[60]

b. Presence of the "Initiative Industry"

The initiative process at the local level, of course, has its share of professionalism and high finance as well. Not all local initiatives are products of grass-roots movements. Especially in the very populous city of Los Angeles, several initiative drives have employed professional campaign services, paid signature gatherers and expensive direct mail circulation of petitions.

Los Angeles' 1988 coastal oil drilling initiatives (Propositions O and P) have been exhaustively cited throughout this report as prime examples of highly financed qualification drives. Proposition O (anti-oil drilling) spent $300,122 qualifying for the local ballot, including expenditures for direct mail petition circulation. Proposition P (pro-oil drilling) allocated a whopping $1,807,685 during the qualification period, in part because Proposition P hired the services of both major petition circulation firms in the county in an effort to make them unavailable to the Proposition O forces.

Several other examples of the professionalization of local initiatives can be cited. In November 1990, Santa Monica became embroiled in a controversy over the construction of a hotel on the beach. A coalition of beachfront home owners, distressed by the growth of hotel and business developments along the coast, financed the qualification of an initiative that placed a moratorium on hotel development on the beach (Proposition S). Proponents of the moratorium hired a professional consulting firm and staff and paid petition circulators more than $10,000 to collect the requisite signatures. Paid signature gathering was supplemented by a volunteer circulation effort by dozens of Santa Monica residents. In the end, $43,986 was spent to qualify Proposition S for the Santa Monica ballot.

At the same time, the two development interests of the planned hotel project on the beach pumped more than $100,000 each into a counter initiative (Proposition T) that sought to preserve much of the moratorium offered in Proposition S—with one major proviso: the planned Santa Monica Beach Hotel could go forward unabated. These developers relied exclusively on paid petition circulation through the Thom Poffenberger & Associates firm to qualify their measure to the same ballot. A total of $233,451 was spent on professional services, general operations and signature gathering for Proposition T during the qualification period alone. The qualification drive was entirely financed by developers Michael McCarty and the Maguire Thomas Partners, which had personal stakes in the project.

3. Signature Validity Rates

Once a petition drive gathers signatures in the given time allotment, the petitions are submitted to the city or county clerks for verification. In order to qualify for the ballot, the petition drive must have gathered a number of *valid* signatures amounting at least to the requisite qualification threshold for that jurisdiction. A "valid" signature is one in which the name and address on the petition coincides with the name and address of a registered voter according to local voter registration rolls.

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60. Several years after defeat of Proposition G, Donald Zimbler (a leading proponent of the initiative) said disparagingly that, upon reflection, he is glad the measure was rejected by the voters. A similar slow-growth measure (Proposition 2) qualified for the ballot the following year and was adopted by the voters. The organization behind Proposition 2 has ever since been beset by public criticisms from government officials blaming the organization for many of the city's ills and has been slapped by lawsuits from pro-development interests. Zimbler expressed relief that he was not in the center of these vitriolic attacks on the slow-growth movement . "I moved out of Pasadena and I am not going back," sighed Zimbler. Telephone interview with Donald Zimbler, July 10, 1992.

a. Official Verification Procedures

Official procedures for verifying petition signatures is relatively consistent from jurisdiction to jurisdiction. State law mandates a random sampling technique to be used for all charter amendments and general law cities. Charter cities may provide some nuances in procedures for verifying initiative ordinance petitions.

The standard verification procedure is a random sampling technique in which elections officials must verify all signatures up to 500, or 5% of all signatures submitted (3% for statewide petitions), whichever is greater. If the sample indicates that initiative proponents have gathered at least 110% of the required number for ballot qualification, the initiative is certified for the ballot. If the sample indicates that proponents have gathered less than 95% of the qualification threshold, the initiative petition is deemed insufficient. If the sample indicates that proponents have gathered somewhere between 95% and 110% of the required valid signatures, then each signature must be verified in order to determine the fate of the qualification drive.[61]

Los Angeles City has a similar random sampling technique, but its threshold for determining sufficiency through the random sample is between 90% and 110% suggested valid signatures. Furthermore, if a random sample indicates that proponents have raised less than 90% of valid signatures, they are given a supplemental 10-day period to attempt making up the shortfall.[62]

b. Differential Validity Rates

Professional signature-gathering firms check their own petitions for validity in order to monitor the integrity of their circulators and to determine the drive's progress. Kimball Petition Management utilizes a three-stage verification process. Supervisors check 10% of the signatures immediately submitted by circulators. Area coordinators verify another 5%, with the process ending with a random verification test applied by the Rand Corporation. American Petition Consultants make use of a similar, computerized verification test. The petitions finally are turned over to the county clerks.

The validity rate of petition signatures varies according to the method of signature collection employed. Paid circulators tend to have the lowest validity rate. Kelly Kimball has found that paid circulators obtain a signature validity rate of anywhere between 58% and 68%, with a preferred target of 65% valid signatures. Well-trained volunteers tend to have a validity rate in excess of 76%, while direct mail petition circulation receives the highest rate of valid signatures (85% and 90%).[63]

Several reasons underlie the differential validity rates. First and foremost is the motivation of the circulator. Paid circulators generally are not concerned about the cause of the initiative proposal nor whether the proposal actually qualifies to the ballot. Their primary interest is personally to acquire as many signatures as possible in order to maximize financial gain. This encourages some recklessness in pressing people to sign petitions.

Volunteers, on the other hand, are primarily concerned about furthering the cause and placing the issue on the ballot. They are more careful in making sure the signatures are valid. Secondly, volunteers are much more timid than professional circulators in asking people to sign. The lack of aggressiveness of volunteers tends to allow people who are not interested in signing the petition to walk away

61. Cal. Elec. Code §§3707, 3708, 4009, 4091 (West Supp. 1992).

62. Los Angeles City Ch. 273(c).

63. Interview with Kimball, *supra* note 33.

undisturbed. An aggressive professional will attempt to hook all adult pedestrians into signing, even those who are reluctant. Many of these people will scratch down a quick name and address that may or may not be accurate simply because it is easier than saying "no" to an aggressive circulator.

Not surprisingly, direct mail has the highest signature validity rate. Signing a direct mail petition is an entirely voluntary act, with no pressure being applied by a solicitor. A respondent can take his or her time to deliberate over the initiative proposal and study the instructions for properly signing the petition. Persons who respond to a direct mail appeal want to be sure that their effort counts.

Since many signatures are found invalid by the city or county clerks, a successful initiative drive must collect a number of signatures well in excess of the actual qualification threshold.[64] The Kimball firm, with a targeted validity rate of 65%, must adjust for that 35% shortfall in the number of signatures obtained. In order to ensure qualification, Kimball attempts to exceed the threshold by 35% plus an additional 8% "cushion."[65] A manual for signature gatherers put out by the city of Los Angeles recommends that petitioners gather signatures in excess of 40% of the qualification threshold.[66]

E. The Commission's Recommendations: Some Qualification and Circulation Requirements Should Be Eased, Others Tightened

One of the more important objectives of the initiative process is to limit ballot qualification to "serious" issues. The originators of direct democracy established a system of petitioning the people as a test of significance. Meeting a signature threshold was intended as a measure of intensity of public support for a proposal. Petition circulation was also intended to restrict the number of measures submitted to the voters.

At the state level, it is questionable how much of these original objectives of the signature threshold have been preserved in today's initiative process. Ballot qualification through the collection of signatures in California has tended to become a function of resources; *money*, not popular support, is frequently the primary determinant of a statewide petition drive's success. It is unclear whether any proper corrective remedies can be taken at the state level. The courts have to date steadfastly refused to allow the states to restrict money in the ballot qualification stage. An overall limit on expenditures for ballot qualification in California was invalidated by the California Supreme Court in 1976,[67] and a ban on paying petition circulators in Colorado was voided by the U.S. Supreme Court in 1988.[68] In light of California's recent experiences, however, the Commission questions whether these court decisions are soundly based today.

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64. Carlton Yee, a forestry professor at Humboldt State University in California, admitted signing bogus names to initiative petitions in an effort to invalidate qualification of proposals he disliked. "I took the position that if I don't like the initiative, I used to not sign," Yee said at a meeting of the California Cattleman's Association. "Now I just sign aliases, hoping to trigger . . . the rejection rate." Signing a false name to a petition for a ballot initiative is a felony violation of the Elections Code. During a state attorney general's investigation into the remarks, Yee claimed he was only joking (Yee said transcripts of his remarks were sent to the attorney general by a "future ambulance chaser"). David Forster, *HSU Prof Investigated for Remarks at Meeting*, Standard Times, May 5, 1990.

65. Interview with Kimball, *supra* note 33.

66. City of Los Angeles, Ordinance Initiative Petition Process, Apr. 24, 1989.

67. Hardie v. Eu, 18 Cal. 3d 371 (1976).

68. Meyer v. Grant, 486 U.S. 414 (1988).

At the local level in California, the situation is not so grim. Although the "initiative industry" has made its presence felt among local initiative drives, qualifying a local initiative for the ballot is still well within the reach of concerned citizens with limited financial resources. Grass-roots volunteer organizing remains the norm among local initiative drives.

Despite fears expressed by city and county officials about the potential for abuse, the petition circulation process at the local level has not resulted in excessive numbers of initiatives nor in waves of frivolous initiative proposals. Well-financed special interest groups are present but not dominant in the qualification stage of local initiatives. Unlike the circulation of statewide petitions, qualification procedures at the local level are not plagued with problems.

Nevertheless, some fine-tuning is desirable; useless hurdles to ballot qualification can safely be eliminated, while other existing requirements can be tightened. The Commission recommends that cities and counties take several moderate steps to reform local qualification procedures: eliminate the requirement that proponents publish or post prior notification that a petition is about to be circulated; standardize circulation procedures; improve disclosures during the circulation period; streamline the signature verification process; and lower the signature threshold for municipal charter amendments (discussed in Chapter 5, "Voting Requirements").

1. Eliminating the Prior Public Notification Requirement

The Commission recommends eliminating the requirement that initiative proponents must publish or post in three places their intent to circulate an initiative petition. Currently, a notice of intent is appropriately filed with local election officials to begin the process of titling, but the further requirement that such notice also be published in a general circulation newspaper or posted at three public locations prior to petition circulation is obsolete and serves no additional purpose.

The requirement for prior public notification presumably was established as a mechanism to enhance voter information about the initiative. Today, however, it is difficult to believe that such a prior notice contributes to the knowledge of the electorate. The information provided in a "Notice of Intention" tends to be nondescript and uninformative. Furthermore, very few people have indicated ever seeing such a notice—and even fewer bother to read it or discuss it with others.

The prior notification requirement has also caused some confusion among initiative proponents. In one instance, proponents of a rent stabilization measure in San Francisco properly filed a "Notice of Intention" with city officials and published the notice in conformity with the public notification requirement. Initiative sponsors, however, failed to understand that the "Notice of Intention" also had to be printed on the cover page of each petition. After collecting 15,000 signatures—far more than enough to qualify for the ballot in San Francisco—the petitions were ruled invalid.[69]

A similar misunderstanding invalidated initiative petitions in Santa Monica the following year. In 1988, proponents of a slow-growth measure collected enough signatures to qualify their proposal to the Santa Monica city ballot. Once again, however, proponents did not understand that, even though petition circulation was underway, an intent to circulate notice had to be printed on the face of every petition. Superior Court Judge David Rothman felt his hands were tied by the law and dismissed the petitions. "It's clear [that] the statute provision is there. . . . For

69. Meyers v. Patterson, 196 Cal.App. 3d 130 (1987).

whatever arbitrary and silly reason . . . it's there. What right does a court, or a city attorney for that matter, have to ignore it?"[70]

2. Standardizing Petition Circulation Procedures

The Commission recommends that qualification procedures, especially as detailed in the state Elections Code, be standardized to help avoid confusion and court interference in the local initiative process. Signature thresholds for similar types of initiatives among all counties and cities should be founded on a comparable electoral base of the last gubernatorial vote; circulation periods for ordinances and charter amendments should be compatible; and petition formats should be delineated and made similar for both initiative ordinances and initiative charter amendments.

A common criticism of state procedures governing local initiatives is that the rules are inconsistent for different types of initiatives. The rules governing different aspects of the process were apparently written by different legislators at different times without regard for precedent. The signature base for county charters and ordinances, for instance, is based on a percentage of the last gubernatorial vote in the jurisdiction. But the threshold for municipal charter amendments and ordinances is based on total registered voters in the city—a much more difficult threshold to reach. (The signature threshold base is discussed in greater detail in Chapter 5, "Voting Requirements.") The petition circulation period is 180 days after titling for county measures, but 200 days after public notification for municipal measures. Municipal initiative ordinance petitions must be printed in nothing less than 12-point type, but municipal initiative charter petitions must be printed in nothing less than 10-point type.[71]

This myriad of inconsistent procedural requirements unnecessarily increases confusion among initiative proponents and provides election officials with too much discretion in rejecting disliked initiative petitions. These rules should be standardized and simplified.

3. Improving Disclosure During Circulation

The Commission recommends that circulation *petitions* should prominently identify, at the top of the petition and in bold type, the identities of the two largest contributors to the initiative drive as of the release of the official caption and summary. In addition, proponents of initiatives should be required to file financial statements with elections officials within 30 days after titling the proposal, with the statements to be current within seven days of the filing. Finally, the petition should disclose in bold type that the proponent may amend the initiative proposal (as discussed in Chapter 3) as long as the amendments are consistent with the initiative's "purposes and intent."

Many states, including California, require petition circulators to disclose whether or not they are being paid to collect signatures. This often takes the form of a button prominently displayed, a notice on the petition itself or a mandatory oral statement when approaching a potential signer. In California, the petition must state: "NOTICE TO THE PUBLIC. THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK." It is a misdemeanor to respond falsely to the question.[72] Most practitioners in

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70. Tracy Wilkinson, *Santa Monica Slow-Growth Petitions Rejected by Judge,* Los Angeles Times, June 23, 1988.

71. Letter from Richard Seeley, Director, Glendale-LaCresenta Advocates, to C.B. Holman, California Commission on Campaign Financing, July 1, 1992.

72. Cal. Elec. Code §§41.5, 29720 (West Supp. 1990).

the signature-gathering business agree that such disclosure has very little impact. Persons in the industry of paid petition circulators have not noticed any effect from disclosure on their ability to raise signatures.[73]

A broader disclosure requirement revealing the identities of an initiative's financial backers would be more informative. Potential petition signatories would be able to learn which individuals, corporations or organizations have given the initiative its principal early funding. Signatories would also learn the affiliations (*e.g.*, tobacco, environment, labor, etc.) of the largest contributors. These disclosures would help potential signatories better understand the motives of the initiative's major backers and thus the merits and purposes of the initiative itself.

It would be quite workable to mandate public disclosure of major financial backers within 30 days after titling. The identities of the financial interests behind an initiative may be informative to many electors. The new early financial disclosure filing recommended by the Commission would enable elections officials and members of the public to check whether the proponent had accurately disclosed the initiative's two major contributors at the top of the signature petitions.

To be sure, an initiative campaign could try to conceal the identities of major financial backers by asking them to make large contributions at a later date. These contributors' names would not appear on the petitions. But in most instances such a deceptive strategy would not be possible. Many initiatives require considerable early expenditures prior to circulation for research, public opinion polling and the start-up expenses of employing signature-gathering firms. The identities of major contributors funding these early efforts would appear on signature petitions. Furthermore, any attempt to deceive the public in this matter would eventually be exposed in later financial statement reports, and thus could prove counter-productive to the campaign effort as a whole.

The Commission has recommended (see Chapter 3, "Initiative Drafting and Amendability") that proponents be allowed to amend their initiative immediately following formal qualification of the initiative and completion of the public hearing. To alert petition signatories to the possibility of proponent-made amendments, the Commission recommends that the following notice appear at the top of all signature petitions:

> *The proponent may later amend the initiative measure set forth in this petition before it appears on the ballot if the amendments are consistent with the initiative's "purposes and intent."*

This notice will dispel any concerns that petition signatories may be unfairly surprised by subsequent proponent-made amendments.

4. Streamlining Verification Procedures

Counties are responsible for verifying signatures on all state and county petition, while cities are responsible for verifying signatures on municipal initiative petitions. In both cases, initiatives should qualify for the ballot if the random sample verification of signatures indicates that proponents have gathered at least 105% (as opposed to the current 110%) of the valid signatures needed for qualification. To conduct a random sample, each local jurisdiction would verify *all signatures submitted* up to 500. Cities and counties that received more than 500 raw signatures would verify a random sample of the total.[74] For county and municipal initiative

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73. Interview with Kimball, *supra* note 33.

74. The random sample of signatures for verification would consist of (i) at least 500 signatures or 3% of all signatures submitted, whichever is greater or (ii) 3% of all signatures submitted or 1,500 signatures, whichever is less.

petitions, that random sample should be lowered from 5% of signatures submitted to 3% to be in conformity with state law. Regardless of the total number of signatures submitted, however, no jurisdiction would be required to verify more than 1,500 signatures.

State law mandates that localities use probability sample procedures in verifying petition signatures. The present practice of signature verification, however, does not fully conform to probability sampling techniques. Experience indicates that if probability sampling procedures are strictly followed, a sample size of 1,500 persons will reflect almost as accurately the characteristics of a total population of 10,000 persons as it would reflect the characteristics of 1 million persons. Little is gained in the signature verification process by increasing the size of the sample beyond 1,500 persons, regardless of the total number of signatures submitted.

An analogy may clarify this point. Imagine two barrels full of marbles. One barrel contains 10,000 marbles, the other 1 million. Both barrels are composed of half red marbles and half blue marbles. If the barrels are shaken to mix the red and blue marbles perfectly, samples of 1,500 marbles for each barrel should contain 50% red marbles and 50% blue. Increasing the sample size for the larger barrel does not significantly contribute to the accuracy of the survey.

Sampling error is the degree to which the results of a sample can be expected to differ from the results if the entire population had been surveyed. In a probability sample, sampling error is largely determined by the absolute size of the sample, *not* the proportion of the sample size to the population as a whole. Of course it is statistically true that the larger the sample, the smaller the sampling error that can be expected. But a law of diminishing returns comes into play where each additional person added to the sample contributes less and less to sampling error—to the point where it is no longer worthwhile to increase the sample size. The Gallup Poll has calculated the relationship of sample size with sampling error through its experience with public opinion polling. A sample size of 1,500 persons has a ±3% margin of error.[75]

Streamlining the signature verification process in such a manner would substantially ease the burden imposed on large counties and minimally impact smaller communities. California's county governments are mandated by the state to absorb all costs associated with signature verification of *statewide* initiatives. Even some local initiatives in populous communities may require local elections officials to verify several thousand or more signatures. This can be expensive. The Los Angeles County Registrar's office, for example, estimates that it costs $1.07 to verify each signature. The county is routinely presented with well over 200,000 raw signatures for every successful statewide initiative petition drive, of which 3% (or at least 6,000 signatures) must be checked. Los Angeles has found it necessary to employ a permanent staff of 31 people for signature verification duties and hire a

75. Sample size and sampling error, according to the Gallup Poll standard.

Number of Interviews	*Margin of Error*
4,000	±2%
1,500	±3%
1,000	±4%
750	±4%
600	±5%
400	±6%
200	±8%
100	±11%

number of part-time workers to assist at peak periods. A maximum verification count of 1,500 signatures per initiative would make it possible for six or seven people to determine petition sufficiency in as little as a single day.

This proposal may generate resistance from those who are unfamiliar with advanced statistical sampling techniques. For this reason the Commission recommends a conservative approach toward streamlining the size of the sample in which *each* local jurisdiction is obligated to verify 500 to 1,500 signatures. Arkansas, for example, used statistically current sampling methods to examine a random sample of only 1,079 signatures *statewide* to verify the qualification of three initiative constitutional amendments in 1986. The procedure had a confidence level of 95% but was mired in controversy due to the sensitive nature of the issues involved and the practice was ended.[76]

F. Some Potential Reforms of the Circulation Process Need Further Study or Are Not Desirable

The drafters of the initiative process in 1911 envisioned a system in which a determined cadre of volunteers could submit a policy proposal for voter approval if their cause was sufficiently popular. This vision of ballot access is no longer true in California for statewide initiatives, but it has not entirely lost its descriptive relevance to the local initiative process. Perhaps even a greater threat to direct democracy than the influence of well-financed special interest groups is the frequent disdain for initiatives expressed in the words and deeds of local governmental representatives.

It should be recognized that, unlike the state initiative process, the qualification process for local initiatives is not overwhelmed by problems of abuse and special interest politics. Some improvements certainly can be made, but an overhaul of local qualification procedures is not appropriate at this time. The following is a list of potential reforms that the Commission does not believe are proper remedies at this stage in the history of the initiative although some warrant further study.

1. Using Public Opinion Polls to Qualify Initiatives

At the time the initiative process was established, petition circulation seemed the only reliable method to test the extent of an initiative's popular support. Public opinion polling and other modern survey techniques were not developed for the social sciences until the 1950s. However, now that public opinion polling is a viable means of assessing the popular will, it might be better suited than petition

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76. Arkansas Secretary of State W.L. "Bill" McCuen used the random sampling technique developed by Dr. M.D. Buffalo and Maryagnes Moore of the Center for Research and Public Policy, University of Arkansas/Little Rock, to verify initiative petition signatures in 1986. McCuen certified three initiative constitutional amendments to the state ballot, including an anti-abortion amendment, after randomly checking only 1,079 signatures for each initiative. Timothy Kennedy, *Initiative Constitutional Amendments in Arkansas: Strolling through the Minefield*, 9 U. Ark. Little Rock L. J. 59 (1986).

In 1980, Arkansas Secretary of State Riviere utilized an *untested* random sampling method for signature verification in which his office checked only 184 names out of 200,000 signatures on a proposed amendment to raise the state's interest rate ceiling. Riviere certified the amendment for the ballot but was so sharply rebuked by former secretaries of state that he relented and hired extra help at a cost of about $20,000 to verify all signatures. Ironically, the results were similar. Today Arkansas verifies all signatures and has not tried a random sampling method again.

A full discussion of the sampling technique used by McCuen in 1986 is provided in a policy paper prepared by M.D. Buffalo and Maryagnes Moore, *Validating Petitions by Sampling*, Center for Research and Public Policy, University of Arkansas/Little Rock, July, 1986.

circulation to determine what issues are of sufficiently serious public concern to warrant being placed before the voters.

A plan for developing a polling qualification process might contain the following elements. First, proponents of an initiative could submit their proposal to the secretary of state's office for titling, summary and preparation of a preliminary petition. Proponents would then gather a minimum level of signatures to demonstrate that their proposal is not frivolous. Proponents successful at this stage would submit their proposals to a government-administered hearing. The hearing would produce a report on the initiatives, including a brief description of each proposal. The elections office would compile the descriptions of all preliminary initiative proposals onto a single questionnaire and conduct a random sample in-house survey of voter attitudes toward each proposal. Proposals of the same subject matter (including referred measures) would be grouped together and explained by the interviewer. Measures receiving a majority approval of those surveyed would qualify for the ballot at the next election.

This in-house survey procedure might adequately limit ballot access in several ways. First, frivolous measures would be screened out by the preliminary petition circulation. Second, the comprehensive, explanatory nature of an in-house interview—complete with an analysis of each measure's impact produced by the public hearing—would encourage greater scrutiny and cautious selection by those being surveyed. Third, by placing conflicting measures side-by-side, respondents would be encouraged to select one against the other. Finally, interviewers would also record "don't care" responses, leading to respondent approval only of those measures of sincere concern.

Using public opinion polling instead of petition circulation as a test of public concern for a proposal might also yield more accurate results. It would be an affordable method of ballot qualification, removing money as a major threshold. And it would provide preserve grassroots access to the local ballot.

The polling threshold, however, would fundamentally restructure the qualification process and thus quite possibly be politically unacceptable at this time. The ballot also could conceivably become overloaded with initiative proposals (unless a cap were placed on the number of initiatives that could be placed on the ballot using this method). Significant controversies might surround the selection of polling questions, as well as the idea of having a representative of the government rather than a proponent "circulating" the proposal. The very "newness" of the idea might cause alarm, particularly since its actual impact on the initiative process would be uncertain. For all these reasons, the Commission does not now recommend changing to a polling threshold. It is, however, worthy of public discussion and should be widely reviewed with its pros and cons debated before being offered as a concrete policy recommendation.

2. Limiting Contributions During the Qualification Period

Professional signature-gathering organizations offer a single wealthy individual or organization the opportunity to "purchase" a ballot position for a favored initiative, so long as they have enough money to do so. In other instances, groups of four or five related organizations have been able to raise staggeringly large sums to qualify measures, despite the fact that these measures later demonstrate little public support.

Allowing one or even a few individuals or organizations single-handedly to pay for the qualification of ballot initiatives is not sound public policy for several reasons. First, although virtually any initiative can be qualified through the use of professional signature gatherers, some or many of these measures may lack

ultimate popular support. Allowing individuals or organizations to buy unsuccessful measures onto the ballot subjects the state to unnecessary and expensive processing costs. Second, unsuccessful measures clutter up the ballot and frustrate voters, leaving them reluctant to vote and disenchanted with the initiative process itself. Third, allowing one or a few large contributors to place an initiative on the ballot circumvents the fundamental purpose of the signature-gathering process—to demonstrate broad, as opposed to narrow, popular support.

The Commission has carefully considered the possibility of a high limit on contributions to a ballot initiative committee prior to qualification. Such a limit would prevent one or a handful of individual contributors from single-handedly paying for the qualification of ballot measures. The U.S. Supreme Court, however, has invalidated a limit on contributions to ballot measure committees on free speech grounds. (For further discussion, see Chapter 8, "The Influence of Money.") Although some language in court opinions has indicated the possibility that this doctrine might be modified, it would take additional research and a carefully framed test case to present those issues properly to the Supreme Court.

3. Paying for Initiative Qualification: The "Cynic's Choice"

The Commission also does not recommend a second reform option—allowing proponents to pay the local government to get on the ballot. Known as the "Cynic's Choice," adherents of this reform argue that since proponents can qualify their measure by raising enough money to pay professional signature gatherers, initiative proponents should be allowed to bypass the formality of signature gathering and simply pay for ballot access. Instead of letting the initiative industry be the beneficiary of wealthy proponents, proponents could pay the government directly, thereby avoiding a useless exercise and enriching local treasuries at the same time.

Candidates are currently given a similar option for ballot access. For many offices, formal candidacy may be initiated either by paying a filing fee to the government or by collecting a certain number of signatures. Candidates most often choose to pay.

Whatever the financial rewards may be for government under this reform option, the apparent cynicism of the proposal would be detrimental not only to initiative proponents but to public perception of the initiative process as well. Any initiative proponent that purchased a place on the ballot in this manner would risk significantly damaging publicity. Worse, voter confidence in the initiative process as a "people's check" on government would be further reduced. The "Cynic's Choice" might also result in more special interest proposals being placed on the ballot. Making it convenient and easy for wealthy individuals, special interest groups and corporations to purchase ballot access without the headache of overseeing qualification operations could encourage greater use of initiatives.

4. Restricting the Method of Payment to Signature Gatherers

Prohibiting all payment to petition circulators may be appealing, but it has been ruled unconstitutional by the U.S. Supreme Court.[77] Requiring payment in the form of hourly wages or salaries rather than on a per signature basis, however, has never been tested in the courts. Supporters of a ban on payment per signature argue that it would tend to take away the pressures on signature gatherers to collect signatures by any means, such as misrepresenting the contents of initiatives or even faking

77. Meyer v. Grant, 486 U.S. 414 (1988).

signatures altogether. North Dakota currently requires that payment be on a wage or salary basis rather than per signature.[78]

The elimination of per signature payments has undoubted appeal on first impression. It is unclear, however, whether a ban on payment per signature would have a significant impact on misleading or high-pressure signature-gathering practices. Under an hourly wage system, petition circulation businesses might still retain incentives for circulators to use high-pressure tactics by requiring signature quotas as a condition of employment. Motives to collect fraudulent signatures might be lessened somewhat but could not be entirely removed. A constitutional challenge to a ban on payment per signature could be expected.

G. Conclusion

Petition circulation is the traditional test to determine which issues shall be placed before the voters. The collection of a certain threshold of signatures is designed to measure quantity and intensity of popular support for a proposal. The threshold is also intended to curtail the number of initiatives presented to the voters and to keep frivolous measures off the ballot.

While the influence of money has done a great deal to undermine these original objectives of petition circulation at the state level, qualification procedures at the local level are not so heavily plagued with abuse. Improvements can be made in the local initiative process—such as standardizing the rules of signature collection, improving disclosure and streamlining signature verification procedures—but governmental officials should proceed cautiously and avoid trying to "correct" problems that do not exist.

78. N.D. Cent. Code §16.1-01-12(11) (1988).

CHAPTER 5

Voting Requirements and Electoral Restrictions

"It is widely accepted that the type of election (special, general, or consolidated) has become an integral part of the strategy to get an initiative measure passed. Campaigns are waged on the basis of what type of voter turnout is most likely to ensure passage of a particular ballot measure."[1]

The success or failure of a ballot initiative can often depend on more than just campaign advertising or a simple majority vote of the people. Sometimes the procedural rules that shape the conduct of elections can also become a significant force in determining electoral outcomes. These rules determine the type of measure on the ballot (charter amendment or ordinance), the type of election (special or general election) and the existence of any special vote requirements (approval by a simple- or super-majority).

A. California Has Similar Requirements for Amending Local City or County Charters and Ordinances

California has an established tradition of "home rule." The California Constitution vests the state with authority to create city and county governments, organize their structures and define their powers.[2] Throughout most of the 1800s, state governments actively meddled in and regulated local government affairs. Cities and counties were subservient to the state in all areas of governance. In 1875, Missouri became the first state to amend its constitution to allow cities with a

1. Jim Knox, Claire Landry and Gavin Payne, Local Initiative: A Study of the Use of Municipal Initiatives in the San Francisco Bay Area 44 (Coro Foundation, 1984).

2. Cal. Const. art. XI, §§1, 2.

population in excess of 100,000 to formulate many of their own rules of governance by establishing local constitutions, known as "municipal charters." California followed suit in 1879 but required that city charters, after adoption by the city's voters, be submitted to the legislature for ratification or rejection as a whole.[3]

California's system of home rule has evolved considerably through the years. Today, any city may adopt a municipal charter and legislative approval of charters or charter amendments is no longer required.[4] Within Los Angeles County, 20 of the county's 86 cities have adopted their own charters and are charter cities.[5] Any county in the state may also incorporate as a charter county—Los Angeles County was the first to do so in 1913—but, due to overlapping responsibilities with the state, charter counties lack the independence from state control afforded to charter cities.[6]

Charters operate as a type of "mini-constitution" within the greater constitutional framework of the state and federal government. The purpose of a charter is to create the framework of the county or city's government. Local charters cannot run counter to the precepts of the California Constitution or the U.S. Constitution. Local charters can, however, either displace state laws in areas of strictly "municipal affairs" or enhance the legislative intent of state laws in certain areas of statewide concern. The difficulty of defining what is strictly a municipal affair or what is an enhancement of legislative intent has been and continues to be a constant source of legal dispute.

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3. The concept of "home rule" developed out of a concern over the unequal application of state laws to local jurisdictions. Legislative actions in the early 1800s frequently embodied special measures designed to apply to only one or a few localities. Sometimes these special measures were awarded as privileges to favored municipalities with no discernible legal basis. . An attempt to reform this practice came with an amendment to the California Constitution requiring that all general state laws be uniformly applied. This provision is still retained in the state Constitution. Cal. Const. art. I, §11

It soon became obvious, however, that state laws could not be applied uniformly in all situations. Larger communities, for instance, had different needs than small communities. The next reform "classified" local governments and then established laws applicable to each class. Once again favoritism in legislation emerged, as classes of local jurisdictions were so rigidly defined that some classes contained a single city.

Finally, constitutional scholars produced the "home rule" provision which was incorporated into the California Constitution. Cal. Const. art. II, §3. Uniform application of general state laws but also gave communities the option of tailoring laws to their own special needs. Counties and cities could "specialize" the application of state laws through the adoption of their own local charters. League of Women Voters, State-Local Government Relationships, at 23 (1980).

4. Approval by concurrent resolution of both houses of the legislature used to be required by the provisions of section 3 of article XI of the California Constitution. Article XI was amended in 1974 to dispense with the necessity for legislative approval of city charters and charter amendments.

5. Charter cities in Los Angeles County are: Alhambra, Arcadia, Burbank, Cerritos, Compton, Culver City, Downey, Glendale, Industry, Inglewood, Irwindale, Long Beach, Los Angeles. Pasadena, Pomona, Redondo Beach, Santa Monica, Temple City, Torrance and Whittier.

6. Of California's 58 counties, 11 have adopted their own charters. After Los Angeles County voters adopted the first county charter in 1913, 10 others have followed suit: Alameda, Butte, Fresno, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara and Tehama. The main advantages of a charter county form of government is that: (i) lesser administrative officers can be made appointive rather than elective; (ii) salary scales can be independently formulated; and (iii) administrative structures can be reorganized more easily. In actuality, the number of elected officials, salary scales and administrative structures of charter counties are not much different than in general law counties. Charles Bell and Charles Price, California Government Today: Politics of Reform, at 291 (1980).

No exact definition of "municipal affairs" has been formulated by the courts. Instead, the courts have preferred to consider the merits of each dispute over local jurisdiction on a case-by-case basis.[7] The courts have developed, however, a rule of thumb for determining what is or is not a municipal concern. If the subject of the dispute fails to qualify as a *statewide concern*, then the conflicting charter measure is a municipal affair and beyond the reach of legislative enactment.[8] The phrase "statewide concern" is thus nothing more than a conceptual formula to aid in judicial mediation of jurisdictional disputes. The inability to demonstrate a significant state interest in a legislative matter renders the matter a local concern, preserving core values of charter government.[9]

Charters also enable local governments to strengthen existing legislative schemes. In such fields as citizens' exercise of referendum powers, for example, the California Constitution allows charter counties and cities to establish procedures different from state law or even the state constitution, so as long as the charter does not impinge upon the basic right of referendum expressed in the Constitution. Between the provisions of state law or the state constitution and the provisions of a local charter, ". . . those which reserve the greater or more extensive referendum power in the people will govern."[10]

City and county charters may be amended or repealed by initiative. The initiative process may not be used, however, to adopt an altogether new charter. Proposing a new charter—what may be appropriately labeled a charter "revision"—must originate from a charter commission (although creation of a charter commission may be proposed by initiative). The charter commission may either be elected by the voters or appointed by the local governing body. Once an authorized commission proposes a new charter, the package as a whole can then be submitted for ratification by a majority vote of the people. To date, a clear line of demarcation between what constitutes a charter "amendment" versus a charter "revision" has not been drawn.

Just as constitutional law presides over statutory law, charter law represents the supreme law of the local jurisdiction and controls in any conflict with ordinances.[11] Given the supremacy of charter law over local ordinances, any initiative charter amendment or revision must be submitted to the voters for approval, whereas initiatives proposing ordinances may be approved by the city council or board of supervisors and not submitted to a popular vote.

Despite the hierarchy of charter laws and ordinances, the procedural requirements for an initiative charter measure and an initiative ordinance are the same in most jurisdictions. Both types of initiatives have the same qualification signature threshold and the same simple majority vote requirement for approval. Amending a municipal charter by initiative requires petitioners to collect signatures amounting to 15% of the city's registered voters. Proposing a municipal ordinance by initiative in a general law city also requires 15% of registered voters to sign a petition. Despite the superior standing of charter law, the only difference between proposing an initiative charter amendment and an initiative ordinance is that petitioners are given *more* time to collect signatures for the charter amendment. Petitioners have 200 days after public notification to qualify a charter amendment to the ballot but only 180 days after titling to qualify an ordinance. In this sense, it is

7. *See* Butterworth v. Boyd, 12 Cal.2d 140 (1938).
8. Ex parte Braun, 141 Cal. 204 (1903).
9. California Federal Savings and Loan Association v. City of Los Angeles, 54 Cal.3d 1 (1991).
10. Hunt v. Mayor and Council of Riverside, 31 Cal.2d 608, 623 (1948).
11. Harman v. City and County of San Francisco, 7 Cal.3d 150 (1972).

actually somewhat easier to change a city's supreme charter than to change a simple ordinance.[12]

This similarity in procedural rules between two very different classes of local law opens the door for potential abuses—such as the recent election strategy known as "counter initiatives" (discussed below).

B. Local Procedure for Charter Amendments Lends Itself to Abuse

As discussed in Chapter 1 ("Origins and History"), the counter initiative strategy is part of a two-pronged effort to defeat an initiative proposal. It involves first placing a measure on the ballot that would cancel an opposing reform initiative if approved, and second waging an opposition campaign against the reform initiative as well. The measure receiving the larger majority dominates in all its provisions.

Counter initiatives are designed to pursue several objectives. First, sponsors of the counter initiative hope that if both measures are approved, their measure will receive more votes than, and thus negate, the targeted measure. The counter initiative is usually offered as a more moderate and practical proposal and thus more deserving of voter approval. Second, counter initiatives are sometimes designed to foster confusion in the hope that voters will reject both the counter measure and the targeted initiative.

Counter initiatives are a relatively recent phenomena at the state level, but they have been employed in local politics from the very start of the initiative process. The indirect procedures mandated for local initiatives tend to encourage counter ballot measures. Counter measures may stem from two sources: either as an *initiative* proposed by a competing group or as a *referred measure* placed on the ballot by the local governing body.

1. Counter Initiatives and Business Interests

When a counter measure takes the form of an initiative, it has historically been sponsored by business interests seeking to nullify a proposed reform initiative. In 1988, for example, a coalition of environmental groups qualified an initiative for the Los Angeles City ballot to prohibit planned coastal oil drilling (Proposition O). Occidental Petroleum Corporation responded with a counter initiative designed to preserve a plan for coastal drilling (Proposition P). Occidental Petroleum drafted its counter initiative, hoping that Proposition P would either out-poll the anti-drilling measure—thereby maintaining the company's drilling rights—or obfuscate the issue and bring both measures down in defeat—an outcome that would also allow oil drilling. Both initiatives were labeled "Oil Drilling" and both were touted as *the* environmental measure. In order to nurture a pro-environmental image, the industry initiative called for the city of Los Angeles to oppose oil drilling in state and federal waters—areas in which the city has no jurisdiction. This clause and others like it, though meaningless and ineffectual, provided the basis for Occidental's major campaign thrust: Oppose oil drilling in Santa Monica Bay—Vote *for* Proposition P and *against* Proposition O.[13] Proposition O, the environmental protection initiative, survived the onslaught and was approved by a 52% margin (as opposed to 34% voting in favor of Proposition P) despite being vastly outspent by the oil industry.

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12. By contrast, petitioners have only 150 days to qualify either a constitutional or a statutory amendment at the state level. Cal. Elec. Code §3513 (West 1977.)

13. Marvin Braude and Zev Yaroslavsky, *Proposition O, Proposition P,* Los Angeles Times, Oct. 27, 1988.

2. Counter Measures and Local Authorities

By far, the greatest share of counter measures at the local level are referred measures placed on the ballot by the local governing body. It is very common for city councils or county boards to challenge an initiative by placing their own alternative measure on the same ballot. Local governments in Greater Los Angeles have demonstrated a strong propensity to react defensively when confronted with an initiative. Rarely have initiatives been adopted by the governing board without a vote of the people. More often, initiatives are rebuked by the body and passed onto the ballot along with an alternative legislative measure from which voters may choose.

The degree to which local governments can react defensively to initiatives was recently displayed in the city of Torrance. A 1990 initiative that would have banned the commercial use of hydrofluoric acid at the Mobil Torrance refinery (Measure A) faced near universal opposition from the city council and mayor.[14] The council claimed that passage of the proposition could obstruct a pending lawsuit by the city to gain regulatory control over the use of toxic chemicals at the refinery. Council members published a letter saying that, although they favored a ban on hydrofluoric acid, they preferred the lawsuit to the ballot measure. In fact, the letter said that passing the ballot measure "might well delay (the lawsuit) going to trial for years to come" and cost the city millions in legal fees.[15] In order to drive the point of their opposition home to voters, the council placed a second proposition on the ballot that, while not directly a counter measure, gave the explicit impression that if voters approved Proposition A, they had to be prepared to pay for it. The council's proposition, Measure B, followed immediately after the toxic regulatory initiative on the same ballot and was worded as follows:

> "**Measure B**: *In the event Measure A is adopted at this election, shall the amount of appropriations . . . be increased by the sum of $2 million for each of the four fiscal years 1990-91, 1991-92, 1992-93 and 1993-94 in order to offset the anticipated costs of legal defense and implementation of Measure A?*"

Despite the widespread popularity of the toxic regulatory initiative early in the campaign, both ballot propositions were handily defeated by a massive opposition campaign financed by Mobil and the influence of city council opposition to the measure.[16] Mobil spent about $650,000 in an opposition campaign—roughly $30 per vote—which clearly had an impact on the election outcome. But dozens of people

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14. Councilmember Dan Walker sponsored Proposition A; all other councilmembers opposed the measure.

15. George Stein and Janet Rae-Dupree, *Toxic Acid Initiative Sparks High Interest Among Voters,* Los Angeles Times, Mar. 4, 1990.

16. Resentment against unsafe operations at the Mobil refinery had long run high among residents in Torrance. A series of dramatic accidents through the years had highlighted safety problems and alarmed citizens. One such accident was the death of the 19-year old daughter of the wife the city's police chief. On December 4, 1979, faulty safety equipment at the refinery—which Mobil knew was inoperative for several days—released an explosive vapor cloud over a nearby city street. As Cyndi Robinson drove down the street, the car ignited the cloud. She suffered massive burns over 98% of her body and died 20 hours later.

Another explosion and fire at the facility's hydrofluoric acid unit occurred in 1987. According to Torrance firefighter Jerry V. Terrill, this accident also occurred because Mobil knowingly ignored problems with crucial safety systems. *Id.*

interviewed as they left the polls also indicated that the city council's near-unanimous opposition won their votes against the acid ban.[17]

Ironically, just a few weeks after the defeat of Measure A the Torrance City Council voted unanimously to support a virtually identical ban on the use of hydrofluoric acid at the refinery. This time the proposal was offered as a four-county regulation by the South Coast Air Quality Management District rather than as a citizens' initiative. Dan Walker, proponent of the original Measure A, was asked how he felt about the council supporting other proposals to ban hydrofluoric acid after campaigning so vigorously against the ballot proposition. "I throw up my hands," he said.

But Torrance Mayor Katy Geissert, who led council opposition to Measure A, said there was no contradiction in the council's action. "We did not disagree with the intent," Geissert said, referring to the ballot proposition. "We disagreed with the means (of using the initiative process)."[18] In terms of such a policy ban interfering with the city's pending lawsuit and costing taxpayers millions of dollars, the council now argued that the demonstration of widespread support among governmental agencies for banning hydrofluoric acid might bolster the city's standing in court and expedite resolution of the court case.[19]

By viewing initiatives as a threat to the authority of local government, as exemplified above, local agencies often oppose an initiative proposal and, in many instances, provide an alternative proposal on the same ballot.

3. Potential for Charter Law Abuse

Regardless of the problems that may be attributed to counter initiatives, such as increasing the costs of initiative campaigns or fostering voter confusion, the procedural rule that the initiative approved by the largest majority dominates is intended to preserve principles of democratic governance. Experience at the state level, however, suggests even that this principle of majority rule can be subverted by invoking constitutional law, and it offers important lessons for local initiative proponents.

At the state level, the art of counter initiatives reached new heights in California's 1990 general election. Because the alcohol industry had for decades successfully lobbied the legislature to block any proposed increase in the state's alcohol tax, a coalition of health, law enforcement and consumer groups placed a statutory "nickel-a-drink" liquor tax on the state ballot (Proposition 134). The industry decided that the tax initiative had a good chance of receiving voter approval and responded by prodding the legislature to place a second measure—a constitutional amendment counter measure—on the ballot calling for a much smaller tax increase on liquor (Proposition 126). At the same time, the alcohol industry also supplied the bulk of the financing for a third initiative (Proposition 136) which, if approved, would have canceled any special tax increase on the ballot that did not receive two-thirds voter approval. A hidden clause in Proposition 136, nicknamed the "poison pill," made its super-majority vote requirement for tax increases retroactively effective to measures on the same ballot. Thus, the liquor industry not only campaigned against the first alcohol tax measure, it supported a second

17. Janet Rae-Dupree, *Torrance Council Vows to Continue Mobil Offensive,* Los Angeles Times, Mar. 8, 1990.

18. George Stein and Gerald Faris, *Torrance Backs Proposals to Ban Refinery Acid,* Los Angeles Times, Mar. 22, 1990.

19. *Id.*

counter measure designed to negate the first tax and also discreetly supported a third measure that would have eliminated *both* liquor tax proposals.

Both industry counter measures—Propositions 126 and 136—were drafted as *constitutional amendments,* while the relevant tax provisions of the "nickel-a-drink" initiative were *statutory*. Normally, if voters approve two conflicting measures, the one receiving the most votes becomes law. In this case, however, the constitutional provisions of Proposition 126 would have taken precedence over the statutory law of Proposition 134, no matter which initiative was approved by the highest margin. Thus, if voters approved two conflicting measures—one a constitutional amendment and the other a statute—the constitutional amendment automatically would nullify the statutory measure, even if the constitutional amendment received fewer votes. The voters rejected all three alcohol-related initiatives and thus the alcohol industry's tactics could be viewed as successful.[20]

California's November 1990 ballot also contained a number of additional counter initiatives addressing food regulation (Propositions 128 and 135) and forest harvesting (Propositions 130 and 138). Because the ballot was long and confusing, voters rejected 10 of the 13 initiatives, including all of the targeted initiatives and counter initiatives.

These refinements of the counter initiative strategy may also appear at the local level using charter amendments. Since charter law is superior to ordinances, if voters approve two conflicting measures—one an ordinance and the other a charter amendment—the charter amendment will dominate, even if it is approved by a smaller margin. Since charter amendments are as easy to place on the ballot as ordinances—either as an initiative or as a referred ballot measure by the council or board—electoral procedures encourage the use of charter proposals in a counter initiative strategy. Business interests, defensive local authorities or any other party interested in circumventing a reform initiative may try to enhance their prospects of victory by placing an alternative charter amendment on the same ballot—at no extra cost or inconvenience.

The fact that participants in the local initiative process have yet to make use of the potential advantages of charter law in a counter initiative strategy may simply reflect the inexperience of these players, not a forecast of future trends. This practice has only recently emerged at the state level, and it is likely to appear in local politics as well.[21]

C. Special Vote Requirements Can Handcuff the Initiative Process

On June 6, 1978, voters across the state approved Proposition 13, a constitutional amendment. Proposition 13, in essence, limit property taxes to a 1% ceiling on the 1975 assessed value of property, to be increased no more than 2% annually thereafter. Taxation on real property is thus not subject to voter approval and cannot exceed these constitutional ceilings.

Proposition 13 also restricts the ability of local governments to impose other taxes, stating: "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except

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20. Ironically, because of California's budget crisis in 1991, the basic provisions of Proposition 126 increasing the tax on alcohol were adopted by the legislature.

21. Ironically, prior to the change in state law making it more difficult to qualify a municipal charter amendment to the ballot, it was actually easier to petition for a charter amendment than an ordinance. Given the supremacy of charter law, a single charter amendment qualified to the ballot by less than half the signatures needed for a single ordinance could well have nullified or restructured whole areas of a city's statutory framework.

ad valorem taxes on real property or a transaction tax or sales tax of the sale of real property within such City, County or special district."[22]

This requirement, that any special taxes imposed by local governments must be approved by a two-thirds vote of the electorate, has been softened somewhat by several court rulings. The courts have held, that traditional special assessments do not constitute "taxes" and are thus not subject to the two-thirds vote requirement;[23] that a district that had no prior taxing authority on property could levy special purpose taxes without two-thirds voter approval;[24] and that increases in general taxes for a local jurisdiction's general fund are exempt from the special vote requirement of Proposition 13.[25]

Nevertheless, Proposition 13's super-majority vote requirement on special taxes at the local level breathed new vigor into the idea that initiative proponents could "lock in" their public policy programs by mandating some form of special vote requirement for any future changes in policy—even when those future changes are demanded by popular initiative. Even though Proposition 13 was not itself approved by a two-thirds majority, any future changes in the measure's tax ceilings must now be ratified by a larger majority than that which approved the original ballot proposition.

Similar super-majority vote requirements have been written into subsequent initiatives with ramifications for local taxing authority. The "Local Taxation" measure (Proposition 62) on the 1986 general election state ballot would have rescinded the court interpretations of Proposition 13 and redefined those revenue sources as special taxes subject to the two-thirds vote approval. Another tax measure on the November 1990 ballot would have imposed a similar restriction on state taxes. Since 1976, no statewide initiative that established revenues for programs has ever received two-thirds voter approval. Few local measures that have affected taxes have received two-thirds of the vote. The effect of special vote requirements imposed by initiative has thus been to stifle the citizens' power to adopt special taxes through the initiative process.

John Randolph Haynes once described the seriousness of this threat to direct democracy in reference to historical efforts by special interest groups to obstruct citizen control over taxing powers via initiative: *"if they can destroy the people's use of the initiative in its most important function, taxation, it will be the beginning of efforts which will lead to the destruction of the entire initiative power of the people."*[26] The strategy of attempting to "lock in" public policy by a super-majority vote requirement may eventually be used in initiatives that deal with issues beyond taxation.

An even greater issue posed by special vote requirements, however, is not the feasibility of attaining a super-majority vote of approval; it is the philosophical question whether a majority at one point in time can strip future majorities of their rights and powers to enact initiative legislation. Although Proposition 136 failed at the polls, its approval by a 51% simple majority would have required future tax proposals to receive two-thirds voter approval to become effective. The will of 51% of the voters in 1990 would have become more important than the will of 66% of the

22. Cal. Const. art. XIII(A)(4).

23. County of Fresno v. Malmstrom, 94 Cal. App. 3d 974 (1979).

24. Los Angeles County Transportation Commission v. Richmond, 31 Cal.3d 197 (1982).

25. City and County of San Francisco v. Farrell, 32 Cal.3d 47 (1982).

26. *Quoted in* Laura Tallian, Direct Democracy: An Historical Analysis of the Initiative, Referendum and Recall Process, at 41 (1977).

voters in subsequent years. (Although a simple majority vote on a subsequent measure could have repealed Proposition 136.)

D. Excessively Long Ballots Cause Irritation and Confusion Among Voters

Voters want a voice in important public policies, but the sheer number of propositions on California's state and local ballots in recent years has unsettled even the most civic-minded voter. Although the actual number of initiatives on the ballot has varied from decade to decade, more initiatives appeared on the state ballot between 1980 and 1989 (a total of 44) than at any other point in California history.

Yet the growing number of initiatives on California's statewide ballot is only half the story. Most of the measures on the ballot come not from initiatives but from state legislators and local governments. In November 1990, for example, Los Angeles voters not only had to confront 13 citizen-sponsored initiatives but 23 additional measures as well—15 legislatively-referred propositions, three county measures and five city ballot propositions. Voters thus had to make 36 public policy decisions in addition to voting on candidates.

Public opinion polls indicate that voters are irritated by the length and complexity of recent ballots.[27] Their agitation is increased when so many of the measures deal with mundane issues of little public policy significance but require a popular vote because they are locked into the state constitution. In June 1990, for example, voters were asked to amend the constitution to allow the renewal of chiropractic licenses during the chiropractor's month of birth rather than at the beginning of the year. In November 1990, voters were asked among other things to change the constitution so that local hospitals could invest in private corporations.[28]

Trivializing the ballot with many minor propositions is one source of voter frustration. More detrimental is the fact that inevitably a few high-financed issues capture most of the media's attention, while other issues are left with inadequate public scrutiny. Yet some of these other propositions raised critical public policy questions. On Los Angeles' November 1988 ballot, for example, while environmentalists and Occidental Petroleum Corporation waged an expensive and hotly debated campaign over oil drilling along the coast (Propositions O and P), a bond measure on the same ballot for rebuilding the Los Angeles Central Library after it was extensively damaged by arson went largely unheeded in campaign advertisements and in the news media. Although the library bond measure was supported by a substantial majority of voters, it fell slightly short of the two-thirds voter approval mandated by Proposition 13.[29] Many other policy questions on the ballot were even less visible to voters.

A lengthy ballot is not only confusing, it is also costly. Printing and mailing the June 1990 ballot pamphlet and supplement cost the state an estimated $7 million.[30] The November pamphlet and supplement cost an estimated $9 million.[31] In addition,

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27. Mervin Field, *The California Poll*, Sept. 13, 1990. For a fuller discussion of public opinion toward the initiative process, *see* Chapter 2, "Impact of Ballot Initiatives."

28. Voters said "yes" to all of them.

29. In Los Angeles' November 1988 election, the library bond measure (Proposition L) received 539,105 votes in favor (59.8%) and 362,444 against (40.2%). Because of the two-thirds vote requirement imposed by Proposition 13, Proposition L was defeated.

30. Telephone interview with David Pitman, Assistant Chief, Elections Division, California Secretary of State's office (May 2, 1990).

31. Telephone interview with Cathy Mitchell, Elections Analyst, Elections Division, California Secretary of State's office (Mar. 9, 1991).

local governments must pay for and distribute sample ballots and, sometimes, their own supplemental pamphlets explaining local ballot propositions. The workload of printing and handling state ballots associated with each additional ballot proposition is also borne primarily by county governments.[32]

1. Restrictions on the Length of the Ballot

California state law specifically forbids restrictions on the number of initiatives that may be submitted to voters at any given local election. Once again, however, procedures between county and municipal elections are slightly inconsistent. State law mandates that no county shall hold more than one special election in a six-month period[33] and that "any number of proposed ordinances may be voted upon at the same election;"[34] state law governing municipal elections makes no mention of the number of special elections that may be conducted but does prohibit limits on ballot measures with the exception that no more than one ordinance of the same subject matter shall be submitted to voters at a special election within a 12-month period.[35] The two sets of election laws regulating county and city elections have virtually the same impact: no limits may be placed on the number of ballot measures at any given election, but voters need not be burdened by measures of the same subject more than once a year.

Although a few states limit the number of legislatively-referred constitutional amendments that may be submitted to the voters, only one—Illinois—specifically limits the *number of initiatives*.[36] No ballot in Illinois may contain more than three public questions to be voted upon by the electors, including legislatively-referred measures as well as initiatives.[37] Of these public questions, no more than one measure may propose changing the form of a municipal government. If more than the allotted measures qualify to the ballot of an election, the first measures certified will be selected for the ballot.

Limiting the number of initiatives on Illinois' ballot does not appear to be much of a problem. The initiative process in that state is very restrictive. Initiatives can only deal with "structural and procedural" issues involving the legislature.[38] Public policy may not be affected by initiatives. Consequently, initiative proposals are uncommon in Illinois and not likely to be constrained by the limit.

Arkansas imposes a rather unique limitation on ballot length. While the legislature cannot place more than three constitutional amendments on any single ballot, no such limit applies to citizen-sponsored initiatives.[39]

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32. Cal. Elec. Code §10000 (West 1987).

33. Cal. Elec. Code §3710 (West 1977).

34. Cal. Elec. Code §3715 (West 1977).

35. Cal. Elec. Code §4014 (West 1977). The California Supreme Court interpreted this provision to apply only to initiatives of the same subject matter, not an *initiative* and a *referendum* of the same subject matter. Referendum Committee of Hermosa Beach v. City of Hermosa Beach, 184 Cal.App.3d 152 (1986).

36. Arkansas, Colorado, Illinois, Kansas and Kentucky limit the number of constitutional amendments that may be placed on a single ballot.

37. Ill. Rev. chap. 46, art. 28, §1.

38. Ill. Const. art. XIV, §3.

39. Ark. Const. amend. 7. Initiatives in Arkansas have not always been free from numerical limitations. Arkansas first adopted the initiative process with passage of Amendment 10 in 1911. At that point, initiatives were included under the limit of three constitutional amendments per ballot. Amendment 10, however, was poorly drafted and left considerable ambiguity in how the initiative process was to work. Voters approved Amendment 13 in 1920 that redefined and extended the authority

Most states place no limit on the number of initiatives or legislative measures that may appear on a ballot. California, like almost every other state, imposes no restrictions on the number of ballot propositions that may be submitted to the voters at any given election.

A few states—Massachusetts, Nebraska, Oklahoma and Wyoming—restrict how often an initiative proposal may be submitted to the voters. Massachusetts and Nebraska prohibit placing a measure on the ballot whose subject is substantially the same, either affirmatively or negatively, as any measure submitted to the people within three years and four years, respectively.[40] Oklahoma prohibits a rejected initiative from reappearing on the ballot within a three-year period unless proponents gather signatures amounting to 25% of the last gubernatorial vote.[41] Wyoming does not allow a defeated initiative proposition to be reintroduced on the ballot for five years.[42] By contrast, California does not restrict the frequency with which an issue may be resubmitted to the voters.[43]

2. Lack of Voter Fatigue and Voter Drop-Off

Lengthy ballots present two other related concerns: *voter fatigue* and *voter drop-off*. When voters face a lengthy ballot, a decreasing number of votes are sometimes cast for items located near the bottom of the ballot. This has been called "voter fatigue." "Voter drop-off" consists of the disinclination of voters to cast ballots for less important offices and propositions. While nearly every voter casts ballots in the presidential race, for example, significantly fewer votes are cast for Congress, fewer still for legislative candidates and fewest of all for local races and judgeships.

Voter fatigue and drop-off are relevant to the order in which ballot measures appear on the ballot. Most states and localities list propositions last on the ballot, following candidate races.[44] Thus ballot measures are most susceptible to the effects of declining voter participation. California further specifies that initiatives must appear after bond measures and legislatively-referred measures. If voter fatigue

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of the people to initiate laws and constitutional amendments and exempted initiatives from the limit on ballot measures. Arkansas' speaker of the assembly, a staunch opponent of initiatives, ruled that Amendment 13 would not become effective because the measure was not approved by a majority of all votes cast at the election. Five years later, the Arkansas supreme court reversed the speaker's ruling (also changing the name of Amendment 13 to Amendment 7), and the initiative process became a full part of the state's system of governance in 1925.

40. Neb. Const. art. III, §2; Mass. Const. amend. art. 74, §1.

41. Okla. Const. art. 5, §6.

42. Wyo. Const. art. II, §52(d).

43. One example of virtually identical initiatives being placed on subsequent ballots in California are two AIDS (Acquired Immune Deficiency Syndrome) measures sponsored by Lyndon LaRouche. Proposition 64 on the November 1986 ballot would have declared AIDS and the carrying of the HTLV-III (now called HIV) virus a contagious disease subject to health reporting requirements. The measure was resoundingly rejected at the polls by a margin of 29%-to-71%. LaRouche qualified a virtually identical AIDS reporting initiative for the June 1988 ballot. The only difference for Proposition 69 was that HTLV-III was no longer specified as the causal agent of AIDS and replaced with reporting all those in the "condition of being a carrier" of the AIDS virus. This measure was rejected by voters 32%-to-68%.

A third similar, though not identical, AIDS reporting initiative was placed on the next ballot by conservative Rep. William Dannemeyer. Proposition 102 on the November 1988 ballot called for reporting all AIDS-infected persons to health authorities who would then be responsible for notifying potential contacts with the infected person. The AIDS reporting concept was still unacceptable to the voters, who rejected the measure by a margin of 34%-to-66%.

44. Alaska places candidates and issues on different ballot punch cards. Oregon and Washington list propositions first on the ballot.

and drop-off are real, initiatives in California can be decided by a minority of voters. More importantly, voter fatigue and voter drop-off may suggest that the quality of voter decisions is lower for initiatives.

The Commission conducted an analysis of voter fatigue and drop-off at the state level since 1978. Assuming behavioral patterns to be similar in local elections, the study suggests that these are not significant problems in California. While some drop-off usually (but not always) occurs between the most important candidate race and the lesser offices and ballot propositions, the extent of initiative drop-off is minimal—comparable to voter drop-off for such statewide offices as lieutenant Governor and secretary of state. In two recent state primaries, more people voted on the only initiative on each ballot (Proposition 13 in 1978 and Proposition 51 in 1986) than voted for Governor.

As shown in Table 5.1, initiatives tend to attract more voter attention than many statewide candidates, especially in primary elections. The greatest drop-off occurs for legislatively-referred measures—which are positioned *before* initiatives on the state ballot. Evidently problems of ballot fatigue and voter drop-off are greatly exaggerated. Voters pick and choose among the candidate races and ballot propositions that are of greatest interest to them. Voting activity follows those candidates and issues perceived to be important by the electorate, regardless of their ballot position.

Table 5.1

PERCENTAGES OF VOTES CAST IN CALIFORNIA FOR OFFICES, LEGISLATIVE MEASURES AND INITIATIVES, IN NON-PRESIDENTIAL ELECTION YEARS, 1978 to 1990

	Governor	*All Other Statewide Offices Combined*	*Legislative Measures*	*Initiatives*
1978 Primary	90.8%	78.6%	78.1%	96.5%*
1978 General	97.0%	92.7%	83.7%	95.2%
1982 Primary	94.1%	92.5%	86.2%	87.3%
1982 General	97.7%	93.5%	88.8%	92.7%
1986 Primary	86.0%	82.4%	86.2%	93.5%
1986 General	97.7%	93.4%	88.6%	92.0%
1990 Primary	88.4%	78.6%	85.4%	85.5%
1990 General	97.5%	93.5%	89.3%	91.4%

* Proposition 13 was the only initiative on this ballot.

Source: California Commission on Campaign Financing Data Analysis

E. Should Initiatives Be Limited to Regular Election Ballots?

Most local jurisdictions comply with state standards for the submission of initiatives to voters by mandating that measures be placed on either a special or general election ballot depending on the number of signatures collected. A higher signature threshold places an initiative on a special election ballot; a lower threshold places an initiative on the next regularly-scheduled election ballot.

Not all jurisdictions conform to this practice, however. The city of Los Angeles leaves the decision whether to place an initiative on a special or general election ballot up to the discretion of the city council. Berkeley expressly forbids initiatives on

special election ballots. Many states also do not allow initiatives on primary or special election ballots.[45]

The rationale for limiting initiatives to regular election ballots is straightforward: fewer people vote in primary and special elections. Special elections that are not consolidated with primary or general elections consistently have the lowest turnout of all. Thus, voters in low-turnout primary or special elections may not be representative of the electorate as a whole. Not only do fewer voters participate in primary and special elections, but they also tend to comprise an unbalanced cross-section of the population. Those who vote in primaries and special elections tend to be better educated, more involved in politics and members of a higher socioeconomic stratum.[46] Some scholars have therefore speculated that conservative ballot measures would fare better than liberal measures in primary and special elections.[47]

Surprisingly little evidence exists to confirm substantially different voting patterns between voters of different types of elections. An analysis by the Commission of voting patterns on initiatives at the state level suggests that an ideological bias between primary and general election voters is not evident.[48]

Furthermore, using the Commission's data base of all initiatives on local ballots in the Los Angeles area from 1983 through 1991, it is surprising to discover how infrequently initiatives are placed on special election ballots and not consolidated with other statewide elections. Only five of a total 44 local initiatives (or 11%) throughout this time period qualified for special election ballots. The bulk of local initiatives (22) qualified for regularly-scheduled municipal elections, while another significant share of initiatives (17) were submitted to voters at consolidated statewide primary or general elections.

Approval rates for local initiatives are roughly comparable between special and regular municipal elections. About 40% of initiatives have been approved at special elections and 35% approved at regular elections. By far the most common issue on the ballot in both special and regular municipal elections is land use and development. There is some indication that voters in special elections are somewhat less tolerant of development projects than voters in regular municipal elections, but the cases of special election initiatives are so few in number that any conclusion is tenuous at best.

F. In the Commission's Judgment, Charter Law Should Be Made Harder to Amend than Ordinances

Community experience with direct democracy indicates a need for limited improvements in the electoral criteria for managing the initiative process. Many of the rules governing initiative procedures for counties and cities seem incongruent and not well developed. Until recently, for example, it was much easier to qualify a charter amendment to the ballot than it was to qualify an initiative ordinance—even though charter law is more permanent and dominant.

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45. States that restrict initiatives to general election ballots are: Arizona, Arkansas, Colorado, Florida, Idaho, Illinois, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, Ohio, Oregon, South Dakota, Utah, Washington and Wyoming.

46. David Magleby, Direct Legislation, at 87-89 (1984).

47. Interview with Professor Daniel Lowenstein, UCLA Law School, in Los Angeles, California (July 16, 1990).

48. California Commission on Campaign Financing, Democracy by Initiative: Shaping California's Fourth Branch of Government, at 189-191 (1992).

Initiative procedures at the local level should be modified to be more consistent and to reflect the supremacy of charter law. Furthermore, the potential for abuse through the use of counter initiatives should be addressed before it becomes a serious problem.

1. Basing Signature Qualification Thresholds for Both Charter Amendments and Ordinances on Electoral Percentages Rather than Registered Voters

Although the legislature has recently changed the qualification threshold of municipal charter amendments to make it consistent with the qualification threshold of municipal ordinances (based on a percentage of *registered* voters), the change was done in a mischievous manner and under an aura of anti-initiative sentiment.[49] Meanwhile, the qualification of county charter amendments and ordinances remains based on a percentage of the previous vote for governor rather than the tougher standard of registered voters. State law should be standardized so that all county and city charter amendments and ordinances are also subject to a qualification threshold based on a percentage of the previous vote for Governor. This would alleviate fears among citizens that the legislature is attempting to derail their right of initiative and at the same time provide a comprehensible and consistent set of electoral procedures.

The Commission recommends that state law be revised to establish consistency of qualification signature thresholds for counties and cities according to the following model: petition signatures amounting to 10% of the jurisdiction's last vote for all gubernatorial candidates is sufficient to qualify an initiative ordinance for the next regularly-scheduled election ballot; petition signatures amounting to 15% of the last gubernatorial vote is sufficient to qualify an initiative ordinance for a special election ballot; and petition signatures amounting to 15% of the last gubernatorial vote is sufficient to qualify an initiative charter amendment for either a special election ballot called for that purpose or the next regular election ballot.

State ballot propositions have become increasingly numerous, adding substantially to ballot length, but local initiatives are not nearly as numerous. No pressing need exists to curtail the number of local measures through higher signature requirements. Furthermore, charter communities that have retained the lower signature threshold based on percentage of gubernatorial vote have not experienced an unmanageable and growing number of local initiatives qualifying for the ballot. A lower threshold for general law cities will not result in an unruly wave of "initiative fever" at the local level.

2. Imposing a Special Vote Requirement to Add Language to Charters

The Commission recommends that a reasonable special vote requirement be imposed for popular ratification of any additions to charter law. To *add* new language to a charter, any initiative or referred charter amendment should be required to receive the approval of 60% of those voting on the issue at any one election or, alternatively, the approval of a simple majority vote in two successive elections. Thus, if a charter amendment enjoys strong popular support (over 60%), it can be immediately adopted. If an amendment enjoys simple majority support, the extra burden of ratification at two successive elections will preserve the wishes of the majority while encouraging a more deliberative process and discouraging those who seek to exploit the supremacy of charter law through the initiative.

Precisely how high to set the super-majority ratification threshold was a matter of considerable debate within the Commission. The super-majority threshold most

49. For further discussion of the legislative change to the qualification signature threshold of municipal charter amendments, *see* Chapter 4, "Petition Circulation."

commonly imposed upon legislative bodies is a two-thirds vote. Judging from election results for California ballot propositions, however, a two-thirds ratification requirement for voter approval would be very difficult to obtain. The objective of the Commission is to make the task of charter amendment through initiatives more difficult but not prohibitively arduous. A 60% super-majority for ratification appears best suited to this objective.

At the same time, the Commission does not wish to deprive a simple majority of voters from being able to change a charter via the initiative. It is important, however, to maintain an inconvenient barrier to amending charters in order to minimize the likelihood that ordinances statutory in nature will be casually codified into the charter and maximize the likelihood that such ordinances will be placed in the regular statutory framework. By allowing simple majority ratification *in two successive elections,* the right of the majority to amend the charter is preserved, while an inconvenience factor is established to encourage more deliberative consideration by the voters and thus to maintain respect for the primacy of charter law.

Current events have made it necessary to include charter amendments referred by local legislative bodies in this category of propositions subject to a special vote requirement for approval. City councils and county boards have routinely fought against popular initiatives by placing counter measures on the same ballot. It would be unfair to allow legislative bodies an advantage in the counter initiative strategy by giving them an easier standard for voter approval of referred measures. Both types of charter amendments should be subject to the same special vote requirement at the polls.

3. Discouraging Initiative Proponents From "Locking In" Their Policy Proposals With Future Special Vote Requirements

The Commission recommends that, if an initiative seeks to impose a specified special vote requirement on future measures, it must itself be approved by the same special vote and go into effect the day after the election. If, for example, a tax initiative seeks to require that any future tax be adopted or repealed by a two-thirds super-majority of the voters, then that initiative itself must be approved by two-thirds of the voters to be effective. This principle should be placed in the state constitution and apply to all localities.

It is inappropriate for initiative proponents to "lock in" their policy proposals by requiring a special vote for future initiatives touching upon the same subject. This practice allows a bare majority of voters to tie the hands of future larger majorities—an undemocratic and possibly unconstitutional practice. It makes it difficult to reverse policies approved in the heat of the moment (such as requirements that future special taxes be approved by a two-thirds majority). It is also inappropriate that an initiative be allowed to change the electoral rules retroactively. These devices have thus far been used infrequently but under present law it is only a matter of time before they become more common. The Commission's recommendation that special vote requirements go into effect the *day after* the election would prevent charter amendments from creating exceptions to this rule simultaneously with their passage.

A requirement that initiatives proposing a special vote for future amendments be approved by the same special vote is consistent with established constitutional norms. It not only respects the principle of "one person, one vote," but it follows the norm in which a body of law, such as a charter or constitution, that imposes a super-majority requirement for future amendments itself be ratified by a super-majority vote.

G. The Commission Is Not Satisfied That Other Specific Reforms Are Needed or Desirable

In the quest to enhance the quality of decisionmaking at the polls, some have suggested that the number of initiatives on the ballot should be limited so that voters may reasonably deliberate on each issue. Others have expressed concern that the placement of initiatives on special election ballots leads to unrepresentative voting and that initiatives should only appear on general election ballots. In the Commission's view, these proposed solutions are unwise and would have adverse side effects that would far outweigh their desired benefits.

1. Restricting the Length of the Ballot

In the November 1990 election, voters expressed strong dissatisfaction with the long and complex ballot confronting them. Undoubtedly this is a problem, but it should not be over-exaggerated. If anything, a longer ballot means that the more important issues will generally receive the voters' attention and the lesser issues will be left to those who are concerned about them. Generally, this has meant that *initiatives* have received as much or more voter attention than most candidate races, while *referred measures* have captured the interest of somewhat fewer voters. Apparently, voters are reasonably informed of the pressing issues on even a long ballot and cast their votes accordingly. (See discussion earlier in this chapter.)

Lengthy ballots may mean that some important issues will be neglected by the press and the voters because they are of less concern than more controversial initiatives. In the Commission's view, limiting the number of measures on the ballot to solve this problem would cause more harm than good, simply because there is no reasonable way to decide which issues should appear on the ballot and which should not. For example, one way to limit the issues for the ballot would be an arbitrary "first-to-qualify" rule. But this would heavily favor ballot access for those well-endowed special interest groups capable of affording expensive—and rapid—signature-gathering services. This would not be an improvement. Another way would be to raise the qualification signature threshold substantially, hoping that some measures would drop out. This proposal also suffers from a bias toward wealthier organizations.

The practice of restricting the number of ballot propositions may function adequately in some states—such as Illinois, where very little initiative activity exists—but it would seriously impair California's local initiative process. First, the selection of issues placed before the voters would become arbitrary. The first initiatives to qualify for the ballot may not be the most important. Second, propositions referred by local governing bodies could easily dominate the ballot, since a council or board could easily and quickly place measures on the ballot. They, too, would have to be limited; yet restrictions on the number of referred measures would mean that areas of public policy might go unattended. Local governments might have to decide, for instance, whether to delay funding for schools in order to place a bond measure for libraries onto the ballot. Third, and perhaps most importantly, a numerical limit on initiatives might make the ballot the exclusive domain of those who could pay for the fastest signature gathering.

2. Prohibiting Initiatives on Special Election Ballots

The Commission takes no strong position on the matter of placing initiatives on special election ballots. The Commission's analysis shows that no significant harm has resulted from this practice. Although a slight bias against development projects may be a characteristic of special election voters, any slant in outcome does not appear to be substantial between special elections versus general elections. It is not

accurate to believe that initiatives are disadvantaged by being placed on special election ballots.

Furthermore, no great burden on local governments appears to stem from allowing initiatives on special election ballots. Rarely are local initiatives placed on special ballots that are not consolidated with other state elections. And initiative proponents at the local level have not demonstrated any keen advantage or strategy for targeting special election voters versus regular election voters. Fears of political advantage gained through targeting a unique set of voters in special elections are unfounded.

H. Conclusion

Representative democracy and the initiative process are two different forms of governance that are sometimes at odds. The two forms must be carefully crafted to accommodate inevitable conflicts. In the forefront of needed reforms to California's initiative electoral procedures at the local level are safeguards to preserve the integrity of charter law. A reasonable special vote requirement for additions to a charter would replace the existing unpopular and inconsistent tougher signature thresholds.

At the same time, the integrity of law should be protected by preserving the fundamental precept of "one person, one vote." Any initiative proposal calling for a special vote for future amendments should be required to receive that same vote of approval for enactment. In an era in which voters are being asked to decide upon an increasing number of important public policies, the rules should be applied equally.

CHAPTER 6

News Coverage and Paid Advertising

"The [initiative process] is proposed as a check on the [political] machines . . . . When the machine managers get familiar with the working of the [initiative process], they will work it for their own ends far more readily than they work the [legislative process]."

— Editorial, New York Times
Oct. 18, 1911

The integrity of the initiative process depends substantially on the quality and quantity of information on which voters base their choices. This information comes from many sources, including family and friends. But while personal acquaintances may be persuasive sources of voter information, the most efficient are those that reach a wide audience. These include the news media (television, radio, cable television and newspapers), political advertising (delivered through the mass media as well as billboards, literature and direct mail) and local government-sponsored information (such as the ballot pamphlet).[1] (For a detailed discussion of the ballot pamphlet, see Chapter 7, "The Ballot Pamphlet.")

Although ballot pamphlets offer the most comprehensive information on initiatives, news and political advertising often reach larger audiences. Newscasts typically keep the content of their messages brief, often focus on the controversial

1. An additional source of voter information that is particularly useful in California is privately-sponsored ballot pamphlets. The League of Women Voters, the Commonwealth Club of San Francisco and Town Hall of California, for example, publish their own versions of nonpartisan pamphlets that summarize and debate the pros and cons of each measure. Privately-sponsored ballot pamphlets are discussed at greater length in Chapter 7, "The Ballot Pamphlet."

aspects of a ballot initiative and dramatize their coverage with pictures and sound; political advertising is often weighted in emotionalism, exaggeration and innuendo. Yet despite the tendency of these media to compress, simplify and sensationalize, their ability to attract and hold audiences make them an effective force in informing and shaping voter opinion. This chapter examines the role of advertising and the media in influencing public opinion and voting behavior in initiative elections.

A. "Managed" Information Dominates Local Initiative Campaigns

A multitude of factors influence voting behavior, ranging from party affiliation to demographic considerations. In candidate elections, the candidates themselves represent a wide array of issues and symbolize the interests of a variety of demographic groups, whether spoken or unspoken, by virtue of race, gender and appearance. By contrast, in ballot measure elections an initiative usually represents a specific issue and carries with it none of the additional symbolic baggage associated with candidates. Without the voting cues offered by political parties or candidate personalities, voters in initiative campaigns typically must decide how to cast their ballots based on knowledge of the issues. Consequently, accurate voter information is even more important in initiative elections than in candidate elections.

With personalities playing less of a role, the mass media emerge as the primary source of information used to develop voter attitudes on ballot measures. News and paid political advertising comprise the major sources of information voters use in casting their ballots on initiatives.

Yet this also poses a problem for effective delivery of adequate voter information. While prudent decisionmaking on initiatives inherently requires greater voter information on the issues, voters have fewer sources of information available to them. Instead of relying on a multiplicity of sources, such as personality traits and candidate history, voters are heavily dependent on the mass media for information. Complicating matters even further, the integrity of these information sources is often questionable.[2]

In a world where the media play such a fundamental role in shaping voter awareness, professional campaign management firms exert a powerful influence over the direction of initiative campaigns. An effective campaign manager will stage favorable news events and carefully craft advertising appeals. Frequently this "managed" information may be the only election information available to voters besides the ballot pamphlet, especially for initiatives that do not arouse independent news attention. The accuracy of voter information on local ballot measures therefore largely turns on the quantity and impartiality of election news coverage and the existence of some balance between paid political advertisements for and against each measure.

B. Paid Advertising Plays a Crucial Role in Swaying Voters

Paid advertising comes in many forms. Newspapers and the electronic media are two of the most common, but political advertisements are also purchased on billboards, lawn signs, leaflets and mass mailings, including the increasingly popular slate mailers. Choosing the appropriate mix of advertising mediums

2. "An election campaign does not lend itself to explanations but to simple fact statements or slogans. As a result, voters may be confused and make decisions, not on a factual or philosophical basis, but for emotional or political reasons." St. Paul Citizens for Human Rights v. City Council, 289 N.W.2d 402, 407 (Minn. 1979).

depends on the target audience and the campaign's resources. Each medium has a distinct audience, and each carries a different price tag.

Campaign advertising for initiatives had its origins in product advertising. In the 1930s, the first campaign management firm to specialize in initiatives was organized by two Californians, Clem Whitaker and Leone Baxter.[3] Campaigns, Inc. revolutionized political campaigning by adapting the techniques of product advertising to politics. By the 1950s, dozens of California campaign management firms handled initiatives. Today, these firms still borrow techniques from commercial advertising.[4] Many work interchangeably in both commercial and political markets.

1. Innuendo and Deception

Initiative campaign advertising has developed a reputation for innuendo, deception and exaggeration. Initiative campaigns are issue campaigns, and this heightens the role of advertising in affecting vote choices. Advertising campaigns have considerable leverage in defining the issue. Neither side has an inherent interest in providing a fair and balanced presentation of the ballot measure. Because victory, not education, is the primary objective of campaigns, a campaign will dispense only that information which supports its case.[5]

Initiatives are often more difficult to comprehend than candidates. Whereas a candidate might simply pledge to "get tough on crime," an anti-crime initiative must actually propose a concrete policy program—something that candidates are warned to avoid. As the policy discussion moves away from generalities (candidates) and toward specifics (initiatives), countless additional dimensions for political debate are opened to scrutiny. Initiative opponents find this an especially valuable tool to exploit in defeating ballot measures. Opponents often lock onto one minor provision of an initiative and exaggerate its potential negative implications, sometimes well beyond credulity. Their objective is to foster voter confusion and doubt as to whether the measure really furthers an otherwise favorable policy goal. In candidate elections, an uncertain voter often opts for the status quo by voting for the incumbent; in initiative elections, the uncertain, hesitant or confused voter typically votes "no." This tendency to vote against confusing initiatives is exploited by misleading or deceptive advertising.

2. Unbalanced Campaign Spending

The tendency of initiative campaigns to use one-sided or misleading advertising is exacerbated by unbalanced campaign spending. Many of the highest-spending initiative campaigns in California history were triggered by proposals designed to curtail the practices of a specific industry and the subsequent response by industry to defend its interests. Many of the recent proposals that stimulated high campaign spending have focused on environmental and consumer protections but have also included governmental reform and morality measures. Such initiative movements frequently spend most of the money they are able to raise merely on qualifying for the ballot, leaving little with which to campaign. Well-funded interests—be they political, corporate or labor—are able to invest vast sums of money

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3. Walton Bean, California: An Interpretive History, at 470-471 (1973).

4. Ballot measures are "packaged" for the public in much the same way an advertising firm attempts to sell a can of peas. "Voting is based on what we feel, not what we think," says consultant Robert Goodman. "Everything is image." *Quoted in* Leslie Phillips, *Image Men Package Our Candidates*, USA Today, Feb. 20, 1984.

5. Derrick Bell, *The Referendum: Democracy's Barrier to Racial Equality*, 54 Wash. L. Rev. 1. (1978).

in campaign advertising to stem the tide. The temptation to use false or deceptive advertising arises whenever a gross unbalance in campaign resources renders one side incapable of challenging the advertising assertions of the other.

Time and again, unbalanced campaign spending has encouraged deceptive advertising because the other side was unable to finance an adequate response. In 1988, for example, a slow-growth organization in the City of Pasadena, known as Northeast Pasadena Residents Association (NEPRA), qualified a growth-control initiative for the local ballot. The "Responsible Growth Initiative" (Proposition G) would have imposed, among other things, a two-year moratorium on major developments in Pasadena until a new city general plan could be written. To obtain exemptions from the moratorium, a project would have to win unanimous approval from the Pasadena Board of City Directors.

An opposition group, called the Committee for Common Sense in Pasadena, broke the city's record in campaign expenditures on a ballot measure campaign by spending $107,780 to defeat Proposition G. More than $100,000 of the opposition fund came from real estate interests, with $59,000 of that originating from outside Pasadena. Advocates for Proposition G could only muster $4,039 in campaign expenditures on behalf of the slow-growth measure—and were thus outspent by a ratio of 26-to-1.

Opposition forces deluged voters with radio advertising and an expensive direct mail campaign which claimed that Proposition G would prohibit development of three very popular planned projects: the Huntington Hotel (which voters had already approved in an earlier election), the Huntington Hospital and the YWCA/YMCA facility.

The charges that the initiative would stop these popular developments were not credible. Under the provisions of Proposition G, any project receiving unanimous approval of the City Board could begin development. In the last quarter of 1987, over 75% of the Board's decisions were unanimous; in fact, out of 3,654 building permits issued that year, only 19 would have been prevented by the initiative.[6] It seems highly likely that the board would have unanimously approved the three hotel, hospital and YWCA/YMCA projects.[7]

Nevertheless, proponents of Proposition G could not garner the resources needed to counter the opposition's charges. Amos Hoagland, one of the leaders of the slow-growth movement, expressed the group's frustration with not being able to afford an adequate informational campaign: "Unfortunately, it makes it very difficult for the average honest citizen to try to get his position before the public."[8]

Proposition G was defeated at the polls by more than a 2-to-1 margin. Ironically, a better organized and better funded initiative campaign was able to

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6. Editorial, *Proposition G: Preserving the Quality of Life or Destroying Its Future?* Pasadena Star-News, June 2, 1988.

7. Supporters of Proposition G firmly believed that the Pasadena Board of City Directors would grant unanimous approval to the popular development projects of the Huntington Hotel, Huntington Hospital and YWCA/YMCA. In an effort to prevent the matter from being used as an opposition campaign tactic, proponents appeared before the Board and requested that they confirm unanimous consent for the projects. Mayor John Crowley and other members of the Board, however, were leading opponents of the growth-control initiative and active in the opposition group, Committee for Common Sense in Pasadena. The Board decided not to assure the public that unanimous consent on the development projects would be forthcoming. John Fleck, *Initiative Advocates Rebuffed on Exemption*, Pasadena Star-News, Apr. 19, 1988.

8. John Fleck, *Moneywise, Prop. G Foes are Clear Winners*, Pasadena Star-News, May 28, 1988.

secure voter approval of another slow-growth measure (Proposition 2) in the following year.

3. Greater Doubts as Election Day Nears

Voters usually have an opinion on individual ballot proposals early in the campaign, but their opinions tend not to be fixed and are subject to change during the course of the campaign. The most common pattern of opinion change on ballot propositions goes from initial support to late opposition.

One study charted voters' pre-election attitudes on 48 ballot propositions in California between 1960 and 1986 from surveys conducted by the California Poll.[9] On 10 of these measures, public opinion changed very little through the campaign. Apparently voters have "standing opinions" on issues such as the death penalty and English as the official language which are not easily subject to change regardless of the extent of campaigning.

On 38 of these measures, however, public opinion dramatically altered and frequently reversed. In most instances, the proportion of undecideds increased through the course of the campaign and precipitously dropped as election day arrived. The most common pattern was a decline in "yes" votes, a mid-election increase in undecideds and eventually an increase in "no" votes. This tendency resulted in a reversal of majority public opinion in 53% of the cases, a decline in support but not enough for a reversal in 12% of the cases and a swelling of "no" votes from "yes" votes when the "no" side started out ahead. There were only three cases in which the "no" side declined during the course of the campaign.

Unlike candidate elections, voters are much more open to persuasion on ballot issues. This volatility makes campaign advertising critical to outcome of initiative elections, especially given the lack of partisan or candidate voting cues. Voters initially like a policy proposal, but as the campaign wears on, uncertainty and fear of the application of a concrete policy program takes precedence over the early intrigue with a new idea. Heavy opposition campaign spending compounds this uncertainty and fear and often results in voter rejection of the ballot proposition. When proponents are unable to respond to the campaign assertions of the opposition, even the most popular initiative proposal is likely to go down in defeat.

4. Policing Political Ads

At one time, television stations as a policy refused to air campaign advertisements during newscasts. The rationale for this prohibition was that some viewers might misconstrue the advertisement as being part of the newscast. Many station managers believed that it was dangerous to mix the one-sided presentation of a candidate or issue with a balanced, objective newscast. If a station presented a news segment on an environmental measure, for instance, using interviews with both environmentalists and business representatives, and that news segment was then followed by a paid commercial advocating one side of the issue, the commercial might well receive undeserved credibility by its association with the news and the newscast might lose credibility by association with the commercial.

A number of stations have changed this policy, however, in apparent deference to commercial considerations. In the Los Angeles media market, for example, CBS, NBC and independent television station KTTV have recently lifted their longtime policy prohibiting such advertisements during local newscasts in order to compete

9. David Magleby, *Opinion Formation and Opinion Change in Ballot Proposition Campaigns,* Manipulating Public Opinion 105 (Michael Margolis and Gary Mauser, eds., 1989).

against other local stations that accept political ads during news coverage.[10] Candidates and committees seek to advertise during prime time newscasts because their commercials will gain credibility and because they will reach a demographically desirable audience segment—viewers of news tend to be better informed about political events and more likely to vote. Any station that refuses to air political ads in its newscasts simply redirects political advertising revenues to a competitor who will. Furthermore, prime advertising time outside news slots is generally more expensive because audiences are larger. Stations that restrict the amount of political advertising time they make available will lose advertising revenues because some political campaigns cannot afford to purchase the more expensive non-news prime time.

This development, along with the pervasiveness of misleading and unbalanced campaign messages, has encouraged some news media to play an active role in "policing" the accuracy of political advertising. For example, efforts have been made to minimize the risk of viewers misconstruing campaign rhetoric for news. NBC is attempting to sandwich all political advertisements between other types of commercials, so that the paid political spot does not immediately precede or follow a news report. KTTV in Los Angeles accepts political ads only near the end of its newscasts, when feature stories rather than political news dominate the program.

Another policing device is the growing use by the media of "truth boxes." Prior to the 1990 elections, the media approached political advertising with a hands-off attitude. In its constant struggle to maintain a semblance of objectivity, the media refrained from judging the accuracy of campaign messages, relaying the messages from opposing campaigns and letting audiences fend for themselves.

Recently, however, some segments of the news media appear to have made a genuine advance in press coverage of politics. From California to Florida, newspapers, radio and television stations have begun to evaluate the accuracy of political advertisements. These "truth boxes" usually consist of point-by-point quotations from a commercial printed in a box, followed by factual background information and an evaluation of the truthfulness of the commercial's statements. Truth boxes vary in style from prudent understatement to wild subjectivity depending on the media. While most newspapers tend to shy away from labeling a statement an outright lie, the *Detroit Free Press* has gone so far as to condemn one gubernatorial ad as "more like a hardware store commercial than a spot touting someone to lead the state."[11]

Truth boxes originated in March 1990 when Keith Love, political reporter for the *Los Angeles Times,* persuaded the newspaper to critique political advertisements after watching the California Democratic primary campaign of gubernatorial candidate John Van de Kamp, which he thought included misleading attacks against Van de Kamp's opponent, Dianne Feinstein. The *San Francisco Chronicle, Sacramento Bee* and KRON-TV in San Francisco soon followed suit. Newspapers and television stations in Florida, Kansas, Kentucky, Georgia, Minnesota, New York, Texas and elsewhere quickly published their own truth boxes.

The practice of critiquing political advertisements is likely to spread. A poll of political reporters and news directors around the country conducted by People for the American Way found that 80% believe the media should play a more active role

10. Steve Weinstein, *Three Stations Lift Bans on Political Ads in Newscasts,* Los Angeles Times, Oct. 4, 1990.

11. *Quoted in* Thomas Rosenstiel, *Policing Political Ads,* Los Angeles Times, Oct. 4, 1990.

in exposing false or misleading advertising.[12] Already truth boxes have spread from candidate campaigns to initiative campaigns in California. With the ever-increasing financial significance of initiative campaigns, it seems highly likely that the media will expand its scrutiny of initiative advertising in other states as well.

C. The Use of Slate Mailers Grows

Although the concept of slate mailers is old, slate mailers matured in the early 1980s into a powerful form of paid political advertising—one that can easily be used to transmit deceptive messages. In its simplest form, a slate mailer consists of a mass mailing that endorses a full slate of candidates and ballot measures, usually under the rubric of a common partisan or ideological theme such as the "Democratic Voter Guide." Historically, political parties and other ideological organizations have prepared slates for distribution to their own members or to a targeted audience. Labor organizations, particularly the AFL-CIO, made extensive use of slate mailers to alert the union membership of candidates and issues that could affect labor's interests. Smaller political groups, such as the Sierra Club, have also distributed endorsement mailings within their memberships. In California and several other states, party organizations frequently sent mass slate mailings in primary and general elections to their respective declared party loyalists.[13]

Much has changed in the nature and integrity of slate mailers in recent years. Instead of serving as a means for a like-minded group to inform voters of candidates and ballot issues that are in harmony with the organization's political philosophy, slate mailers have become a profitable business in which endorsements are frequently sold to the highest bidder or given to popular candidates with or without their knowledge in order to reap the benefit of association. Slate mailer organizations today often are little more than a back office of a professional campaign firm using the slate mailer strategy on behalf of their paying clients.

1. Concept of Slate Mailers

In order to be persuasive, slate mailings should achieve four goals. First, they must recommend candidates and ballot measures that at least appear to possess some common bond, ideology, party affiliation, membership or other trait. Without a theme linking the candidates and recommendations together in some way that appeals to the recipient voter, the slate mailing will have little persuasive impact.

Second, slate mailers must include a few obvious choices of top candidates that immediately signal a bond with the target audience. A Democratic mailer, for instance, must have the party's endorsed senatorial and gubernatorial candidates at the top of the list to persuade voters that the remaining endorsed candidates and recommendations fall within the "Democratic Party camp." It is so important that a mailer have these top candidates leading the list that they are often endorsed by the mailing entity without the permission of the candidates themselves. A mailing

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12. *Id.*

13. The practice of party slate mailings in California's primary elections was ended in 1963 when state law prohibited party involvement in nomination contests. Cal. Elec. Code §11702 (West 1977). In a 1989 decision, the U.S. Supreme Court ruled that California's ban on party endorsements in primary elections constituted a violation of First Amendment free speech. The court reasoned: "By preventing a party's governing body from stating whether a candidate adheres to the party's tenets or whether party officials believe that the candidate is qualified for the position sought, the ban directly hampers the party's ability to spread its message and hamstrings voters seeking to inform themselves about the candidates and issues, and thereby burdens the core right to free political speech by a party and its members." Eu v. San Francisco County Democratic Central Comm., 109 S. Ct. 1013, 1015 (1989).

entity has a constitutional right of freedom of speech to endorse any candidate on its mailer, with or without the candidate's permission or even knowledge.

Third, mailers must offer endorsements for as many offices and ballot measures as possible. It is particularly important that a slate card provide recommendations for the lesser offices, such as judicial contests and ballot measures. These are the races in which voters need the most assistance in deciding how to cast their ballots. A mailer that provides this assistance is more likely to be carried into the polling booth and used as a voter's guide. Thus, slate cards will often resemble actual ballots and encourage voters to "TAKE THIS VOTER SLATE WITH YOU TO THE POLLS."

Fourth, a slate mailing entity attempts to secure early financial commitments from many of the endorsed candidates and ballot measure campaigns that are to appear on the mailer in order to defray costs or even to make a profit. Early financial commitments are useful to cover initial start-up costs and to establish the mailer's credibility in approaching other candidates and campaigns.

2. Charging for Placement on a Mailer

The process of deciding which candidates and campaigns to approach for placement on a mailer, how prominently to display each candidate and ballot proposition and what to charge for placement, are some of the most controversial aspects of slate mailings. Generally, slate operators have a specific political objective in mind when compiling their endorsements. A campaign management firm, for example, may be handling the campaigns of a candidate and a ballot proposition. The firm's primary objective is to get that candidate elected and the ballot measure approved. A slate mailer will be designed to display both the candidate's name and the "vote yes" on the initiative campaign in bold type and in a prominent location on the card. Endorsements of top candidates will be placed on the mailer at no charge.

Having identified all the candidates and proposition campaigns it wishes to include in the mailing to give it credibility, the firm then seeks contributions for placement on the mailer from other candidates and campaigns that more or less fall within the Democratic camp. Prices will vary depending on level of office, location and size of the endorsement on the mailer, the difficulty of the candidate's race, the campaign's available financial resources, past associations with the candidate, the relative desirability of the candidate, the amount of start-up funds already secured and numerous other factors.

This complicated pricing scheme gives slate operators almost complete discretion over the selection of their candidates and initiatives. As a result, slate mailer organizations may charge candidates for the same office (such as candidates for two or more congressional seats in the same area) different prices for inclusion in the mailer.

Most slate mail organizations conduct their activities well beyond the boundaries of any single locality or jurisdiction. In fact, highly profitable slate mailers will include endorsements for candidates and ballot measures ranging from city elections to state elections. Michael Berman and Carl D'Agostino of BAD Campaigns, Inc., for instance, will begin their mailer with endorsements for the top state offices, such as governor and U.S. Senate, and work their way down to endorsements for city council and municipal judges. Voters in different jurisdictions throughout the state receive the same basic mailer slightly revised to reflect the appropriate local contests.

Prices for inclusion on the BAD Campaigns slate mailer vary widely with the level of office sought. In 1990, for example, gubernatorial candidate Dianne Feinstein paid Berman and D'Agostino $660,000 for a prominent position on their

mailers; Gray Davis' endorsement for state controller cost $50,000; Harlan Hahn's campaign for Los Angeles County assessor paid $45,000; spots for local ballot measures in the City of Los Angeles ranged from $90,000 in price to $3,000; municipal judgeship candidate David Finkel paid $3,000; and Santa Monica School Board candidates Pam Brady and Michael Hill paid $1,000 and $500, respectively. Legislative and congressional candidates, some of whom were paying clients to the campaign consulting firm, were included in the mailer free of charge.

3. Integrity of Slate Mailers

Serious questions have arisen about the integrity of slate mailers, especially since the use of this form of paid advertising has become widespread. There is genuine concern that slate operators may simply be selling their endorsements to the highest bidder for contests in which the operator has little vested interest. The 1982 Berman/D'Agostino mailer offered itself as a "Democratic Voter's Guide." Yet it endorsed some Republican candidates who were prepared to pay more for a slot than their Democratic opponents. "There was a bidding war and I lost," complained Democratic judicial candidate Evan Anderson Braude, "even though I'm a Democrat and he's (Roy Carstairs) a registered Republican."[14]

Political consultant Merv Evans has put out his own slate card under the name "Californians Concerned About Crime." In at least one instance, Evans' preferred candidate for a judgeship position, Thomas Foye, refused to pay the asking price of $2,000, and so he sold the slate endorsement to competitor Elana Sullivan. "Yeah, Foye wouldn't pay the price, so I gave it to Sullivan," bluntly confirmed Evans.[15]

a. Ethical Questions

Some candidates have accused for-profit mailing firms of pressure tactics in the pricing of slate card slots. Richard Nevins, a 24-year Democratic incumbent on the board of equalization in 1982, charged that he was left off the Berman/D'Agostino June primary slate because he refused to pay the asking price of $40,000. His opponent, Saul Lankster, was put on the slate at no charge. The mailer helped Lankster—a relatively unknown contender—attract an impressive 33% of the vote and give Nevins a serious challenge. Los Angeles County Sheriff Sherman Block commented: "It's consistent with such individuals that if you don't meet their prices, they will go with someone for less or nothing, so as to teach you a lesson, so that next time you will deal with them and meet their price."[16] Berman and D'Agostino responded that they had put Lankster on the slate card in the board of equalization race because they believed that Nevins had become a "creature of special interests" during his tenure on the board.[17]

The payment-for-endorsement aspect of for-profit mailers raises several obvious ethical issues. First, slate operators tread a fine line between providing a meaningful source of information to voters with a common bond and providing support to anyone willing to pay for it. Second, and related to the first objection, many voters tend to assume that slate mailers are based to some extent on altruism and not commercial profit. Slate mailers convey the impression that they principally support a cause or a party, rather than being a profitable business enterprise concerned about particular clients. Third, an implicit atmosphere of coercion exists among many slate mailing operations. A slate mailer needs to recommend vote

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14. Gail Dianne Cox, *Commercial Slates Sell Endorsements in Judgeship Races*, Los Angeles Daily Journal, June 4, 1982.

15. *Id.*

16. Kenneth Reich, *Slate Endorsement 'Shakedown' Claimed*, Los Angeles Times, June 18, 1982.

17. *Id.*

choices for as many offices and ballot measures as possible in order to maximize its utility to voters. If a preferred candidate or ballot measure campaign declines to pay for inclusion in the mailer, operators are tempted to offer the endorsement to the competitor—who in all likelihood does not conform to the ideology or common bond of the mailer—for the purpose of filling slots and receiving funds for the slate card. Candidates and ballot measure campaigns may feel compelled to meet the asking price of a slate operator.

b. Implied Official Endorsements

One of the most serious objections to slate mailers is the deceptive impression in many cases that the mailer represents an official endorsement by a party or respected public official. Although not in violation with the law, it is evident that slate mailers are misleading to many voters who believe the mailers represent an official party endorsement. Many are carefully designed to appear as official party publications. The "top" names on a slate are selected to give the impression that the mailer represents a single partisan stance; the mailer is constructed in an official format, frequently as a sample ballot; the mailer is labeled with a partisan name; and the committee behind the operation always uses a pseudonym that sounds like an official party organ. Voters are deluged, for example, with for-profit slate mailers from the private consulting firm of Berman/D'Agostino that are labeled "Democratic Voter's Guide," compiled and distributed by BAD Campaigns and incorporated under the pseudonym of "Californians for Democratic Representation." The official Democratic Party symbol of a donkey is also plastered across the mailer, and well-recognized Democratic candidates for Governor and U.S. Senate are prominently displayed at the head of the ticket. Yet, the slate has no connection with the California Democratic Party.

The potential for slate deception can be particularly effective in low-level contests and ballot measures. One mailer sent out by Cerrell and Associates, a Democratic consulting firm, on behalf of a client running for a judicial position in conservative Orange County, featured the leading Republican candidates for national and state offices. The mailer prominently endorsed Ronald Reagan for president and other well-known Republicans for state offices—along with Cerrell's Democratic judicial candidate. Reagan and other top Republican endorsees neither paid for inclusion in the mailer nor authorized the use of their names in the mailer. Even though Cerrell's client was not a member of the Republican Party, Orange County voters who received the mailer assumed that Reagan and other Republicans had endorsed the unknown judicial candidate and that he was "one of them."[18]

4. Legal Constraints on Slate Mailers

Slate mail operators have substantial leeway in the conduct of their activities. Under protection of the First Amendment guarantee of freedom of speech, individuals, firms and businesses retain the right to endorse any candidate or any issue they please, without the consent of the campaign, and to publicize that endorsement through legally-acceptable means. Although certain disclosure requirements have been imposed on slate operators and their mailers, the courts have generally refrained from regulating the content of slate mailers or deceptive campaign practices.[19]

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18. Cerrell, a Democratic consultant, felt justified in associating his liberal judicial client with more conservative Republican figures. "Orange County was going to vote for those Republicans, anyway. Why not use those names to help my guy on the way?" Interview with Joseph Cerrell, President of Cerrell and Associates, in Los Angeles, California (Oct. 3, 1990).

19. California Republican Party v. Mercier, 652 F. Supp. 928 (1986). The United States District Court, in responding to a challenge by the California Republican Party against a slate card

Two very recent statutory controls over slate mail operations in California focus on disclosure. The first deals with the format of slate mail itself. Each mailer must, in large typeface, identify the group sending the literature, provide a notice that the group does not represent an official party organization and include a designation following each endorsed candidate or campaign showing (1) whether the campaign paid for the endorsement, and (2) whether the candidate or campaign has consented to the endorsement.[20]

The second requires slate mail organizations to file regular reports on their financial activities with the secretary of state. Financial reports must disclose payments of $100 or more received for endorsing candidates or committees on any slate mailer, the name of each candidate or committee endorsed free of charge and payments of $100 or more made by the slate mail organization for production and distribution of the mailer. Additionally, financial reports must state the total amount of contributions made and expenditures received by the organization.[21]

5. Persuading Voters

When slate mailers first came into popular use in the early 1980s, only a few slate mail organizations existed and they tried not to overlap their mailings. This monopolization of slate mailings considerably enhanced their persuasiveness to voters. Many voters were led into thinking that the mailers were official party endorsements and not profit-oriented enterprises.

Today, a multitude of organizations send overlapping slate mailers to voters. Voters frequently receive three or four slate mailers, all touting their link to the same political party or set of interests (environment, tax reduction), and yet they frequently endorse different or competing candidates or committees. Slate mailers could lose some effectiveness when two or more mailings present themselves as representing a similar party, such as a "Democratic voter's guide," but endorse opposing candidates. California's recent disclosure requirements may also help voters understand the profit-oriented nature of slate mailers.

D. Under Certain Conditions, Considerable Voter Information Can Come From Non-Paid Media

Although paid advertising is typically the dominant source of voter information on initiatives, especially for less controversial ballot measures, it is certainly not the only source. The news media and government-sponsored publications are important alternative sources of voter information which can even eclipse the "managed messages" of paid advertising.

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organization that misled many voters into believing the for-profit mailer was an official party publication, said: "Despite the Party's contentions to the contrary, this is not a case involving an interference with the right to vote. This is a case involving allegedly deceptive campaign tactics. The Party does not claim that any of its members were denied their right to cast their ballots. Rather, it claims that some of its members may have been persuaded to vote against their true interests, or at least to vote differently than they otherwise would have. This claim of deceptive and unfair campaigning is similar to the claim of disruptive heckling which *Scott* indicated should not be actionable in federal court. . . ." *Id.* at 937. In a footnote to the decision, the court added: "As *Mercier* points out, for the federal courts to start evaluating campaign materials for deceptiveness would raise concerns close to the heart of the First Amendment, and this is an additional reason to decline the Party's invitation to chart a course which would require the courts to conduct such evaluations." *Id.* at 937 n. 17.

20. Cal. Elec. Code §84305.5 (West Supp. 1990).

21. Cal. Gov't Code §84219 (West 1987).

1. What Is News?

The broadcast media generally do not place ballot measures high on their priority list of newsworthy items. Even though ballot propositions directly enact many of the most important laws and policies, the broadcast media view a thorough discussion of most propositions as unsalable. The media have far more exciting news items from which to choose.

Traditional wisdom has it that ballot measures stand even less chance of becoming news because they are pitted against more colorful candidate campaigns. The electronic media devote relatively little attention to ballot measures during the campaign season; candidate contests for the higher offices get most of the political news coverage. As Vigo "Chip" Nielsen, counsel to many candidates and initiative committees, has observed:

> *"It is a real fact that candidates get more coverage than ballot measures. These ballot measures are terribly complex. . . . If we have Jerry Brown running against . . . Pete Wilson, it's a much more exciting thing to talk to one or both of these people than to try to figure out what the lottery will really do if enacted. . . . I don't think there's much comparison on the quantity or quality."*[22]

This news emphasis on candidates rather than ballot measures may be changing somewhat. Some ballot propositions—almost always initiatives—have aroused such controversy and interest that only candidates for the highest offices have received more media attention in recent years. Nevertheless, enhanced media attention on some controversial initiatives should not obscure the fact that voters receive inadequate information through the media on most ballot propositions.

2. Impact of News on Election Outcomes

In some instances, a few underfunded initiative campaigns have defeated far wealthier opposing forces because the issue was sufficiently controversial to garner extensive news coverage. But these instances are unusual. It is important to realize that these "Cinderella stories" are made possible by a unique set of circumstances that simply do not apply in the vast majority of initiative campaigns. The media gatekeepers rarely view an initiative as "sexy" enough to warrant such extensive news coverage.

Measuring the impact of newscasts on voting behavior is a dubious art in the world of social science. The overarching problem is an assessment of causality. It is impossible to state definitively whether news content shapes voting behavior, or whether the attitudes and norms of the electorate shape news content. Moreover, a multitude of intervening variables in the social environment also shape voter attitudes and behavior in ways that are independent of news coverage.

Although some scholars argue that the news media strongly affect the electorate's political attitudes by literally telling the voter what to think, most believe that the influence of the press lies somewhere between "minimal" and "agenda-setting." The minimal effects theory contends that the news media generally do not change pre-existing political attitudes and beliefs; rather, they reinforce an individual's political orientation.[23] Individuals tend to pay more attention to the news messages with which they agree and less to those that conflict with their ideological predispositions.

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22. Vigo "Chip" Nielsen, *quoted in* A.D. Ertukel, *Debating Initiative Reform: A Summary of the Second Annual Symposium on Elections at The Center for the Study of Law and Politics,* 2 Journal of Law and Politics 322 (Fall 1985).

23. Political Attitudes and Public Opinion, at 173 (Dan Nimmo and Charles Bonjean, eds., 1972).

Another school of thought, not necessarily at odds with the minimal effects theory, is that the news media serve an agenda-setting function.[24] That is, the news media may not determine what we think, but they affect what we think *about.*[25] Under this view, the gatekeepers of news select those issues and candidates they feel are newsworthy, and they decide which aspects of these issues and candidates to cover in their newscasts.

This agenda-setting function of the news can be critical in some initiative elections. Because voters historically tend to reject initiatives they know little about, the amount of information they receive frequently can make a difference. Sometimes, for example, an initiative proposal can tap a public sentiment that had been previously unrecognized by the media. When that happens, the media's attention is focused on the issue, thereby setting the news agenda. A prime example is the current wave of term limit proposals sweeping the nation. This insurgency has awakened the press to a widespread anti-incumbency mood among the public. But when initiative proposals fail to tap some theme of public enthusiasm, the lack of news coverage is often fatal.[26] At that point, a sizable advertising budget becomes essential if the merits of the initiative are to be brought to the public's attention.

E. Press and Elite Endorsements Have an Important Impact on Public Opinion and Election Outcomes

Two distinct types of endorsements function as sources of voter information: press endorsements and elite endorsements. Press endorsements include television, radio and newspaper editorials. Elite endorsements encompass recommendations by community and political leaders, organizations and celebrities. Although evidence on the impact of endorsements on election outcomes is mixed, it appears that both press and elite endorsements occasionally influence vote choices under certain conditions.

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24. The concept of an agenda-setting function for the news media is frequently portrayed as opposed to the minimal effects theory. Scholars in communications tend to favor the agenda-setting function concept, which they depict as highlighting the importance of communication mediums in American society, while political scientists generally side with the notion of minimal effects, which they suggest enhances the importance of political factors in composing the nation's policy agenda. The central themes of each theory, however, are not necessarily exclusive. Minimal effects posits that the media are not likely to change an individual's ideological predispositions; agenda-setting agrees with the idea that the media do not tell us what to think on any given issue. Their point of departure is how extensively the media determine what we think *about,* quite apart from other political factors.

25. James Lemert, Does Mass Communication Change Public Opinion After All?, at 40-42 (1981).

26. Public opinion has occasionally forced the media to focus on candidates that have otherwise appeared to lack any chance of success. The television networks, for example, have often found themselves scrambling to shift their attention from one presumably "unbeatable" presidential candidate to a previously-ignored underdog in several of the presidential primary elections of the past two decades. In 1972, for example, George McGovern was scarcely mentioned as the press focused on Edmund Muskie up to the New Hampshire primary. In 1975, a CBS analysis of Democratic candidates failed even to mention the eventual winner, Jimmy Carter, and an ABC piece declared populist Oklahoma Senator Fred Harris the best organized candidate. In 1984, Gary Hart was dwarfed by media emphasis on Walter Mondale and John Glenn. At the beginning of that year, The Washington Post declared that Mondale had sealed the nomination, only to back pedal with a new look at Gary Hart after the early primaries. In February, Hart's press corps barely filled a small van. Two weeks later, 60 reporters trailed the candidate. Denise Kalette, *Week's Surge Brings Media on the Run,* USA Today, Mar. 6, 1984.

1. Press Endorsements

The impact of television and radio editorials on vote choice is much harder to measure and test than the impact of newspaper editorials. Television editorials are infrequent and the size of their audience uncertain. Consequently, research has focused on newspaper editorials, but the conclusions reached may be analogous to the electronic media. Undoubtedly, newspaper editorials had a greater impact prior to the rise of television. Nonetheless, newspaper editorials are read by those with a better education and a strong inclination to vote. Editorial cartoons are even more widely disseminated.

Scholarly studies indicate that press endorsements can shape voter attitudes. One early study in Ohio confirmed the significance of editorial endorsements by the *Toledo Blade* in securing voter approval for a poorly advertised local referendum.[27] Another established the value of marked ballots provided by newspapers for voters to take to the polls.[28]

Perhaps the most comprehensive research supporting the positive impact of newspaper editorial endorsements on ballot measures examined California voting behavior from 1948 through 1968.[29] A later study of California statewide initiative elections from 1970 through 1980 reached the same conclusions.[30] The research identified the direction editorial endorsements took on ballot propositions in various regions of the state, then compared voting results in those regions against average voting results statewide. If the bulk of newspapers in one region endorsed a "yes" vote on Proposition 1, and voters in that region supported Proposition 1 in a higher proportion than the statewide average, the studies assumed an apparent positive editorial impact on vote choice.

The 1948-1968 study found that voters agreed with their regional newspaper endorsements 80% of the time, finding that a substantial editorial impact on vote choice had occurred. The 1970-1980 study also found a positive correlation between editorial endorsements and vote choice but was more cautious in assuming the existence of a causal relationship. Although the author found that some editorial impact did occur, he concluded it was too difficult to measure; the relationship between editorial endorsements and vote choice may have reflected the newspapers' attempt to reflect, rather than lead, their market. Prudently, the author concluded an "apparent" but unmeasurable editorial impact exists.

An analysis of editorial endorsements for and against the competing campaign finance reform measures on California's June 1988 ballot (Propositions 68 and 73) suggests that press opinions played a limited role in that particular campaign. Across the state, 71% of the state's major newspapers endorsed Proposition 68 while 79% opposed Proposition 73. The voters, however, approved *both* measures but gave *more* votes to Proposition 73 than to its rival Proposition 68.

A 1990 survey of California voters conducted by Charlton Research Company found that 64% of respondents said that newspaper endorsements were not an important source of election information, while 35% felt that newspaper

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27. Reo Christiansen, *The Power of the Press: The Case of the "Toledo Blade,"* 3 Midwest Journal of Political Science, 229-240 (Aug. 1959).

28. Herbert Baus and William Ross, Politics Battle Plan, at 251 (1968).

29. James Gregg, California Newspaper Editorial Endorsements: Influence on Ballot Measures (1970).

30. Kenneth Rystrom, Measuring the Apparent Impact of Newspaper Endorsements in Statewide Elections in California, 1970-1980 (1984), unpublished Ph.D. dissertation (Department of Political Science) University of Southern California.

endorsements were important. Those surveyed found many other sources of information more useful: newspaper articles or analyses (73%), the voters' pamphlet (69%), television news stories (60%) and television advertisements (39%). Less useful than newspaper endorsements were public opinion polls (24%), radio advertisements (23%), endorsements by celebrities (13%) and billboards (9%).[31]

It thus appears that press editorials may exercise some influence on the vote for or against propositions, but only under limited conditions. Editorial endorsements are most effective when voters lack other cues, such as partisan issues, and when voters have few sources of information. Newspaper editorials probably have little, if any, effect on controversial measures which interest voters keenly.

2. Elite Endorsements

Community and political elites appear to have considerably greater impact on ballot initiative outcomes than press endorsements, although elite endorsements also have their limitations. Several times in California history an endorsement by a political elite has been instrumental in garnering voter approval for an initiative, even against well-financed opposition.

The significance of elite endorsements in affecting public opinion is well documented in both candidate and proposition elections. Political elites, as a group or as individuals, can help define the issues for voters in much the same way that political party endorsements do. An established individual, group or organization often symbolizes a particular political orientation to the voter, however ambiguous that orientation may be. Candidates and issue advocates alike place a high priority on assembling an appropriate list of elite endorsements to help them define the issues for voters. Thus, proponents of criminal justice reforms vigorously seek endorsements from police and law enforcement organizations to depict their measure as "anti-crime." Environmental proponents prize endorsements from the Sierra Club and the Natural Resources Defense Council to assure voters that their measures are indeed protective of the environment. Similarly, campaign committees seek endorsements from labor unions, chambers of commerce and other respected organizations in the community to help them define the intent and goals of their initiatives.

Voters are quite interested in who supports a measure and who opposes it, and they are significantly inclined to cast their ballots accordingly. This is particularly true when an issue is difficult to understand, there is an inadequate dissemination of information, or the choices are complicated by an unbalance in campaign advertising. For this reason, the public strongly supports the public disclosure of initiative sponsors and their major financial backers.

F. Until Recently, the FCC's Fairness Doctrine Has Helped Under-Funded Organizations Present Their Views

Broadcasting over the airwaves—whether in the form of paid advertising, news, or editorials—is the single greatest source of public information on social issues. Polls consistently report that three-quarters of all Americans cite television as their principal source of information.[32] The airwaves have long been deemed a public resource that may be licensed to, but not owned by, private broadcasters. The Federal Communications Commission (FCC) was established in 1934 to ensure that

31. Charlton Research Company, California Issues Study (Nov. 1990).

32. Tracy Westen and Beth Givens, The California Channel: A New Public Affairs Channel for the State, at 31 (1989).

radio (and later television) licensees operate in the "public interest" and in accordance with the management of a scarce and valuable resource.[33]

In 1949, the FCC articulated what became known as the "fairness doctrine," a regulation which required television and radio broadcasters to provide a reasonable amount of time for the discussion of "controversial issues of public importance."[34] Compliance with the fairness doctrine was to be enforced through complaints and licensing procedures. In 1963, the fairness doctrine was complemented by a new FCC ruling requiring broadcasters to cover both sides of controversial issues of public importance at the station's own expense if no spokesperson appeared able to pay for one side or the other.[35]

Fairness does not mean "equal time." It only requires broadcasters to present a sufficient amount of broadcast time to create a public dialogue. This might require that one side of an issue be given as much as one-third the amount of broadcast time provided to the opposing side or as little as one-tenth, depending on individual circumstances.[36] A number of factors are weighed in deciding what is fair, including the total amount of time allotted for the issue, the quality of broadcast time, the frequency of the broadcasts and the size of the audience reached.[37]

A unanimous U.S. Supreme Court ruling in 1969 upheld the fairness doctrine against First Amendment challenge, concluding that the public interest in having access to a wide and robust diversity of competing views on public questions was furthered by the doctrine.[38] Fairness may be achieved through news coverage, public affairs programming, spot announcements or even advertising time. The broadcaster is relatively free to choose which viewpoints need to be addressed, who will present them and the format of the presentation.[39] Broadcasters are obligated to seek out spokespersons of opposing viewpoints and provide free public affairs programming or spot announcements only if no responsible spokesperson can be found capable of paying for air time.

In 1987, the FCC repealed the fairness doctrine in the specific context of paid advertisements for a controversial issue (*i.e.*, nuclear power plants). The FCC concluded that the doctrine deterred rather than enhanced a diversity of views and was thus unconstitutional.[40] However, the FCC subsequently indicated that it had not yet decided whether to repeal the fairness doctrine *for ballot initiatives*.[41] Many California broadcast stations continued to observe the fairness doctrine by providing

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33. *See, e.g.,* Federal Communications Act of 1934, 47 U.S.C. §309(a) (1990).

34. 1949 Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949).

35. Cullman Broadcasting Co., 25 R.R. 895 (1963). This 1963 FCC ruling requiring broadcast stations to fulfill their fairness obligations, even at their own expense if necessary, became known as the "Cullman doctrine."

36. *See, e.g.,* Council for Employment and Economic Energy Use, 65 F.C.C.2d 26 (1977); National Broadcasting Co., 16 F.C.C.2d 956 (1969).

37. Fairness Doctrine and Public Interest Standards: Fairness Report Regarding Handling of Public Issues, 48 F.C.C.2d 1 (1974).

38. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

39. Generally, broadcasters attempt to select widely recognized spokespersons for the issue being addressed. FCC regulations merely state that broadcasters should select "genuine partisans who actually believe in what they are saying." Fairness Doctrine and Public Interest Standards, 48 F.C.C. 2d at 1283.

40. Syracuse Peace Council v. FCC, 2 F.C.C.R. 5043 (1987), *aff'd,* Syracuse Peace Council v. FCC, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied,* 110 S. Ct. 717 (1990).

41. Letter from Hon. Dennis Patrick, Chairman, Federal Communications Commission, to Hon. John Dingell, Chairman, House Committee on Energy and Commerce (Sept. 22, 1987).

free spot announcement time to ballot measure committees which were significantly outspent by their opponents in paid advertising. Recently, on January 6, 1992, the FCC repealed the fairness doctrine as it applied to ballot measures as well.[42] A number of organizations are appealing its decision to the courts.

1. Impact of the Fairness Doctrine in General

In reality, the fairness doctrine has had only a limited impact on broadcasting practices in general. The FCC has compelled broadcasters to cover only those issues "so critical or of such great public importance that it would be unreasonable for a licensee to ignore them completely."[43] In the entire history of the fairness doctrine, the FCC has only ruled once that a broadcaster had been irresponsible in ignoring a political issue altogether.[44] Licensees have had more or less unlimited discretion in choosing which issues to discuss.

The fairness doctrine has been used frequently to provide balanced coverage of candidates and initiatives, although it has not been enforced with any vigor by the FCC in the 1980s. In fact, broadcasters have rarely lost a license due to violations of the doctrine, even for repeated, gross violations of fairness.[45] There have been, however, frequent "reminders" of fairness obligations issued to broadcasters and numerous FCC investigations and negotiations with individual licensees to address fairness complaints. Occasionally, these investigations have secured costly corrective measures.

2. Application to Ballot Initiatives

Although the FCC has generally been lax in enforcing the fairness doctrine, the doctrine's most effective application had been for ballot initiative campaigns. Because ballot measures are inherently "controversial" and of "public importance," the FCC had said that broadcasters presenting one side must also address the other side. Moreover, if one side is presented via paid political commercials, the FCC concluded that it would be "unreasonable" for the broadcaster to present the opposing side in newscasts or discussion shows. Rather, the broadcaster must present the opposing side via *free* commercials, supplied to it by the opponents, if the opponents lack the resources or desire to pay for their own messages. As a result, in many elections where one side purchased millions of dollars of advertising to support or oppose an initiative, broadcasters have aired commercials for the other side *free*—usually at a ratio of one free ad for every three or four paid ads.

An analysis of the initiative process in Colorado by Media Access Project, however, found that both radio and television stations failed to provide a fair presentation of both sides of ballot issues. Proponents were badly outspent by opponents on the measures under study. Although broadcasters were glad to sell advertisement time to both sides, proponents could not afford the same quality spots purchased by opponents. Paid opposition messages were aired in the high-audience period of prime time, while poorly-financed initiative proponents were forced to purchase spots only during non-prime time hours. Additionally, the well-funded opposition forces placed many more advertisements on television and radio than proponents, frequently at a ratio of 10-to-1 or more. Only a few radio stations

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42. Arkansas AFL-CIO, ___ F.C.C.2d ___ (FCC 91-434) (Jan. 6, 1992).

43. *Fairness Doctrine and Public Interest Standards,* 48 F.C.C.2d at 1276.

44. The one case in which the FCC penalized a station for failing to cover an important political issue involved a plan for strip mining in a West Virginia community. Patsy Mink, 59 F.C.C.2d 987 (1976).

45. Thomas Cronin, Direct Democracy, at 121 (1989).

complied with the fairness doctrine and many of these offered free time at periods of the day when the potential audience was smaller.[46]

3. Significance of the FCC's Recent Repeal of the Fairness Doctrine

In 1987, the FCC concluded that the fairness doctrine had a chilling effect on political dialogue in the media, stifling debate rather than promoting the discussion of controversial ideas. It also concluded that licensed broadcast stations were sufficient in number to provide an adequate diversity of opinions and ideas on the airwaves without FCC regulation. It therefore repealed the fairness doctrine in most instances.[47]

The FCC's decision was issued in the context of paid advertising promoting a nuclear power plant and not in the context of a ballot initiative. Broadcasters and others were left in the dark as to whether the fairness doctrine had been repealed for ballot initiatives or not. In response to a letter of inquiry from Congressman John Dingell, Chairman of the House Committee on Energy and Commerce to the FCC, FCC Chairman Dennis Patrick stated that the Commission's 1987 fairness repeal was confined to the facts of that case and that it had not yet addressed the question whether the fairness doctrine applied to ballot initiatives.[48] The National Association of Broadcasters wrote to its member radio and television stations advising them that, in its view, fairness still applied to initiative campaigns.[49]

Broadcast stations in California split in interpreting this chain of events. Some, such as ABC affiliates, continued to honor the fairness doctrine for initiative campaigns and gave the under-funded side free advertising time. Other stations, such as CBS affiliates, concluded that the FCC would ultimately repeal fairness for initiative campaigns and refused to honor requests for free rebuttal time.

The result of this legal uncertainty was to increase the impact of money and one-sided information in initiative campaigns. Increasingly, supporters or opponents of ballot initiatives who lacked funding found it difficult to have their views aired through the electronic media. News programs already spend little time on ballot initiatives, and more and more stations refused to honor the free rebuttal time requirements of the fairness doctrine. Because application of the fairness doctrine in this area was unclear, the balance of views in many initiative campaigns began to suffer.

On January 6, 1992, the FCC released a new opinion in which it held explicitly, and for the first time, that it would no longer apply the fairness doctrine to ballot measures.[50] The Commission concluded that the fairness doctrine operated to "chill" broadcast speech by actually "reducing" the discussion of controversial issues via broadcasting. As a result of this opinion, and unless the fairness doctrine is reinstated by the FCC or the courts, the November 1992 California general election will be the first in which the power of paid advertising to influence political debate over the airways will be unchecked by the FCC's fairness doctrine. One-sided media advertising in initiative campaigns may become even more pronounced.

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46. Randy Mastro *et al., Taking the Initiative: Control of the Referendum Process Through Media Spending and What To Do About It,* 32 Fed. Comm. L. J. 315-369 (1980).

47. Syracuse Peace Council, *supra* note 40.

48. Letter from Hon. Dennis Patrick, *supra* note 41.

49. Nat'l Ass'n of Broadcasters, Legislative Issue Papers, paper presented to the 1988 State Leadership Conference (Feb. 1988), at 13.

50. Arkansas AFL-CIO, *supra* note 42.

G. Initiative Disclosure Laws Are Similar from Jurisdiction to Jurisdiction

The Political Reform Act of 1974 enacted a number of provisions governing campaigns for both candidates and ballot measures. One of the more important set of regulations concerns campaign finance disclosure. These disclosure rules apply to all campaigns in state as well as local jurisdictions.

Campaign committees that raise or spend $1,000 or more in support of or opposition to a ballot measure must file three campaign finance reports. These reports must disclose the names, addresses and occupations of all persons contributing $100 or more. The first report is a preelection disclosure covering the period up to 45 days before the election. The second report covers the period 44 days through 17 days before the election and must be filed 12 days prior to the election. The final report is a post-election disclosure that includes the last 17 days of the campaign and 58 days following the election. The Act also prohibits anonymous or cash payments of $100 or more.[51]

Unlike many general law requirements, the Political Reform Act allows local jurisdictions with or without a charter to enact stricter standards if so desired.[52] Only a few municipalities in the Los Angeles area have opted for stricter rules governing campaign finance disclosure of *ballot measures*; many more impose tougher standards for local *candidate* campaigns.[53] Agoura Hills has the most stringent reporting standards for ballot measures, requiring all contributions of $10 or more to be reported and prohibiting any cash contributions in excess of $9.99.[54]

1. Identification of Advertising Sponsors

Federal and state laws, along with several municipal ordinances, require that sponsors of paid advertisements be identified in the ads. In California, this disclosure requirement applies to all forms of political advertising from broadcast time to printed matter.

Disclosure laws requiring the identification of advertising sponsors have come under constitutional challenge in several states. Illinois and North Dakota previously had such a requirement apply to initiatives, but state courts found their rules unconstitutional.[55] Neither state imposed any burden greater than the disclosure laws in other states. Instead, the courts in Illinois and North Dakota extended the reasoning of a 1960 U.S. Supreme Court ruling that forbade jurisdictions from barring distribution of "any handbill in any place under any circumstances" that did not provide the names and addresses of the sponsors.

In *Talley v. California,* the U.S. Supreme Court struck down a Los Angeles ordinance that required all political handbills to have an identification statement of the person responsible for distribution.[56] The Court argued that such disclosure

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51. Political Reform Act, Cal. Gov't Code, §81000 *et seq.*, Local Initiative: A Study of the Use of Municipal Initiatives in the San Francisco Bay Area, 12 (Coro Foundation, 1984).

52. Cal. Gov't Code, §81009.5 (West Supp. 1992).

53. Several cities have established tougher reporting standards than state law for local candidate campaigns. For a full discussion of local candidate campaign finance laws in California, see California Commission on Campaign Financing, Money and Politics in the Golden State (Center for Responsive Government, 1989).

54. Agoura Hills Municipal Code, Art. II, Ch. 10, §21004 (1989).

55. People v. White, 116 Ill. 2d 171 (1985); State v. North Dakota Education Ass'n, 262 N.W.2d 731 (1978).

56. Talley v. California, 362 U.S. 60 (1960).

could have a chilling effect on free speech, especially political speech that may be controversial or unpopular. The justices noted that before the Revolutionary War ". . . colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. . . . Even the Federalist Papers, written in favor of adoption of our constitution, were published under fictitious names."[57] Numerous court cases have voided disclosure laws on free speech grounds in California, Louisiana, Massachusetts, New York and Oklahoma, while still others have upheld the constitutionality of an identification requirement for paid political advertising as serving a "compelling state interest" to inform the public.[58]

2. True Sponsorship and Proposition 105

Apart from the constitutional question, another problem is the obfuscation of the true identities of sponsors through misleading committee names. Disclosing that a given advertisement was paid for by the "Committee for Good Government," for example, provides no clue as to the underlying financial interests.

Both California and Montana have developed regulatory schemes that seek to identify true sponsorship in political advertisements, although California's law (enacted by Proposition 105) has since been invalidated by the courts. Montana's disclosure law requires that political committees use names that connote the economic interest behind the committee or the common employer of the majority of its contributors.[59] This name is then posted on any paid advertisements.

In 1988, California voters approved the most comprehensive advertisement disclosure act to date (Proposition 105), but the law dealt with far more than disclosure of advertising sponsorship in initiative campaigns. The measure also required corporations to disclose business activities in South Africa; advertisements for household toxic chemicals would have to provide information on the safe disposal of these products; and nursing home contracts and advertisements would have to disclose the number and nature of citations received for health and safety violations. Proposition 105 was invalidated in its entirety by the courts for violation of the single-subject rule.[60]

Perhaps the most important provision of Proposition 105 was the disclosure requirement regarding advertisements for and against initiatives. Any advertisement authorized by a committee had to include a statement disclosing the industry, individual, corporation or labor union funding the ad. Major funding sources for an advertisement had to be disclosed according to the following criteria:

- *Industry.* Any industry which is both the largest contributor to the committee responsible for the advertisement, and whose combined contributions to the committee amount to $500,000 or more (or $50,000 or more which constitutes at least 25% of all committee contributions).
- *Individual or Other Group.* Any person whose contributions to the committee are $100,000 or more and who is the largest contributor.

57. *Id.* at 65.

58. Philip Dubois and Floyd Feeney, Improving the Initiative Process: Options for Change, A Report to the California Policy Seminar (Feb. 5, 1991) at 31-32.

59. Mont. Code Ann. §13-27-210 (1989).

60. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).

- *Corporations or Labor Unions.* Corporations or labor unions as a group when their combined contributions to the committee amount to $100,000 or more and constitute at least 50% of all contributions.
- *Out-of-State Sources.* Out-of-state sources of funding as a group when their combined contributions amount to at least $100,000 and constitute 50% or more of all contributions to the committee.
- *Two or More Funding Sources.* If there were more than two major funding sources for an advertisement according to the above criteria, the committee was required to disclose the first two applicable sources in the following order: industries, individuals, corporations and labor unions, and out-of-state contributors. The committee was required to disclose only one funding source if the broadcast advertisement was 25 seconds or less or the published advertisement was less than 25 square inches. The disclosure requirement only applied to advertisements the contents of which were more than 50% devoted to one initiative.[61]

H. The Commission Recommends Enhanced Voter Information Through Improved Disclosure

The quality of voter information needs to be improved. This can be achieved by enhancing the quality of paid and non-paid voter information, which would thereby enrich the electorate's ability to evaluate the accuracy of campaign messages. Voter information through paid advertising can be improved through better disclosure of sponsorship. Voters want and have a right to know who is paying for an initiative campaign. Voter information from non-paid sources can be improved by encouraging the news media and broadcasters to provide fair coverage of both sides of pressing election issues.

1. Optimizing Sponsorship Disclosures in Political Advertising

The Commission recommends that provisions of Proposition 105, which required the disclosure of funding sources behind political advertisements, be reinstated at both the state and local levels, minus the provision that exempts multiple-issue advertisements. Proposition 105 established disclosure triggering thresholds of contributions from different sources ranging from $50,000 to $100,000 for statewide campaigns; local governments should establish their own triggering thresholds for disclosure which could range anywhere between $10,000 and $50,000 depending on the size of their jurisdictions. Each advertisement for or against a ballot measure should identify the two top funding sources for the committee responsible for the ad. The identity of the ad's sponsors must be clearly audible in broadcast and clearly legible in print. Ad sponsors should be identified in such a way as to indicate true sponsorship, such as the principal industry behind the bulk of campaign contributions.

In past elections, organizations funding one side or other of a ballot measure campaign could create innocuous sounding campaign committees to sign their media advertising. "Taxpayers for Common Sense," for example, was the committee

61. This last provision exempting disclosure of funding sources for paid political advertisements devoted to two or more initiatives was abused extensively in California's November 1990 elections. Proposition 105 apparently was drafted before the growing role of competing and counter-initiatives was clearly understood. The loophole was used by state legislators, for example, who organized a campaign against *two* legislative term limits proposals (Propositions 131 and 140). Because their ads opposed both measures, they were not devoted more than 50% to either one. As a result, the legislators (David Roberti and Willie Brown) were able to conceal their opposition to these measures.

name chosen by the alcohol industry to present its opposition to Proposition 134 (the alcohol tax) on the November 1990 ballot. "No on 128—The Hayden Initiative," was the name chosen by various industry groups to oppose the sweeping environmental initiative ("Big Green") on the same ballot. Under the provisions of Proposition 105 which were in effect for that election, however, paid opposition advertisements were required to make the following disclosures:

> *"Paid for by 'Taxpayers for Common Sense,' with major funding from the Beer Institute and industry, the Wine Institute and the Distilled Spirits Council, a committee against Proposition 134."*
>
> *"Paid for by 'No on 128—The Hayden Initiative,' with major funding from chemical and allied products industries, Chevron, Monsanto and Arco."*

The Commission believes that disclosures like these would better identify the funders of media advertising in future campaigns and provide the voters with relevant information to assist them in casting their ballots.

Court rulings adverse to disclosure have generally emanated from states in which exorbitantly unbalanced campaign spending is not a common occurrence. Spending and contribution patterns in California's initiative campaigns highlight the compelling state interest in campaign finance disclosure for any state with a comparably "mature" initiative process. In all probability, any constitutional challenges in California against disclosure of the sponsors behind campaign advertisements would be rejected by the courts.

2. Improving Disclosures on Slate Mailings

The Commission believes that disclosures on slate mailers must be significantly improved to identify more clearly the nature of the mailing, its sponsor and whether candidates and ballot measure committees promoted by the mailer paid for, *and authorized,* the endorsement. Today, as this study reveals, slate mailers are often characterized by concealment of critical facts so that voters are badly confused.

Currently, each mailer must disclose the name of the group sending the literature, contain a notice where relevant that the group does not represent an official party organization and indicate whether each endorsed campaign paid for and consented to the endorsement. These disclosures, however, tend to be well hidden in footnotes and made all the more obscure by deceptive titles to the direct mail literature, such as "YOUR DEMOCRATIC BALLOT GUIDE," displayed prominently in large type on the cover of the mailer.

It is difficult to curtail such deceptive labeling without treading on First Amendment rights. Nevertheless, slate mailer disclosure requirements could be appreciably enhanced by localities using some of the "true sponsorship" standards formerly contained in Proposition 105 (but which were not applied to slate mailers). Instead of allowing a for-profit campaign management firm, for example, simply to call itself by the misleading name of "Californians for Democratic Representation" on a mailer, the true name of the sponsoring firm should be clearly labeled as employed by specific candidates and/or ballot measure committees. The disclaimer notice that the mailer is not sponsored by an official party organization should be displayed near the title or cover of each piece of literature included in the mailer.

Similarly, notice of whether the candidate or committee paid for or authorized the endorsement must be given greater emphasis than the current hard-to-find footnote. In the case of candidates endorsed by the mailer, notice of whether the candidate paid for inclusion in the mailer or authorized the endorsement should appear in clearly legible print *side-by-side with each endorsement.* In the case of

ballot measures endorsed by the mailer, a notice should be printed side-by-side stating whether the ballot measure committee paid for inclusion in the mailer and, if so, listing the two top contributors to the committee according to "true sponsorship." For example, a "Vote 'No' on Prop. O" (1988 anti-oil drilling measure) endorsement on a hypothetical slate mailer paid for by the opposition campaign committee might be accompanied by a notice stating: "Paid for by the oil and gasoline industries."

3. Enhancing Disclosure of Last-Minute Contributions

The Commission recommends that local jurisdictions toughen disclosure standards by requiring all "late" contribution filings (listing donations of $1,000 or more made within the last two weeks before the election) include a running total of how much the donor has given to the campaign for the entire period. Under current general law, a campaign receiving a late contribution has to disclose it within 24 hours of its receipt. A telegram or overnight mail delivery is required. The campaign, however, is only required to disclose the amount of that particular contribution. Anyone wanting to know how much the listed donors have given in total contributions to the campaign has to add all the late contributions plus the amounts listed in the last regular campaign statement. Requiring the campaign to cumulate all contributions made by late donors will not be unnecessarily burdensome to the filer but will provide useful information to the press and others reading the filings.

4. Encouraging Responsible Journalism

The Commission hopes that its findings will encourage journalists and the news media to participate actively in providing voters with accurate and useful information. The press should not merely serve as a conduit for high-financed campaigns to distribute false or one-sided election information. Critical reports of inaccuracy in campaign advertisements, such as truth boxes, are a great service for a better-informed electorate. Additionally, broadcasters should make every reasonable effort to voluntarily keep the "fairness doctrine" alive in practice.

The news media are the primary source of election information used by voters. Television, radio and newspapers have a tremendous impact on voter information and election outcomes. It is important in the Commission's judgment that the press rightfully accept an obligation to the public to provide voters reasonable access to balanced and accurate election information.

Century Communications, a television cable company located in Los Angeles, has developed a new format which illustrates ways in which information can successfully be transmitted to voters by television. In 1990, Century aired five separate programs, usually an hour long, on the statewide ballot measures and another five shows on local ballot measures. Each program, hosted by Century Communications' Bill Rosendahl, featured proponents and opponents debating the merits of the measure. The shows began with Rosendahl reading the title and summary of the proposition which had been prepared by the attorney general. In some instances, Rosendahl would air the television ads which had been prepared for each measure and then have the participants discuss the truth of the ads. The programs usually debated the propositions which competed with each other. One show, for example, discussed the reapportionment initiatives, Propositions 118 and 119; another the environmental measures, Propositions 128, 130, 135 and 138. Each program was aired approximately 10 times by Century and offered to other cable companies throughout the state.

I. The Commission Believes Some Proposed Reforms to Be Beyond the Reach of State and Local Government Jurisdiction and Does Not Recommend Others

In the area of the news media and voter information, government policy can easily overstep useful bounds. Government should tread very cautiously when curtailing or regulating speech. If government actions are not likely to produce clearly positive results, the infringement should be avoided. The following potential recommendations to enhance voter information are either beyond the jurisdiction of the California legislature or local government to implement or do not appear sufficiently constructive for the Commission to recommend.

1. Reestablishing the "Fairness Doctrine"

The Commission strongly favors reinstatement of the fairness doctrine as applied to initiative campaigns and urges the federal government to reaffirm the mandatory application of the fairness doctrine to *all* broadcasters in initiative campaigns. California ballot initiative campaigns are frequently characterized by enormously one-sided media advertising battles, in which one side spends tens of millions of dollars on radio and television messages while the other side is able to spend virtually nothing.

Until now, gross disparities in spending have been partially ameliorated by the FCC's fairness doctrine. California voters have been exposed to *both sides* of controversial and extremely important issues instead of only the side which possesses the most money. The FCC's recent repeal of the fairness doctrine, however, will most probably result in the reappearance of gross spending differentials in future elections. The Commission therefore recommends that the federal government seriously consider reinstating the fairness doctrine, or some reasonable equivalent, as it applies to ballot measures. However, since it is beyond state jurisdiction, the Commission cannot offer a policy recommendation for a California remedy in this area. The fairness doctrine and the regulation of broadcast time remains the sole domain of Congress and the FCC.

2. Creating Truth-in-Advertising Regulations for Campaigns

Some jurisdictions have established laws prohibiting deliberately false statements in advertisements for and against initiatives. The problems in defining what is false and what is true—let alone determining whether the dissemination of "false" information was deliberate—render such laws of little use and give them a dangerous potential for abuse. Courts generally have taken a narrow view in the application of these restrictions and, consequently, few legal actions contesting false statements and deceptive advertising have arisen. It is believed preferable, rather than relying on explicit legal sanctions in this area, to leave questions of truth to the free market of ideas—in the debate among proponents, opponents, the press and the public.

Campaigns also occasionally draft deceptive unofficial titles for their initiatives that belie the real objectives of their proposal or give the campaign committee a name that disguises sponsors' identities. The Commission concluded that the practical and constitutional problems involved in attempting to prohibit deceptive initiative titles and committee names are too formidable. Unofficial titles are rarely adopted by the attorney general in titling an initiative for the petition and the ballot, and any proposed remedial action would thus provide little benefit. Misleading campaign committee names are best dealt with through frequent disclosure of the campaign's principal contributors and the "true sponsorship" recommendation given above for initiative petitions and campaign advertisements.

J. Conclusion

Voters rely heavily on election information received from the news media and campaign advertisements in deciding how to vote, especially for ballot propositions in which many of the traditional voting cues frequently are not available. Political advertising in today's media market is exorbitantly expensive, giving well-financed special interest groups an important advantage in dominating the election information transmitted to voters. The accentuated importance of political advertising in local initiative campaigns has contributed to the proliferation of professional campaign services that strive to "manage" election information for their own benefit. While the news media has recently developed some novel means of scrutinizing the accuracy of campaign messages, it has begun to shy away from providing a well-rounded discussion of election issues.

The Commission strongly encourages the media to uphold its obligation of facilitating dialogue on public policy and initiative proposals. The federal government could assist by clarifying the application of the fairness doctrine to initiative campaigns. In the meantime, local jurisdictions can play a useful role in nurturing the quality of voter information by mandating the greater disclosure of the sponsors of political advertisements in initiative campaigns.

CHAPTER 7

The Ballot Pamphlet and Voter Information

"The officials who administer California elections, such as the county clerks, say quite proudly, 'We have the best informed voters in the world.' The reason, they say, is the voter handbook mailed to everybody in California in advance of the election. It has fifty or sixty pages of absolutely impenetrable prose."

— Prof. Raymond Wolfinger, 1979[1]

Wise policy decisions require useful and accurate information. When that information is inadequate or distorted, the quality of decisionmaking suffers. These lessons are often cited in debates over the desirability of ballot initiatives as instrumentalities of self-government.

Critics of the initiative process question the wisdom of adopting public policies through ballot measures. They argue that voters have neither the time nor the interest to understand fully the wide range of complicated issues often involved, and certainly not when compared to full-time representatives who ideally spend their working lives analyzing and debating political questions. However, much the same criticism can be leveled against representatives. With the number of issues before them, even representatives often do not have the time or interest to understand many of the complicated bills which pass the legislative bodies.[2]

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1. *Quoted in* The Referendum Device, at 63 (Austin Ranney, ed. 1981).

2. Daniel Weintraub, *Legislators Throw Out the Textbook in Last-Minute Frenzy,* Los Angeles Times, Sept. 15, 1989.

Defenders of the initiative process argue that it does not attempt to impose full-time legislative responsibilities on the electorate. Voters are not asked to weigh the merits of all legislative proposals. They are only asked to examine the pros and cons of a few measures each election—many of which raise issues already of central concern to them. The electorate is able to judge between good or bad initiatives, just as it is able to judge between good or bad representatives. What voters principally need is easily available and useful information to use in making these judgments.

Both critics and defenders agree that useful and adequate voter information is an essential component in the initiative process. Voters draw on three primary sources of voter information in making initiative decisions: the ballot pamphlet and other sources of government-sponsored information, general news media coverage and paid political advertising. This chapter focuses on California's local ballot pamphlets—their structure, design and official wording—along with other sources of government-sponsored information. (See Chapter 6, "News Coverage and Paid Advertising," for a discussion of privately-sponsored sources of voter information.)

A. Captions and Summaries on Local Initiative Petitions Are Important Early Sources of Voter Information

Every local jurisdiction with an initiative system provides for the distribution of some voter information regarding the initiatives. The first information prepared by government officials which is seen by the voters are the captions and summaries on initiative petitions as they are circulated for signatures.[3] All localities require that proposals receive an official caption and brief summary from the county counsel or city attorney which are placed at the top of the initiative petition prior to circulation. The purpose of the official caption and summary is to offer potential signators a brief and impartial description of the measure and thus to minimize deceit and confusion.

1. Procedures for Titling in California's Localities

Procedures for writing official descriptions for initiatives are uniform among all cities and counties in the state of California. Before circulating an initiative petition in any city or county, proponents must first file a notice of intention with the city or county clerk along with a written text of the proposal. If so desired, proponents may also submit a statement of 500 words or less explaining the reasons behind the proposed initiative. This statement sometimes helps clarify the measure for local officials preparing the official description and is used in subsequent notifications of intent to circulate in newspaper publications.

The clerk then forwards these materials to the city attorney or county counsel, respectively. Within 15 days, the attorney or counsel is required to provide an official caption and summary of the measure that gives a "true and impartial statement of the purpose of the proposed measure" in 500 words or less.[4] This official description serves as both the *petition* caption and summary and, if the petition drive successfully qualifies the measure for the ballot, the *ballot* caption and summary. Proponents are permitted expedited court review to any objections with the official description that may be pursued either prior to petition circulation or prior to ballot qualification.[5]

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3. In many states, including California, the official caption and brief summary of an initiative prepared by government officials are collectively known as the "official title." Other states use the word "title" to designate only the caption to an initiative. This chapter uses the terms "caption" and "summary" instead of the less specific term "title."

4. Cal. Elec. Code §§3702.5, 4002.5 (West Supp. 1992).

5. Cal. Elec. Code §§3702.7, 4002.7 (West Supp. 1992).

Once the proponents receive the official initiative description, but before they begin petition circulation, a notice of intention as well as the official description of the measure must be published or posted in public places. The notice of intention and description must be published at least once in a newspaper of general circulation throughout the jurisdiction. If newspapers are available to only a portion of readers in the jurisdiction, then the notice and description must be published once in the newspaper and posted in three public locations. If no newspaper exists, the notice and description must be posted in at least three public locations.[6] (The Commission recommends that this requirement be eliminated.) See discussion in Chapter 6, "New Coverage and Paid Advertising."

Los Angeles City imposes additional informational requirements on petition format. The petition must be printed in both English and a minority language if more than 5% of the voting age citizens in the city are members of that minority language group and that the English illiteracy rate of the group is above the national average (currently at 2.7%).[7]

Only one minority language group in Los Angeles meets these requirements. Spanish-speaking Americans account for 12.5% of the city's population with an English illiteracy rate of 8.4%. American Indian and Asian American populations do not meet the noted population and illiteracy tests using the 1990 census data.[8] Consequently, initiative petitions in Los Angeles must be presented to voters in both English and Spanish.

2. Drafting Official Descriptions at the State Level in California

Responsibility for drafting the captions and summaries for initiative petitions prior to circulation in California rests with the attorney general. The statutory guidelines for these descriptions are few and vague. They provide only that the caption and summary must not exceed a total of 100 words and should include "the chief purpose and points of the proposed measure."[9] If the attorney general determines that enactment of a measure would affect revenues or expenditures of state or local governments, the department of finance and joint legislative budget committee, in consultation with the legislative analyst, must prepare a fiscal impact analysis to be included in the circulation summary.[10] In actuality, some staff in the three offices overlap, since the legislative analyst is a member of the joint budget committee. Thus, fiscal impact analyses are usually prepared by the same staff. All initiative petitions must include the circulation caption, summary and fiscal analysis. No further guidelines are set forth, leaving the details largely to the discretion of the attorney general's office.[11]

The attorney general is also in charge of drafting the official caption and summary that appear in the voters' pamphlet and on the ballot for qualified initiatives. The only statutory guideline offered at this stage is that the ballot caption and summary should not exceed 100 words and that it should "give a true and

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6. Cal. Elec. Code §§3703, 4003 (West Supp. 1992).

7. Los Angeles City Elec. Code §334.

8. For purposes of Los Angeles election procedures, "illiteracy" is defined as failure to complete the fifth grade.

9. Cal. Elec. Code §3502 (West Supp. 1990).

10. Cal. Elec. Code §3504 (West 1977).

11. Different attorneys general have different styles of writing. George Deukmejian's style of writing, when he was attorney general, tended to employ very brief statements of the general topic. Deukmejian was the attorney general who labeled an anti-rent control initiative as "Rent Control." His successor, John Van de Kamp, favored more descriptive captions and summaries.

impartial statement of the purpose of the measure. . . ."[12] The ballot caption and summary may or may not be the same as in the circulation petition or the ballot pamphlet.

While state law presently provides for no expedited court review of the caption and summary during the circulation phase, expedited review is available when these appear in the official voters' pamphlet. As discussed below, a preliminary draft of the voters' pamphlet is open to public review before it is finalized. Any voter is given 20 days to seek court-ordered changes of any part of the pamphlet, including the measure's official caption and summary, directly from the superior court in Sacramento County.

3. Procedures for Titling of State Initiative Petitions Across the Nation

Oddly enough, procedures for preparing official descriptions of initiatives at the state level tend to be less well developed than at the local level. Depending on the state, such as California, official descriptions may not be the same for the circulation petition and for the ballot. Oftentimes, states provide no expedited court review for proponents to challenge inaccuracies in official descriptions—or, as in California, provide for such challenges only late in the circulation process.

Procedures for initiative descriptions at the petition stage tend to vary widely from state to state (see Table 7.1). Captions, summaries and fiscal analyses are usually drafted by a specified governmental office, and the format of the petition is standardized by the secretary of state. Requirements for captions and summaries range from the lax standards of Florida, where initiative proponents write their own captions and summaries and petitions are viewed as "political advertisements,"[13] to the elaborate procedures of Montana, where a committee of two proponents, two opponents and the attorney general writes the caption and summary. About one-third of the states at this early stage in the initiative process allow sponsors to seek expedited court review to resolve disputes over the wording of the official petition caption or summary.

The language of an initiative's caption and summary is particularly important following ballot qualification. In California, the caption and summary usually become the initiative's official description in the voters' pamphlet and on the ballot. The caption and summary may be rewritten for the ballot but the original version is almost always used. Every initiative state provides some form of administrative review of the language of the official ballot caption and summary although procedures from state to state vary. Administrative involvement in the preparation of ballot descriptions ranges from approval of proponents' suggestions, as in Florida, to the complete writing of the caption, summary and even text of a measure, as in Washington, D.C.[14] (see Table 7.2).

Although proponents have a right to demand that the official caption and summary be presented in an unbiased fashion, many states fail to take adequate precautionary steps to ensure that administrative interpretations reflect the intent of

12. Cal. Elec. Code §3531 (West 1977).

13. Rule 1C-7.009(6), Florida Dept. of State.

14. The Board of Elections and Ethics in the District of Columbia prepares the official title and summary for an initiative proposal prior to the circulation period. This circulation title and summary remain the official ballot title and summary if the initiative qualifies for the ballot. The board is vested with the authority to redraft an initiative proposal into proper legislative form if deemed necessary. However, the board rarely has found need to redraft a proposal. Instead, proponents are given guidelines as to the proper form before submission of their proposal, which usually are followed satisfactorily. Telephone interview with Kathy Williams, Staff Paralegal, Board of Elections and Ethics, District of Columbia (May 17, 1990).

an initiative proposal. Instead, state statutes often use vague and subjective standards to govern administrative actions. For example, Massachusetts states that the attorney general's office shall issue a "fair" caption and summary,[15] but it neglects to give proponents or opponents a convenient and economical means to contest the official description. Only about half the states have established expedited avenues for judicial or administrative challenges to the official wording.

Table 7.1

STATE PROVISIONS FOR PETITION CIRCULATION CAPTIONS AND SUMMARIES

State	*Caption and Summary Procedures*	*Expedited Review*
Alaska	Proponent writes caption and summary, subject to approval by Lt. Governor	Superior Court
Arizona	Proponent writes caption; no summary	No
Arkansas	Proponent proposes caption and summary subject to approval by Attorney General	Supreme Court
California	Attorney General writes caption and summary	No
Colorado	Drafting board prepares caption and summary in conduct of public hearings with input from proponent	Re-Hearing; Supreme Court
Florida	Proponent writes caption and summary	No
Idaho	Attorney General writes caption and summary	Supreme Court
Illinois	Proponent writes caption and summary, subject to approval by Board of Elections	No
Maine	Ballot question written by Secretary of State; no summary	No
Massachusetts	Proponent writes caption, Secretary of Commonwealth writes summary, subject to approval of Attorney General	No
Michigan	No caption, proponent writes summary	No
Missouri	No caption or summary	No
Montana	Committee of two proponents, two opponents, and Attorney General writes caption and summary	District Court
Nebraska	No caption; proponents write summary	No
Nevada	No caption or summary	No
North Dakota	No caption; summary drafted by Secretary of State, approved by Attorney General	No
Ohio	Proponents write caption and summary, subject to approval by Attorney General	No
Oklahoma	No caption; proponent writes summary	No
Oregon	Attorney General writes caption and summary after receiving public comments	Supreme Court
South Dakota	Format determined by State Board of Elections	No
Utah	No caption or summary	No
Washington	Attorney General writes caption and summary	Superior Court
Wash., D.C.	Board of Elections writes caption, summary and measure	Yes
Wyoming	No caption; Secretary of State writes summary	District Court

Source: California Commission on Campaign Financing Data Analysis

15. Massachusetts statutes declare: "Any such question shall be accompanied by a fair, concise summary prepared by the attorney general. . . ." Mass. Gen. Laws Ann. ch. 54, §53 (1988).

Table 7.2

STATE PROVISIONS FOR OFFICIAL BALLOT CAPTIONS AND SUMMARIES

State	*Caption and Summary Procedures*	*Expedited Review*
Alaska	Written by Attorney General; proponent may negotiate wording with Lt. Governor	Yes
Arizona	Proponent writes caption, Secretary of State drafts summary, subject to approval by Attorney General	No
Arkansas	Proponent proposes caption and summary, subject to approval by Attorney General	Yes
California	Attorney General writes caption and summary	Yes
Colorado	Drafting Board prepares caption and summary In conduct of public hearings, with input from proponent	Yes
Florida	Proponent writes caption and summary, subject to approval by Secretary of State	No
Idaho	Attorney General writes caption and summary	Yes
Illinois	Proponent write caption and summary, subject to approval by Board of Elections	No
Maine	Ballot question and summary written by Secretary of State	No
Massachusetts	Secretary of State writes caption and summary, subject to approval by Attorney General	No
Michigan	No caption; Board of State Canvassers writes summary	Yes
Missouri	No caption; Attorney General writes summary	Yes
Montana	Committee of two proponents, two opponents, and Attorney General write caption and summary	Yes
Nebraska	Attorney General writes caption and summary	Yes
Nevada	No caption; Secretary of State writes summary, subject to approval by the Nevada Legislative Commission	No
North Dakota	No caption; summary drafted by Secretary of State, subject to approval by Attorney General	No
Ohio	Proponent writes caption and summary, subject to approval by Attorney General and Secretary of State	No
Oklahoma	No caption; proponent proposes summary, Secretary of State revises and certifies, reviewed by Supt. of Education	Yes
Oregon	Attorney General drafts preliminary caption and summary, receives public comments and writes final version	Yes
South Dakota	Format determined by state Board of Elections	No
Utah	Office of Legislative Research and General Counsel write ballot caption; Director of Legislative Research writes summary	Yes
Washington	Attorney General writes caption and summary	Yes
Wash., D.C.	Board of Elections and Ethics writes caption and summary	Yes
Wyoming	No caption; Secretary of State, with assistance of Attorney General, writes summary.	Yes

Source: California Commission on Campaign Financing Data Analysis

4. Agency Which Provides the Official Description

Most state and local jurisdictions designate a single government officer as having responsibility for preparing the official caption and summary. Yet no jurisdiction, including the state of California, has published detailed guidelines for

its attorney general, local counsel or other administrative agencies to follow in writing initiative descriptions. Only one state, Colorado, conducts public hearings in the course of writing an official caption and summary.[16]

Even assuming a competent and honest officeholder, a certain amount of bias in the drafting of the descriptions may inevitably emerge from the individual drafter's own values and experiences.[17] Several jurisdictions have attempted to deal with these problems by developing a system which allows for expedited administrative and/or judicial review of official language, including the caption and summary. Steps that can be taken to reduce bias in the formulation of an initiative caption and summary also include publication of the rules and standards utilized in writing initiative captions and summaries and an opportunity for public hearings.

5. Contesting Circulation and Ballot Captions

Unclear petition captions and summaries have occasionally caused problems in California. In one instance at the state level, the attorney general's ballot caption clearly misled voters as to the intent of an initiative. An anti-rent control measure on the June 1980 ballot (Proposition 10) was actually labeled "Rent Control" during the circulation stage, giving prospective signers of the petition the false impression that the proposed initiative supported rent control.[18]

The 1972 Clean Environment Act is another case in point. The measure was labeled "Pollution Initiative" by the attorney general during the circulation period. The initiative sponsors, fearing that such a caption would play into the hands of opponents (who called themselves "Vote No on Pollution"), filed suit to change the wording. The proponents realized there was no timely means available to get the caption changed during the circulation period, but they filed the suit in the hope of

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16. The attorney general in the state of Oregon receives written public comments on a preliminary draft of titles and summaries and then considers these objections in finalizing the ballot descriptions.

17. An experience in the state of Illinois exemplifies how far bias can interfere in the election process. As was common practice, the Illinois secretary of state had considerable leeway in determining the order of candidate names on the ballot. The secretary of state believed that those candidates with the most governmental experience and/or endorsed by one of the two major parties were the most qualified candidates. Thus, the Secretary felt justified to order the names according to his personal opinion of who was the most qualified. At a news conference, the secretary of state explained how he was not attempting to show favoritism or bias; he was only concerned that the state have good government:

"Q. Why did you choose in favor of people that you know—names you recognized?

"A. Well, I sure wouldn't want to put on somebody there first that I didn't know. I might be getting a Communist or somebody that's against our form of government.

"Q. You were playing it safe?

"A. I'm gonna take care of people like, that I've known and the names that I knew and people that I felt would make good candidates, who make good delegates to help re-write our constitution. This is no kids game—re-writing the constitution of the state of Illinois. And you need to elect delegates that's competent, know something about state government and will uphold our constitution of the United States, and, and, and start to waving the flag a little bit."

The court accepted the sincerity of the secretary of state's good intention but soundly rejected his actions. Weisberg v. Powell, 417 F.2d 388 (7th Cir. 1969).

18. For a fuller discussion of the Rent Control measure, see Chapter 3 "Initiative Drafting and Amendability."

securing a court order to have the caption changed for the ballot and ballot pamphlet. The court ordered the attorney general to change the title.[19]

While no expedited court review for contesting petition captions and summaries is available to proponents of statewide initiatives at the early stage of petition circulation, state law provides proponents of *local* initiatives with immediate review. At the state level, for instance, court action against the "Rent Control" label was too late to change the circulation caption but succeeded in amending the ballot caption to "Rent." But at the local level, initiative proponents may challenge the wording of petition captions and summaries prior to the circulation process.[20] The circulation period does not begin until ". . . after termination of any action for a writ of mandate . . . ."[21]

a. Substantial Compliance

In recent years, the California courts have been inclined to show deference to administrative agencies responsible for drafting official captions. The courts ask whether the official caption and summary "substantially complies" with the Elections Code, which requires an official description that encapsulates the "chief purposes and points" of the measure.[22] Substantial compliance is defined as follows: "if reasonable minds may differ as to the sufficiency of the title, the title should be held sufficient."[23] An initiative's title and summary need not contain a complete catalogue or index of all provisions in order to be deemed sufficient.

The substantial compliance test has been repeatedly applied by the California courts to thwart most legal efforts at voiding initiatives because of their official descriptions. Proposition 13 is a case in point. Opponents challenging the proposal after it was adopted by the voters argued that the title was deceptive because it failed to take note of the initiative's multiple objectives. The California Supreme Court agreed that the title was technically incorrect but found it not sufficiently misleading. Proposition 13 generated enough publicity and debate, the court

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19. People's Lobby Inc. v. Reinecke, No. WEC 25264 (L.A. Super. Ct., Mar. 31, 1972). In response to a court injunction against the title "Pollution Initiative," the attorney general changed the ballot label to "Environmental Initiative." The court concluded: "At the time the title and summary was provided by the attorney general, there was no provision in the elections code, nor is there any today, which confers on proponents the right to appeal or dispute the title designated or the summary prepared, irrespective of how distorted, incorrect, or deceptive the title may be. An earlier statute, later declared to be unconstitutional, had given the right of review to title commissioners consisting of three justices of the District Court of Appeal.

"Thus, the question is whether or not the title 'POLLUTION INITIATIVE' has a tendency to mislead or deceive the voting public. . . .

"While this court has no power to substitute its judgment for that of the attorney general in proposing an appropriate title, it may nonetheless enjoin the use of a misleading or deceptive title. Had the title been the same as the Act, to wit, 'Clean Environment Act Initiative,' the voters would have a much clearer comprehension of what the initiative proposes; or even had the title been 'Anti-Pollution Initiative' it would more nearly describe what the initiative seeks to have accomplished.

"Accordingly, the court will enjoin the use of the title 'POLLUTION INITIATIVE' and direct the attorney general to provide a proper descriptive title as expeditiously as possible."

20. Cal. Elec. Code §4002.7 (West 1992).

21. Cal. Elec. Code §4006 (West 1992).

22. Cal. Elec. Code §3502 (West Supp. 1990).

23. Epperson v. Jordan, 12 Cal. 2d 61 (1938).

reasoned, that the electorate was adequately informed as to its contents and therefore not misled by the title.[24]

The official caption and summary are the voters' initial source of information on the objectives of an initiative measure. The caption and summary not only present the issue during the petition process and on the ballot but are reprinted in the ballot pamphlet as well. Most observers consider it essential that the official description of a proposal reasonably encompass all of its significant provisions and contain unbiased language.

b. Expedited Review Procedures

Fifteen states, including California, provide some form of expedited court review if proponents believe that the official caption or summary to be used on the ballot and in the ballot pamphlet is misleading.[25] Expedited review at the local level is provided immediately upon titling of an initiative petition; at the state level, it is provided during preparation of the ballot pamphlet. Nine other states fail to provide for an expeditious hearing at all.[26] Procedures for expeditious review of the official ballot caption and summary are very similar from jurisdiction to jurisdiction. A designated court handles the review process. Frequently a time deadline is specified by law for the court's ruling. Courts are generally empowered to rewrite the caption or summary in accordance with their findings and their decisions are final.

B. The Ballot Pamphlet Offers Voters a Comprehensive Source of Information

All jurisdictions—local and state—distribute a description and analysis of ballot measures. The method of distribution, however, may vary from one governmental entity to the next. General law cities in California, for example, are required at least to include an impartial analysis and arguments for and against each measure in a "Sample Ballot" to be distributed not more than 40 days nor less than 10 days before each election.[27] Oftentimes, this sample ballot is prepared and mailed by the city; sometimes it is consolidated with the county sample ballot. Most cities in Los Angeles County will take the opportunity to consolidate their election information with the county sample ballot when the jurisdictions conduct simultaneous elections. Any city that conducts an election that is not held at the same time as the county election, such as a municipal special election, must distribute its own pamphlet for that election.

Charter law cities have greater flexibility in the conduct of elections and sometimes choose to provide more extensive voter information through an expanded ballot pamphlet or supplementary newspaper advertisements.[28] The city of Santa

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24. Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208 (1978). In 1986, an appellate court applied the substantial compliance test to uphold an attempted murder conviction. The appellant appealed his sentence partly on the grounds that the 1978 Briggs initiative (Proposition 7), which increased the penalties for murder and attempted murder, had a misleading official title and therefore should be voided. The court ruled that the chief purposes and points of the initiative were sufficiently stated in the title. People v. Flores, 178 Cal. App. 3d 74 (1986).

25. The 15 states providing for expeditious judicial review of ballot initiative descriptions are: Alaska, Arkansas, California, Colorado, District of Columbia, Idaho, Michigan, Missouri, Montana, Nebraska, Oklahoma, Oregon, Utah, Washington and Wyoming.

26. The nine states that do not provide for expeditious review of initiative descriptions are: Arizona, Florida, Illinois, Maine, Massachusetts, Nevada, North Dakota, Ohio and South Dakota.

27. Cal. Elec. Code §10010 (West 1992).

28. In addition to the city of Long Beach's ballot pamphlet, the city further requires the city clerk to publish the text of all ballot measures for three successive days in the city's major newspaper. This

Monica, for instance, prepares and distributes a substantial voter information pamphlet for all of its elections, regardless of any concurrent county or state election. Charter cities that have assumed full responsibility for the preparation and distribution of ballot pamphlets independent of county or state sources of election information also include Burbank, Cerritos, Long Beach and Los Angeles.

Typically, a local voter information pamphlet includes a sample ballot that lists all the candidates and measures in the same format as the actual ballot, statements by the candidates, the official ballot caption of each measure, an "impartial" analysis by a governmental agency and arguments for and against each measure. Although general law jurisdictions are required by the state to include an assessment of the fiscal impact of bond measures in the voter information pamphlet,[29] they need not include a fiscal impact statement for any ordinances or charter amendments on the ballot. State law also does not require that the exact text of local initiative proposals be printed in the sample ballot; some but not all local governments that do not provide the text of each measure include a notice that the text will be mailed to any voter upon request at no charge.

1. Preparing Los Angeles' City Ballot Pamphlet

Several cities in California invest substantial time and resources in producing an informative ballot pamphlet. Los Angeles and San Francisco, for example, have developed extensive procedures for preparing a readable and accurate source of government-sponsored election information. Both communities make use of a "Ballot Simplification Committee" in an attempt to make their pamphlets easily understandable.

In Los Angeles, the Ballot Simplification Committee consists of five members. The committee is composed of a staff person from the offices of city attorney and chief legislative analyst and three electors. The mayor appoints one of the electors and the president of the city council appoints the other two. Each of the elector-members of the Ballot Simplification Committee must be a professional reading expert qualified to determine and predict the readability level of simplified versions of ballot measures.[30] Membership of the committee may be enlarged at any time if so needed.

For every measure submitted to the voters, the committee digests and simplifies the analyses and arguments that appear in the voter information pamphlet. Ideally, the simplified digests should be written at the eighth-grade reading level.[31] In reality, an eighth-grade reading level is the preferred target goal that may not be fully attainable under certain circumstances.

The digest of each measure is to include eight identifying subsections in the following sequence: Title, The Issue, The Situation, The Proposal, Argument For, Argument Against, A Yes Vote Means, and A No Vote Means.[32] Each digest with all of its subsections combined is limited to no more than 300 words unless otherwise

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supplemental newspaper advertising is to occur not more than 20 days nor less than 10 days prior to the election. Long Beach Charter §306 (Parkin 1991).

29. Cal. Elec. Code §§5301, 5302 (West 1977).

30. Los Angeles Elec. Code Supp. §115(A)(1) (1980).

31. Los Angeles' Election Code further specifies that the reading level is to be measured according to the Dale-Chall Formula for Predicting Readability. Los Angeles Elec. Code Supp. §115(B)(3) (1980). For further discussion of readability tests, see footnote 55.

32. Los Angeles Elec. Code Supp. §115(B)(4)(a) (1980).

specified by the city clerk and the president of the city council for measures involving extraordinary length or complexity.[33]

The Los Angeles voter information pamphlet is structured into three general sections. The simplified digests of each measure are grouped together first in the pamphlet. These digests are then followed by the official analyses prepared by the chief legislative analyst and the arguments as written by the principal proponents and opponents. Full texts of the measures immediately follow each respective official analysis. A sample ballot is mailed separately by the county.

Simplified digests are subject to approval by the city council. The council has no authority to amend or change digests; it can only approve or reject them as written. Because time is usually limited, when the council rejects a digest it usually is not rewritten. The pamphlet is then assembled without any simplified digest for that measure. This happens rather frequently. In the June 1992 election, for example, two of the four city ballot measures had no simplified digests because of a city council veto.[34]

The cost of Los Angeles city ballot pamphlet varies widely depending on the number of measures at any particular election and the size of the city's registered electorate. Printing is usually the largest cost of the pamphlet, followed closely by the cost of mailing it to every registered voter. The November 1990 pamphlet, for example, cost $163,200 for printing and $128,500 for mailing.[35]

2. Preparing California's State Ballot Pamphlet

In California, the secretary of state prepares the voters' ballot pamphlet and distributes it to all registered voters.[36] Copies of the booklet also are distributed to all county and city clerks, legislators, public libraries, public high schools, public colleges and universities. Such widespread distribution makes the ballot pamphlet an important source of information. California invests over $5 million in printing and mailing the pamphlets each election.[37]

State laws clearly delineate the structure of California's ballot pamphlet.[38] Every measure is allotted four pages, plus whatever it takes beyond these four pages to include the complete text of the proposal (now placed at the back of the pamphlet). At the top of the first page for each measure is the official caption and proposition number, followed by the official summary. If the measure originated from the legislature, the number of votes cast for and against the bill is listed under the summary. An analysis by the legislative analyst appears underneath and extends, if

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33. The title of a digest is not included in the 300-word limit.

34. Telephone interview with Pat Letcher, Coordinator, Los Angeles Ballot Simplification Committee, April 23, 1992.

35. Telephone interview with Tom Hasse, Management Analyst, Los Angeles City Clerk's office, April 23, 1992.

36. Counties that do not furnish data processing information of names and addresses of registered voters to the secretary of state are responsible for distributing the pamphlet themselves. Cal. Elec. Code §3578(b) (West Supp. 1990).

37. During the 1990 primary election, the estimated cost to the state of distributing the ballot pamphlet rose to $7 million because of a need to mail out a second, supplemental pamphlet. The legislature had suspended the deadline for placing legislative measures on the June ballot. After the principal ballot pamphlet was completed, two more measures were put on the ballot. The secretary of state's office had to compile and mail a supplemental ballot pamphlet at an additional estimated cost of $2 million. Telephone interview with David Pitman, Assistant Chief Analyst, Elections Division, California Secretary of State's office (May 2, 1990).

38. Cal. Gov't Code §§88002 (West 1987).

necessary, onto the second page. It includes a brief discussion of relevant background information, an explanation of what the proposal seeks to accomplish and a fiscal impact statement. The third and fourth pages for each measure are reserved for pro and con arguments facing each other on opposing pages, with rebuttals placed at the bottom of the pages. (See Appendix I for an example.)

Ballot measures are set forth in the pamphlet in the same order as they appear on the ballot. Legislative measures come first, followed by initiatives and referenda in the order in which they qualified for the ballot.[39] It is not uncommon for the legislature to postpone the final deadline for submission of legislative measures for the ballot (but not initiatives) in order to accommodate last-minute emergency bills. These measures appear last on the ballot and in the ballot pamphlet.[40]

3. Preparing the Pamphlet in Other States

As a state-sponsored source of voter information, ballot pamphlets are supposed to supply voters with a fair and impartial presentation of the issues. States that prepare and distribute ballot pamphlets have devised a variety of means to ensure that their summaries and analyses reasonably portray the facts.

a. Committee System

Some states use committee systems to draft ballot pamphlet materials. In Oregon, a committee of two proponents and two opponents is formed for each measure. The proponents on the committee are the sponsors of the proposition; the opponents are selected by the secretary of state. These four people then appoint a fifth person mutually acceptable to all of them.[41] A draft of the ballot pamphlet explanation for each measure must be completed no later than 100 days prior to the election. The secretary of state then conducts public hearings to receive suggested changes. If any are made, they are forwarded to the committee for consideration. The committee may revise the statement according to the public's suggestions as long as the final draft is filed at least 90 days prior to the election. If any voter objects to the language of the final draft, the voter may appeal directly to the state supreme court for a final judgment.[42]

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39. Cal. Elec. Code §3573 (West 1977).

40. In June 1990, the California legislature set a record for the longest delay in submitting last-minute measures to the ballot. The original deadline is 131 days prior to the election. For the June 1990 election, the legislature's bills did not reach the secretary of state's office until 87 days prior to the election—42 days after the deadline set by law. David Pitman, Assistant Chief Analyst of the Elections Division, noted that any further delay would have made it impossible for the secretary of state to prepare and mail even a supplementary ballot pamphlet discussing these additional issues. Telephone interview with David Pitman, Assistant Chief Analyst, Elections Division, California Secretary of State's office (May 18, 1990). This record of legislative delay did not last long. In the November 1990 general election, the legislature waited until 66 days prior to the election before submitting a second set of 11 measures for inclusion on the ballot, in addition to four legislative measures and 13 initiatives submitted earlier in a timely fashion. The delay required another supplementary ballot pamphlet which the secretary of state's office managed to prepare and distribute before election day. Telephone interview with John Mott-Smith, Elections Specialist for Legislation and Voter Outreach, California Secretary of State's office (Jan. 21, 1991).

41. Or. Rev. Stat. §251.205 (1988).

42. Oregon also gives the secretary of state a technique for supplementing voter information in addition to the printed ballot pamphlet. The secretary of state can purchase television and radio broadcast time to describe the ballot measures within four weeks of the election. The advertisements may include only the ballot caption or popular name of each state measure, the number and form in which the ballot caption will be printed on the official ballot and a summary of the explanatory statements for each measure. Although the secretary of state is empowered to make use of these alternative sources of information, the state has never done so. Telephone interview with Larry

In Montana, a committee is composed of two proponents, two opponents and the attorney general. The committee does not conduct public hearings, but expedited procedures for court challenges are provided.

b. Legislative Hearing in Massachusetts

Massachusetts has a system of "indirect initiatives" in which all qualifying initiatives must first be submitted to the state legislature for a hearing and a possible vote prior to appearing on the ballot (see Chapter 3, "Initiative Drafting and Amendability"). The attorney general prepares the ballot pamphlet which includes an official caption and summary, followed by one argument for the measure and one against. A sentence describing the actions of the legislature concerning the measure is inserted beneath the caption. For example, a 1986 initiative proposal calling for voter registration by mail (Proposition 6) had the following statement under the caption: "Do you approve of a law summarized below, *which was disapproved by the House of Representatives on May 6, 1986, by a vote of 56-93, and on which no vote was taken by the senate before May 7, 1986?*" [43] Besides listing the total legislative vote below the caption, each individual legislator's vote is listed in the ballot arguments section. The ballot arguments section includes a summary of the majority and minority reports of the legislative committee that conducted hearings on the proposal. Committee members representing both the majority and minority draft a brief summary of their reasons for supporting or opposing the measure and include the names of all the respective members under the appropriate summary.[44]

4. Attempts to Achieve Plain, Simple and Accurate Language in California's State and Local Ballot Pamphlets

In California, the legislative analyst is instructed by statute to write an impartial analysis of each initiative measure in "clear and concise terms" comprehensible to the average voter.[45] The legislative analyst can request assistance from professional writers or educational specialists to comply with this provision. This readability requirement applies only to the legislative analyst's portion of the pamphlet. Estimates of the reading comprehension skills of the average voter generally range somewhere around the 8th grade level. Although the legislative analyst makes an effort to prepare an easily comprehensible analysis, the material has consistently been criticized as being far too difficult to read and understand.[46]

Bevens, Manager of the Elections Division, Oregon Secretary of State's office (May 1, 1990). *See* Or. Rev. Stat. §251.295 (1988).

43. Massachusetts Secretary of State, Massachusetts Information for Voters: The Ballot Questions in 1986, at 12 (emphasis in original).

44. Mass. Const. art. 48, General Provisions, pt. 4.

45. Cal. Elec. Code §3572 (West Supp. 1990). Oklahoma and Oregon impose readability standards on official ballot titles and summaries. Oklahoma requires that the official title and summary be written at the 8th grade comprehension level. Oregon permits the secretary of state to determine an appropriate reading level standard for the official title.

46. One examination of California's ballot pamphlet from 1974 through 1980 found much of the material written at an 18th grade level—fully comprehensible only to those who have reading comprehension skills of at least two years of graduate school—but this study was conducted before the state established a readability committee. The study applied several readability tests to the pamphlet. The Extended Fry Graph, Dale-Chall and Flesch tests all concluded that reading the ballot pamphlet required a reading level equivalent to a few years of graduate school. These formulas assessed readability by measuring vocabulary, sentence length, complexity and conceptual difficulty. Common Cause v. Eu, Super. Ct. for the County of Sacramento, Civil No. 322060, "Declaration of David Magleby," Exhibit B (1984).

In 1984, California Common Cause and Daniel Lowenstein, co-author of the Political Reform Act, filed suit against the secretary of state for preparing ballot pamphlets which failed to meet the readability standards required by law.[47] State law had been amended in 1974 by the Political Reform Act (Proposition 9) to require that the analysis prepared by the legislative analyst be "easily understood by the average voter."[48] The plaintiffs argued that the secretary of state had made no attempt to improve the readability of the pamphlet, and they provided evidence that the pamphlet had become even more difficult to read since passage of the Political Reform Act.

Plaintiffs asked the court to require that at least the legislative analyst's portion of the November 1984 pamphlet be written in language that was easier to comprehend. The case was settled without a court opinion, and the compromise reached by Common Cause and the legislative analyst was subsequently codified into law by the legislature in 1985.[49] A five-member readability committee was established to review the legislative analyst's summary and to "confirm its clarity and easy comprehension to the average voter."[50] The legislative analyst, however, retained final authority to determine the language of ballot analyses.

California's readability committee is composed of five members, none of whom receive payment other than expenses. One member must be a specialist in education, one must be bilingual and one must be a professional writer. All members are appointed by the legislative analyst. In January and June of even-numbered years, the committee reviews the ballot measure analyses prepared by the legislative analyst. The committee does not review the language of the attorney general's official caption and summary or of the pro and con arguments.[51]

The legislative analyst's office recognizes the need for making the ballot pamphlet more readable. However, its office is not willing to sacrifice accuracy for the sake of readability. The legislative analyst applies two criteria to determine the language of its analyses: accuracy and simplicity of language. Accuracy is given dominance. If simplicity of language affects the accuracy of the description, it will be rejected.

The legislative analyst steadfastly refuses to be bound by any readability formula in determining its pamphlet language. A computer software package that recommends readability improvements is used, but the program's recommendations are viewed as advisory only. The legislative analyst's office contends that simplification to the 8th grade reading level can lead to absurd consequences. Many readability programs, for example, claim the word "legislature" is beyond the 8th grade reading level. Eliminating such a term might go too far in sacrificing accuracy.[52] One observer informally estimates that the

47. Common Cause v. Eu, Civil No. 322060 (Sacramento County Super. Ct., 1984).

48. Cal. Gov't Code §88003 (West 1987).

49. SB 92 (Lockyer), introduced December 20, 1984; chaptered as Cal. Elec. Code §3572 (West Supp. 1990).

50. Cal. Elec. Code §3572 (West Supp. 1990).

51. "Analysis Review Committee: Membership and Functions," policy statement by the Legislative Analyst (Oct. 1985).

52. A former member of the readability committee concurs: "I agree that accuracy should not be lost. I remember one instance when the legislative analyst presented a simplified summary of a measure to the committee. It was so simple that the meaning of the measure was lost. After I explained what their simplified summary said to me, the analyst responded: 'Well, if that's what Betty thinks it means, we will have to rewrite the summary.'" Telephone interview with Betty Trotter, Member of the State Readability Committee, 1986-1988 (May 17, 1990).

legislative analyst's summary, even after incorporating advice from the readability committee, requires a 12th grade reading level for adequate comprehension.[53]

Despite the efforts of the state readability committee, voters complain every election about the comprehensibility of the voters' pamphlet. The secretary of state routinely receives letters from citizens angry over the difficulty of reading the booklet. Editorials decrying "legalistic gobbledegook" in ballot measure analyses are common.[54] The attorney general's official summary is usually the primary target of public complaints.

a. Readability in San Francisco

The state readability committee was partly patterned after a similar but stricter readability committee for the city and county of San Francisco. Efforts by the San Francisco Ballot Simplification Committee to simplify its ballot pamphlet to an 8th grade reading level reveal the difficulty of reaching such a low educational level. As shown in Appendix I, San Francisco's booklet looks very simple and contains none of the legal language of the state pamphlet. The caption says briefly what the measure concerns. The issue is then transformed into a simple "yes" or "no" question placed before the voters. The ballot simplification committee includes a paragraph explaining what a "yes" vote and "no" vote mean on this issue, which stands beside one paragraph of background information (labeled "The Way It Is Now") and one paragraph describing the proposal. Pro and con arguments are included on following pages.

Nevertheless, when this Commission applied the Flesch-Kincaid[55] readability test to a selected description of Proposition R in San Francisco's 1988 ballot pamphlet (involving the homeporting of the USS Missouri in San Francisco Bay), the entire description rated at the 18th grade readability level. The official summary rated at the 25th grade readability level was the most difficult section of the description to read. Problems that made the official summary difficult to read included the complexity of some words ("homeporting," "Memorandum of Understanding," "apprenticeship") and the length of the single run-on sentence of the summary (52

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53. Telephone interview with John Vickerman, Chief Deputy Analyst, California Legislative Analyst's office (May 16, 1990).

54. *See, e.g.,* text of a KCBS-TV editorial (May 11, 1990) which decried ballot pamphlets "written by lawyers for other lawyers" and urged voters to "vote no on anything that isn't clear."

55. Modern readability assessment tests are based heavily on principles established by Herbert Spencer in his article *Philosophy of Style* published in the Westminster Review in 1852. Spencer argued the three tasks necessary for comprehension are (1) understanding the words, (2) understanding their relationship, and (3) grasping the thought conveyed. He offered four variables for assessing the likelihood of readers meeting these tasks: syllable length of words, familiarity of words, abstract level of words and sentence length.

In 1943, Rudolf Flesch developed the Flesch formula for general adult reading matter. His reading ease formula focuses on the number of syllables per 100 words and the average number of words per sentence using the following calculations:

- Select samples of 100 to 200 words from the material to be rated.
- Count the number of syllables per 100 words (w1).
- Count the average number of words per sentence (s1).
- Calculate reading ease as: 206.835 - [(0.846)(w1) - (1.015)(s1)].

Originally, the Flesch formula used a scale of 0 to 100 in assigning a readability score. It has since been modified to a grade level score as the Flesch-Kincaid formula. The Flesch-Kincaid formula is the most frequently used readability test. Other readability formulas include the Dale-Chall formula, the Extended Fry Graph, and the Harris-Jacobson formula. David Magleby, Direct Legislation: Voting on Ballot Propositions in the United States, at 207-208 (1984).

words). Readability of the section labeled "The Way It Is Now" rated at the 14th grade level for many of the same reasons.

Trying to simplify the official description of Proposition R to the 8th grade readability level points out the "Catch-22" that oftentimes is involved in such efforts: How can a description of an initiative calling for homeporting be simplified to an 8th grade level when the word "homeporting" requires a college education to understand?

The San Francisco pamphlet may not be an ideal model for the state pamphlet for other reasons as well. In its quest for simplicity, the committee often provides extremely scanty background information on a measure, offering no more than a short paragraph in some instances. Local initiatives also tend to be less complicated than statewide measures and typically call for a single legislative action. While a local measure may ask voters to allocate funds for maintenance of a local park, for example, the "Big Green" initiative on the November 1990 state ballot involved protection of the oceans, regulation of the timber industry, reduction of chemicals depleting the ozone layer and a host of other environmental programs. Measures such as these require considerable analysis and background information, and the language required for an accurate discussion will frequently exceed the 8th grade reading level.[56]

b. Readability in Los Angeles

As discussed above, Los Angeles has also established a Ballot Simplification Committee to make the city's ballot pamphlet more readable and easier to understand. The city's Elections Code specifies that the committee should tailor its ballot measure descriptions for an 8th-grade reading level. Los Angeles has made tremendous strides in simplifying the language in its ballot pamphlets. However, as is the case in San Francisco, Los Angeles' simplified versions of ballot descriptions often falls short of the target goal.

In assessing the readability of Los Angeles' ballot pamphlet, the Commission applied the Flesch-Kincaid test to the simplified description of one initiative measure (Proposition H) in the June 1990 ballot pamphlet. The simplified version proved significantly more readable than the official ballot description. The officially-stated "Issue" in the pamphlet description read as follows:

> *Shall Charter be amended to create Ethics Commission, authorize appointment of special prosecutor, reform Board of Referred Powers, disqualify from candidacy and remove officials convicted of conflicts of interest, limit campaign contributions, provide limited public funds to candidates who limit expenditures, require elective City officials to devote entire time to official duties, prohibit them from receiving any outside earned income, including honoraria, except from other government agencies, and relate their salaries to salaries of Municipal Court judges or, for incumbents so choosing, to current salary limitations?*

According to the Flesch-Kincaid analysis, the paragraph above is written at the 17th grade level, requiring a reading ability equivalent to five years of college to be fully understood. The Los Angeles Ballot Simplification Committee revised the official question by restructuring the sentence, making use of bullets and headings to break the monotony of a single run-on question, and employed easier to understand language. The simplified version is as follows:

56. Telephone interview with Vickerman, *supra* note 53.

THE ISSUE:

Should the Charter be changed to:

- *create a City Ethics Commission,*
- *establish a program for public financing of election campaigns,*
- *limit spending of candidates who accept public campaign funds,*
- *prohibit outside employment for elected City officials, and*
- *base salaries of Councilmembers and other elected City officials to salaries of Los Angeles Municipal Court judges?*

A YES VOTE MEANS:

You want to create a City Ethics Commission, establish a program for public financing of election campaigns, limit campaign spending by candidates who accept public funds, prohibit outside employment for elected City officials, and base the salaries of elected officials on the salaries of Municipal Court judges.

A NO VOTE MEANS:

You do not want to create a City Ethics Commission, establish a program for public financing of election campaigns, limit campaign spending by candidates who accept public funds, prohibit outside employment for elected City officials, and base the salaries of elected officials on the salaries of Municipal Court judges.

This version of the questioned scored at the 14th grade level—requiring two years of college—a vast improvement over the official question, but still far shy of the 8th grade target goal. Similar differences in reading levels are evident between the official analysis and arguments sections of the measure and the simplified analysis and arguments. The official analysis scored a reading level of the 15th grade; the simplified version scored at the 10th grade. The arguments section written by the proponents and opponents in the official description were written at the 12th grade reading level; the Ballot Simplification Committee rewrote a shorter version of the arguments and brought the reading score down to the 6th grade.

Like the experience in San Francisco, Los Angeles' Ballot Simplification Committee has been able to improve the readability of the city's pamphlet. But the target goal of reducing the structure and language of the descriptions to an 8th grade reading level usually has not—and perhaps often cannot—be achieved. Other simplified descriptions of ballot measures generally confirm that an 8th grade reading level may be out of reach for most analyses of ballot measures. Analyses of Propositions 111 (gasoline tax) and 119 (reapportionment) on the state's June 1990 ballot by the League of Women Voters' privately-published ballot pamphlet—widely regarded as one of the most readable pamphlets—scored at the 12th grade reading level by the Flesch-Kincaid test.

c. Challenging Ballot Pamphlet Descriptions

Los Angeles provides no expedited judicial review procedures for persons wanting to contest the accuracy of either the official *petition* caption and summary or ballot pamphlet descriptions. But while Los Angeles as a charter city does not allow expedited court review, all general law cities do provide a means for voters to challenge misleading *ballot* captions or summaries as well as petition titles. The clerk of a general law jurisdiction must make all ballot pamphlet materials available for public inspection at least 10 calendar days prior to printing. Any voter of the jurisdiction in which the election is being held may seek a writ of mandate requiring any or all of the materials to be changed or deleted. A peremptory writ

should be issued only upon clear and convincing proof that the material is false or misleading.[57]

Although the state of California has no expedited review process for challenging petition titles, the state does provide for quick judicial review of the voters' pamphlet. As with the preparation of the ballot pamphlet in general law local jurisdictions, the secretary of state makes a draft of the state pamphlet available for public inspection at least 20 days before going to the printer. Any voter may seek a writ of mandamus in Sacramento County superior court to order changes or deletions of obviously false or misleading material in any part of the pamphlet. The court can order amendments "only upon clear and convincing proof" of falsehoods. The court order will be valid only if it does not interfere with the printing schedule and distribution of the pamphlet.[58]

Despite the strict time constraints on voters to challenge materials in the pamphlet, court challenges are infrequent at the local level but common at the state level. Ten petitioners, for example, sought writs against the June 1990 state ballot pamphlet. Challenges have occurred every election in recent history. The courts tend to be responsive to these requests for writs of mandamus and have frequently forced last-minute changes to the state pamphlet.[59]

5. Pro and Con Arguments in the Ballot Pamphlet

The printed arguments for and against a ballot initiative which appear in the voters' pamphlet are among the most readable and useful sources of information available to the voters. These pro and con arguments can provide insights that more neutral official summaries may avoid. For practical reasons, however, and to screen out frivolous arguments, jurisdictions have devised a variety of means to limit the number of pro and con arguments in their ballot pamphlets or newspaper advertisements. These include fees, selection procedures and outright prohibition of arguments.[60]

a. Procedures for Selecting Ballot Arguments in California's Local Communities

All general law localities in the State of California must publish one argument each in favor of a proposition and opposed to the measure if such arguments are submitted to the clerk in an appropriate format and in a timely fashion. Arguments are to be no more than 300 words in length and must be submitted within a reasonable time period that does not disrupt the printing schedule for sample ballots.[61] Any individual voter, bona fide organization or the legislative body may

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57. Cal. Elec. Code §5025 (West Supp. 1992). A lack of an effective opportunity to appeal a lower court's decision to change or delete ballot pamphlet material because of time constraints has been ruled by the courts as insufficient to invalidate this right to seek immediate writ of mandate. Geary v. Renne, 914 F.2d 1249 (1990).

58. Cal. Gov't Code §88006 (West 1987); Cal. Elec. Code §3576 (West Supp. 1990).

59. Telephone interview with Pitman, *supra* note 37.

60. Five states do not provide pro and con arguments with their voter information newspaper advertisements or ballot pamphlets: Maine, Michigan, Nevada, North Dakota and Wyoming. One analyst suggests that interesting constitutional questions may be raised in states that do not publish pro and con arguments. For example, since the only information provided by the state to all voters is the analysis prepared by state officials, is it a violation of public forum doctrine for the state to monopolize this political communication? Is it a violation of equal protection for the state to give itself permission to communicate through this forum but deny it to all others? Herbert Graham, *The Direct Initiative Process: Have Unconstitutional Methods of Presenting the Issues Prejudiced Its Future?* 27 UCLA L. Rev. 450 (1979).

61. Ferrara v. Belanger, 18 Cal.3d 253 (1976).

submit pro or con arguments regarding any ballot measure for the sample ballot.[62] If more than one arguments on any one side of an issue have been submitted, the clerk selects one argument in favor and one arguments against according to the following selection criteria: the legislative body; bona fide sponsors or proponents of the measure; bona fide associations of citizens; and, lastly, individual voters.[63]

In general law jurisdictions, the clerk must then send the arguments for and against each measure to the persons filing the opposing arguments. Each side may then submit a rebuttal argument of no more than 250 words that will also be printed in the sample ballot immediately following the direct argument which it seeks to refute.[64]

Most states that publish pro and con arguments authorize an administrative agency or official—frequently the secretary of state—to determine which arguments to print. California's method of selecting arguments is typical of that used by other states. The primary proponent and opponent are each given 500 words in the pamphlet to state their argument. If they so choose, the allotted space can be subdivided among other persons wishing to print an argument. The secretary of state usually assembles a staff of four to six persons to discuss the selection of arguments. The secretary of state is empowered to make the final determination.[65] State law sets priorities to be used in deciding which arguments to select: legislators for measures that originated from the legislature, proponents who filed initiative petitions, bona fide associations of citizens and, finally, individual voters.[66]

In the case of ballot measures originating from the legislature, the rules of selection are quite clear. The author of the measure and two persons appointed by the author have first priority in writing the argument in favor.[67] If the measure was not adopted unanimously by the legislature, one member of each house who voted against it will be appointed by the presiding officers to write the opposing argument.[68] In the absence of any argument, the secretary of state issues a press release notifying the public that applications for ballot arguments are being accepted. The secretary is free to select the final argument in accordance with the priority guidelines.

In the case of initiative proposals, the sponsor who filed the petition has first priority in writing the argument in favor. If for some reason the proponent declines, the opportunity is open to the public following the same criteria used in selecting the opposing argument. Bona fide associations are given first priority over individual voters. In choosing between competing arguments, the secretary of state does not examine the persuasiveness of the argument but rather the degree of public recognition enjoyed by the association or individual.[69] A highly recognized association such as the League of Women Voters tends to be selected over lesser known groups or any individual.

b. Charging Fees for Printing Arguments

In San Francisco, the primary proponent and opponent file an official argument and rebuttal that is published at no charge immediately after the ballot

62. Cal. Elec. Code §5013 (West Supp. 1992).
63. Cal. Elec. Code §5014 (West 1977).
64. Cal. Elec. Code §5014.5 (West Supp. 1992).
65. Graham, *supra* note 60, at 453.
66. Cal. Elec. Code §3565 (West 1977).
67. Cal. Elec. Code §3526 (West 1977).
68. Cal. Elec. Code §3527 (West Supp. 1990).
69. Graham, *supra* note 60, at 453.

analysis. An unlimited number of additional arguments may be printed at the back of the pamphlet by any voter who pays $50 plus $1.50 per word or, alternatively, collects signatures of registered voters which count 50 cents each toward the publication fee.[70]

Some states (but not including California for statewide measures) charge proponents and opponents to print their ballot arguments. Fees can range from as low as $100 to as high as $1,500.[71] Idaho at one time charged the highest fees for printing ballot arguments. However, after opponents of one measure were unable to afford the cost of printing an opposition argument in the pamphlet, the state ended its fee requirement and turned to other screening procedures. The possible chilling effect on free speech for those unable to pay is apparent and may pose serious constitutional questions.

Most states that assess a fee for publishing pro and con arguments provide some alternative, non-financial method of access. In Oregon, for instance, proponents and opponents may either purchase a half-page space for a ballot argument or submit a petition with 1,000 signatures for the space.[72] Federal constitutional law may mandate such an alternative non-financial means of getting a ballot argument published in the pamphlet. Several states had previously required candidates to pay a registration fee in order to run for office. The U.S. Supreme Court, however, ruled that candidates be provided a free alternative means of access to the ballot, such as gathering signatures.[73] Following this logic, a California court in 1986 ruled that a San Francisco requirement of fees to publish arguments in the voters' handbook denied equal access to a limited public forum and therefore violated state and federal guarantees of equal protection.[74]

Oregon has no limit on how many ballot arguments may be published, making it unique among states. Oregon has completely removed any administrative agency from selecting which arguments will be published and has instead turned entirely toward the fee/petition process to screen the arguments. An imbalance in the number of arguments for and against a measure is not uncommon. In 1984, for example, a proposal to establish a lottery had only one argument in favor published in the pamphlet—purchased by representatives of the lottery industry—and no arguments against. Another proposal on the same ballot to curtail nuclear energy facilities had seven arguments in favor (four by petition, three purchased) and four arguments in opposition (all purchased).[75]

6. Importance of the Ballot Pamphlet in the Election Process

Estimates vary on how extensively voters' pamphlets are read. Most surveys indicate that somewhere between 30% and 60% of voters rely on the booklets for information about some if not all ballot measures. Ballot pamphlets are less important as a source of voter information about candidates. In a 1970 survey of 1,204 Oregon citizens, 45% of respondents said they read "all or most" of the

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70. San Francisco's November 1988 ballot pamphlet contained 55 state and local ballot propositions. The city's June 1990 ballot was almost as long.

71. *See* Graham, *supra* note 60.

72. Or. Rev. Stat. §251.255 (1988).

73. Lubin v. Panish, 415 U.S. 709 (1974).

74. Gebert v. Patterson, 186 Cal. App. 3d 868 (1986). The case involved the City and County of San Francisco.

75. A measure dealing with the issue of water fluoridation on the Oregon ballot had a mistake in its wording, rendering it virtually nil. The official description failed to notice the language problem. Only a paid argument against the measure pointed out the flaw.

pamphlet. They viewed the voters' pamphlet as a "very" (41%) or "somewhat" (38%) useful source of information on propositions. By contrast, those surveyed found the voters' pamphlet less useful for candidates. Voters are able to get more information on candidates from other sources.[76]

Similar findings appear elsewhere. Most voters in Seattle have repeatedly told interviewers that the ballot pamphlet is *the* major source of information on ballot measures.[77] Campaign managers in California have estimated that 50% of voters use the booklet.[78] A 1976 exit poll of Massachusetts voters conducted by the secretary of state indicates that 75% of those going to the polls said they made some or a lot of use of the voters' information booklet. As shown in Table 7.3, the ballot pamphlet ranked first in importance to voters as a source of information, even above television news and paid advertising.

Table 7.3

INFORMATION SOURCES FOR BALLOT MEASURE VOTING IN MASSACHUSETTS, 1976

"There are a lot of different ways that people get their information. I have a list of several sources of information on the ballot questions. As I read them off, I would like you to tell me whether you used them in deciding how to vote today. . . . Would you say you made a lot of use, some use, little use, or you didn't use (the source) at all?"

Information Source	A Lot of Use	Some Use	Little Use	Did Not Use
Voters' Pamphlet	59%	16%	6%	19%
Newspaper Reports	39%	34%	13%	14%
Television News	32%	32%	17%	19%
Radio News	21%	34%	19%	26%
Paid Advertising	10%	22%	21%	46%
Advice of Friends	7%	21%	23%	49%
Advice of Employers	3%	6%	9%	82%

Source: Thomas Cronin, Direct Democracy: The Politics of Initiative, Referendum and Recall, at 82 (1989).

Even in states where the voters' pamphlet is not distributed to every voter, the pamphlet plays an important role in informing voters about ballot propositions. Utah, for instance, prepares a voters' pamphlet which is published as a newspaper insert in the state's major newspapers and distributed to voters by mail only upon request. Thus, although the pamphlet is widely available, a voter must make some effort to obtain it. In a survey conducted by Utah's secretary of state, the percentage of voters receiving the pamphlet in general elections between 1980 and 1988 ranged from 58% to 73%. The pamphlet is thus a significant source of voter information and generally ranks third in importance, falling behind television and newspapers. Among those who received the pamphlet, no less than 82% read all or part of it in

76. Donald Balmer, State Election Services in Oregon, at 42 (1972).

77. Hugh Bone, The Initiative in Washington, 1914-1974, Washington Public Policy Notes 2 (Oct. 1974), at 5.

78. Robert Benedict, Some Aspects of the Direct Legislation Process in Washington State: Theory and Practice 126 (1975) (unpublished Ph.D. dissertation, University of Washington).

every election year surveyed. No fewer than 87% who read the pamphlet felt the information was somewhat or very helpful. (See Table 7.4)[79]

Table 7.4

SURVEY OF UTAH VOTERS' ATTITUDES ON SOURCES OF ELECTION INFORMATION

1. Prior to the election, where did you get most of your information about the propositions?

	1980	1982	1986	1988
Television	29%	26%	31%	30%
Newspapers	32%	32%	32%	30%
Radio	4%	5%	4%	4%
Voters' pamphlet	18%	17%	14%	11%
Direct mail	3%	4%	3%	5%
Word of mouth	8%	9%	10%	9%
Other	4%	5%	6%	11%
Don't know	1%	2%	1%	0%

2. Did you take the opportunity to read the pamphlet?

	1980	1982	1986	1988
Yes, all	28%	40%	39%	36%
Yes, part	54%	46%	48%	48%
No, too complicated	3%	2%	3%	3%
No	10%	10%	9%	11%
Don't know	5%	2%	1%	2%

3. Did you find the information in the ballot pamphlet:

	1980	1982	1986	1988
Very helpful	44%	43%	50%	42%
Somewhat helpful	43%	44%	40%	48%
Not very helpful	8%	7%	6%	6%
Not helpful	1%	3%	1%	1%
Don't know	4%	2%	3%	3%

4. Did you feel the information in the voters' guide was:

	1980	1982	1986	1988
Biased	10%	11%	15%	19%
Unbiased	73%	67%	69%	65%
Don't know	18%	22%	16%	16%

Source: Surveys conducted by Dan Jones & Associates on behalf of the Utah Secretary of State's office

a. Popularity of the Pamphlet in California

Research by Mervin Field has found that the ballot pamphlet plays a significant informational role for voters in California. A survey of those who voted on the highly-publicized June 1976 nuclear power initiative (Proposition 15) revealed that television was the primary source of voter information (46%). Nearly a third of the respondents cited newspapers as their primary informational source. Only 13% reported the voters' pamphlet as a source of information. However, on less

79. When Utah voters were asked in the survey by the secretary of state whether an additional $30,000 should be spent to mail the pamphlet to all registered voters, approximately 60% of respondents opposed the idea and 25% favored it.

publicized ballot measures, 33% of California voters indicated the voters' pamphlet was their primary source of information.[80]

A subsequent Field survey conducted in 1982 found slightly different results. Field's data suggested that voters relied almost equally on newspapers and television as their primary source of information—31% and 30%, respectively. Voter information pamphlets were a primary informational source for 21% of the respondents. Next in order were oral discussions (5%), mail advertisements (5%) and radio (3%).[81]

A poll conducted by the Charlton Research Company following the November 1990 general election in California found that the most powerful sources of voter information were newspaper articles and analyses and the ballot pamphlet. Seven out of 10 voters agreed that newspapers and the ballot pamphlet were either extremely or somewhat important in their decisionmaking. As shown in Table 7.5, television news, televised debates and television advertising were rated below the ballot pamphlet as less useful sources of voter information.

Table 7.5

USEFUL SOURCES OF VOTER INFORMATION IN CALIFORNIA

"For each of the following sources of information about issues and campaigns, please tell me in general how important that source was in helping you decide how to vote in the elections. Was it extremely important, somewhat important, not very important, or not at all important to you?"

	Important Net Percentage	*Unimportant* Net Percentage
Newspaper Articles or Analyses	73%	25%
Voters' Pamphlet	69%	29%
National Television Stories or Analyses	61%	38%
Local Television Stories or Analyses	60%	40%
Slate Cards	55%	44%
Party Endorsements	53%	44%
Family and Friends	50%	49%
Televised Debates	47%	50%
Television Advertisements	39%	61%
Direct Mail Literature	38%	60%
Newspaper Endorsements	35%	64%
Public Opinion Polls	24%	75%
Radio Advertisements	23%	77%
Endorsements by Celebrities	13%	86%
Information From Employer	10%	82%
Billboards and Signs	9%	89%

Source: Charlton Research Company, California Issues Study, November 1990, at 15.

In cases of lesser-known ballot measures, the pamphlet will be the only conveniently available source of information. Professor Betty Zisk observes, "I have

80. Magleby, *supra* note 55, at 136.

81. League of Women Voters, Initiative and Referendum in California: A Legacy Lost?, at 54-55 (1984).

found [at least in Massachusetts] that it is almost impossible to obtain much information beyond the Voters' Information Pamphlet about some of the less publicized questions [aid to parochial schools in 1982, the 1976 advisory question on a deep water refinery]. If this is true for a scholar-activist, it must be even more difficult for nonspecialists."[82]

b. Education and the Ballot Pamphlet

Surveys repeatedly show more educated voters rely more heavily on the voters' pamphlet. A survey of California's November 1972 election found only 7% of those with less than an 8th grade education said that the voters' pamphlet was a source of information on the ballot measure, while 44% of those with advanced degrees received at least some of their information from the booklet.[83]

The causal relationship is not entirely clear. Do those with less than a 8th grade education avoid the pamphlet because it is too difficult to read? Or do they avoid the pamphlet because they prefer to get their information from television rather than from the print media? The same survey cited above suggests that both factors may be at play. The less educated prefer to receive their information from television rather than the newspaper (52% to 36%). Additionally, they are far more inclined than those with advanced degrees to get their information from a single source. The propensity of those with little formal schooling not to read the voters' pamphlet is compounded by the complexity of the booklet itself.

Perhaps the most comprehensive survey on the demographic background of those who read the ballot pamphlet was conducted for California's November 1990 election by Dubois, Feeney and Costantini.[84] The researchers prepared a questionnaire that was printed near the end of California's November 1990 ballot pamphlet, inviting readers to complete the survey and mail back to the secretary of state at their own expense. More than 51,000 registered Californians responded.

As the authors note, because the survey is based on readers of the ballot pamphlet, the results are not indicative of overall voter opinion. Unsurprisingly, only 3.6% of readers of the pamphlet found it "not very helpful" in making ballot choices. A more interesting result of the survey, however, is the demographic background of respondents. If those who responded are representative of ballot pamphlet readers in general, those who use the pamphlet are among the most highly educated and politically motivated segment of California's electorate. Approximately 28% of respondents held a college degree and nearly 90% had at least some college education. More than 92% of respondents claimed that they usually vote in both primary and general elections, and more than 95% said they vote on "most or all" ballot propositions. It is interesting to note that even for this highly educated pool of respondents, the most widely read and most valued part of the pamphlet was the pro and con arguments section.

C. Privately-Published Pamphlets Offer Useful Lessons for Improved Local Ballot Pamphlets

In California, the League of Women Voters, *California Journal* magazine, the Commonwealth Club of San Francisco, Town Hall of California and other non-profit educational organizations distribute their own voters' pamphlets analyzing the

82. Betty Zisk, Money, Media and the Grass Roots: State Ballot Issues and the Electoral Process, at 254 (1987).

83. Magleby, *supra* note 55, at 135.

84. Philip Dubois, *et al.*, The California Ballot Pamphlet: A Survey of Voters, a preliminary report prepared for the California secretary of state (Mar. 1991).

issues before the election. These independent sources tend to be less reluctant than government agencies to discuss controversial matters in their pamphlets. The background information they provide, especially in the Town Hall pamphlet, is considerably more extensive than official analyses, frequently drawing on relevant statistics, surveys and social science studies.

The various analyses available for the November 1988 Cigarette and Tobacco Tax initiative (Proposition 99) demonstrate the different approaches. The California Ballot Pamphlet has one paragraph of background information describing the current tax rate and agency collection process. The *California Journal* provides slightly more information, pointing out the last time the tax was raised and comparing California's tax to the rest of the nation.[85] The League of Women Voters pamphlet is even more informative. It provides a longer background section and additional information in the pro and con section. The Town Hall analysis is the most complete. It discusses the current tax rate, comparative tax rates in other states, survey data on the popularity of smoking, the social costs of smoking, the effectiveness of educational programs on smoking behavior and the profit margins of the tobacco industry.

Official voters' pamphlets may shy away from such extensive discussions for two reasons. First, some of the available factual data about tobacco, for example, casts smoking in an unfavorable light. If used in the secretary of state's analysis, tobacco industry representatives in all likelihood would accuse the state of bias and pursue court challenges to amend or delete the background information. Government officials are acutely sensitive to charges of bias—even to the point of failing to give voters useful information. Second, official pamphlets publish the complete texts of all the measures, consuming valuable space and leaving less room for additional information. Neither the *California Journal,* League of Women Voters nor Town Hall pamphlets include the actual initiative texts.

1. Readability

The privately-published pamphlets studied appear more readable than most official government versions. Town Hall of California's pamphlet benefits from its format.[86] A colorful, glossy cover enhances its aesthetic impact, and some of the legalistic and technical language of the official summaries and fiscal analyses is excluded. The *California Journal* and League of Women Voters pamphlets are perhaps the most readable. They do not include the legalistic and technical language of the official captions, summaries and fiscal analyses. The League of Women Voters even goes one step further in simplifying its pamphlet. Instead of labeling Proposition 99 as "Cigarette and Tobacco Tax. Benefit Fund. Initiative Constitutional Amendment and Statute," for example, the League simply labeled it, "Cigarette Taxes."[87]

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85. Although the background information provide by the *California Journal* on most ballot propositions is limited, the *Journal* supplied a lengthy background discussion for the insurance reform measures. The five insurance measures of 1988 were grouped together and three-quarters of a page was devoted to a single background section.

86. Town Hall of California did not prepare a ballot pamphlet for the 1990 elections.

87. The League of Women Voters pamphlet, however, continued to use the nondescript and confusing titles for the insurance initiatives issued by the attorney general. Thus, voters had to sift through the following ballot titles: Insurance Rates and Regulation (Proposition 100); Automobile Accident Claims and Insurance Rates (Proposition 101); Insurance Rates, Regulations, Commissioner (Proposition 103); and Automobile and Other Insurance (Proposition 104).

2. "Grouping" by Subject

One of the best features of the privately-published booklets is their grouping of ballot measures dealing with similar topics. By law, the official pamphlet descriptions must appear in the same order as the measures appear on the ballot.[88] Thus, even though four initiatives in November 1988 dealt with similar insurance matters, each measure was discussed separately. The exact same background information was used for each measure and repeated four times.

By contrast, the Town Hall, League and *California Journal* pamphlets grouped the discussion and analyses of competing insurance measures together. (The League also grouped its discussion of two AIDS initiatives together.) Grouping saves space and, more importantly, makes it much easier for readers to comprehend the differences between competing measures. This is particularly useful in light of recent trends in which opponents to an initiative proposal qualify their own "counter initiative" for the ballot rather than simply launching an opposition campaign.[89]

Given the all-or-nothing character of the counter initiative strategy, it is particularly important that voters be aware of the differences between conflicting initiative proposals. Town Hall and, to a greater degree, the League of Women Voters facilitate understanding of the differences between conflicting initiatives by directly comparing and contrasting their provisions. Town Hall's pamphlet alerts the reader to conflicting provisions in a final paragraph of its analysis.[90] The League's pamphlet neglects to alert readers of specific conflicting provisions, but it does provide a superior method of comparison. In its election pamphlet, the League constructs a chart that includes all major aspects of insurance reform and describes how each measure would impact those categories (Exhibit 7.A). A "best" comparison would incorporate the approaches of both the League and Town Hall: a comparison chart that also specifically identifies conflicting provisions within each category.

3. Endorsements by Opinion Leaders

Another interesting feature of the League of Women Voters' pamphlet is its listing of prominent organizations and individuals supporting each initiative. The *California Journal* also makes a concerted effort to inform voters of each initiative's supporters. In the 1988 insurance reform debate, for example, the names of backers became a critical factor in influencing vote choice.

The names of proponents and opponents take on special significance for the electorate when the measures are complex or when paid advertisements confuse the issue. Although several scholarly studies have concluded that endorsements have only a limited impact on voting behavior,[91] these studies examined the impact of elite

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88. Ballot order of statewide initiatives is statutorily determined as the order in which they qualify for the ballot. Cal. Elec. Code §10218 (West 1977).

89. Two state campaign finance measures appeared on the June 1988 ballot. Proposition 68 was a comprehensive reform measure, while Proposition 73 was more limited and designed in part to negate much of Proposition 68. Both initiatives were approved by voters, but Proposition 73 received more votes and thus dominated over any conflicting provisions (of which there were many). It seems apparent that voters had cast ballots in favor of both propositions with a sincere interest in campaign finance reform. Many voters probably did not understand that voting *for* Proposition 73 was, in effect, a vote *against* more comprehensive reform. Had that been clearly understood, the election results may have been different.

90. The November 1988 Town Hall ballot pamphlet reads in part: "Contradictory provisions can be found between the insurance reform measures regarding rate fluctuations, rate rollbacks, redlining, good driver discounts, anti-trust exemptions, broker rebates, consumer protections, lawyer's fees, and selection of the insurance commissioner by appointment or election."

91. *See, e.g.*, Zisk, *supra* note 82; Magleby, *supra* note 55, at 152-58.

endorsements on all initiatives, rather than complex and confusing ones. When voters find it difficult to know which way to vote on a particular issue—as is frequently the case among counter initiatives—elite endorsements can become a principal factor affecting voter choice. News analyses and public opinion polls, for example, confirm that Ralph Nader's endorsement was the major reason behind the 1988 electoral success of Proposition 103 (automobile insurance regulation) and the failure of all the other insurance reform initiatives he opposed.[92] When issues are difficult, voters want to know who backs the measure and who opposes it. They often cast their ballots accordingly.

Exhibit 7.A

LEAGUE OF WOMEN VOTERS' INITIATIVE COMPARISON CHART

How the Insurance Propositions Compare

Propositions 100, 101, 103 and 104

Provisions	Proposition 100	Proposition 101	Proposition 103	Proposition 104
Rates	Good-driver discount beginning January 2, 1989, reduces rates 20 percent below rates charged on January 1, 1988, for liability, medical, and collision. Prohibits territorial rating unless clear and convincing evidence shows it to be a valid predictor of loss	Beginning November 9, 1988, rates on bodily injury liability and uninsured motorist components are reduced 50 percent and frozen at that level for one year. Rates could then increase under a specified formula through December 1992, when this proposition expires.	Beginning November 8, 1988, insurance rates on motor vehicle, homeowners, and business insurance are rolled back 20 percent from their levels on November 8, 1987 and frozen at these levels for one year until November 8, 1989, when a good-driver discount plan takes effect with rate reductions of 20 percent. Primary factors in setting rates are determined to be the insured person's driving record, the miles driven, and the number of years of driving experience.	For a two-year period (July 1989 through June 1991) average statewide premium rates on bodily injury liability, uninsured motorist, and basic no-fault benefits are reduced 20 percent. Prohibits public officials from setting or approving rates except for workers compensation and assigned risk insurance. Allows territorial rating.
At-fault or No-fault System	Affirms the present at-fault system, thereby possibly restricting other systems such as no-fault.			Enacts a no-fault system of auto insurance. Company provides minimum basic benefits, paid regardless of fault in an accident, to a policyholder for economic losses not covered by workers compensation, disability benefits, and health insurance. Applies only to bodily injury, does not cover damage to vehicles or property resulting from collision.
Accident Coverage	Does not set limits on filing of lawsuits to recover losses after auto accidents.	Limits claims for non-economic losses (pain and suffering) to 25 percent of the economic losses (medical costs and lost earnings) not paid by other sources. Limits do not apply in cases of death or permanent injury.	Does not set limits on filing of lawsuits to recover losses after auto accidents.	Permits a person to sue the individual at fault only for economic damages exceeding the no-fault coverage or for non-economic damages resulting in death or permanent injury. Arbitration, not court trial, would settle disputes over basic benefit payments.
Supporters (partial list at press time)	Mothers Against Drunk Driving; Congress of California Seniors; John Van de Kamp, Attorney General; Insurance Consumer Action Network; National Insurance Consumer Organization; Consumer Federation of America; California Trial Lawyers Association; California Bankers Association; Common Cause; Consumers Union; Assemblymember Lloyd Connelly.	Assemblymember Richard Polanco; Coastal Insurance Company.	Ralph Nader, consumer advocate, and Voter Revolt to Cut Insurance Rates; Consumers Union; and Common Cause.	Citizens for No-Fault Sponsored by California Insurers; California State Automobile Association; Dianne Feinstein, former Mayor of San Francisco; and Bill Honig, State Superintendent of Public Instruction.

Source: League of Women Voters of Los Angeles, Nov. 8, 1988 General Election

D. In the Commission's Judgment, Substantial Improvements Should Be Made in Local Ballot Pamphlets and Other Sources of Government-Sponsored Information

By far the most important form of government-sponsored election information is the ballot pamphlet. The quality of local ballot pamphlets vary widely from jurisdiction to jurisdiction, with some of the charter cities investing the greater share of resources into their own municipal pamphlets. A few of these pamphlets are impressive, but all could stand improvements in preparation, organization and/or design. Comparisons among the pamphlets of various localities, states and private associations suggest a number of ways in which the informative nature of

92. Leo Wolinsky, *For Prop. 103, Biggest Selling Point May Be the Salesman,* Los Angeles Times, Nov. 2, 1988.

government-sponsored pamphlets can be enhanced. Procedures should be established to optimize the readability and fairness of official descriptions.

1. Mailing or Publishing a New Summary Ballot Insert Shortly Before the Election

The Commission believes there is a pressing need for a new type of short ballot summary—possibly to be distributed *in addition to*, not in place of, the existing voters' pamphlet. This new ballot pamphlet, perhaps called a "Summary Ballot Pamphlet," would be mailed to all registered voters with the local ballot pamphlet or sample ballot.

The summary ballot pamphlet would consist of a large, attractively printed, quick-reference chart, possibly reproduced in two colors, which would briefly describe all the measures in the election and provide information relevant to them. The summary would be prepared by the clerk's office at the same time as the official pamphlet, thereby allowing interested citizens the means to challenge the accuracy of its information. Voters would use this summary to obtain quick synopses of the ballot propositions, as a final check before deciding their positions.

Some major newspapers already provide their readers with a quick-reference summary chart of all ballot measures just before an election. Readers find these brief summaries useful in organizing the major issues and themes of each initiative. The Commission believes these summary charts should be adopted by the state and local governments in an improved format.

The summary would list all the ballot measures by number down the left-hand side of the chart. Then, in columns across the document for each proposition, the summary should present the following information: the measure's official caption, condensed versions of the official summaries, condensed versions of the pro and con ballot pamphlet arguments (prepared by the authors of those arguments), lists of up to five supporters and opponents of each measure (chosen by the measure's proponents and opponents), a current listing of the top five financial contributors on both sides (based on the most recent disclosures) and a statement of the legislative body's vote for and against each measure. A mock-up of such a summary appears in Appendix J to the Commission's report. Preferably, the summary pamphlet could be mailed to every household, either by itself shortly before an election or as an insert in the municipal ballot pamphlet or county sample ballot.

The use of a summary ballot pamphlet would have several important benefits. First, it is apparent that a substantial number of voters simply do not carefully read the current voters' pamphlet—either because it is too long and they do not have the time, or because it appears too complex and legalistic. A short ballot pamphlet summary would enable voters to grasp the essential issues quickly. Voters preparing their positions the night before the election would know they had a quick and convenient reference to help them with their decisions. The easy accessibility of a pamphlet summary would increase its use.

Second, it is apparent that many registered voters do not vote at all—quite possibly because they are intimidated by the voters' pamphlet and feel they are not adequate to the task of casting an informed ballot. A summary might encourage more of them to participate in the election.

Third, many voters who read the longer pamphlet are often unable to digest all its information. The summary could act as a guide or "executive summary," enabling them to spot the issues that concern them and then to study those issues further in the full voters' pamphlet.

It could be argued that reliance on a condensed summary might induce voters to cast their ballots based on inadequate or sketchy information, thus allowing major

local policies to be determined without sufficient thought and analysis on the part of the electorate. The Commission believes, however, that the summary ballot pamphlet would supplement, not replace, existing sources of information. Many voters today cast their ballots without *any* reading of the voters' pamphlet. They simply walk into the ballot box, read the short ballot summary and cast their vote on the spot. A short summary chart might give some voters more information than they now use and encourage others to study the key issues beforehand, thereby significantly enhancing the quality of voting.

2. *Improving the Structure and Content of Information Provided by the Government*

Structural changes to local ballot pamphlets can also be made to highlight its informational value. Some of these changes have already been adopted by some jurisdictions.[93] Other changes may require statutory authority.

a. *Grouping Conflicting Propositions in the Ballot Pamphlet and on the Ballot*

Much could be gained by informing voters of the similarities and differences between competing initiatives. The discussion of these measures should be bundled together in the ballot pamphlet. A chart should be included to compare and contrast major aspects of the competing initiatives. The chart should specifically identify opposing provisions and highlight their conflicting aspects in bold type or, preferably, red ink.

Some states group measures that deal with similar subjects together on the ballot. The purpose of this grouping is to call voters' attention to the conflicting provisions of each measure and to highlight the opposing choices available. Washington, Maine and Massachusetts provide three distinct models for grouping competing measures on the ballot. Washington and Maine *mandate* that voters may choose only one of two or more conflicting propositions. Massachusetts *encourages* voters to choose one over the other.

Washington's system is a two-step process that causes considerable voter confusion. When conflicting propositions are placed on the ballot, voters are given two questions. First, they are asked to choose "for either measure" or "against both measures." Second, they are then asked to select the measure they prefer.[94] If a majority of the voters chooses "either measure" in step one, then the proposition receiving the most votes in step two becomes law. The greatest problem with Washington's model is voter drop-off. Many voters cast ballots against both measures in the first step and then decline to indicate their preference between the two measures in the second step. As a result, if a majority of voters chooses "either measure" in step one, a bare majority of them, or a minority of all voters, can effectively determine which alternative measure will become law.

Maine also forces voters to choose between competing propositions or against both. The legislature is empowered to place a measure on the ballot as an alternative to an initiative already qualified for the same ballot. The alternative propositions are grouped under a single caption that generally describes the subject. Voters are given

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93. In the November 1990 ballot pamphlet, the secretary of state adopted some structural changes recommended by the Commission, such as using bullets to break up the official summary of a measure.

94. Grouping conflicting measures on the Washington ballot applies only to legislative alternatives to initiatives, not counter initiatives. The legislature has placed alternative measures to initiatives on the ballot only three times: twice on the same ballot in 1972 and once in 1988. Telephone interview with Don Whiting, Washington Assistant Secretary of State (Feb. 21, 1991).

the choice to vote "Yes" on option A (the initiative), "Yes" on option B (the legislative measure) or "No" on option C (both proposals). The following warning is printed in bold black type immediately below the caption: "MARK ONLY ONE SQUARE OR YOUR VOTE WILL NOT COUNT."

Although Maine's approach is much clearer than Washington's, both methods of grouping create the possibility that public policy will be enacted by a minority of voters. If 34% of the voters choose option A while options B and C each receive 33%, for example, the initiative would be enacted into law by slightly more than one-third of the voters.

Massachusetts offers a less dramatic, "informational" model of grouping competing measures on the ballot. The Massachusetts legislature may deem two or more ballot propositions—initiatives or legislative measures—in conflict and group them on the ballot with a warning label stating that only one of the measures may go into effect. Voters can cast affirmative votes for both competing measures if they desire, and the one receiving the largest majority wins. Voters are at least told the consequences of their actions.

The Commission believes that current California law governing the order of initiatives on the ballot (and hence in the ballot pamphlet) should be amended to grant cities and counties some discretion in this field. Local authorities should be required to group measures dealing with similar subjects—even measures addressing similar subjects which do not substantially conflict—for purposes of clarity.

The city attorney or county counsel should be further empowered to determine which measures are sufficiently in conflict that the courts might consider them counter measures and invalidate one or the other in its entirety. When the attorney's office makes such a determination, it should order them grouped together in the ballot pamphlet and on the ballot and accompany them with a warning label stating that only the measure receiving the most votes may go into effect. The office should make this determination at an early enough date to allow for expedited court review of the decision and appropriate organization and printing of the ballot pamphlet. The decision as to which ballot propositions—including initiatives and legislative measures—are substantially in conflict as to invoke the "all-or-nothing" standard should be made by the attorney's office, rather than the local legislative body, in order to minimize the political considerations of such a decision.

Two different types of warning labels for grouped measures on the ballot may be necessary. One would state that of two conflicting statutory propositions, the approved measure receiving the most affirmative votes may prevail in specified or in all aspects. A second would state that if conflicting ordinance and charter measures are both approved, the charter amendment will control regardless of relative vote share.

b. Requiring Texts at the Back of the Pamphlet

Most local jurisdictions, especially general law communities, neglect to publish the exact texts of initiatives in their ballot pamphlets or sample ballots.[95] These communities merely include a brief analysis of each measure by the city attorney or county counsel along with arguments for and against. Several of the charter cities, on the other hand, include the full text of every measure in their own voter information pamphlet published independently of the county sample ballot.

95. General Law communities are only required to make full initiative texts available at cost upon request. Cal. Elec. Code §3795, 4018 (West Supp. 1992).

The city of Long Beach, for example, publishes the official ballot caption first, followed by the initiative's text, on the next page is an impartial analysis, and concludes with pro and con arguments. Santa Monica follows a comparable format minus any official ballot caption; the text comes first. Los Angeles begins its ballot descriptions with the official caption at the top of the page and an impartial analysis beneath. Pro and con arguments follow and the text comes last. In each of these charter city ballot pamphlets, however, the text of ballot measures is integrated with the analyses rather than placed at the back of the pamphlet.

Although keeping the texts of measures out of local ballot pamphlets enjoyed some initial support among members of this Commission, the Commission decided to recommend that all jurisdictions should publish the texts of measures in the back of their pamphlets. Foremost in the Commission's reasoning was the fact that the availability of the texts lends the ballot pamphlet an important air of legitimacy. Whether or not a person reads the text, the very availability of the texts at the back of the pamphlet assures the reader of the accuracy of the official summary and analysis. It is less likely that officials responsible for preparation of the pamphlet will write a deceptive or inaccurate description when readers can check the text for themselves. With texts in hand, readers also are given the means to verify the accuracy of conflicting claims made by proponents and opponents of initiatives. In addition, the Commission has found that publication of initiative texts in the ballot pamphlet has been an invaluable tool for historical research at the state level. The actual wording of most initiative proposals throughout California history would have been lost if not preserved in the state ballot pamphlet. Since localities generally do not publish the texts of local ballot measures, the exact wording of most initiatives at the local level unfortunately have been lost for historical research. Finally, the fact that some people read at least parts of the texts is reason enough to make the actual proposed legislation widely available.

An alternative used in some localities in which the pamphlet contains a postcard for registered voters to mail and obtain the full texts of ballot measures is impractical. Most voters do not begin reading the pamphlet and thinking about ballot measures until a few days before the election. By then, ordering the texts would be too late.

Nevertheless, many people find the texts of initiatives intimidating. For obvious reasons these texts must be written in legal language. In addition, the texts of new material are often superimposed upon the original statutes being amended; sections of existing statutes proposed for amendment are crossed out and new provisions are printed in italic type. Readers may be less intimidated by these formidable texts if they are not printed next to the summaries and arguments but removed to the back of the pamphlet. Additionally, it would be less confusing to highlight changes in existing laws with red ink rather than strikeout and italics.

c. Adding a Separate Section for Endorsements

The Commission believes a significant reform would be the increased use of endorsements in the ballot pamphlet. It therefore recommends that the clerk's reserve for the proponent and opponent in the ballot pamphlet up to one-half a page each in side-by-side vertical columns which could be used solely for endorsements—a listing of the names of the principal individuals and organizations supporting the proponents' and opponents' positions. Giving the proponents and opponents of each measure enough space to list dozens of principal supporters would enable voters to align themselves with others whose opinions they respect, or at least to receive cues as to which positions might be closest to their own.

Reliance on endorsements is an oft-used and valuable practice in decisionmaking, particularly on complicated questions. Deciding which doctor to

choose, which auto mechanic to select and even which household products to purchase all involve decisions which are often heavily influenced by the opinions of friends or others who have relevant experience and whose opinions are trusted. In the political arena, elected officials are frequently unable to study carefully the texts of the thousands of bills on which they must vote. They therefore turn, first, to the opinions of their staff aides and, second, to the opinions of other elected officials whose judgments they respect—authors of bills, committee chairs or individual officials of valued perspective, political persuasion or judgment. Voters confronting ballot measures also turn to endorsements to help them decide how to vote—particularly when those measures are complex, and have received little free media attention. The Commission believes that voter reliance on endorsements is a valuable practice and should be encouraged as an aide to informed decisionmaking.

Currently, spokespersons for and against individual ballot measures are given a limited amount of ballot pamphlet space to present their arguments. They are entitled to use this space to list the supporters of their respective positions, but doing so cuts into the space allotted to them to present their substantive arguments. As a result, most proponents and opponents devote the bulk of their space to substantive arguments and list only two or three supporters, typically as signatories to their arguments. The Commission believes the use of endorsements is so important, particularly in light of the growth in complex and numerous initiatives, that additional space should be reserved for their use. This space would not detract from the space available for substantive arguments. Endorsements should not be listed, however, unless the clerk has on file a signed statement from the endorsing individual or organization permitting the use of that person or organization's name in the ballot pamphlet.

d. Improving Financial Disclosures on the Initiative Petition and in the Ballot Pamphlet

Information on major contributors for and against an initiative is frequently of considerable importance to voters. Just as information on who supports and opposes an initiative provides useful voting cues, information on who is financing a campaign may be helpful in affecting voters' choices. Disclosures not only identify special interest groups behind a measure, they also help point out sharp discrepancies in the amounts of moneys spent for or against an initiative. Understanding that one side is vastly outspending the other can be useful to voters in weighing the merits of information put forth in advertising campaigns.

The first opportunity for disclosure is during the initiative qualification drive. Before the petition circulation begins, initiative proponents should disclose all contributions received as of the date of the official caption and summary. The top of each initiative petition should list the names and affiliations of the two largest contributors at that time. Understandably, financial disclosure at this early date may not accurately reflect the financial base that will ultimately develop in the course of the campaign, but potential signatories will at least be given some indication as to the identities of special interest groups behind an initiative drive. (See recommendations section of Chapter 4, "Circulation and Qualification.")

A legislative bill requiring that the ballot pamphlet list major contributors for and against each state measure was vetoed in 1990 by then-Governor George Deukmejian. The bill by Senator Quentin Kopp (I-San Francisco) would have mandated the disclosure of all contributors giving $10,000 or more to an initiative campaign. The Commission believes this proposal is a good one and should be extended to the local level. Listing major financial contributors in the ballot pamphlet would help give voters an indication of an initiative's true financial base.

Because the voters' pamphlet is prepared halfway through the campaign period, this listing is likely to reflect accurately a measure's true support.

The Commission also believes the five largest contributors for and against each measure should be listed in the "Summary Ballot Pamphlet" which it proposes be mailed to all voters before the election. (See discussion above.) This late mailing would give voters accurate and up-to-date information on major financial contributors since very large contributions often are received late in the campaign.

e. Recording Individual Elected Officials' Votes

Elsewhere in this report (see Chapter 3, "Initiative Drafting and Amendability") the Commission recommends that local legislative bodies be required to vote on every qualified initiative that reaches the ballot. In conjunction with this recommendation, the Commission also recommends that localities record the vote in the voters' pamphlet. A one-page chart should be placed at the back of the ballot pamphlet listing representatives' name and vote cast on all initiatives. This legislative vote will also give voters useful information on the positions of their elected representatives who presumably have given the question serious thought. A public recording of the vote will also enhance the accountability of elected officials to their constituencies, encouraging them to vote carefully in the knowledge that their votes will be recorded and made public.

3. Improving Ballot Pamphlet Design

A number of design changes to the voters' pamphlet would greatly enhance the booklet's readability. An analysis by Robert Herstek, the Commission's design consultant, proposes several simple printing features that would help make the pamphlet easier to read and comprehend.[96] These recommendations include the following:

- *Using different type sizes to emphasize the materials introducing the discussion of each measure.* In much the same way as a newspaper article briefly summarizes a news story in its first paragraph, thereby encouraging interested readers to continue through the rest of the story for additional details, the official caption and summary should be printed in a larger type than the following analysis. Boldface type might be useful in this regard. Currently, Herstek reports, the "page is just one giant blur with everything carrying the same weight."
- *Mixing typefaces.* The summary could be presented in a sans serif face like universal or helvetica and the text in a serif face as it presently is. For example: This would allow readers to differentiate more easily between the summary and the text, thus increasing their ability to focus. It may also be useful to differentiate the background discussion from the description of the proposal in the analysis section.
- *Using two colors of print.* A second color ink significantly enhances the aesthetics of printed material and can be quite useful in focusing readers' attention. Utah and Massachusetts use multiple colors in their pamphlets. Red ink would be particularly effective in highlighting important points. The caption should be in red along

96. Robert Herstek, "Graphic Design Analysis and Recommendations for Initiative Statute," (Mar. 1990) (unpublished report commissioned by the California Commission on Campaign Financing, on file with Commission).

with other headings. Points requiring special emphasis could be highlighted in red.

- *Printing the pro and con arguments and their rebuttals side-by-side rather than above and below each other.* Since the arguments typically are longer than the rebuttals, arguments would run completely down the left column of a page, wrap around to the top right side of the page, and the rebuttal would then begin somewhere below in the right hand column. This format would make it easier to compare the two sides.
- *Relaxing the informal rules against charts and graphs in the pamphlet,* especially in the official description. As a matter of practice local agencies have not accepted pictures, given the possibility that proponents and opponents might employ alarmist, shocking or misleading photographs to bolster an argument emotionally. Graphic designs, however, are less likely to be abused in the same manner. Charts and graphs can be useful in clarifying a point. The use of charts, graphs and other graphic designs should be encouraged.

4. Simplifying the Official Description for the Circulation Petition and Ballot Pamphlet

The language of the official caption and summary should be simplified and made more descriptive. Wording used in the official caption and summary should target the 12th grade reading level.

Although official captions and summaries of initiatives at the local level tend to be written in a clearer fashion than official descriptions at the state level, there remains room for improvement. Captions for most Los Angeles City initiatives are fairly descriptive and understandable. However, not all communities in the Los Angeles area present readable captions and summaries. Apparently in an overzealous drive for neutrality, some city officials write their official descriptions in "legalese" and in a manner that often says very little.

The official description of a measure to lease hospital property in the city of Downey portrays this problem. Printed in the ballot pamphlet and on the ballot is the caption, "ORDINANCE NO. 711." The ensuing summary reads as follows:

> "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY, CALIFORNIA, APPROVING A LONG TERM LEASE AND APPROVING A SETTLEMENT AGREEMENT AND MUTUAL RELEASE."

This description is not the least bit helpful in providing voters with information about the nature of the ballot measure. A better caption would be something like "HOSPITAL LEASE," followed by a description on the order of:

> "AN ORDINANCE TO EXTEND THE CITY'S LEASE WITH THE DOWNEY COMMUNITY HOSPITAL."

Local officials responsible for ballot descriptions should keep in mind that they are not writing for the law books when they title ballot measures; they are writing to inform the voters.

a. Targeting 12th Grade Reading Level

Although it may not be possible to simplify the language of official descriptions to the 8th grade level, they should be written in a less legalistic manner. If initiative proponents and opponents can state their case in relatively clear language, local officials should be able to do the same in their captions and summaries.

The language of official initiative descriptions that is placed on the initiative petition and in the ballot pamphlet can be made more readable not just by simplifying the language but also by restructuring the wording. San Francisco's ballot pamphlet description has used one long run-on sentence that makes it significantly harder to read. A similar problem has plagued the attorney general's summary of initiatives in California.

In 1990, the Commission suggested that the attorney general use "bullets" to highlight major points in the official summary and break apart long paragraphs. Exhibit 7.B demonstrates how "bullets" can help make a paragraph easier to comprehend. In the exhibit, the original official summary of Proposition 119 in the June 1990 ballot pamphlet is contrasted to a restructured summary. No changes in language have been made in the restructured version; it has simply been modified by the introduction of bullets that segment each major issue in the description. Clearly, the restructured version is more comprehensible than the original. Very little effort was required to improve its readability. Just by restructuring the summary, the reading level necessary for comprehension was reduced by a full grade. This suggestion should be adopted at the local level.

b. Permitting Immediate Court Review Before Circulation

In order to ensure that initiative proponents are satisfied with the official caption and summary, procedures for expedited court review should be available in all local jurisdictions as soon as the circulation petition is captioned. Objections to the language used in describing an initiative are common. The frequency of court challenges to first drafts of California's ballot pamphlets demonstrates the degree of concern for having an accurate description of a measure. The official caption and summary are so crucial to voter comprehension of a measure that expedited review procedures should be established at this early stage of an initiative, not just when the ballot pamphlet is about to be published. It would be a relatively simple matter to extend the same expedited review process to the initial titling period, delaying starting the time clock on the circulation deadline for up to two weeks until the matter has been settled in court.

E. The Commission Believes That Some Proposed Local Ballot Pamphlet Reforms for Improving Its Readability Are Impractical or Undesirable

Local and state ballot pamphlets have long come under criticism for being too difficult to understand. Many of these complaints have not been the fault of the pamphlet itself but rather a result of the legalese in the official summary. Other complaints raise valid problems with the language or structure of the pamphlet. However, some proposed reforms might cause more harm than good. These reforms not recommended by the Commission are discussed below.

1. Targeting Readability at the 8th Grade Level

Some advocates of simplifying the pamphlet argue that the target reading level should be set at the 8th grade—the level of reading comprehension of the average California voter. The Commission does believe that every reasonable effort should be made to reduce the grade level needed for reading comprehension to a target goal. However, each reduction in grade level brings with it a loss of important concepts and useful language. Excessive language simplification can translate into a loss of clarity. For example, the word "legislature" does not fall within the 8th grade reading level. Describing an initiative that proposes restructuring the legislature in such simple language that even the word "legislature" cannot be used would diminish, not improve, the clarity of the ballot pamphlet. The Commission's

recommended 12th grade target level for readability encompasses a sufficient vocabulary to describe accurately most initiatives on local and state ballots.

Exhibit 7.B

COMPARISON OF ORIGINAL AND REDESIGNED VERSIONS OF A CALIFORNIA BALLOT PAMPHLET SUMMARY

Original Official Summary for Proposition 119 (June 1990)

Official Title and Summary

REAPPORTIONMENT BY COMMISSION. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Amends state Constitution. Requires 12-person Commission, appointed by retired appellate justices, adjust boundaries of California Senatorial, Assembly, Congressional, and Board of Equalization districts. Commissioners appointed from nominees of non-partisan, non-profit state organizations. Requires Commission review plans submitted by registered voters and adopt plan or amended plan which complies with standards. Each district's population may vary no more than 1% from average district population. Senatorial districts formed from two adjacent Assembly districts, Board of Equalization districts from 10 adjacent Senate districts. Elections held for all Senate and Assembly seats in 1992. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Requires Legislature to transfer $3.5 million to the Independent Citizens Redistricting Fund in 1990-91 for expenses of commission. Transfers thereafter, every 10 years, adjusted for changes in the Consumer Price Index, resulting in the reduction of reapportionment costs by several millions of dollars each decade. If Supreme Court undertakes redistricting of reapportionment costs by several millions of dollars each decade. If Supreme Court undertakes redistricting, state costs would increase thereby offsetting part or all of above savings.

Redesigned Version of Original Official Summary for Proposition 119 (June 1990)

Official Title and Summary

REAPPORTIONMENT BY COMMISSION.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

- Amends state Constitution.
- Requires 12-person Commission, appointed by retired appellate justices, adjust boundaries of California Senatorial, Assembly, Congressional, and board of Equalization districts. Commissioners appointed from nominees of non-partisan, non-profit state organizations.
- Requires Commission review plans submitted by registered voters and adopt plan or amended plan which complies with standards.
  - Each district's population may vary no more than 1% from average district population.
  - Senatorial districts formed from two adjacent Assembly districts, Board of Equalization districts from 10 adjacent Senate districts.
  - Elections held for all Senate and Assembly seats in 1992.

Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:

- Requires Legislature to transfer $3.5 million to the Independent Citizens Redistricting Fund in 1990-91 for expenses of commission.
- Transfers thereafter, every 10 years, adjusted for changes in the Consumer Price Index, resulting in the reduction of reapportionment costs by several millions of dollars each decade.
- If Supreme Court undertakes redistricting of reapportionment costs by several millions of dollars each decade. If Supreme Court Undertakes redistricting, state costs would increase thereby offsetting part or all of above savings.

Source: California Ballot Pamphlet (June 1990)

2. Allowing Access to the Arguments Section of the Ballot Pamphlet by Purchase or Petition

Several states and the City and County of San Francisco permit anyone to place an argument in the ballot pamphlet for or against a measure by either buying that space or presenting a sufficient number of petition signatures. Advocates of this reform argue that wider access to the pamphlet will expand the number of viewpoints expressed and will consequently offer readers more information upon which to make a decision. This method of pamphlet access also avoids the possibility that the government may select an unrepresentative spokesperson of an initiative.

Offering a multitude of pro and con arguments in the ballot pamphlet for each initiative is not in itself a bad idea. But it may be too costly and too extravagant for most local communities in California. Many cities (and the county) in Greater Los Angeles are financially strapped and lack sufficient resources to produce and distribute the same kind of lengthy ballot pamphlet put together by San Francisco. It is not uncommon for San Francisco to receive five, six or even seven arguments for or against a given ballot measure. Ballot pamphlets in San Francisco regularly amount to nearly 200 pages. Excessively long ballot pamphlets are not something that many communities in the Los Angeles area can afford.

3. Making Use of Modern Communications Media

Distributing voter information through alternative communications media is another excellent idea that may be appropriate for the state or wealthy communities, but which may not be an affordable service for most local communities. The Commission has recommended that the state of California enhance its role in voter information beyond the ballot pamphlet by dispersing election information through modern communications technologies. Alternative mediums could include home video election information or election information through a toll-free telephone number.

But it would be impractical to require similar informational services from most cities and counties. Not only would these services be costly to local governments, they probably also would not offer sufficient benefit to the communities. Initiatives at the local level are relatively uncommon and, more often than not, noncontroversial. It does not seem prudent to require local jurisdictions to develop informational systems beyond an improved ballot pamphlet.

F. Conclusion

The voters' pamphlet is a valuable yet underutilized source of voter information. Although it is not necessarily the primary source of voter information—newspapers and television sometimes rank higher—it is widely used and highly valued for its non-prejudicial content. In many instances, the voters' pamphlet is the only source of information available to voters on lesser-known measures and local issues. The current voters' pamphlet is a constructive complement to the one-sided information given to voters through paid advertisements. The pamphlet must be redesigned to communicate more simply and effectively. Its language should be simplified and made more descriptive, its organization should be revamped to facilitate greater comparisons between competing measures and its design should be revised to make its contents easier to read and comprehend. Perhaps most importantly, a new summary ballot pamphlet should be sent to all registered voters shortly before each election.

CHAPTER 8

The Influence of Money on Los Angeles Area Ballot Initiatives

In 1903, frustrated by the spectacle of wealthy special interests bribing elected officials to influence legislation, the citizens of Los Angeles adopted the ballot initiative process, thereby enacting a system of direct democracy which allowed them to bypass the city council and its moneyed supporters altogether. The Progressive reformers who backed the Los Angeles initiative process—and its statewide version nearly a decade later—believed it would allow the public to enact laws directly without the distorting effects of money. Voters could evaluate proposals on their merits, unencumbered and uncorrupted by special interest influence. The initiative process would provide a "safeguard [by] which the people should retain for themselves" the power to pass laws which would "reflect the will and wish of the people,"[1] not the powerful interests of money.

Yet today, almost 90 years later, money often dominates the local initiative process even more than it does the local legislative process. In larger cities, money alone and in sufficient quantities can virtually *qualify* any measure for the ballot. And in most cities, money in large amounts can in many cases *defeat* any measure so long as that measure is outspent by a wide enough margin.

As described later in this chapter, the local initiative process in the Los Angeles metropolitan area has, like the statewide initiative process, frequently become an expensive battleground in which the most sophisticated campaign weaponry is employed by those with vast sums of money. In the city of Los Angeles, for example, more campaign dollars were devoted to four initiative campaigns over a two-year period ($12.5 million from 1986-88) than to the more than 50 candidates

1. California Ballot Pamphlet Special Election Oct. 10, 1911, Arguments in Favor of SCA 22.

running in city council races over a six-year period ($10.4 million 1979 to 1985).[2] Even in smaller cities with relatively quiet and inexpensive candidate elections, initiatives tend to act as lightening rods for uncharacteristically large campaign contributions and substantial spending.

To assess the influence of money over the local initiative process, the Commission conducted a detailed computerized analysis of campaign finance information for initiatives appearing on city ballots in the Los Angeles area from 1983 to 1991. In total, over 4,000 individual contribution and expenditure records from 40 measures in 20 cities amounting to over $30 million were analyzed. The population size of the cities studied ranged from the smallest, La Canada-Flintridge (population size, 20,166), to the largest, Los Angeles (population, 3.2 million). (See Table 8.1 for a complete list of the cities and local measures analyzed.)

For purposes of comparison, the Commission also conducted two distinct computerized data projects analyzing *statewide* initiative campaign finance patterns. The first studied the effects of large contributions and high spending in ballot measure campaigns by analyzing the campaign finance patterns of *the 18 highest spending statewide initiative campaigns in California history*.[3] This analysis, which covered 34 years of initiatives from 1956 to 1990, helped the Commission develop an historical perspective on the role of heavily one-sided spending in initiative contests. The second data analysis project evaluated the patterns of low- and high-spending campaigns in the *current* initiative process by analyzing *all 18 statewide initiatives in the 1990 primary and general elections.* (See Table 8.2 for a listing of the initiatives studied in the Commission's statewide initiative samples.) Altogether in the statewide project, the Commission analyzed 33 separate initiatives and one legislative measure (Proposition 126), assessed over 110,000 contribution and expenditure entries totaling more than a half-billion dollars ($568 million). (See Appendix F for a complete summary of the Commission's local and state data analysis projects.)

A. Local Initiatives Are Frequently Qualified by Single Contributors

Individuals and business organizations frequently fund local initiative qualification efforts singlehandedly. The median number of contributors to initiative qualification drives in the Los Angeles area cities surveyed was *three*.[4] Since 1983, only the city of Los Angeles (with a signature requirement that exceeds 123,000[5]) has witnessed more than 100 contributors to a single local initiative qualification effort.[6]

The frequency of single-handed qualification drives is in large part due to more intense citizen interest in local "quality of life" issues—from residential and

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2. California Commission on Campaign Financing, Money and Politics in Local Elections: The Los Angeles Area, at 333 (1989).

3. The 18 highest spending initiative campaigns were determined through a review of Fair Political Practices Commission historical material. Initiative spending figures were converted to 1988 dollars and then ranked from highest to lowest.

4. This figure is based on the contributors giving in amounts $100 or more. State disclosure laws do not require the itemization of under-$100 contributors.

5. For ballot qualification, the city of Los Angeles requires initiative proponents to obtain signatures equal to 15% of the most recent mayoral vote. Derived from the 1989 mayoral vote, this threshold now stands at 123,000, according to the Los Angeles City Clerk's office.

6. Proponents of Los Angeles anti-oil drilling Proposition O in 1988 received their qualification funding from 106 contributors. (Competing pro-oil drilling measure Proposition P—funded almost entirely by Occidental Petroleum—received its qualification support from approximately 30 contributors.)

commercial development to "leash-free" public areas for dogs. In addition, the relatively few numbers of signatures required for local initiatives diminishes the qualification cost burden—the median number of signatures required for initiative qualification in the cities surveyed by the Commission was approximately 2,000. The combined effect of low-cost qualification and local citizen involvement thus allows individual initiative proponents to fund petition printing, the required local newspaper notice and then rely largely on volunteer circulators. The median amount raised for a Los Angeles area qualification effort was approximately $2,300.

Table 8.1

LOCAL BALLOT MEASURES INCLUDED IN THE COMMISSION'S DATA ANALYSIS

All Los Angeles Area Initiatives (and Rival Council Measures), 1983 to 1991

City (Prop.)	Election Yr.	Subject	Total Expenditures
Azusa ("A/B")	1987	Sale/Devel. Local Golf Course	$230,603
Burbank ("A")	1985	At-Large/District Elections	$9,336
Burbank ("A")	1991	Growth Limits	$333,132
Burbank ("B")	1991	Growth Limits	$356,809
Burbank ("C")	1991	Sale of School Property	$17,162
Cerritos ("H")	1986	Term Limits for City Officials	$27,109
Culver City ("1")	1990	Building Height Limits (Initiative)	No Spending
Culver City ("2")	1990	City Council Rival to Prop. 1	$1,086
Claremont ("A")	1986	Land Zoning Change	$187,744
Hermosa Beach ("J")	1987	Use of Railroad Right of Way	$12,391
Hermosa Beach ("C")	1989	Use of Beachside Land Parcel	$3,791
Hermosa Beach ("E")	1989	Use of Greenbelt Area/Leash Law	$5,046
Hermosa Beach ("F")	1989	City Council Rival to Prop. E	No Spending
Hermosa Beach ("G")	1991	Use of Beachside Land Parcel	$6,894
Hermosa Beach ("H")	1991	City Council Rival to Prop. G	No Spending
La Canada-Flintridge ("A")	1986	Land Zoning Changes	$17,246
Los Angeles ("U")	1986	City Growth Limitations	$368,788
Los Angeles ("V")	1986	"Jobs With Peace"	$585,303
Los Angeles ("O")	1988	Ban Pacific Palisades Oil Drilling	$3,306,436
Los Angeles ("P")	1988	Allow Pacific Palisades Oil Drilling	$8,226,914
Manhattan Beach ("Z")	1984	Zoning Railroad Right of Way	$8,721
Manhattan Beach ("E")	1988	Land Zoning	$19,701
Paramount ("FF")	1988	Reduction in Housing Density	$31,899
Pasadena ("G")	1988	City Growth Controls	$169,093
Pasadena ("1")	1989	City Council Rival to Prop. 2	$57,541
Pasadena ("2")	1989	City Growth Controls (Initiative)	$93,550
Rancho Palos Verdes ("L")	1989	View Preservation (Initiative)	No Spending
Rancho Palos Verdes ("M")	1989	City Council Rival to Prop. L	$147,829
San Fernando ("L")	1986	Lease of Police Facility	No Spending
San Gabriel ("1")	1987	City Growth Moratorium	$58,277
Santa Clarita ("P")	1990	City Annexation of Land	$162,068
Santa Monica ("S")	1990	Beachside Hotel Development	$75,754
Santa Monica ("T")	1990	Moratorium on Hotel Development	$244,438
Santa Monica ("Y")	1990	Elected City Attorney	$194,978
Santa Monica ("Z")	1990	Beachside Hotel Development	$546,760
South Pasadena ("1")	1983	Height and Parking Limit Variances	$55,778
Torrance ("A")	1990	Use of Chemical at Local Oil Refinery	$819,048
West Hollywood ("AA")	1990	Establishment of a Card Club	$331,150
Westlake Village ("Z")	1987	City Council Compensation/Expenses	No Spending
Total L.A. Area Expenditures (1983-91):			**$16,712,373**

Source: California Commission on Campaign Financing Data Analysis Project

By contrast, the statewide initiative qualification process is dominated by high-cost professional signature gathering firms that now boast they can qualify *any* measure for the ballot (one even "guarantees" qualification) if paid enough money to hire cadres of individual signature gatherers. At the state level, any individual, corporation or organization with approximately $1 million to spend can now place any issue on the ballot and at least have a chance of enacting a state law.

Table 8.2

STATEWIDE BALLOT MEASURES INCLUDED IN THE COMMISSION'S DATA ANALYSIS

I. The 18 Most Expensive Statewide Initiative Campaigns in California History

Proposition	Election Year	Subject	Total Expenditures*°
104	1988 General	No Fault Insurance	$37,499,034
134	1990 General	Alcohol Tax	$24,208,045
99	1988 General	Tobacco Tax	$23,078,388
4	1956 General	Oil Refineries	$22,696,974
100	1988 General	Insurance Reform	$22,486,983
128	1990 General	Environment	$17,738,234
18	1958 General	Right to Work	$13,921,161
5	1978 General	Smoking Regulations	$13,461,826
15	1982 General	Handgun Registration	$12,398,095
51	1986 Primary	Tort Damages	$12,273,245
39	1984 General	Reapportionment	$12,037,862
36	1984 General	Income Tax Reduction	$11,865,807
130	1990 General	Forest Protection	$11,743,785
15	1976 Primary	Nuclear Power	$11,599,622
17	1964 General	Featherbedding	$11,248,668
10	1980 Primary	Ban of Rent Control	$9,949,529
11	1980 Primary	Surtax on Oil Profits	$9,006,281
61	1986 General	State Salary Limitations	$8,468,189

II. 1990 Primary and General Election Statewide Initiative Campaigns

Proposition	Election Year	Subject	Total Expenditures*
115	1990 Primary	Criminal Law	$2,313,192
116	1990 Primary	Rail Transit	$1,276,411
117	1990 Primary	Wildlife Protection	$1,247,353
118&119	1990 Primary	Reapportionment	$12,154,052
126**	1990 General	Alcohol Tax	$1,538,868
128	1990 General	Environment	$19,185,674
129	1990 General	Criminal Law	$1,127,231
130	1990 General	Forest Protection	$12,702,078
131	1990 General	Term Limits/Camp. Finance	$3,577,970
132	1990 General	Gill Net Fishing Ban	$713,436
133	1990 General	Crime/Drug Abuse	$803,395
134	1990 General	Alcohol Tax	$26,183,421
135	1990 General	Pesticide Regulation	$5,683,692
136&137	1990 General	Jarvis Tax/Initiative Measures	$11,067,308
138	1990 General	Forest Clear-Cutting	$5,612,160
139	1990 General	Prisoner Labor	$1,608,852
140	1990 General	Term Limits	$4,317,475

* Total combined proponent and opponent spending.
° Figures converted to 1988 dollars for the purposes of ranking.
** Proposition 126 was a legislative alternative to Proposition 134.

Source: California Commission on Campaign Financing Data Analysis Project

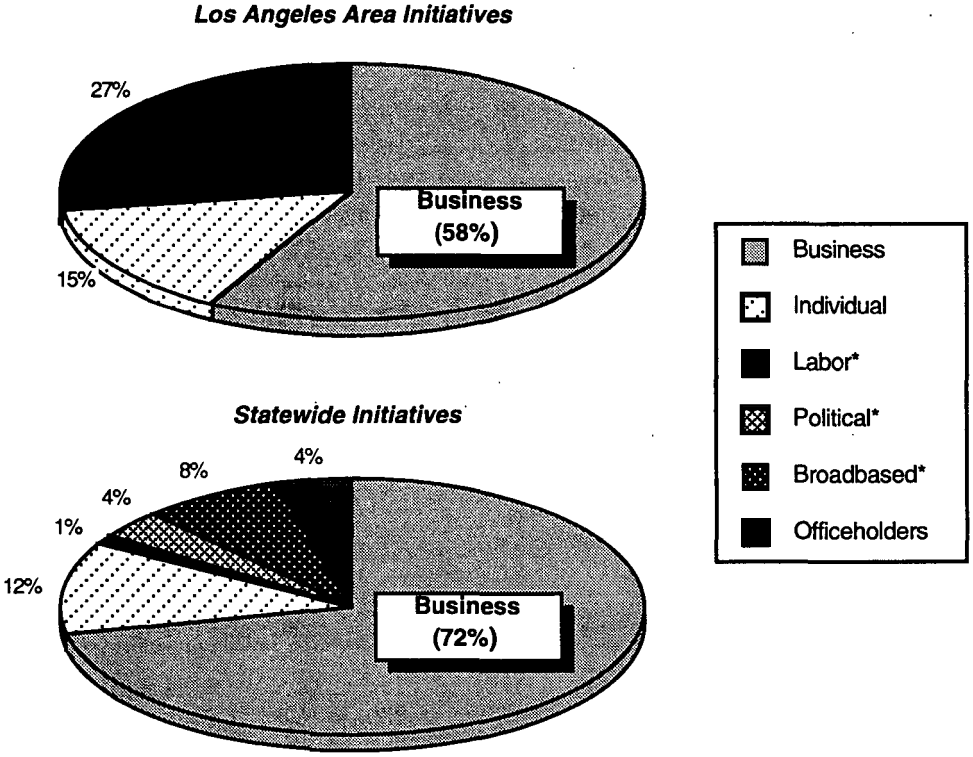
1. Sources of Qualification Funding

Single qualification funding sources are most common in small and medium-sized cities. In Azusa, for example, one business (the Azusa Greens Golf Course, owned by Johnny E. Johnson) spent approximately $93,000 to qualify two initiatives for the same ballot (Propositions A and B in 1987 which attempted to determine the fate of the golf course land.) In Hermosa Beach, local activist Parker R. Herriott single-handedly funded and qualified two initiatives over a two years (1989-1990) advocating development restrictions on a beachside vacant lot known as the "Biltmore site."[7] In San Gabriel, two individual contributors each giving less than $1,000 qualified a 1987 city growth moratorium measure.

Table 8.3

QUALIFICATION SOURCES OF CONTRIBUTIONS

Los Angeles Area Initiatives vs. Statewide Initiatives



*Labor, political party and broadbased organization contributions to local initiative campaigns amounted to less than 1% of the total given.

Source: California Commission on Campaign Financing Data Analysis Project

These patterns can also be seen at the state level, though the amounts given are much larger. In 1984, for example, Scientific Games of Atlanta, a manufacturer of lottery tickets, contributed $1.1 million (or 99.6% of the total qualification funding) raised ($1.11 million) the ballot.[8] In 1988, San Francisco Bay Area attorney Jim Rogers spent approximately $300,000 (93% of the total $324,000 raised) to qualify his

7. Herriott qualified Proposition C (in 1987) and Proposition G (in 1989). (Both were defeated.) Herriott is also circulating a new initiative for a 1992 special election ballot.

8. California Fair Political Practices Commission, Report of Receipts and Expenditures, 1984 General Election.

successful advertising disclosure Proposition 105 for the ballot.[9] In 1990, Harold Arbit contributed nearly $1 million to qualify Proposition 130 ("Forests Forever") for the ballot, and in 1991 Frank Wells contributed over $500,000 to re-qualify the forest protection initiative.

Business ranks as the largest contributor in both local (58% of the total) and state (72%) initiative qualification drives. (See Table 8.3) Local initiative proponents receive a similar share of their petition circulation funding from individuals (15% in local initiatives versus 12% in all statewide initiatives surveyed). Due to significant elected official involvement in Los Angeles City initiative campaigns, the level of officeholder contributions to local petition circulation efforts far exceeds the statewide percentage (27% to 4%). While broadbased organizations, labor and political parties play a more active role in statewide initiative qualification drives, their presence is near non-existent at the local level.

2. Local Initiative Qualification Inexpensive, Unlike Statewide Initiative Process

As discussed in greater detail in Chapter 4 ("Circulation and Qualification"), initiative proponents spend far less to qualify initiatives at the local level than at the state level. While median statewide initiative qualification expenditures exceeded $1 million in 1990, the median petition circulation expenditure for all Los Angeles area *local* initiatives studied failed to reach $2,000. *Total* proponent qualification expenditures for the 18 statewide initiatives in 1990 topped $20 million; *total* local initiative proponent qualification expenditures for the nearly 40 measures studied fell just short of $3 million. (See Table 8.4.)

The relatively rare use of paid circulators and signature gathering firms in most small and medium-sized Los Angeles area cities has kept overall qualification costs low. The combined effect of low signature requirements and significant citizen focus on local issues has allowed proponents such as Parker Herriott in Hermosa Beach to spend less than $3,000 in qualifying *two* initiatives in two elections (Proposition C in 1989 and Proposition G in 1991).

In small and medium-sized cities, only initiative proposals conceived to benefit particular city interests or businesses raise substantial money for paid circulation. In West Hollywood, for example, a group of business investors calling themselves the "West Hollywood Club" single-handedly qualified a 1990 measure attempting to establish card clubs in the city. Relying largely on paid circulators, the West Hollywood Club spent over $26,000 on petition circulation. In Claremont, developer William "Buck" Johns spent over $82,000 to qualify an ultimately unsuccessful initiative proposing to rezone a parcel of land for commercial development.

In Azusa, Azusa Greens Golf Course owner Johnny E. Johnson spent $93,000 to qualify *two* initiatives for the same 1987 ballot. Johnson apparently would have reaped substantial financial gain if either measure had passed. Proposition A would have rezoned the golf course land allowing Johnson to abandon the golf course in favor of residential and light industrial development. Proposition B mandated city purchase (financed by bonds) of the golf course for $26 million from Johnson to "preserve this space for the people." Johnson wrote into the proposal, "No price is too high for the people of Azusa to pay to keep the Azusa Greens Golf Course." Both measures were soundly defeated.

In larger cities, the use of sophisticated and expensive paid circulation methods is more common. In 1988, for example, the city of Los Angeles witnessed

9. California Fair Political Practices Commission, Report of Receipts and Expenditures, 1988 General Election. Proposition 105 was passed but subsequently invalidated by the courts.

the two most expensive local initiative qualification drives of the last decade—Proposition O ($300,122), which opposed the city-approved plan to drill for oil in the Pacific Palisades and the Occidental Petroleum-backed Proposition P ($1.8 million), which would have allowed the drilling to occur. The combined qualification expenditures on these two measures far exceeded the combined qualification spending of *all* other measures studied.

Table 8.4

LOCAL QUALIFICATION EXPENDITURES

All Los Angeles Area Initiatives, 1983 to 1991

City (Prop.)	Election Year	Subject	Qual. Expend
Azusa ("A/B")	1987	Sale/Devel. Local Golf Course	$93,315
Burbank ("A")	1985	At-Large/District Elections	$0
Burbank ("A")	1991	Growth Limits	$1,265
Burbank ("B")	1991	Growth Limits	$6,423
Burbank ("C")	1991	Sale of School Property	$879
Cerritos ("H")	1986	Term Limits for City Officials	$247
Culver City ("1")	1990	Building Height Limits (Initiative)	$0
Claremont ("A")	1986	Land Zoning Change	$76,923
Hermosa Beach ("J")	1987	Use of Railroad Right of Way	$8,783
Hermosa Beach ("C")	1989	Use of Beachside Land Parcel	$451
Hermosa Beach ("E")	1989	Use of Greenbelt Area/Leash Law	$2,143
Hermosa Beach ("G")	1991	Use of Beachside Land Parcel	$1,981
La Canada-Flintridge ("A")	1986	Land Zoning Changes	$601
Los Angeles ("U")	1986	City Growth Limitations	$247,750
Los Angeles ("V")	1986	"Jobs With Peace"	$58,098
Los Angeles ("O")	1988	Ban Pacific Palisades Oil Drilling	$300,122
Los Angeles ("P")	1988	Allow Pacific Palisades Oil Drilling	$1,807,685
Manhattan Beach ("Z")	1984	Zoning Railroad Right of Way	$2,800
Manhattan Beach ("E")	1988	Land Zoning	$1,124
Paramount ("FF")	1988	Reduction in Housing Density	$8,531
Pasadena ("G")	1988	City Growth Controls	$48
Pasadena ("2")	1989	City Growth Controls (Initiative)	$20,180
Rancho Palos Verdes ("L")	1989	View Preservation (Initiative)	$0
Santa Clarita ("P")	1990	City Annexation of Land	*
San Fernando ("L")	1986	Lease of Police Facility	$0
San Gabriel ("1")	1987	City Growth Moratorium	$1,630
Santa Monica ("S")	1990	Beachside Hotel Development	$43,986
Santa Monica ("T")	1990	Moratorium on Hotel Development	$234,004
Santa Monica ("Y")	1990	Elected City Attorney	*
South Pasadena ("1")	1983	Height and Parking Limit Variances	$1,963
Torrance ("A")	1990	Use of Chemical at Local Oil Refinery	$0
West Hollywood ("AA")	1990	Establishment of a Card Club	$26,502
Westlake Village ("Z")	1987	City Council Compensation/Expenses	$0
Total L.A. Area Qualification Expenditures (1983-91):			**$2,947,434**
Median L.A. Area Qualification Expenditure (1983-91):			**$1,981**

*Qualification period campaign disclosure statements were not available from the city clerk.

Source: California Commission on Campaign Financing Data Analysis Project

Proponents of Proposition P, financed primarily by Los Angeles City Councilmembers Zev Yaroslavsky and Marvin Braude, relied primarily on direct mail circulation ($184,000) and partially on paid circulators ($50,000). Proponents of Proposition O spent nearly equal amounts on paid circulators ($207,000) and direct mail ($228,000) in addition to $1 million in early broadcast advertising expenditures

to sow broadbased support for the measure. Proponents of both measures spent large amounts on professional consultants during the qualification period.

While the use of expensive petition circulation at the local level is limited, the increasing reliance on paid circulators and signature gatherers at the statewide level may forecast rising local circulation expenses in the future. Because more initiatives are being circulated at the state level, the competition for signature gatherers has driven up their price. Ken Masterton of the petition circulation firm Masterton & Wright paid petition circulators approximately 33 cents per signature in 1988; by 1990, he was paying up to 50 cents per signature.[10] Masterton says, "Paid circulators go where the money is. A modestly funded effort with paid signature gatherers can lose half of them in one day if a better funded measure hikes the price."[11]

As a result of these cost increases, spending to qualify statewide initiatives in 1990 rose dramatically. Proponents of alcohol tax counter initiative Proposition 136 spent over $2 million on qualification using a combination of paid circulators and direct mail. Anti-"Big Green" counter measure Proposition 135 proponents devoted nearly $1.3 million to qualification. Timber industry-backed rival measure Proposition 138 proponents spent over $1.2 million on petition circulation.

The increase in statewide qualification expenditures has been most acute among traditionally low-cost ballot measure drives. Statewide initiative proponents who once rested their qualification efforts on volunteers (like their local counterparts do now) have turned almost entirely to paid circulation. In 1978, for example, proponents of smoking regulation Proposition 5 spent approximately $56,000 on a largely volunteer signature gathering effort which included small expenditures on campaign pamphlets and newspaper advertising. Just a decade later, by contrast, proponents of tobacco tax Proposition 99 spent over $826,000 on petition circulation. Of this amount, 70% ($577,000) went to signature gatherers and direct mail circulation, and 19% to "general" staff, office rent and other miscellaneous needs ($158,530).

In 1990, high qualification expenditures among traditionally low-cost initiative proponents seemed routine: alcohol tax Proposition 134, $1.3 million; forest protection Proposition 130, $1 million; government reform Proposition 131, $964,000; term limits Proposition 140, $832,000; "Big Green" Proposition 128, $718,000; anti-gill nets Proposition 132, $621,000; rail transportation bond Proposition 116, $548,000; and wildlife protection Proposition 117, $545,000.

Unlike the experiences at the local level, the rising costs of current qualification drives in the statewide initiative process are consuming greater amounts of total campaign funds. Proponents frequently spend the bulk of their campaign budgets on petition circulation, leaving few resources left for the campaign. In 1990, for example, proponents of Proposition 117 devoted over half (53%) of their total campaign budget to qualification. Proponents of criminal justice reform Proposition 129 spent *94%* of their total expenditures on signature gathering. Circulation costs consumed 78% of the total proponent spending on behalf of Proposition 131. Proposition 132 proponents devoted 82% of their total dollars to qualification.

For ballot measures that either already enjoy widespread popular support or do not face multimillion dollar opposition campaigns, such a draining of campaign resources may have relatively little effect on the success of the measure. The

10. Telephone interview with Ken Masterton, Masterton & Wright (Sept. 5, 1990).

11. *Quoted in* Harold Meyerson, *The Year of the Initiative*, L.A. Weekly, May 11-17, 1990.

victorious anti-gill net Proposition 132, for example, which spent very little on the campaign, enjoyed both significant public support and no major opposition campaign. Conversely, unsuccessful government reform Proposition 131 faced the difficulties of being highly complicated (and thus in need of explanation through a campaign), unable to raise much money for a campaign and enduring an expensive opposition campaign waged by state officeholders.[12] Proposition 131 was soundly rejected by the voters.

B. Large Contributions from Business Dominate Local Initiative Campaigns

At both the local and state level, corporate funding of initiative campaigns—like campaign contributions to officeholders—have become part of the "cost of doing business" in California. At the local level, the percentage of total business contributions (77%), in fact, exceeded the level of business contributions to Los Angeles area local candidate races previously studied by the Commission (58%).[13] Likewise at the state level, business contributions to initiative campaigns in 1990 (66%) outpaced business contributions to state legislative candidates (59% in 1988, the latest figures compiled).

1. The Principal Sources of Contributions

General contribution patterns for local initiatives surveyed reveal an overwhelming business presence. Among all local initiatives surveyed, businesses gave 77% of the total dollars raised. Other sources paled by comparison. Officeholders gave 14%, individuals 8%, broadbased organizations 1% and political parties less than 1%. Labor, usually a major funding source for state and national candidate campaigns, also contributed less than 1% of the total dollars raised.

By comparison, of the contributions made to all statewide initiatives studied, businesses outpaced all other sources—also generating 77% of all moneys raised. Other sources also lagged far behind. Individuals gave 8%, officeholders 5% and broadbased organizations 4%. Funding from political parties, important generally in reapportionment campaigns, accounted for 3% of the total dollars surveyed. Labor contributions also remained proportionally small (3% of the total). (See Table 8.5.)

a. Substantial Business Involvement in Local As Well As State Initiative Campaigns

Industry groups and businesses maintain that they must involve themselves in initiative campaigns to defend their livelihoods. "When the survival of your industry is at stake, there is no greater priority," says a spokesman for the logger-sponsored campaign against 1990 statewide Proposition 130 (forest protection).[14] At the local level, Mobil Oil contributed over $740,000 to successfully defeat a 1990 Torrance initiative which would have curtailed the use of a harmful chemical at their local refinery. Had the measure passed, the *Los Angeles Times* reported, Mobil would have had to pay up to $100 million to convert to a new oil refining process.[15]

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12. Key legislators let it be known that they would look with disfavor upon, and possibly retaliate against, any major business interest that contributed to the campaign finance/term limits measure. Traditional sources of funding dried up.

13. California Commission on Campaign Financing, *supra* note 2, at 329.

14. Anti-Proposition 130 campaign spokesman David Fogarty, *quoted in* Paul Jacobs and Daniel M. Weintraub, *Corporations Pump Money Into Ballot Campaigns,* Los Angeles Times, Oct. 27, 1990.

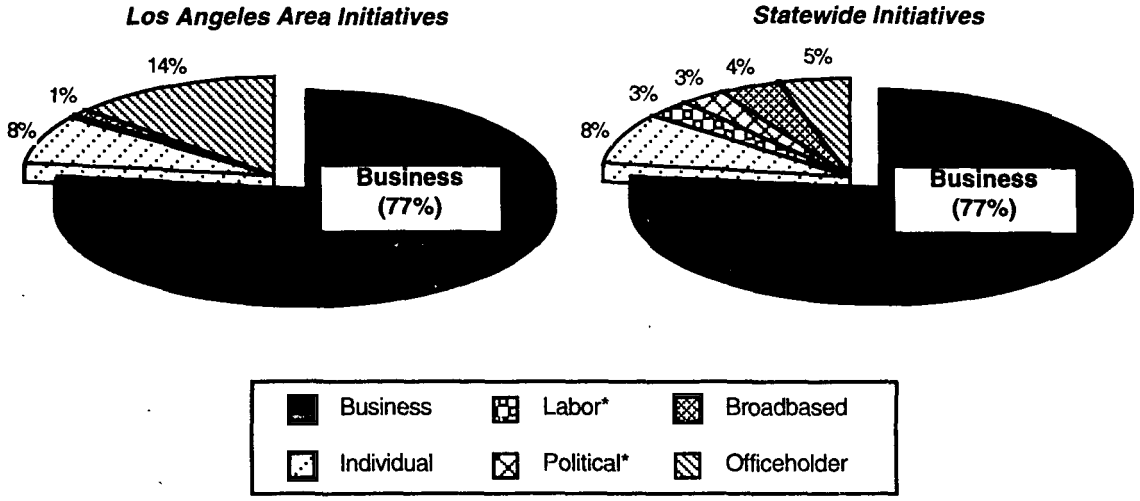
15. George Stein and Janet Rae-Dupree, *Toxic-Acid Initiative Sparks High Interest Among Voters,* Los Angeles Times, Mar. 4, 1990.

At the state level, the passage of tobacco tax Proposition 99 in 1988 has been linked to a $30 to $40 million annual decline in tobacco industry sales as more Californians have turned away from the smoking habit.[16] The $22 million "investment" the tobacco companies made in opposing Proposition 99, according to the tobacco industry, was small in comparison to these massive losses.

Table 8.5

SOURCES OF CONTRIBUTIONS

Los Angeles Area Initiatives vs. Statewide Initiatives



*Labor and political party contributions to local initiative campaigns amounted to less than 1% of the total given.

Source: California Commission on Campaign Financing Data Analysis Project

Large Business Participation in Local Initiatives. The primary role of businesses in local initiatives has been to oppose them. The median total amount business contributed to *oppose* local initiative campaigns was over $22,000; in *support* it was less than $1,000. The most intense local business focus was in attempting to defeat land use and city development-related measures. Of the $11.9 million contributed by business to local initiative campaigns in the Los Angeles area between 1983 and 1991, $9.7 million (82%) went towards opposing anti-development initiatives. By contrast, business spent $1.3 million (11% of total local business contributions) supporting pro-development measures. The remainder of business attention was devoted to industry-specific measures, such as the establishment of card clubs in West Hollywood and defeating chemical regulation at the Torrance Mobil refinery.

Anti-development measures drew the largest local business reaction:

Los Angeles Propositions O vs. P (1988). The battle over Propositions O and P in Los Angeles, which settled a 22-year dispute over Occidental Petroleum's bid to develop and drill oil on a small strip of beachside property in the Pacific Palisades,

16. In 1990, approximately 22 million fewer packs of cigarettes were sold in California than would have been expected based on trends prior to passage of Proposition 99. Michael Evans Begay, Ph.D., and Stanton A. Glantz, Ph.D., Political Expenditures by the Tobacco Industry in California State Politics, Institute for Health Policy Studies, University of California, San Francisco (March 1991).

stands as one of the most intense examples of business involvement in the local initiative process. Opponents of the drilling plan, led by Councilmembers Zev Yaroslavsky, Marvin Braude and State Controller Gray Davis, qualified Proposition O to extinguish the oil drilling plan. Instead of funding a direct opposition campaign to Proposition O, oil drilling proponents qualified their own counter initiative (Proposition P) which proposed to allow the plan to go forward. Political consultant and Proposition P adviser Joseph Cerrell said, "We can live with the defeat of Proposition P as long as O is defeated [as well]. Proposition P is a counter measure to a great degree."[17]

Proponents of Proposition O raised nearly $3.5 million financed largely by Davis ($900,000), Yaroslavsky ($820,000), Braude ($194,000) and Hollywood producer A.J. Perenchio ($225,000). Opponents of Proposition O (and supporters of Proposition P), however, received over $7.8 million from Occidental Petroleum. Councilmember Yaroslavsky commented, "Occidental Petroleum has spent enough to win a statewide election. . . ."[18] Despite the expensive opposition campaign, the anti-drilling measure Proposition O prevailed with 52% of the vote; Proposition P received just 34% voter support.

Burbank Propositions A and B (1991). In Burbank, two 1991 height limitation initiatives (Propositions A and B) attracted substantial opposition from the city's media industry. In addition to mandating specific building height limits, Measure A proposed a per-year cap on the construction of new residential and office units. Burbank Councilmember Tom Flavin, who strongly opposed Measure A commented, "It's obviously being put forward by a handful of people intent on stopping progress regardless of the facts or consequences."[19] Measure B simply required all new Burbank buildings to be "low rise."[20]

While proponents of both measures raised a combined $44,000, the city's major media corporations responded with a well-financed opposition effort. NBC Studios, Warner and the Disney Co. each contributed over $170,000 to the successful opposition campaigns. Local aerospace giant Lockheed also gave over $100,000. Total business contributions to the opposition campaign amounted to 98% of all the funds raised. Both measures were defeated.

Pasadena Propositions G (1988), 1 and 2 (1989). The change in the early 1980s from an "at-large" city council election system to a neighborhood-dominated, district election format, in addition to a rising residential consensus against city development, created fertile ground for a strong slow growth movement. Over a two year period, Pasadena voters faced three anti-growth measures (two initiatives, Propositions G and 2, and one council-sponsored rival measure, Proposition 1).

Proposition G, by far the most severe of the three measures to appear before voters, attempted to require unanimous city council approval for new construction of large buildings. It also sought to institute a citywide moratorium on large developments for two years, require developers to "replace" housing demolished for a new development and explicitly stop a controversial 184-unit building project known as "Rose Townhomes," forcing the land to be rezoned for single family residences.

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17. Ted Vollmer, *TV Spots Escalate Battle Over Oil Drilling,* Los Angeles Times, Oct. 13, 1988.

18. *Quoted in* Ted Vollmer, *Oil Drilling Fight War Chests Pass $8.7 Million Total,* Los Angeles Times, Oct. 29, 1988.

19. *Quoted in* Richard Swearinger, *Burbank Group to Seek Cap on Development,* Van Nuys Daily News, Apr. 27, 1990.

20. Staff, *Burbank Votes With Studios,* The Burbank Leader, Feb. 28, 1991.

The measure prompted significant business response. While proponents of the sweeping Proposition G raised less than $6,000 in support of the measure, city business interests contributed $147,000 (94%) of the total $159,000 raised in opposition. The largest opposition contributions came from owners of the city's local shopping mall (Pasadena Marketplace, $16,000) and a real-estate political action committee (Issues Mobilization PAC, $16,000). Under considerable scrutiny from not only local businesses but from other slow-growth advocates pressing their own measure for the 1989 ballot (Proposition 2), Proposition G was defeated, receiving only 30% of the vote.

In the wake of Proposition G's defeat, other more organized city slow-growth advocates qualified a new slightly less restrictive development control measure (Proposition 2). The measure, sponsored by the citizen group PRIDE ("Pasadena Residents In Defense of our Environment"), spurred the city council to place an even milder counter measure on the ballot.

This time, the slow growth measure received more significant financial support, raising a total of $42,000 from mostly small contributors. The city council-sponsored measure raised over $7,000, the largest contribution from a development firm (McGuire Thomas Partners, $3,000). Opponents to both measures, however, raised over $94,000, the largest contributions coming from hotel developer Lary J. Mielke ($22,000) and Issues Mobilization PAC ($17,600). Voters, however, enacted Proposition 2 and handily defeated Proposition 1.

San Gabriel Proposition 1 (1987). In San Gabriel, proponents of a growth moratorium initiative backed by small individual contributors also drew substantial business opposition. Opponents raised 90% of their total contributions from local developers. The largest contribution against the initiative ($40,434 from Shyu Corporation) was more than three times the total amount raised by the proponents ($12,000). Despite this heavy business funding in opposition, the measure succeeded with a stunning 83% of the vote.

Business Domination of Statewide Initiative Contribution Patterns. Substantial corporate funding in California statewide initiative campaigns has generally occurred in opposition to measures affecting specific industry interests. Since 1978, for example, the tobacco industry contributed approximately $30 million dollars to campaigns opposing three anti-tobacco initiatives (Proposition 5 in 1978, Proposition 10 in 1980 and Proposition 99 in 1988). Tobacco companies funded a $22 million campaign to oppose Proposition 99 alone.[21]

In 1988, industry groups added the counter initiative—qualifying their own initiative designed to negate the anti-business measure—to their arsenal of opposition campaign strategies. Though only partially successful in 1988,[22] the use

21. The opponents of Proposition 99 campaigned on the theme that a tobacco tax would lead to a cigarette black market "just over the border" in Nevada. To avert the rise of a new class of cigarette "criminals," voters were asked to reject the tobacco tax. Tobacco companies were closely identified with the opposition campaign. Some believe that voters thus were voting against the tobacco industry more than voting for the tax.

22. In the primary election of 1988, a group of officeholders led by Republican State Assemblyman Ross Johnson successfully "defeated" campaign finance reform measure Proposition 68 (which included a comprehensive scheme of contribution limits, expenditure ceilings in exchange for partial public matching funds and a ban on non-election year fundraising for state legislative campaigns). Johnson's measure (Proposition 73) contained provisions which specifically banned the public financing provisions in Proposition 68 (and thus undermined the expenditure ceilings portion of the proposal). Though both measures passed, Proposition 73 gained more votes and thus invalidated Proposition 68. (Court decisions have subsequently suspended major portions of Proposition 73.) In the November 1988 election, the insurance industry sponsored two counter initiatives (Propositions

of counter measures was instrumental in the sound defeats of three initiatives on the November 1990 statewide ballot—Proposition 128 ("Big Green"), Proposition 130 (Old Growth Forest Protection) and Proposition 134 (Alcohol Tax). But this strategy has proven to be expensive.

Proposition 134 (liquor tax). Using a counter measure strategy, the alcohol industry spent $38 million, nearly twice as much as the tobacco companies spent in 1988, to successfully defeat Proposition 134 (liquor tax).[23] In contrast to the Proposition 99 opposition campaign where tobacco tax opponents engaged in a single direct opposition campaign, anti-Proposition 134 forces attacked on three fronts: a direct opposition campaign, a rival tax measure (Proposition 126) and an anti-tax initiative (Proposition 136). "[Proposition 134 is] the most serious threat to this country since prohibition," said California Wine Institute President John DeLuca months before the election.[24] Anti-134 campaign manager Rick Manter proclaimed, "We will spend millions."[25] A liquor trade newsletter also reported, "[I]ndustry executives will [contribute] whatever is necessary [to defeat the tax]."[26]

One of the most powerful themes of the anti-134 campaign was the "tax" issue. "Joe Sixpack" was going to have to pay more than just a "nickel a drink," opponents claimed; the "escalator" clause would allow for future unchecked tax increases. In largely funding the Jarvis anti-tax Proposition 136, the alcohol industry attempted to give consistency to its anti-tax stance. This move also gave "No on 134" forces access to the Jarvis mailing lists of anti-tax voters.

Had it passed, Proposition 136 would have required all future and present tax and revenue initiatives (even those on the November 1990 ballot, such as Proposition 134) to be enacted by a two-thirds vote of the people.[27] State Senator Ed Davis, an opponent of Proposition 136, called the anti-tax initiative a "rum-soaked fraud," alluding to the millions of dollars in funding by the alcohol industry. "[I]t's a selfish last desperate attempt on the part of the booze industry to make millions of dollars of profit and evade their responsibility to support government," Davis charged.[28]

In addition to backing counter initiative Proposition 136, the liquor industry successfully convinced the legislature to place a rival (and milder) alcohol tax constitutional amendment on the ballot. The proposal (Proposition 126) received 54

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101 and 104) and two direct opposition campaigns to defeat insurance regulation Propositions 100 and 103. The opposition strategy was only partially successful: Proposition 100 was defeated, while Proposition 103 passed.

23. The anti-Proposition 134 figure includes moneys spent on two counter measures: the legislature's much milder alcohol tax Proposition 126 and anti-tax Proposition 136, both funded primarily by the alcohol industry. Expenditures by the "No on 134" direct opposition campaign were also included.

24. *Quoted in* Meyerson, *supra* note 11.

25. *Quoted in* Kathy Zimmerman McKenna, *Ballot Bowl: Industries Seek to Undermine Consumer, Environmentalist Initiatives,* California Journal, Aug. 1990.

26. *Quoted in* Bradley Inman, *Spirits Industry Launches $20 Million Drive Against Tax Hikes,* Los Angeles Times, June 10, 1990.

27. Proposition 136 may also have affected Propositions 128, 129 and 133 because of their revenue-raising provisions. The measure's substantial funding by the alcohol industry indicates that its primary target was Proposition 134. The text of the proposed law reads, "[Proposition 136] is inconsistent with any other initiative on the same [November 1990] ballot that enacts any tax, that employs a method of computation, or that contains a rate not authorized by this measure, and any such measure shall be null and void and without effect." California Ballot Pamphlet, General Election 1990, "Proposition 136: Text of Proposed Law," §11.

28. *Quoted in* Virginia Ellis, *Anti-Tax Plan Called a Shill for Liquor Industry,* Los Angeles Times, Sept. 25, 1990.

votes (out of 72 voting) in the state assembly and 30 votes (out of 34 voting) in the state Senate. Had Proposition 126 passed with more votes than Proposition 134, it would have negated *all* of Proposition 134.[29] In addition, Proposition 126 contained provisions exempting it from the anti-tax provisions of Proposition 136.

Huge contributions from large donors were doled out to all three opposition efforts. Seagram & Sons, for example, contributed nearly $260,000 to Proposition 126, nearly $480,000 to Proposition 136 and $1.1 million to the Proposition 134 opposition campaign. The Guinness Corporation contributed $80,000 to Proposition 126, $212,000 to Proposition 136 and $560,000 to the anti-134 campaign. The Beer Institute contributed $802,000 to Proposition 126, $1 million to Proposition 136 and $40,000 to the anti-134 campaign.

Though Propositions 126 and 136 were turned down by the voters, the goal of defeating Proposition 134 was achieved. "The liquor industry's full attention has been focused on this issue, I can assure you," commented campaign consultant John Jervis of the PBN Co. "This was the biggest alcohol tax increase ever proposed by any state."[30] In the end, Proposition 134 received just 31% of the vote. Ironically, the legislature passed and the Governor signed into law an increase in the alcohol tax in June 1991.[31]

Proposition 128 ("Big Green"). Backed by substantial contributions from state Assemblyman Tom Hayden (over $1 million) and various broadbased interest groups, Proposition 128 was challenged by an $18 million three-front opposition campaign which included a direct opposition effort and two counter initiatives (Propositions 135 and 138). One year prior to the election, a consultant to the Western Agricultural Chemical Association, a group opposed to Proposition 128, concluded, "It will be extremely difficult to defeat [Proposition 128] . . . with a 'No' campaign only. We can win with an alternative initiative."[32]

Portrayed as a "pesticide safety policy," counter initiative Proposition 135 specifically targeted Proposition 128's provisions relating to pesticide enforcement for food, water and worker safety. Had both measures passed and Proposition 135 received more votes, significant portions of Proposition 128 would have been negated.[33] Forest industry-backed Proposition 138, while primarily aimed at "Forests

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29. The text of Proposition 126 reads: "[Proposition 126] is inconsistent with and intended as an alternative to any initiative measure that appears on the same ballot that imposes taxes or surtaxes on alcoholic beverages. In the event that [Proposition 126 and Proposition 134 both pass], a conflict shall be deemed to exist between the measures and the measure which receives the greater number of votes shall prevail in its entirety and the other measure shall be null and void in its entirety." California Ballot Pamphlet, General Election 1990, "Proposition 126: Text of Proposed Law," §7.

30. *Quoted in* Nancy Rivera Brooks, *Expensive Victory for Business,* Los Angeles Times, Nov. 8, 1990. Proposition 134 would have raised California's per-gallon wine tax from one cent to $1.29 for dry varieties and from two cents to $2.15 for sweet varieties; the beer tax from four cents per gallon to 57 cents; the distilled spirits tax from $2 per gallon to $8.40. Proposition 126 would have raised California's per-gallon wine and beer taxes to 20 cents and the distilled spirits tax to $3.30.

31. In June 1991, the legislature passed and the Governor signed into law AB 30 which raised California's per gallon wine tax to 20 cents, the beer tax to 19 cents per gallon, the distilled spirits (of less than 100 proof) tax to $3.30 per gallon and the distilled spirits (of more than 100 proof) tax to $6.60 per gallon. The wine tax was last increased in 1937; the beer tax was last raised in 1959; the hard alcohol tax was last boosted in 1967.

32. *Quoted in* Meyerson, *supra* note 11.

33. The text of the proposed Proposition 135 reads, "[I]t is the intent of the people to implement this initiative measure relating to pesticide enforcement for food, water, and worker safety to the exclusion of the Environmental Protection Act of 1990 [Proposition 128] or any other initiative measures which may be adopted at the same time on the same subject. To that end, if this initiative

Forever" Proposition 130 (see below), also contained provisions specifically designed to defeat certain forest regulation sections of Proposition 128.

The direct anti-128 opposition campaign was funded primarily by large oil companies such as Atlantic Richfield ($947,000), Chevron ($812,000) and Shell ($600,000). The main counter measure (Proposition 135) was backed by agricultural interests such as the California Farm Bureau Federation ($474,000). Some corporate contributors such as tobacco giant Philip Morris gave substantial amounts to both campaigns. Philip Morris contributed $125,000 to the anti-128 campaign and $370,000 in support of rival Proposition 135.

Though voters rejected industry-backed Proposition 135 (it received just 30% of the vote), the goal of defeating Proposition 128 was achieved (it gained just 36% of the vote). "We've won a lot of big ones in the past, but this one may be the biggest," said anti-128 campaign director Richard Woodward.[34] Commenting on the loss of their own counter measure, Proposition 135 supporter Lee H. Stutzenberger, chairman and chief executive officer of the Dolphin Group remarked, "No one here is crying."[35]

Proposition 130 ("Forests Forever"). Backed primarily by investor Harold Arbit ($5 million) and Disney Company President Frank Wells ($1 million), Proposition 130 also faced a rival measure (Proposition 138). Had both initiatives passed with Proposition 138 receiving a higher number of votes, *all* of Proposition 130 would have been negated.[36] Proposition 138 received its major funding from the state's leading lumber companies: Georgia Pacific ($1.5 million), Sierra Pacific ($1.4 million), Louisiana Pacific ($1.3 million) and Pacific Lumber ($981,000). Both initiatives were defeated, with Proposition 130 getting 47% of the vote and Proposition 138 receiving only 29% of the vote.

b. Small But Intense Individual Contributor Involvement in Local Initiatives; Large Individual Contributions in State Initiatives

Although small individual contributors are substantially irrelevant at the state level, in many cases they drive ballot measure efforts at the local level. In several local initiative campaigns surveyed, individual contributors on the proponents' side accounted for 80%-to-100% of all the contributions given. In some cases, *single* individual contributors provided most or all of the funding for initiatives. Opposition campaigns, generally the domain of business sources, rarely attracted such intense individual involvement. The cities of Burbank, Hermosa Beach, Manhattan Beach, Pasadena, Santa Clarita, Santa Monica, San Gabriel and South Pasadena have all witnessed individual contributor-driven campaigns for initiatives.

In Burbank, for example, city resident and local electrical contractor Sidney Giddens gave almost $3,000 to fund in its entirety a 1985 initiative proposing to change city council elections from "at-large" to "district-by-district." The

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measure receives a higher number of votes than the Environmental Protection Act of 1990 or another initiative measure at the same election, such initiative measures to the extent they regulate pesticide enforcement for food, water and worker safety shall be deemed inconsistent with this initiative measure." California Ballot Pamphlet, General Election 1990, "Proposition 135: Text of Proposed Law," §87.

34. *Quoted in* Tom Furlong, *Expensive Victory for Business,* Los Angeles Times, Nov. 8, 1990.

35. *Quoted in* Furlong, *id.*

36. The text of the proposed Proposition 138 reads, "This measure is inconsistent with, and intended as an alternative to specific provisions of [Proposition 128], [and] all of the terms of [Proposition 130]. . . . If this initiative and any such other inconsistent, alternative, or conflicting initiatives are passed by majorities voting thereon then the one with the most votes shall prevail. . . ." California Ballot Pamphlet, General Election 1990, "Proposition 138: Text of Proposed Law," Title Ten, §14 at 4(j).

unsuccessful measure, supported by homeowners and opposed by the city council, attempted to steer the city's leadership toward more "neighborhood sensitive" policies.

In San Gabriel, individual contributors financed 78% of a successful 1987 initiative instituting a citywide moratorium on new development. In Manhattan Beach, a small group of individuals funded an unsuccessful 1984 initiative campaign to rezone a strip of former railroad right-of-way as an "open space-scenic right-of-way." Individual contributions to the measure (all given in amounts less than $1,000) equaled 100% of the total funding ($3,871).

In Santa Monica, a band of strong anti-crime residents and opponents of the incumbent city attorney financed an initiative requiring the office of city attorney to be elective. Individual contributions to the unsuccessful measure accounted for 72% of the total funding.

At the state level, initiative campaigns in 1990 witnessed large contributions by individuals in several campaigns. Investor Harold Arbit's nearly $5 million contribution to Proposition 130 ("Forests Forever") was the second largest donation to any initiative campaign that year (the largest was $8.3 million from Anheuser-Busch to the anti-alcohol tax effort) and the largest contribution ever given to a California initiative campaign by an individual. Opponents attempted to make Arbit's costly involvement an issue in the campaign, raising the suspicion that Proposition 130 was a financial scheme to benefit Arbit and his investment clients by manipulating timber stocks. Hard evidence of such an arrangement was never produced by the opposition. In an interview with the *Los Angeles Times*, Stanford University economist William F. Sharpe said, "It seems to me to be pretty unlikely [that Proposition 130] would have much of an impact on [Arbit or his clients] either way. If he did this to bring money to his own personal bottom line, it's a pretty bad investment."[37] Midway through the campaign Arbit remarked, "I have the choice of buying a $2 million painting and looking at it on the wall . . . or I could spend $2 million and have a chance of saving the last 5% of California redwood forests."[38]

In the aftermath of Proposition 130's defeat, intense negotiations took place between environmentalists and representatives of the timber industry to forge a compromise forest clear-cutting agreement in the legislature and head off another ballot battle. Following an October 1991 gubernatorial veto of a legislative forest practices proposal, Arbit vowed to place an even tougher forest protection initiative on the June 1992 ballot. Disney Co. President Frank Wells promised $500,000 to start the qualification drive.[39] In November 1991, Arbit's coalition of environmental activists completed its petitioning drive but withheld filing the signatures in hopes of forcing a legislative compromise.[40] In December 1991, Governor Wilson agreed to back a legislative proposal somewhat similar to one he vetoed previously. Arbit withdrew his initiative, but the compromise was defeated in the legislature.

In addition to major backing from Assemblyman Tom Hayden ($1 million) and his former wife, actress Jane Fonda ($50,000), Proposition 128 ("Big Green") on the 1990 ballot also attracted several large individual contributions. "Whatever Tom could do, he did; whatever Jane could do, she did," said Robert Hattoy, Southern

37. *Quoted in* Mark A. Stein, *A Venture Into the Political Forest,* Los Angeles Times, Aug. 16, 1990.

38. *Quoted in* Richard Paddock and Maura Dolan, *Environment an Issue for Industry, Celebrities,* Los Angeles Times, Oct. 25, 1990.

39. Virginia Ellis, *Investor to Back Another Forest Protection Bill,* Los Angeles Times, Sept. 19, 1991.

40. Telephone interview with Brian Huse, League of Conservation Voters (Dec. 17, 1991).

California regional director for the Sierra Club, "But all kinds of individuals have come up and shown their ability to raise money for the cause."[41] The most significant individual contributions came from celebrities. Actor Chevy Chase contributed $125,000, Cable News Network founder Ted Turner gave $120,000 while producer/director Steven Spielberg and actor John Ritter each contributed $50,000.

Other 1990 initiatives received some of their largest contributions from individuals. Proponents of the gill net fishing ban (Proposition 132) received five of their eight largest contributions (in amounts of $10,000 or more) from individuals (totaling $180,000). Proponents of Propositions 131, 133 and 140 also received some of their largest contributions from individuals giving in sums of $10,000 or more.

c. Broadbased Organizations

At the local level, the strength of *individual* contributions has diminished the importance and participation of broadbased organizations—these organizations accounted for just 1% of the total contributions raised by local initiative campaigns. At the state level, however, broadbased organizations have become essential contributors to many initiative campaigns. In 1990, several statewide initiatives received major support from broadbased membership groups. Proponents of Proposition 128 ("Big Green") raised almost $300,000 from the Sierra Club and more than $353,000 from the Santa Monica-based Campaign California (in which Assemblyman Tom Hayden plays a leading role). California Common Cause contributed approximately $62,000 to the campaign for Proposition 131 (term limits/campaign finance reform).

d. Officeholders and Political Parties

Officeholder participation in the initiative process has grown in recent years, with officeholders playing roles of both sponsors and major contributors. Statewide, legislative and local officials have used ballot initiative sponsorship as an alternative platform to enhance their visibility and improve their electoral chances.

The most significant example of officeholder sponsorship of local initiative campaigns occurred in the 1988 Los Angeles battle between Propositions O and P involving oil drilling in the Pacific Palisades. Several elected officials from federal, state and local offices took part in the highly visible and successful campaign to ban coastal oil drilling (Proposition O). The largest officeholder contribution ($900,000) came from State Controller Gray Davis (a subsequent 1992 U.S. Senate candidate) who personally appeared in television ads which, due to the far reach of Los Angeles media, were broadcast to areas far beyond the Los Angeles city limits. U.S. Representative Mel Levine (who ran unsuccessfully for U.S. Senate in 1992) also appeared in many of the ads. City Councilmembers Zev Yaroslavsky (who at the time of the campaign was contemplating a run for mayor) and Marvin Braude also played important and visible roles in the campaign, respectively contributing $820,000 and $194,000 from their officeholder accounts.

Officeholder participation in other local initiative campaigns was minimal—significant only against initiative proposals in which they were directly affected. In Cerritos, for example, elected officials contributed 15% ($4,600) of the total funds spent against a successful 1986 term limitations measure (Proposition H). And in Santa Monica, the sitting appointed city attorney contributed nearly 20% of the total dollars raised to defeat an initiative establishing an "elected" city attorney.

At the state level, officeholder presence in initiative campaigns is more widespread. In 1990, officeholders sponsored 11 of the 18 initiatives reaching the

41. *Quoted in* Ellis, *supra* note 39.

ballot and two of these officeholders were major candidates for Governor.[42] "Initiatives are becoming the candidate's issue papers," says one ballot measure media consultant.[43]

Previously, officeholder involvement in statewide ballot measure campaigns was generally limited to campaigns over reapportionment or government reform initiatives. Such measures still draw the most intense officeholder participation. In 1984, for example, Governor George Deukmejian transferred over $1 million to a Republican-sponsored reapportionment initiative (Proposition 39). In 1990, Assembly Speaker Willie Brown gave $2.6 million and Senate President Pro Tem David Roberti contributed $1.9 millions to defeat two reapportionment initiatives (Propositions 118 and 119) and two government reform measures (Propositions 131 and 140). All but one initiative (Proposition 140, term limits) were defeated.

In funding initiative campaigns, officeholders have generally transferred funds directly from their own campaign accounts. During the 1990 statewide initiative campaigns, because contribution limitations under Proposition 73 capped the dollar amounts state elected officials could raise for their own campaigns, many officeholders formed "initiative committees" which were exempt from the candidate funding restrictions.[44] A 1990 California Common Cause report said, "Even though these committees were controlled by legislators, they were not subject to the Prop. 73 contribution limits. As a result, PACs seeking to demonstrate their support of the [Democratic and Republican] leadership could give large sums of money to initiative committees [the leadership] controlled."[45]

Assembly Speaker Brown, for example, raised more than 68% of his initiative committee's funds in amounts greater than $10,000—even though Proposition 73 limited individual contributions to $1,000 and PAC contributions to $5,000. Senator Roberti collected 77% of his total initiative committee contributions in amounts greater than $10,000. The sources of initiative committee funds were generally the same as for the officeholder accounts. Approximately 48% of Brown's initiative committee contributions came from business, but the largest contribution ($141,000) came from the California Teachers' Association.

Political parties seldom get involved in local or statewide campaigns. At the local level, political party contributions amounted to less than 1% of the total dollars raised. Their participation in statewide initiative campaigns is generally limited to

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42. Governor Pete Wilson sponsored criminal law Proposition 115. San Mateo County Supervisor Tom Heuning sponsored reapportionment commission Proposition 119. Attorney General John Van de Kamp and Assemblyman Tom Hayden sponsored Proposition 128 ("Big Green"). Van de Kamp also backed Propositions 129 (criminal law) and 131 (term limits/campaign finance reform). Assemblywoman Doris Allen sponsored anti-gill net Proposition 132. Lt. Governor Leo McCarthy sponsored drug abuse prevention Proposition 133. Assemblyman Lloyd Connelly sponsored alcohol tax Proposition 134 and rail transportation Proposition 116. Governor George Deukmejian sponsored prison worker Proposition 139. Los Angeles County Supervisor Pete Schabarum sponsored term limitations Proposition 140. These instances of officeholder initiative sponsorship are discussed more fully in Chapter 2, "Impact of Ballot Initiatives."

43. Los Angeles media consultant Sidney Galanty *quoted in* Bill Bradley, *Initiatives Become a New Political Tool—and a Big Business*, California Business, Feb. 1990.

44. Proposition 73, adopted in 1988, imposed contribution limitations on all candidates of $1,000 per fiscal year for individuals and corporations, $2,500 for committees and $5,000 for broadbased political action committees. It did not limit the money officeholders could raise for ballot initiatives. Its restrictions, however, were declared invalid. Service Employees Int'l Union v. FPPC, 747 F.Supp. 580 (E.D. Cal. 1990). This ruling was upheld on appeal (92 Daily Journal D.A.R. 1887 (1992).

45. California Common Cause, A Fist Full of Dollars: 1989-90 Top Ten Contributors to Legislative Campaigns (July 1991).

campaigns over reapportionment. In 1990, for example, state and national Republican Party organizations contributed over $1.2 million to reapportionment Propositions 118 and 119. Approximately 36% of the total contributions in favor of the two reapportionment initiatives came from political parties and clubs. Opponents of the two initiatives received 70% of their funding from state and national Democratic Party organizations. The national Democratic Party group, IMPAC 2000, contributed over $4.6 million to defeat Propositions 118 and 119. In all other 1990 initiative campaigns, the percentage of political party contributions never exceeded 3%.

The large contributions by officeholders and political parties for the purposes of opposing the reapportionment and term limitations initiatives in 1990 were partly blamed for the loss of some hotly contested candidate races. An example is the defeat of Democratic gubernatorial candidate Dianne Feinstein by Pete Wilson. Party and officeholder funds which traditionally go to voter registration and get-out-the-vote efforts were used instead to fund television commercials against Propositions 118, 119, 131 and 140. "The money was spent elsewhere," says then-California Democratic Party Chairman and former Governor Edmund G. Brown, Jr. "Five million dollars went to 118 and 119, and three to four million (dollars) went to term limits."[46] Democratic Party activists maintain that an aggressive voter registration and get-out-the-vote campaign might have helped Feinstein close Pete Wilson's narrow winning margin (three percentage points). Former United Farm Workers labor organizer Marshall Ganz commented, "No Democrat has ever been elected Governor (of California) in the 20th century when it hasn't been preceded by a substantial surge in Democratic registration."[47] No such examples of impact on local candidate election campaigns were apparent.

e. Low Labor Involvement

The historically small number of local and state initiatives affecting labor has meant low labor participation in the initiative process overall. At the local level, labor contributions equaled less than 1% of the total dollars raised. At the state level, substantial labor involvement only occurred in three campaigns. In the 1958 battle over a "Right to Work" initiative which would have severely undermined labor unions, labor forces contributed just under 100% of the total opposition funding. More than 2,200 labor contributions totaling over $2.3 million poured into the successful effort to defeat the proposal. Labor unions also almost entirely funded the unsuccessful 1964 campaign against Proposition 17 (a measure which affected railroad hiring practices). And in 1990, opponents of Proposition 139 (a successful measure which allowed private industry to employ state prisoners in the work force) raised nearly three-quarters (74%) of their total donations from labor organizations, although labor only contributed a total of $206,000. Ironically, one labor organization, the California Correctional Peace Officers Association, contributed $318,000 to the "yes" side, far more than all the labor organizations opposing the measure.

Labor has also made sizable contributions in opposition to statewide initiative campaigns at the request of the state's Democratic legislative leadership. These contributions were apparently made to help preserve the power of incumbent Democratic leaders and not because the initiatives directly affected labor's interests. In 1990, for example, labor groups contributed approximately $600,000 in opposition to campaign finance/term limits Proposition 131 and term limits Proposition 140 (approximately $570,000 to the Roberti/Brown Initiative Committees and $30,000 to the direct 131/140 opposition campaign committee).

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46. *Quoted in* James W. Sweeney, *Democrats' Voter Drive Falters,* Daily News, Oct. 29, 1990.

47. *Quoted in* Sweeney, *id.*

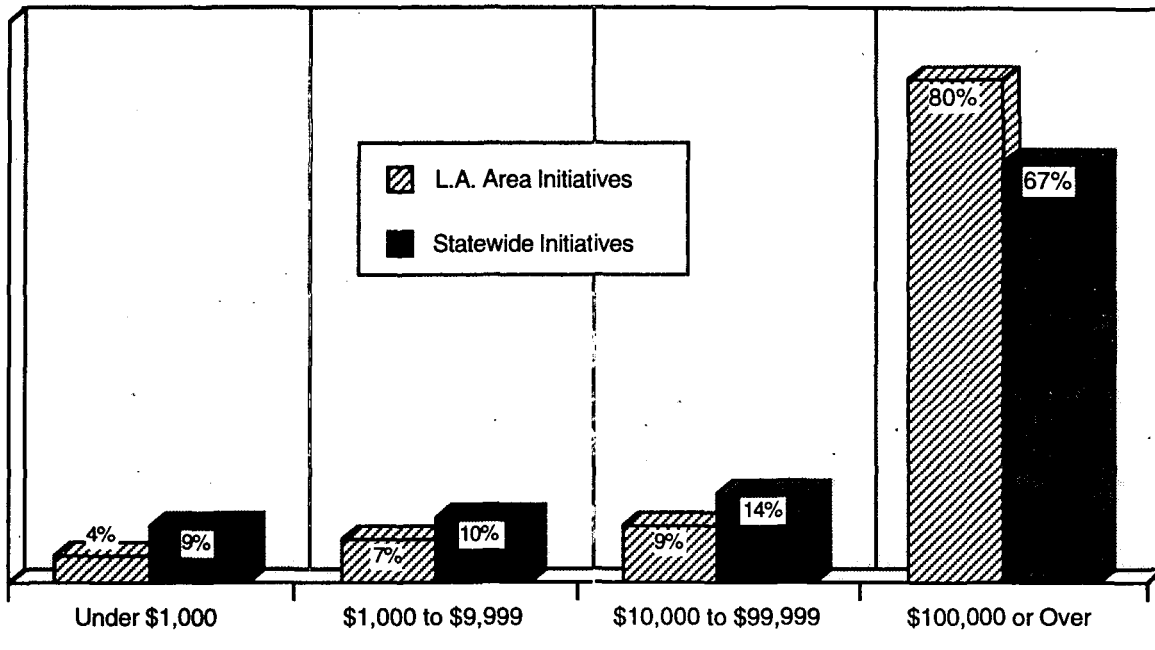
2. The Dominance of Larger Contributions in Local Initiative Campaigns

Large contributions to local campaigns surveyed flowed at a *far higher* rate than they did to statewide initiative campaigns. In local initiative campaigns studied, just 18 contributors giving in amounts $100,000 or more accounted for approximately *four-fifths* (80%) of the total contributions raised, compared to 67% from 295 contributors of $100,000-plus in all the statewide initiative campaigns analyzed.[48] Nearly half (48%) of all local initiative contributions came in amounts of $1 million or more, compared to 42% in statewide initiative campaigns studied. (See Table 8.6.)

Table 8.6

PERCENTAGE OF TOTAL CONTRIBUTIONS ACCORDING TO CONTRIBUTION SIZE

Los Angeles Area Initiatives vs. Statewide Initiatives



Source: California Commission on Campaign Financing Data Analysis Project

The local initiative process also draws far more large contributions than local candidates. In Los Angeles area jurisdictions previously surveyed by the Commission, 82% of contributions to *candidates* came in amounts *less* than $5,000.[49] Approximately 95% of *local initiative* contributions were given in amounts $5,000 or *more*.

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48. These statewide figures were taken from the Commission's combined analysis of the 18 most expensive statewide initiatives in California history and all 18 statewide initiatives in 1990. In 1990 statewide initiative campaigns alone, 141 contributors giving $100,000 or more gave two-thirds of the total contributions raised.

49. These figures for local candidate races were computed from the eight cities out of the Commission's 10-local jurisdiction sample which did not have contribution limitations in place during the period surveyed (1979-85). In the largest jurisdiction sampled without contribution limitations, Los Angeles County, supervisorial candidates received 75% of all their contributions in less than $5,000 amounts. For all cities analyzed, 83% of the total contributions were given in amounts less than $5,000. California Commission on Campaign Financing, *supra* note 2, at 334-344.

Small contributors to local initiative campaigns were large in number but even less significant than small donors to statewide initiative in total dollars raised. At the local level, contributors of less than $1,000 accounted for 77% of the total *number* of contributors but totaled just 4% of the total dollars contributed.[50] Statewide small donors accounted for 78% of the total *number* of contributions and accounted for 9% of the total dollars raised.

As in the statewide initiative process, large contributions in local initiative campaigns are primarily given by business. While 82% of all local contributions from individuals are given in amounts less than $50,000, business gives 83% of its local initiative contributions in amounts $100,000 or more. Approximately 71% of statewide initiative contributions from individuals were in amounts less than $50,000; 76% of business contributions were $100,000 or over. In the statewide initiative process, the trends toward larger individual contributions has intensified in recent years (see below).

The head-to-head conflict between small individual contributors and large business donors has occurred numerous times in local initiative campaigns. In the San Gabriel campaign over a growth moratorium initiative, 100% of proponent contributions were given primarily by individuals in amounts less than $1,000; opponents opposition raised 90% of their total contributions from a single business contributor giving $40,434. In South Pasadena, proponents of a building height limitation initiative raised 100% of their contributions from individuals in amounts less than $1,000; opponents received 87% of their contributions from one business donor giving a single $52,371 contribution.

At the state level, proponents of grassroots-based ballot measure campaigns have historically derived much of their financing from contributions of under $1,000. In recent years, however, traditionally low-cost initiative proponents have relied more on larger contributions to address expanding campaign costs and to counter expensive opposition campaign strategies. Broadbased organizations, wealthy individuals and officeholders have in many cases replaced the under $1,000 contributor as the most significant funding source of such low-spending campaigns.

In 1976, proponents of anti-nuclear power initiative Proposition 15 received 75% of their total funding from *more than 1,100 contributors* giving in amounts less than $1,000. Under-$100 contributions accounted for 55% of the total. By contrast, 1990 Proposition 128 ("Big Green") received 59% of its funding *from three contributors* giving in amounts of $50,000 or more; contributions of less than $1,000 accounted for only 16% of the total dollars raised. (See Table 8.8.)

In 1978, proponents of anti-smoking Proposition 5 received 75% of their total donations from more than *600* contributors giving in amounts less than $1,000. Contributors of less than $100 accounted for 59% of the total dollars raised. Ten years later, tobacco tax proponents of Proposition 99 (1988) raised almost half (47%) of their funding in amounts of $50,000 or more from just *six* contributors. Contributions of under $1,000 amounted to only 6% of total donations raised.

Most other traditionally low-funded or grassroots initiatives drew major funding from large contributions in 1990:

- *Proposition 130 ("Forests Forever"):* proponents received 80% of their donations from *two* contributors giving $1 million or more. Approximately 15% of the total dollars raised came in amounts less than $1,000.

50. The number of contributors giving in amounts "less than $1,000" does not reflect contributions of under $100, since these are not itemized in campaign disclosure reports.

- *Proposition 131 (Officeholder Term Limitations/Campaign Finance and Ethics Reform):* proponents received 59% of their contributions from *three* contributors giving in amounts $50,000 or more. Donations of less than $1,000 accounted for 8% of the total dollars raised.
- *Proposition 132 (Gill Net Fishing Ban):* proponents received 16% of their total contributions from *two* contributors giving $50,000 or more. Approximately 23% of the total was contributed in amounts less than $1,000.
- *Proposition 134 (Alcohol Tax Initiative):* proponents raised 45% of their contributions in amounts $50,000 or more from *six* contributors. Approximately 19% of the total came in amounts less than $1,000.
- *Proposition 140 (Officeholder Term Limitations/Reduction of the Legislature's Budget):* proponents received 61% of their total contributions from *five* contributors giving $20,000 or more. Approximately 30% of the total dollars raised came in amounts less than $1,000.

The only ballot measure in 1990 primarily financed by small contributors was endangered wildlife protection Proposition 117. Almost half of all its contributions ($544,000 out of $1.1 million) came in amounts less than $1,000 from over 1,000 contributors. Proponents, however, received nearly $260,000 from four contributors in amounts of $50,000 or more to help fund petition circulation efforts.

Though non-business funding sources now routinely provide sizable contributions to many initiative campaigns, business sources still possess a far greater large contribution capability. In 1990, corporate contributors accounted for two-thirds (67%) of all the contributions given in amounts of $100,000 or more.

C. Local Initiative Campaign Spending Is a Study in Extremes

The local initiative process in the Los Angeles area has witnessed some of the highest concentrations of campaign spending of anywhere in the state. One unsuccessful initiative opposition campaign in Claremont spent $139 per vote. In Azusa, a golf course owner fruitlessly attempting to rezone and sell his land spent $105 per vote. In Torrance, Mobil Oil spent $53 per vote successfully to stop an initiative regulating the use of a hazardous chemical at its local refinery. In San Gabriel, opponents unsuccessfully tried to thwart a slow growth effort spending $75 per vote.

By contrast, despite high overall spending in the statewide initiative process, the concentration of expenditures has been comparatively low. The $37 million insurance industry-funded campaign for Proposition 104 in 1988 spent just under $16 per vote, the highest figure of all 33 statewide campaigns studied. In 1990 statewide initiatives, spending per vote by a single initiative campaign did not exceed five dollars.

Local initiative spending per vote ratios also out-paced those of Los Angeles area local candidate races studied previously by the Commission. While one Pasadena candidate in 1985 spent $78 per vote, local candidates overall rarely exceeded the $25 mark.[51]

Overall spending in local initiative campaigns is a study in extremes, with development-related issues generating the most intense spending. In smaller cities, where citizen involvement in local issues is more frequent, initiative campaigns are

51. California Commission on Campaign Financing, *supra* note 2.

generally volunteer-driven and spending over even controversial issues relatively low. In Hermosa Beach (population, 22,000), for example, total spending over an initiative mandating open space for a small strip of vacant beachside property did not exceed $7,000. In Manhattan Beach (population 32,661), proponents and opponents of a 1988 building height limit initiative spent around $19,000. In La Canada-Flintridge (population, 20,166), a highly-charged 1986 initiative campaign over the rezoning of land for residential use generated approximately $17,000 in spending.

In the Los Angeles area's larger cities, the level of initiative spending was more extreme. In Burbank, two 1991 growth limitation initiatives attracted approximately $700,000 in spending. In Los Angeles, proponents and opponents in 1986's successful slow-growth Proposition U spent nearly $370,000. On the same ballot, a controversial initiative calling for a redirection of federal spending from military uses to jobs promoting peace drew over $520,000 in spending. Also in Los Angeles, just two years later, the initiative battle over oil drilling in the Pacific Palisades consumed more than $11.5 million in spending.

By contrast, total spending in the statewide initiative process has consistently and steadily increased since the mid-1970s. In 1976, total spending by four initiatives on the ballot was approximately $9 million. By 1988, total campaign costs for 18 initiatives on the ballot were over $127 million—a fifteen-fold increase over 1976. In 1990, initiative campaign costs were $110 million, representing a twelve-fold increase over 1976. Only one of the 18 initiative contests in 1990 spent less than $1 million (a combined $800,000 was spent by proponents and opponents of anti-gill net Proposition 132; all the rest spent more). The highest amount spent on a statewide initiative campaign in 1976 was approximately $4 million; in 1990, 11 of 18 ballot measure contests cost $4 million or more. In all local initiatives surveyed, only one initiative campaign witnessed spending of over $1 million ($11.5 million, Proposition O versus Proposition P in Los Angeles, 1988).

1. Vast Differences in Campaign Methods Between Small and Larger Cities

A survey of voter contact methods in the Los Angeles area's local initiative process reveals immense differences in how campaigns are run in small, medium and large cities. (See Table 8.7.) In the smallest of cities, local initiative campaigns are run primarily by grassroots volunteers; money is generally devoted to pamphlets (for hand-outs) and in some cases newspaper advertisements and outdoor billboards. Small-to-medium-sized cities surveyed by the Commission spent the largest percentage of their voter contact dollars (61%) on campaign pamphlets and direct mail. In the area's largest city, Los Angeles, broadcast advertising has become the dominant campaign strategy, absorbing three-quarters (75%) of the voter contact dollars. The Los Angeles City figure closely resembles statewide initiative patterns, where 76% of all 1990 initiative voter contact expenditures were spent on broadcast advertising.

Lacking initial broadbased support for their positions, local businesses and industry groups have generally employed the most highly sophisticated targeting techniques to influence voter attitudes. As a result, business-backed local initiatives devote large sums to paid political consultants. In their campaign to defeat two 1991 Burbank anti-growth measures, for example, the local industry-funded opponents spent over $143,000 on paid consultants. In the most extreme case, the Occidental Petroleum-backed opposition campaign to the 1988 anti-oil drilling initiative in Los Angeles (Proposition O) spent $840,000 on paid consultants.

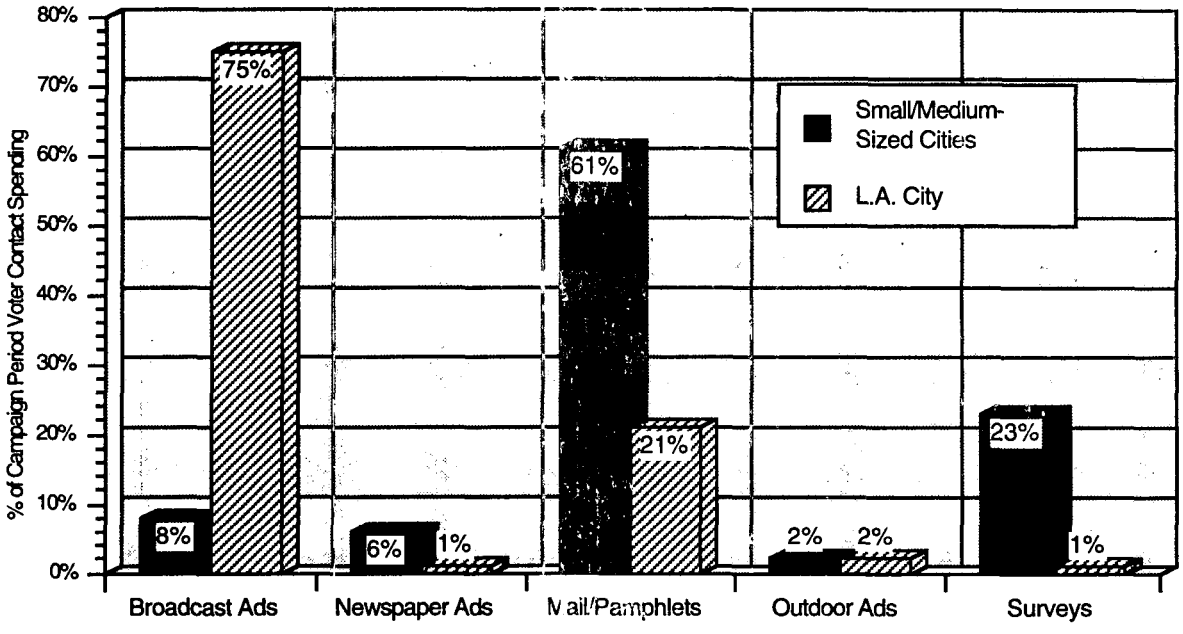
a. The Increasing Use of Broadcast Advertising in Local Initiative Campaigns

"Television is our most effective weapon," says Jack McDowell of political advertising firm Woodward & McDowell, which has been employed by several industry-sponsored statewide initiative campaigns.[52] The statewide initiative process is thoroughly dominated by television and radio advertising; 1990 initiative campaigns spent $52 million for access to the airwaves. At the local level, the serious use of broadcast advertising is a relatively recent phenomenon. In the 1986 Los Angeles City campaign over anti-growth Proposition U, *no* broadcast expenditures were recorded. By contrast, the 1986 campaign for and against "Jobs With Peace" Proposition V, spent approximately $410,000 on radio and television advertising. By 1988, in the contests over Propositions O and P, over $7 million was channeled to broadcast ads, *nine times* the total spending on broadcast advertising for all Los Angeles area local candidate races previously surveyed by the Commission ($790,487).[53]

Table 8.7

DIFFERENCES IN VOTER CONTACT METHODS

Small/Medium-Sized Cities vs. L.A. City



Source: California Commission on Campaign Financing Data Analysis Project

In small and medium-sized Los Angeles area cities, expenditures on television and radio advertising historically have been necessarily low—the gigantic areas covered by the Los Angeles media market make the use of media advertising extremely inefficient. With the advent of community cable systems offering relatively inexpensive advertising to more localized areas, however, local initiative campaigns—even in smaller cities—have begun to employ television advertising in their campaign strategies.

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52. *Quoted in* Jonathan L. Kirsch, *Initiatives Cutting Up the Constitution?,* California Lawyer, Nov. 1984.

53. California Commission on Campaign Financing, *supra,* note 2.

In the 1990 battle over chemical regulation Proposition A, Mobil Oil ran *nightly* 30-minute television advertisements on the local Paragon Cable system in the final five days of the campaign at a cost $35,000.[54] The ads, which were publicized in newspaper advertisements, featured edited recordings of "coffee hour" discussions about the initiative taking place at refinery workers' homes. Mobil also purchased time for two 30-second ads at an average cost of $600 each. The measure, which according to proponents had widespread support a month before the election, was soundly defeated, receiving just 26% of the vote.

In Manhattan Beach, opponents of a 1988 building heights initiative (Proposition E) purchased two small amounts of time on the local Multivision Cable system to supplement their direct mail and newspaper advertising strategies. The total cost of the television advertising time was $336.[55] The unsuccessful initiative (spending nothing on broadcast ads) received just 42% of the vote.

b. The Use of Direct Mail and Slates

As in Los Angeles area local candidate races, local initiative campaigns in small and medium-sized cities use small-scale (sometimes one-time) direct mail campaigns as their main voter communication method. In Cerritos, for example, opponents of a term limits measure spent 84% of their total voter contact expenditures on campaign mail. In the 1989 campaign for Hermosa Beach "open-space" Proposition C, all of the total campaign period voter contact expenditures were devoted to campaign literature. Opponents of a Pasadena anti-growth initiative in 1988 (Proposition G) spent 70% of their campaign period voter contact spending.

By contrast, local initiative campaigns in broadcast media-dominated Los Angeles primarily use targeted direct mail solicitations to reinforce their television and radio dominated efforts. Proponents of anti-oil drilling Proposition O spent 79% of their campaign period voter contact expenditures on broadcast advertising and just 17% on direct mail. Proposition P proponents channeled 73% of their total voter contact budget to television and radio ads and just 25% to direct mail.

The slate mail component of local and state ballot measure campaigns has become costly. Far removed from the ideologically-based endeavors of the past, slate mailers are big business in California. As of 1990, more than 60 slate mail organizations had registered with the state.[56] Placement on some slates frequently goes to the highest bidder. "The slate people lick their chops during the initiative wars," says Ken Masterton of petition circulation and campaign consulting firm Masterton & Wright.[57] At the local initiative level, serious slate card use is prevalent mainly in larger cities where the cost for inclusion can be extremely expensive. In 1986, opponents of the Los Angeles "Jobs With Peace" initiative (Proposition V) paid $4,000 to appear on the conservative "Non-Partisan Candidate Evaluation" slate. By 1988, proponents of Los Angeles pro-oil drilling Proposition P paid $25,000 to appear on the same slate.

At the state level, slate mail costs are massive. Opponents of 1990 Proposition 134 (alcohol tax), for example, paid $750,000 to appear on one of the largest and most influential slate mailers, Berman and D'Agostino's Democratic Voter Guide.[58] With costs that high, "it is hard for citizens' groups to get a place on a slate card," says

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54. This figure excludes production costs incurred by the campaign.

55. *Id.*

56. Dean Murphy and Paul Feldman, *Cries of Foul Fill Political Air as Slate Mailers Arrive,* Los Angeles Times, Nov. 3, 1990.

57. Telephone interview with Masterton, *supra* note 10.

58. Murphy and Feldman, *supra* note 56.

Masterton.[59] (For a more extensive discussion of the use of slate mailers in initiative campaigns, see Chapter 6, "News Coverage and Paid Advertising.")

2. The Impact of Unbalanced Initiative Campaign Spending

Common sense would suggest that money is the decisive factor in initiative campaigns. But the relationship between money and electoral success is not as obvious as one might expect. Money does indeed "talk," but its volume may depend on the particular situation. Pressing social needs, ideological predispositions of the voters, endorsements and a variety of other voting cues can all intervene to affect vote choice despite a well-financed campaign. In some cases, even a heavily one-sided campaign may fail to sway voter opinion if countervailing information has been dispersed through the news media or other sources.

a. National Studies

A significant body of evidence from around the nation suggests that money plays a key role in determining the outcome of initiative campaigns. In 1976, political scientist John Shockley conducted a cross-state analysis of 12 initiative campaigns concerning similar issues backed by different levels of campaign spending.[60] The campaigns dealt with mandatory bottle deposits and the regulation of nuclear energy. In all 12 proposals, industry opponents outspent the proposals' proponents by at least three-to-one. Nine of the 12 initiatives went down in defeat, despite an initial popular base of support.

Another study by Shockley in the 1976 Colorado general election followed the outcome of six initiative campaigns and four ballot measures.[61] Heavy one-sided spending occurred in six of the proposition campaigns, all in opposition. The other four propositions had relatively balanced campaign expenditures. All six measures with heavy opposition spending were defeated, while only two of the four measures with balanced campaigns were rejected by voters. Shockley concluded that in many instances "campaign expenditures seemed to have made a difference in the results."[62]

The Council on Economic Priorities has also found that heavy one-sided spending in initiative campaigns tends to succeed at the polls.[63] An analysis of 16 propositions on the 1978 general election ballots of 11 states and one city found that the side spending the most usually won. Fifteen of the initiative campaigns attracted heavy spending. In 11 of these cases, the side spending the largest amount was successful. Opponents outspent proponents in 13 cases and defeated nine of the measures. Proponents outspent opponents in two instances and won both times. According to pre-election polls, of the nine propositions defeated by heavy opposition spending, six had an excellent chance of passage had campaign expenditures been more equitable.

The most extensive cross-state study to date was conducted by political scientist Betty Zisk.[64] Professor Zisk charted the campaigns and election outcomes of 72 major

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59. Telephone interview with Masterton, *supra* note 10.

60. *IRS Administration of Tax Laws Related to Lobbying: Hearings Before a Subcomm. of the House Comm. on Gov't Operations,* 95th Cong., 2d Sess. 256-274 (May and July 1978) (statement of John Shockley, professor of political science, University of Colorado at Boulder).

61. John Shockley, The Initiative Process in Colorado Politics: An Assessment (1980).

62. *Id.* at 32.

63. Steven Lyndenberg, Bankrolling Ballots: The Role of Business in Financing State Ballot Question Campaigns (1979).

64. Betty Zisk, Money, Media and the Grass Roots: State Ballot Issues and the Electoral Process (1987).

ballot questions from 1976 to 1982 in four states: California, Massachusetts, Michigan and Oregon.[65] In 56 of the 72 campaigns studied, or 78% of the time, the higher-spending side won. This was true on low-spending issues as well as big money campaigns. Higher spending, whether made by proponents or opponents of a measure, was effective at the polls. In more than half of the cases in which survey information was available, public opinion was reversed in the high-spending direction during the course of the campaign.

Zisk also examined the role of intervening variables in ballot measure campaigns. She found elite endorsements to be important factors in a campaign but campaign spending to be the single most powerful predictor of electoral success. While many of the winning high-spending campaigns attracted media coverage and elite endorsements, losing campaigns also had a significant share of elite support. By themselves, elite endorsements frequently failed to carry the day. Judging from studies of the initiative process in other states, money and paid advertising are important variables affecting election outcomes.

b. The Effects of Initiative Campaign Spending in California

At the local level, few studies examining the correlation between campaign spending and local initiative outcome have been conducted. David Hadwiger, research associate at the Institute of Governmental Studies at the University of California, Berkeley, has produced the most comprehensive analysis of the question to date. The study of 276 California cities, sponsored the Institute of Governmental Studies and the California League of Cities, found strong relationships between the level of campaign spending and local initiative election result. Hadwiger concluded, "At the local level, greater campaign spending seems to be strongly related to the likelihood of electoral success, regardless whether the spending is in favor of opposed to the measure."[66] In 34 cases examined where local initiative opponents outspent proponents by more than two-to-one, opponents won 68% of the time. When proponents outspent opponents by more than two-to-one, proponents succeeded in 63% of the (24) cases surveyed.

UCLA law professor Daniel Lowenstein in 1982 conducted the most authoritative study on the impact of money on statewide initiative campaigns in California.[67] Several scholars had earlier reviewed California initiative campaigns and concluded that heavy one-sided spending had little, if any, effect on election outcomes.[68] Compilation of initiative campaigns in the state in which one side outspent the other by a factor of at least two-to-one showed no clear relationship between campaign money and success at the polls. California Research, a Sacramento consulting firm, charted 16 one-sided initiative campaigns from 1954 through 1974. Of these 16 cases, only seven had an election result favorable to the big

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65. Over 150 ballot measures appeared on the ballot in these four states over the time period of study. Zisk selected the 72 cases in her study somewhat arbitrarily, generally preferring issues of controversy, but also including a smattering of noncontroversial ballot measures for comparison. She was selective in the measures for study in order to accommodate additional information for analysis beyond financial expenditures, such as newspaper accounts of elite endorsements.

66. David Hadwiger, *Money, Turnout, and Ballot Measure Success in California Cities,* 45 Western Political Quarterly 542 (1992).

67. Daniel Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice and the First Amendment,* 29 UCLA L. Rev. 505 (1982).

68. *See* Charles Price, "The Initiative: A Comparative State Analysis and Reassessment of a Western Phenomenon," 28 Western Political Quarterly 260-261 (1975); Philip Bentley, It's Your Money—A Defense of Proposition Campaigns, in The Challenge of California, at 103 (Eugene Lee and Larry Berg eds., 1976).

money side; big money lost in nine cases.[69] Under this scenario, money did not prove to be the key to election victory in California initiative campaigns.

Professor Lowenstein looked more closely at the data.[70] He selected for analysis initiative campaigns between 1968 and 1980 in which spending by either the affirmative or negative side exceeded $250,000 and was at least twice as high as spending on the opposite side. Twenty-five initiative campaigns in all met those criteria.

Overall, the big-spending side won in 16 cases (64%) and lost in nine (36%). Without more, this would have suggested that money exerts only a moderate influence over voter choice. However, when Lowenstein separated the 25 cases into two groups—one-sided spending in *support* of an initiative versus one-sided spending in *opposition* to an initiative—a different picture emerged. Among the 15 initiatives *supported* by big money, only seven (46%) were successful and eight (54%) were defeated. Conversely, among the 10 measures *opposed* by big money, nine (90%) were defeated and only one (10%) was approved. In other words, while money may not have been a significant factor in winning voter approval of an initiative, *money was an overwhelming factor in defeating ballot measures.*

c. Reasons Why Negative Spending Is Effective

Lowenstein analyzed the nature of each of the 25 one-sided initiative campaigns for clues as to why negative spending was so effective. He concluded that the single greatest reason for the efficacy of one-sided negative spending was deceptive paid advertising.

Many traditional explanations for the effectiveness of negative spending seem insufficient upon reflection. One favorite argument is that voters simply are inclined to vote "no" on all initiatives. This assumption is inconsistent with the evidence. First, voters are not inclined to vote "no" on measures placed on the ballot by the legislature. With few exceptions, well over 70% of legislative ballot measures are routinely approved in statewide elections. Second, public opinion surveys show that in many instances voters are initially inclined to vote "yes" on initiatives and are later persuaded to vote "no" as the election day nears and they are subjected to negative advertising. The great majority of initiative measures fare well in public opinion two or three months prior to the election, gradually losing majority support by election day. Third, the percentage of California initiatives approved has increased in recent elections. In the June 1990 election, for example, 60% of all the initiatives on the ballot were approved—although a precipitous drop in voter approval occurred in the November 1990 election.

A more plausible argument is that one-sided negative spending can sow confusion and that voters are inclined to vote "no" when confused. Confusion in the sense used here signifies either uncertainty or misperception about a policy proposal. The use of counter initiatives against Propositions 128, 130 and 134 clearly

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69. The California Research study was submitted as evidence for petitioners seeking to strike down expenditure ceilings in ballot measure campaigns in Citizens for Jobs and Energy v. FPPC, 16 Cal. 3d 671 (1976). *See* "Petition for Writ of Mandate and Memorandum of Points and Authorities," at 70-71.

70. UCLA law professor Daniel Lowenstein's research followed up testimony made by USC political science professor Larry Berg before a 1977 congressional hearing on the initiative process. Berg argued that one-sided spending generally has not been successful in support of initiatives, but has been very successful in opposition to initiatives. Professor Berg had not documented his position, however. *Voter Initiative Constitutional Amendment: Hearings on S.J. Res. 67 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary,* 95th Cong., 1st Sess., 9-11 (1977) (statement of Larry Berg, professor of political science, University of Southern California).

illustrates the effectiveness of voter confusion. By the final stages of the campaign, voter confidence in the measures had diminished; all three measures were defeated.

As discussed above, unbalanced campaign spending allows or even encourages deceptive advertising. The temptation is strong to saturate the airwaves with exaggerations and alarming innuendoes when it is realized that one's adversaries lack the money to respond. Deceptive advertising is particularly effective by campaigns against initiative measures because it is far easier to exacerbate fear of change than it is to stir fear of the status quo. Voters know the ramifications of existing policies, but what exactly will happen under a new policy is often uncertain. It is within this realm of uncertainty that opposition spending so effectively exploits the fear of costly unintended consequences.

d. Commission Computer Analysis of the Effect of Unbalanced Campaign Spending

The Commission conducted a sophisticated computer analysis of spending patterns in statewide initiative campaigns in California from 1976 through 1988. The analysis confirms Lowenstein's hypothesis of the effectiveness of negative spending, with notable exceptions in the 1988 general election. The November 1988 election witnessed two of the highest spending opposition efforts ever in the history of the initiative process, yet both were unsuccessful. One effort focused on a tobacco tax initiative (Proposition 99). The tobacco industry pumped $22 million into an opposition campaign versus $1.8 million spent by proponents ($826,842 of which was spent by proponents just to qualify to the ballot). Despite the massive opposition effort, Proposition 99 was approved by a margin of 58%.

A second effort concerned insurance reform. Proposition 103, an insurance reform measure championed by Ralph Nader, was opposed by an array of counter initiatives financed either by the insurance industry or the California Trial Lawyers Association (CTLA). The CTLA placed Proposition 100 on the ballot, while various insurance industry representatives placed three other counter initiatives on the ballot. The insurance industries spent nearly $60 million in total on their counter initiatives and in opposition to Proposition 103 in California—considerably more than what George Bush spent nationwide to be elected president.

A statistical analysis of spending patterns reveals that there is no significant relationship between money spent in *support* of an initiative and the percentage of votes gained or victory or defeat of the initiative.[71] Conversely, there is a strong statistical relationship between the amount of money spent *against* an initiative and its electoral performance. Even without taking into consideration the amount of money spent in support of an initiative, the more funds spent in opposition to a measure, the smaller percentage of votes it received and the greater the likelihood of voter rejection at the polls.

The relationship between opposition spending and electoral defeat of a measure grows stronger with heavy one-sided spending. When one side of an initiative campaign spends more than twice the amount spent by the other side, support expenditures remain statistically insignificant with votes gained and election result, while opposition expenditures are more effective at undermining a measure's election performance.

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71. The Commission used the standard "Pearson Correlation" and "Partial Correlation" to determine these statistical relationships. A definition of these statistical tools is contained in Appendix F. See Table F.4 for a complete detailed review of the results concerning one-sided negative spending.

Clearly, opposition expenditures are effective at chipping away popular support for an initiative and defeating the measure at the polls, especially if opponents significantly outspend proponents. Expenditures made in support of an initiative have not shown the same pattern of effectiveness over time. It is important to note, however, these are general tendencies that have occurred over an aggregate data base; they may or may not apply in any individual case. A multitude of other factors that affect voter choice can intervene under certain circumstances and create exceptions to the rule.

D. Current U.S. Supreme Court Doctrine Prevents Limits on Both Contributions and Spending in Initiative Campaigns

No jurisdiction anywhere in the country restricts the flow of dollars into ballot measure campaigns. Although various state and local governments have tried to limit contributions or impose spending ceilings on initiatives campaigns, the courts have declared these laws unconstitutional in violation of the First Amendment's freedom of speech.

The sole form of campaign finance regulation for ballot measure campaigns which has been upheld by the courts is disclosure. Existing laws require initiative campaign committees to disclose the sources of their contributions and how they spend their funds. The threshold which triggers disclosure ranges from a low of *any* contribution in Florida, Ohio and Wyoming to a high of $500 in Nevada. A threshold of $100 is most common. Alaska, Arkansas, California and Oregon also mandate disclosure of independent expenditures in initiative campaigns. Four states require out-of-state committees to furnish a list of their donors. Only the state of Utah has no disclosure requirements for initiative campaigns. (For a discussion of laws requiring contributor disclosure in political advertising, see Chapter 6, "News Coverage and Paid Advertising.")

1. The Effort to Limit Qualification Expenses

Under the original provisions of California's 1974 Political Reform Act, proponents circulating a statewide ballot petition were prohibited from spending on qualification more than 25 cents times the number of signatures needed to qualify the measure. In 1976, proponents would have been limited to spending no more than $100,000 on their statewide qualification drive. Today, because of cost of living adjustments and more voters, that $100,000 would equal $260,000.

Seven months after the U.S. Supreme Court declared mandatory expenditure ceilings unconstitutional in *Buckley v. Valeo,*[72] the California Supreme Court struck down the state's limitation on qualification expenses. The Fair Political Practices Commission strenuously defended the restrictions, arguing that the limits served a valid public purpose: prevention of fraud and corruption with which paid petition circulators had been associated and provision of assurances to the voters that a position on the ballot could not be bought by the proponents. The FPPC presented evidence of widespread fraud in an initiative drive which had attempted to take away rights of farmworkers. The paid circulators had urged voters to sign the petitions to *protect* the rights of farmworkers, even though the initiative actually took those rights away. In some instances, petitioners had hidden the official attorney general's summary of the initiative at the top of the petition by covering it with a card which read "Lower food prices."[73] While the state supreme court overturned the

72. Buckley v. Valeo, 424 U.S. 1 (1976). In Buckley, the Court ruled that the expenditure of money was tantamount to "speech," and that restrictions on campaign expenditures abridged the First Amendment ability of candidates to communicate their views to the public.

73. Hardie v. Eu, 18 Cal. 3d 371 (1976).

qualification expenditure ceilings in large part due to the *Buckley* decision, it also concluded that the FPPC had not proven that paid circulators engaged in any more deception than unpaid circulators.

Recently the U.S. Supreme Court struck down a Colorado law which prohibited circulators from being paid to circulate petitions. A unanimous Court found that the restriction violated the petitioners' freedom of speech under the First Amendment.[74]

2. The Effort to Enact Contribution Limits

The courts have never approved any law which restricts campaign contributions to initiative campaigns. Both the state of Massachusetts and the city of Berkeley, California, have attempted to restrict the flow of money into initiative campaigns. In both instances the courts declared the attempts invalid.

In *PG&E v. City of Berkeley* (hereinafter *"PG&E"*), the California District Court of Appeal in 1976 invalidated a Berkeley city ordinance which prohibited any contributions by corporations to ballot measure committees.[75] The law was challenged by the utility Pacific Gas & Electric, which sought to disseminate information opposing a ballot measure (a proposal which would have allowed the city to acquire the company's facilities and to establish a municipally owned and operated electric distribution system). The court held that the ordinance violated the First Amendment.

In *First National Bank v. Bellotti,*[76] the U.S. Supreme Court invalidated a Massachusetts statute which prevented corporate contributions to ballot measure campaigns. It ruled that the First Amendment protects corporate speech and the publication of a corporation's views on proposed state constitutional amendments. Writing for the majority, Justice Powell held that the Constitution does not support the argument that expression of views on issues of public importance loses First Amendment protection simply because the speaker is a corporation, even though the corporation cannot prove the issues materially affect the corporation's business. Instead, corporate speech on ballot measures is protected because the voters have a right to hear the corporate speaker's views.[77]

In *Citizens Against Rent Control v. City of Berkeley* (hereinafter *"Citizens Against Rent Control"),* the U.S. Supreme Court struck down a Berkeley, California city ordinance which restricted all contributions to ballot measure committees to a maximum of $250.[78] The Court repeated its finding in *Bellotti* that "[t]he risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue."[79] In a concurring opinion, Justice Rehnquist noted that unlike *Bellotti*, the Berkeley city ordinance encompassed not only corporations but individuals as well. Justice Marshall remarked that if the record had disclosed the tendency of large contributions to undermine the confidence of citizenry in government, he would have been inclined to find a sufficient government interest.[80] Justices Blackmun and O'Connor further commented on the inability of the city to show "'by record or legislative findings that corporate advocacy threatened

74. Meyer v. Grant, 486 U.S. 414 (1988).
75. PG&E v. City of Berkeley, 60 Cal. App. 3d 123 (1976).
76. First Nat'l Bank v. Bellotti, 433 U.S. 765 (1978).
77. *Id.*
78. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1982).
79. *Id.* at 298, quoting *Bellotti,* 454 U.S. at 790.
80. *Citizens Against Rent Control,* 454 U.S. at 301.

imminently to undermine 'democratic processes' or 'the confidence of the citizenry in government.'"[81]

3. California's Brief Experiment With Spending Ceilings

For a brief time, California limited the flow of campaign money into the initiative process. With the approval of the 1974 Political Reform Act (Proposition 9) by 70% of the voters, California enacted provisions which imposed expenditure ceilings on the qualification of petitions and on spending for and against statewide ballot measures during the campaign.

The Political Reform Act required supporters and opponents of a statewide measure to limit expenditures to no more than $1.2 million (today, with cost of living adjustments and population increases, it would be about $2.7 million) or more than $500,000 in excess of the opposing side's total spending (this provision was not to be adjusted for cost of living increases).[82]

The Fair Political Practices Commission and its staff devoted an enormous amount of time in 1975 trying to establish procedures to determine how much each side of a ballot measure could spend on its initiative campaign. Numerous hearings were held, with representatives of the nuclear power industry attending each meeting because of an impending initiative which would have severely curtailed nuclear power in California. The biggest problem facing the Commission was how to allocate the spending caps among the various committees which would be making expenditures during the campaign. The committees had to tell the Commission how much money they were planning to spend no later than 28 days before the election. The Commission was required to notify the committees how much money they were entitled to spend on the election no later than 21 days before the election. The Commission also had to develop procedures to ensure that one side was being kept abreast of how much the other side was spending so that neither side outspent the other by $500,000.

After the Commission adopted complex regulations on these issues, lawyers for the nuclear power industry asked the California Supreme Court to overturn the expenditure ceilings and the Commission's regulations. Before the California Supreme Court could rule on the case, the U.S. Supreme Court decided *Buckley v. Valeo*.[83] The *Buckley* decision upheld selected campaign finance reforms including limits on individual or group contributions to candidates or committees, disclosure and reporting requirements and public financing provisions. However, it invalidated expenditure ceilings, limits on independent expenditures by individuals and groups and caps on expenditures by candidates from their personal funds. The Court found that these restrictions violated the First Amendment.

Although *Buckley* addressed only candidate campaigns, the decision set the stage for subsequent rulings on campaign financing restrictions for ballot measure campaigns. In essence, the high court defined money as a form of free speech protected by constitutional guarantees. Campaign expenditures received greater constitutional protection because they were directly linked to the communication of political ideas to the public. Campaign contributions warranted some but less constitutional protection because they constituted "speech by proxy"—symbolizing one person's support for another.[84] Only given a pressing state interest—such as the

81. *Id.* at 303, quoting *Bellotti,* 454 U.S. at 789-90.

82. The law stated that no side could spend more than 8 cents per registered voter. Cal. Gov't Code §85303 (repealed since Citizens for Jobs and Energy v. FPPC, 16 Cal. 3d 671 (1976).

83. Buckley v. Valeo, 424 U.S. 1 (1976).

84. *See* California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, at 196 (1981).

need to curtail political corruption or even the appearance of such corruption—could contributions to candidates be restricted.

In light of the *Buckley* decision, the FPPC conceded that the expenditure ceilings on ballot measure campaigns were also unconstitutional. The California Supreme Court concurred, holding that the provisions in the Political Reform Act which capped expenditures for ballot measures violated the First Amendment's guarantee of freedom of speech.[85] No party presented any arguments to the court that the expenditures ceilings should be declared valid.

E. The Commission Urges Further Study Toward Fashioning Effective and Constitutional Restraints on Initiative Spending

Efforts to address through legislation the growing influence of campaign money on the initiative process will be difficult but not impossible. Recent U.S. Supreme Court decisions discussed below indicate that the Court might at least be willing to consider narrow restrictions on the ability of organizations to influence elections through the employment of massive spending power. Presented with sufficient evidence, the Court may be willing to go further. Because it is inevitable that strenuous litigation over the constitutionality of any such reform will occur in successive trial and appellate courts, and because for that reason any reform proposal requires the most careful review by able constitutional experts, the Commission is not now prepared to make a specific recommendation. It believes, however, that the study of workable initiative campaign finance reform measures should continue, building in part on the data summarized in this report. Additional public discussion is essential. Among the potential remedies which might be further considered are those discussed below.

1. Rethinking Supreme Court Decisions

In 1986, the U.S. Supreme Court limited the scope of a provision of the Federal Election Campaign Act (FECA) that prohibited corporations from making either direct contributions to candidates or independent expenditures on behalf of candidates. The Court held in *Federal Election Commission v. Massachusetts Citizens for Life*[86] (hereinafter *Massachusetts Citizens for Life)* that such a provision was unconstitutional where the corporation was non-profit and formed for the express purpose of advocating a view. Although the Court suggested that legislation may restrict the electoral activities of for-profit organizations on the ground that their economic power and resulting political clout is not necessarily an accurate reflection of the power of the organizations' political ideas, it concluded that a non-profit corporation's financial strength correlates more closely with public support for its views. The Court also noted that the non-profit corporation in question had no shareholders, was not established by a business corporation or labor union and did not accept contributions from such entities. The Court thus struck down the federal law's restriction on contributions and expenditures by a particular type of non-profit corporation, stating that the government could not restrict the speech of such a non-profit corporation except through the use of disclosure requirements to prevent abuse.

On the other hand, the Court recognized that "[d]irect corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political

85. Citizens for Jobs and Energy v. FPPC, 16 Cal. 3d 671 (1976).

86. Federal Election Comm'n v. Massachusetts Citizens for Life, 479 U.S. 238 (1986).

marketplace."[87] The Court added, "the government enjoys greater latitude in limiting contributions than in regulating independent expenditures,"[88] not to mention the legitimacy of Congressional interest in preventing unfair deployment of public wealth.[89]

In the recent case of *Austin v. Michigan State Chamber of Commerce,*[90] (hereinafter *Austin)* the Supreme Court in a 6-to-3 decision amplified its reasoning by upholding caps on the independent spending of a state chamber of commerce. The Court first distinguished *Massachusetts Citizens for Life* by ruling that the state chamber of commerce in *Austin* was supported by *for-profit* corporations and thus not a spokesman for organizations formed for the purpose of advocating views. The Court then upheld caps on independent expenditures by corporations that used general treasury funds to promote or oppose candidates for state office. The Court's reasoning was twofold. First, excessive corporate expenditures in candidate campaigns risked "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."[91] The Court added, "the unique state-conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures. Corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions."[92]

Second, and also importantly, the Court observed that funds amassed in general corporate treasuries are collected from employees and business associates who have no idea or intention that their money is being used for specific political purposes. Limits on the expenditures of these funds are therefore justifiable. By contrast, limits would not be permissible on independent corporate expenditures using money from segregated funds identified for specific purposes.

The Court's opinion is significant, and particularly relevant to ballot initiatives, in that it appears to widen the Court's focus from an exclusive emphasis on potential of large contributions or expenditures to "corrupt" candidates to the potential of large corporate spending "unfairly" to "distort" political campaigns. In prior decisions such as *Buckley v. Valeo,* the Court stressed that contributions could only be limited because of their potential to create the reality or appearance of "corruption"—a *quid pro quo* between the candidate and the contributor. The government interest in eliminating corruption in campaigns was so strong that it overcame any diminution in free speech caused by contribution limits. But because a ballot initiative cannot be "corrupted," as the Court added in the *Citizens Against Rent Control* decision,[93] contributions to ballot measure committees could not be limited. The Court's concern in *Austin* over the potentially unfair, distorting and corrosive effects of large corporate spending on campaigns could just as easily be applied to initiative as to candidate campaigns. *Austin*, in other words, may suggest

87. *Id.* at 257.

88. *Id.* at 261.

89. *Id.* at 263.

90. Austin v. Michigan Chamber of Commerce, 110 S. Ct. 1391 (1990).

91. *Id.* at 1397.

92. *Id.* at 1398.

93. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 298 (1982).

that some members of the Court might be willing to take a renewed look at the effects of massive organizational spending on ballot initiative campaigns.[94]

2. Limiting Very Large Contributions

As shown by the Commission's study of fundraising patterns, large contributions greatly affect the initiative process. In all local initiative campaigns studied, 80% of all contributions came from 18 contributors giving $100,000 or more. Though these patterns appear most extreme in large cities, instances of huge contributions to initiative campaigns in small and medium-sized cities have grown more frequent. In Torrance, for example, Mobil Oil contributed over $741,000 to successfully oppose a refinery regulation measure (Proposition A in 1990). In Santa Monica, restaurateur Michael McCarty poured $574,000 into a 1990 initiative battle over a beach hotel development. In Burbank, three local media corporations (NBC, Warner Bros. and Walt Disney Co.) each contributed more than $170,000 to defeat two 1991 slow growth initiatives (Propositions A and B). Considering these trends, a well crafted analysis might convince the Court to reconsider its past opinions striking down limitations on contributions to initiative campaigns.

The enactment of a high contribution limitation of perhaps $25,000 in smaller cities or $100,000 in larger jurisdictions (based upon past ballot measure contribution patterns) could achieve several desirable effects. First, the ability of interest groups to overwhelm the initiative process with campaign money would be reduced. Second, such a limit applied to qualification period donations makes it less likely that single corporations, unions or individuals could buy their way onto the ballot. Third, the original intentions of the qualification process—to act as a threshold for broadbased support—may again be realized; initiative proponents would be forced to seek smaller contributions from a wider spectrum of contributors.

The Court's *Citizens Against Rent Control* decision,[95] like other court rulings which have a bearing on the financing of initiative campaigns, was made at a time when the impact of the unrestrained flow of cash into the public policy arena of ballot initiatives was not fully understood. Ruling that a $250 contribution limit from individuals or corporations to initiative campaigns in the city of Berkeley was unconstitutional, the Court's opinion implied that *any* contribution limitation on initiative donations would be unconstitutional. In today's initiative process, however, the flow of massive campaign dollars to initiative campaigns is routine. The time may be ripe to seek new rulings in light of recent developments.

Though it rejected the notion of banning corporate contributions to initiative campaigns in the *Bellotti* decision, the Court nevertheless noted:

> *"Preserving the integrity of the electoral process, preventing corruption, and 'sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government' are interests of the highest importance. Preservation of the individual citizen's confidence in government is equally important."*[96]

In *Austin v. Michigan State Chamber of Commerce,*[97] the Court expressed concern that large corporate treasuries, which have no direct correlation to the

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94. In separate opinions, however, Justices Stevens (concurring) and Kennedy (dissenting) both noted that the effects of high corporate spending on ballot initiatives might still be treated differently from the effects of such spending on candidate campaigns. *See* Austin v. Michigan Chamber of Commerce, 110 S. Ct. 1391, 1407 & n.*, 1418 (1990).

95. 454 U.S. 290 (1982).

96. First Nat'l Bank v. Bellotti, 433 U.S. 765, 788-89 (1978).

97. 110 S. Ct. 1391 (1990).

public's support for the corporation's political ideas, might be used to influence unfairly election outcomes. This suggests that some members of the Court might favorably consider a high contribution limit on organizational contributions to ballot measure committees.

There are, however, difficulties inherent in the concept of contribution limits on initiative campaign donations. Initiative campaigns in California have become so professionalized that businesses and special interest groups would be able to move quickly away from direct contributions to campaigns and establish their own independent expenditure committees. Occidental Petroleum, for example, contributed $7.8 million to oppose a 1988 anti-oil drilling initiative (Proposition O) in Los Angeles. Faced with a hypothetical $100,000 contribution limit, Occidental Petroleum undoubtedly would have mounted its own campaign through massive independent expenditures. Effective reform measures would therefore require a mechanism for limiting such contributions made to *any* organization or independent expenditure committee supporting or opposing a particular initiative measure, as well as limiting expenditures by such organizations.

3. Examining the Potential Value of Expenditure Ceilings

Placing limitations on initiative campaign expenditures would clearly be one of the strongest single measures to reduce the impact of escalating costs. Expenditure ceilings set at a reasonable level would have several positive impacts. The immense pressure to raise huge contributions would be somewhat reduced. A closer approximation to a "level playing field" would be created between well-funded and low-funded interests, reducing to some degree the vast disparities that occur in voter information. Initiative campaigns would be encouraged to use more low-cost grassroots methods of campaigning.

A reform proposal embodying overall expenditure ceilings, on either side of an initiative campaign, faces a significant hurdle. Unlike contribution limitations, which the U.S. Supreme Court has accepted to eliminate the appearance or reality of corruption, expenditure ceilings have been clearly invalidated by the Court and viewed as an abridgment of free speech. As the Court has said, mandatory expenditure ceilings "place substantial and direct restrictions on the ability of candidates, citizens and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate."[98] Nonetheless, the *Austin* case invites the argument that, in California, excessive organizational contributions and one-sided campaign spending have jeopardized the integrity of elections and that voters are being either misled or left uninformed on some vital state issues. The possibility exists that one day such an argument might succeed, particularly if expenditure ceilings *and* contribution limits were combined in a comprehensive approach to the problem.

4. Considering Comprehensive Approaches, Including Expenditure Ceilings, Contribution Limits and Restrictions on Independent Expenditures

On its merits, a comprehensive approach—including expenditure ceilings, contribution limitations and restrictions on independent expenditures—might comprise the best "policy solution" in the long run. With caps on independent expenditures, the full effects of contribution limitations and expenditure ceilings could be realized.

The Commission has carefully studied the impact of high and one-sided spending on ballot initiative campaigns and considers the problem to be a serious one. A consequence of massively high spending could well be increased voter

98. Buckley v. Valeo, 424 U.S. 1, 59 (1976).

disenchantment with and alienation from the electoral process in general. The Commission therefore urges that further careful study be given to the constitutional questions involved in enacting comprehensive contribution limits and expenditure ceilings on ballot initiative campaigns and that, if warranted, a case be crafted that will squarely present the question of their constitutionality to the U.S. Supreme Court for review.

5. Considering Ceilings on Broadcast Advertising Expenditures During Final Phase of Initiative Campaign

Placing a reasonable ceiling on all broadcast advertising expenditures during the final two or three weeks of the initiative campaign in large cities—when large numbers of voters make their decisions—might be one approach toward ameliorating the impact of last-minute one-sided broadcast media blitzes. Such a plan might supply two important benefits. It might make underfunded initiatives less susceptible to last-minute attacks which cannot be answered. And it might provide voters attempting to sort out complicated issues with a more balanced flow of information.

As discussed above, however, existing U.S. Supreme Court decisions raise substantial constitutional barriers to the imposition of any campaign expenditure ceiling. In addition, initiative supporters or opponents might be able to circumvent such expenditure ceilings through massive independent expenditures. Furthermore, limiting broadcast spending during the final phase of the campaign might decrease the amount of information available to voters at a time when they are in greatest need of it. And such a limitation might drive initiative supporters or opponents to use equally misleading or one-sided print materials. Restricting the total amount any one side of an initiative campaign could spend over another on broadcast advertising but not limiting expenditures during the last two-or three-week period might be a more workable alternative. Campaign information could flow unabated through radio and television advertising so long as both sides maintained approximate broadcast spending parity.

6. Examining the Possibility of a Voter Information Fund to Redress Spending Imbalances

Under this proposal, a fee (of 10%, for example) would be levied on all contributions to balloted initiative campaigns, regardless of size or source. The revenues would be placed in a voter information fund operated by the city clerk or other local agency.[99] The revenues would be used to purchase informational radio and television advertisements in any campaign in which one side has greatly outspent the other. The ads would run in the last week to ten days of the campaign (when voters are most focused on the issues).

A typical 60-second spot might give the city clerk 20 seconds to summarize the measure and then provide the proponent and opponent 20 additional seconds each to summarize their views. The proponent and opponent would have to follow a prescribed format (*e.g.*, talking heads only and no video imagery).

The advantage of this plan is its attempt to address a critical problem in initiative campaigns which have already qualified for the ballot: lopsided public information. In several local initiative contests studied, spending differentials of over 5-to-1 occurred. In five contests (where spending was recorded on both sides),

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99. For a detailed discussion of a voter information fund proposal, *see* C.B. Holman and Matthew Stodder, The Fairness Fund: Addressing Spending Imbalances in Ballot Initiative Campaigns, paper presented to the annual meeting of the American Political Science Ass'n, Washington, D.C. (Aug. 29, 1991).

initiative campaigns outspent their rivals by over 30-to-1. One Burbank ballot measure contest (growth limits Proposition A in 1991) witnessed a spending gap of 130-to-1. These imbalances often generate severe cases of one-sided information. The voter information fund would give the underfunded side a minimal opportunity to communicate its views, and the format would seek to heighten the informational component of the messages.

This approach, however, also has significant problems. The "fee" might be deemed by the courts to be a "tax" on speech and thus constitutionally questionable. The measure does not address the problem of independent expenditures (as discussed in more detail above), and companies might spend their own money on a campaign rather than pay a fee. The voter information fund might not provide enough money to attain its objectives. Concerns might arise over the impartiality of the city clerk's portion of the advertisements. And it may not be possible to convince voters that any portion of a campaign contribution (possibly their own) should be used to help the opposing point of view be heard.

7. Providing Proponents and Opponents With Free, "Back-to-Back" Spot Announcement Time on Local Municipal Access Cable Television Channels

The city of Los Angeles and various other communities in the southern California area have written special provisions into their cable television franchise agreements which reserve special cable television channels ("municipal access channels") for use by local governments. The city of Los Angeles, for example, programs a 24-hour-a-day cable channel ("Cityview 35") with coverage of city council meetings, special community events and information about government services and programs. Over 130 cities throughout California operate municipal access cable channels.

Local jurisdictions could offer their local cable municipal access channels, which they control, as a forum for balanced informational programming during initiative elections. Local initiative campaigns might be invited to produce, at their own expense, short two-to-three minute statements on behalf of their positions, using a prescribed format. These video statements would run back-to-back on local cable municipal access channels in the last three weeks before the election. Broadcast times could be listed in promotional announcements on the municipal access channel and in the local ballot pamphlet to encourage a wider audience.

The value of such a plan could be great. Unlike commercial television and radio stations which broadcast to millions of viewers over thousands of square miles, municipal cable access channels play to specific audiences within each city. Local voters who normally are inundated with material promoting state or national campaigns would have access to a new and efficient source of information on local issues. These video presentations might also encourage voters to seek more information from ballot measures campaigns or the ballot pamphlet.

Such a plan, however, contains potential problems. Not all households in a given jurisdiction have cable; voter access to this valuable programming would thus be limited. Furthermore, some initiative campaigns face no organized opposition, and thus no campaign would exist to produce "opposition" videos.

F. The Commission Has Examined and Rejected Other Proposals Related to Initiative Campaign Spending

In its review of various initiative campaign finance reform ideas, the Commission analyzed two proposed remedies which it believes are unworkable or impractical. These include public financing of ballot measure campaigns and reimbursement of the winning side for its expenses.

1. Partial Public Financing to Support Voluntary Expenditure Ceilings

Public financing is a constitutional means of establishing expenditure caps for candidates as well as initiative campaigns. The constitutionality of public financing/expenditure ceilings is premised on the contractual right of the state to provide public funds in exchange for a campaign's voluntary agreement to abide by a specified limit on expenditures. Given its focus on voluntary contractual rights, none of the issues of free speech are relevant to a public financing scheme, and thus no distinction between candidates and initiatives is pertinent.

Public financing of initiative campaigns, however, faces significant problems. The single greatest obstacle to establishment of a public financing scheme in direct democracy is political. In a time of severe cutbacks in government services and tremendous popular resentment toward raising taxes, a public financing program for initiative campaigns in most jurisdictions would be politically untenable. Moreover, among those who do favor public financing of candidates, its greatest selling point is that it may curtail the corrupting influence of private contributions from special interests—a dimension not relevant to initiative campaigns.

Another major weakness of public financing for initiative campaigns is the amount of funding that would be required. The exorbitantly high level of spending on initiative campaigns which is now commonplace would render an offer of public funds in exchange for voluntary limits on expenditures an exceedingly unattractive proposition. Public funding could never match the total amount of campaign dollars available from private sources for most initiative campaigns in California; thus, little enticement would exist for campaigns to participate in a public funding program. Most business interests and well-financed special interest groups in all likelihood would opt out of public financing in order to spend unlimited private dollars on behalf of their cause.

2. Reimbursing the Expenses of the Winning Campaign From Public Funds

Another proposed solution to the burden of an increasingly expensive initiative process is state reimbursement of the winning campaign's expenditures. The proposal could be structured in one of three ways. First, proponents of a successful initiative could be reimbursed for expenses incurred in drafting the initiative statutes or constitutional amendments (such as for legal assistance) up to a certain threshold amount (such as $50,000). Second, successful proponents could be reimbursed just for their qualification expenditures. Third, all the expenditures of a winning initiative campaign could be fully refunded by the state.

Proponents of this idea suggest that the formulation of public policy—even through the initiative process—should come at public and not private expense. In the legislative formulation of laws, officeholders have available to them unlimited legal assistance, staff and offices of legislative research. Initiative proponents, however, are forced to raise large contributions to fund these expenses. Such a plan for reimbursement would make policy creation even through the initiative process a public responsibility.

The Commission believes, however, that this plan—in each of the forms discussed—would be extremely problematic and make poor public policy. As with the previously discussed public financing plan, the increasing frequency of multimillion dollar initiative campaigns would make reimbursements of proponent costs extremely expensive. The method of reimbursement might also prove difficult, since proponents would have to act as agents in refunding campaign contributions to hundreds or even thousands of contributors.

CHAPTER 9

Judicial Review of Ballot Initiatives

"A nation that traces power to the people's will does not easily digest the practice of unelected and unaccountable judges' denying the populace what most of them appear to want. . . . A judicial decision striking down a voter effort also risks engendering a perception by the public itself that its will has been subverted."

— Professor Julian Eule[1]

Litigation is often the final yet critical stage in the initiative process. Opponents of a measure, having been defeated at the ballot box, frequently ask the courts to declare the measures they oppose invalid on constitutional or other grounds. Their recourse to litigation is thus, to paraphrase the German military historian Von Clausewitz, the continuation of political warfare against the initiative by other means. In this often lengthy struggle, the judiciary is reluctantly thrust into the role of acting as final arbiter over the meaning and validity of many ballot initiatives.

In 1912, the United States Supreme Court addressed the fundamental question whether the initiative process itself (a system of *direct* democracy) violated the federal Constitution's guarantee of a "republican form of government" (a system of *representative* democracy). In *Pacific States Telephone and Telegraph Co. v. Oregon,*[2] the Court concluded that the initiative process was simply an additional form of government, not one that eliminated or superseded the republican form of

1. Julian Eule, *Judicial Review of Direct Democracy*, 99 Yale L.J. 1504, 1506 (1989).
2. 223 U.S. 118 (1912).

government and the representative processes thought to be central to it. Since that time, the underlying legitimacy of the initiative process itself has not been questioned by the courts.

Judicial attention has instead focused on the standard of legal review to be used in assessing the legitimacy of individual ballot initiatives. As a general matter, the courts have concluded that both initiatives and legislation should be examined by similar standards of judicial review. In the courts' view, it is irrelevant whether a law is enacted by a legislative body or by the people. Voters have no more right to violate the constitution than does a legislative body.[3] Yet despite this general principle, courts in some states, including California, give ballot initiatives great deference and express reluctance to overturn them.[4] A few states have even stripped their judiciary of the power to review initiatives at all.[5] At one time, Colorado refused to allow its lower courts to invalidate initiatives, and Nevada's state constitution prohibits judicial review of initiatives, although the Nevada courts do not consider themselves bound by this prohibition.

A. California Courts Have Generally Shown Restraint When Urged to Invalidate Initiatives

Although the California courts have been asked to review a significant number of controversial initiatives, they have rarely invalidated them in their entirety. Anticipating legal challenges, proponents routinely insert severability clauses in their initiatives to ensure that major sections not declared invalid remain in effect.[6] As a result, the courts have struck down specific provisions in some initiatives but allowed the remainder of their provisions to become operative.

When the courts do overturn specific initiative provisions, they act on one of several grounds. First and foremost, state and federal courts will strike down statutory initiatives or constitutional initiatives (which amend the constitution) whenever they violate free speech, due process, equal protection or other rights guaranteed under the United States Constitution.[7] Second, the courts will invoke the doctrine of "federal preemption" to invalidate statutory and constitutional initiatives which conflict with federal law, even though these initiatives are enacted by a majority vote of the people.[8] Third, the courts will invalidate statutory initiatives which conflict with any higher law in the state constitution.[9] And fourth, the courts will enforce the important provision in the California constitution which prohibits statutory and constitutional initiatives from containing more than a "single subject."[10] (See discussion of the "single-subject rule" later in this chapter.)

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3. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 295 (1981).

4. *E.g.,* Legislature of the State of California v. Deukmejian, 35 Cal. 3d 658, 683 (1983) (Richardson, J., dissenting).

5. *See* Eule, *supra* note 1, at 1546.

6. Senate President Pro Tempore David Roberti, however, tried to negate the use of severability clauses in initiatives. He introduced a constitutional amendment which, among other things, prohibited severability clauses in initiatives (Senate Constitutional Amendment 9, 1991). This proposal would have meant that if any part of an initiative were declared unconstitutional by the courts, the entire initiative would be invalid. Roberti dropped this provision from the measure.

7. *See* Weaver v. Jordan, 64 Cal. 2d 235 (1966).

8. U.S. Const. amend IX.

9. Cal. Const. art. I, §26.

10. Cal. Const. art. II, §8.

Two recent cases in the last few years may signal an increased willingness by the courts to subject initiatives to stricter scrutiny. In one, the supreme court reversed long-established practice and invalidated an entire initiative, even though only some of its provisions were in conflict with another initiative.[11] In the second, an appellate court invalidated an initiative for violating the single-subject rule.[12] Despite these two cases it is possible that the courts will retain their traditionally respectful view of the initiative process as articulated in the 1978 California Supreme Court decision upholding the constitutionality of Proposition 13 (property tax relief): "It is our solemn duty to 'jealously guard' the initiative process, it being 'one of the precious rights of our democratic process.'"[13]

Critics and supporters of the initiative process divide themselves between two opposing positions. Some believe that the judiciary should aggressively review and strike down initiatives whenever possible. According to this view, initiatives too often enact laws which are arbitrary, ill-conceived, illegal, unconstitutional or otherwise harmful. The judiciary thus bears a special obligation to scrutinize them closely.[14]

Professor Julian Eule of the UCLA School of Law, for example, has recently argued that the courts should scrutinize popularly enacted initiatives more carefully than legislation. Eule argues that the "the judiciary stands *alone* in guarding against the evils incident to transient, impassioned majorities that the constitution seeks to dissipate."[15] Federal courts especially should be vigilant to prevent initiatives from curtailing civil or individual liberties protected by the United States constitution. State courts should give initiatives a "close look" whenever there is evidence that the electorate acted capriciously, without adequate information or scrutiny. In Eule's view, the initiative process lacks the normal checks and balances built into traditional forms of representative government—such as the existence of a bicameral legislature, political parties, an executive veto and a legislative committee system which empower minorities and require bargaining for a bill to move through the legislative process.[16] For this reason, careful judicial review must substitute for the checks and balances lacking in a system which permits voters to enact laws directly.[17]

Others commentators, however, argue that because judges are typically appointed to office and are rarely scrutinized closely by the voters at the polls, they should not elevate their judgments over the expressed will of the people. In this view, the courts should give ballot initiatives the utmost respect, seek to uphold them

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11. Taxpayers to Limit Campaign Spending v. FPPC, 51 Cal. 3d 744 (1990).

12. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).

13. Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, 259 (1978).

14. *See, e.g.*, Eule, *supra* note 1, at 1558-73.

15. *Id.* at 1525 (emphasis in original).

16. Eule notes, however, that bicameralism is missing in the unicameral state of Nebraska (although he fails to point out that Nebraska's legislature is nonpartisan) and an executive veto is missing in many local governments. Eule, *supra* note 1, at 1557.

17. Although Eule raises important issues, he seems to base his views on a somewhat idealized view of the legislative process which is rarely attained in practice. In the California legislature, for example, the theoretical checks and balances are frequently non-existent. Legislation is drafted in the last hours of the session, and few legislators have any idea of what is being proposed in the thousands of bills they are forced to consider in the waning minutes of the session. Initiative campaigns, in contrast, are conducted over a number of months. Opinion makers and interested voters can read the exact text of the initiative at least four months before election day. It is difficult to hide anything in an initiative subjected to so many analyses from so many different sources.

whenever possible and invalidate them only under the narrowest of circumstances.[18]

Professor Donald S. Greenberg, for example, having observed the ballot initiative process in the 1960s, presents a view opposed to that of Professor Eule. "While the initiative and referendum may not fit into a given philosopher's model, and while these powers may, like any others, be misused from time to time, one would hope that the courts will not fall prey to the elitist argument that the people do not know what is best for them and therefore need someone else to tell them. Pragmatically, these institutions work; like the representatives, the people may sometimes approve mischievous or unconstitutional measures, but by and large, as studies show, they are good legislators. . . . If an occasional 'bad' measure is passed, let those who urge less democracy instead use the tools of democracy to convince the people of the 'rightness' of their view."[19]

Judges themselves are undoubtedly aware of the political sensitivity of their role when called upon to strike down popular and democratically enacted initiatives. To refuse to invalidate a measure may be seen as shirking their judicial role as defender of the rights enshrined in the state or federal constitutions. To annul a measure, however, is to risk opposition at the polls when a judge must next run for reelection. After the California Supreme Court struck down the controversial initiative which repealed the fair housing law enacted by the legislature, Chief Justice Roger Traynor, who was on the ballot for reconfirmation, reportedly had his bags packed expecting to be removed by an angry electorate.[20] Former California Supreme Court Justice Joseph Grodin has acknowledged that ballot initiatives are "political hot potatoes."[21] And former California Supreme Court Justice Otto Kaus has noted that ignoring the impact of a highly politicized decision is tantamount to "ignoring a crocodile in your bathtub."[22]

B. The Commission Does Not Believe It Useful to Change the Supreme Court's Current Definition of "Single Subject"

California's constitution, like that of six other states,[23] requires initiatives to address only a "single subject." These provisions parallel constitutional sections in a number of states, including California, which prevent legislatures from adopting legislation containing more than a "single subject." The meaning of the term "single subject," however, is a matter of considerable debate in the courts, the legislature and among legal scholars and persons who draft, study and ultimately vote on the measures.

Originally, California's constitution did not contain a single-subject rule for initiatives although bills enacted by the legislature were subject to the requirement. In 1948, California voters enacted the single-subject rule for initiatives after a group of citizens unsuccessfully attempted to place on the ballot a measure containing an astonishing potpourri of different items, involving pensions, taxes, rights to vote for

18. *See, e.g.,* Legislature of the State of California v. Deukmejian, 34 Cal. 3d 658, 683 (1983) (Richardson, J., dissenting) (initiatives entitled to "*very* special and *very* favored treatment" (emphasis in original); James v. Valiterra, 402 U.S. 137, 141 (1971) (provisions for referenda demonstrate "devotion to democracy").

19. Donald S. Greenberg, *The Scope of the Initiative and Referendum in California,* 54 Calif. L. Rev. 1717, 1747-48 (1966).

20. Joseph Grodin, In Pursuit of Justice, at 105 (1989).

21. *Id.*

22. *Quoted in* Paul Reidinger, *The Politics of Judging,* 52 A.B.A.J. 52, 58 (Apr. 1987).

23. Alaska, Florida, Missouri, Oregon, South Dakota and Wyoming.

Indians, gambling, oleomargarine, health, reapportionment of the state senate, fish and game, repeal of cross-filing for primary elections and surface mining. Although the measure qualified for the ballot, the supreme court removed it on the ground that the measure was an entire *revision* of the constitution rather than a mere *amendment*.[24] (In California, the constitution may be "amended" but not "revised" by an initiative.[25]) But even before the court removed the measure from the ballot, the legislature placed on the ballot a constitutional amendment prohibiting initiatives from addressing more than a "single subject."

Amended in 1948 to add a single-subject requirement for initiatives, the state constitution now provides, "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."[26] This section applies to both state and local initiatives. In contrast, the constitutional provision concerning *statutory* measures enacted by the legislature declares that a statute passed by the legislature which contains more than one subject is not invalid in its entirety; only the parts not expressed in the title of the statute are void.[27] Thus, the consequences of the legislature enacting a bill which contains more than one subject is far less drastic than for a proponent who drafts the same measure as an initiative. If a legislative provision is voided, the legislature can, if it wishes, quickly reenact that provision. If an initiative violates the single-subject rule, however, no part of the initiative can appear on the ballot. If it does appear on the ballot and then is successfully challenged, the initiative is void in its entirety.

In recent years, the definition of a single subject has become a matter of some controversy. As the number of initiatives has increased, critics of the initiative process, including many legislators who dislike all initiatives, have pushed for a narrower definition of the single-subject rule—hoping that the judicial branch would invalidate more initiatives. And as initiatives have tended to become more and more complex, other critics who defend the initiative process in general, but nonetheless decry the tendency of some initiatives toward greater complexity, have also argued for a narrower definition of single subject—hoping that judicial invalidation of complex initiatives will encourage proponents to draft simpler measures which are more easily understood by the voters.

Although single-subject violations are routinely alleged as a first ground of attack by persons who have opposed the measure during its campaign (principally because a successful attack would invalidate the measure in its entirety), these attacks have almost invariably failed. Until recently, the courts had never struck down an initiative on single-subject grounds. Yet two recent court decisions in the last four years suggest this trend may be changing. For the first time in California history, the courts have declared two initiatives unconstitutional on single-subject grounds.[28] No local initiative, however, has been declared invalid on single-subject grounds.

For some critics of the initiative process, these decisions have raised the hope that the courts will now begin to strike down offending initiatives more aggressively. In an attempt to seize the moment, they have thus proposed stricter new definitions

24. McFadden v. Jordan, 32 Cal. 2d 330 (1948).

25. Cal. Const. art. XVIII.

26. Cal. Const. art. II, §8 (d).

27. "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the *part* not expressed is void" (emphasis added). Cal. Const. art. IV, §9.

28. California Trial Lawyers Ass'n v. Eu, 200 Cal. App. 3d 351 (1988); Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).

of "single subject," hoping either that the courts will adopt them on their own or that the legislature will place a measure enacting them on the ballot. Defenders of the initiative see these moves as poorly disguised attempts to gut the initiative process under the guise of tightening an otherwise obscure legal definition. The Commission, however, as explained below, believes that most current proposed alternatives to the single-subject rule are less desirable than the courts' existing formulation; indeed, that the courts' increased use of the existing single-subject definition is a strong argument for allowing them to continue their exploration of this definition without legislative intervention.

1. Rationale for the Single-Subject Rule

The single-subject rule was added to the state constitution for two reasons. The first was to prevent voter confusion. Voters should not be presented with a variety of complex issues in a single proposition. But as Professor Daniel Lowenstein of the UCLA School of Law observes, a measure could violate the single-subject rule even though the voters are not confused. A measure changing the date of the primary election and increasing the penalties for rape, for example, might be perfectly clear to voters but still violate the single-subject rule. By contrast, a measure containing thousands of provisions on one subject might be complex and confusing but still comply with the single-subject rule.[29]

The second rationale for the single-subject rule was to prevent "logrolling."[30] Logrolling involves combining a number of measures which would not pass on their own but when added together might have a chance to receive a majority of votes because enough voters cared about one provision to support the entire package. Elected officials will often "logroll" a bill so that their individual projects will be approved along with other elected officials' pet projects. It seems apparent, however, that the single-subject rule cannot prohibit all forms of logrolling. An initiative to set aside land for public parks, for example, might include many groups' favorite sites yet not violate the single-subject rule. Proposition 70, for example, a 1986 initiative, was a bond measure to permit acquisition of land for dozens of parks throughout California. Although logrolling was involved, the measure addressed a single subject (parks) and was not invalid.

In fact, recent initiatives suggest that logrolling may be on the increase. Proposition 99 increased cigarette taxes by 25 cents a pack and allocated its revenues to a number of unrelated spending programs, such as wildlife habitat and parks conservation. Reportedly, sponsors of the proposition told potential supporters they would receive a share of the revenues if they agreed to help finance the initiative's circulation. Similarly, Proposition 116 (the June 1990 Rail Transportation Act) specified rail projects in almost every part of the state in order to generate statewide support.

The California Supreme Court directly addressed the question of logrolling in a case challenging Proposition 99 on single-subject grounds. The court concluded, "Because Proposition 99 satisfies the single-subject rule, there is no constitutional basis for a separate claim of 'logrolling.' The single-subject rule is the method by which the state constitution guards against that hazard."[31] The court noted that the single-subject rule does not require a showing that each provision of an initiative is

29. Daniel Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. Rev. 936 (1983).

30. Brosnahan v. Brown, 32 Cal. 3d 236, 267-68 (1982) (Bird, C.J., dissenting).

31. Kennedy Wholesale v. State Board of Equalization, 53 Cal. 3d 245 (1991). The court apparently concluded that logrolling within the confines of the single-subject rule was acceptable. Logrolling dealing with more than one subject was not.

"capable of gaining voter approval independently of the remaining provisions."[32] Indeed, it pointed out that any initiative containing more than one sentence is subject to the charge that voters might approve part but not all of the measure, but that alone is not a reason for the courts to invalidate the measure. Voter judgments (in the case of initiatives) and legislative judgments (in the case of bills) both constitute balancing acts to determine whether a proposal's benefits outweigh its shortcomings.[33]

2. *Case Law Attempting to Define "Single Subject"*

In 1949, a year after the single-subject rule was added to the state constitution, the supreme court concluded that the rule should apply identically to legislative matters and initiatives. It then announced its first definition of "single subject": in order to meet the test a "reasonable relationship" must exist among an initiative's various provisions.[34] Further refining this principle, the court declared that the provisions of a measure must be "reasonably germane" to each other. In other words, an initiative addresses a single subject if its provisions share a common conceptual link—for example, political reform or environmental protection.[35]

In recent decisions, a minority of supreme court members have suggested a second definition of "single subject": the provisions of an initiative address a single subject if they are "functionally related" to each other.[36] This test means that each provision has to be interrelated—for example, an initiative could contain a series of "campaign finance reforms" but not include both "campaign finance reforms" *and* "ballot pamphlet reforms" under the general rubric of "political reform."

Justice Mosk, for example, has urged that the court should change its definition of the single-subject rule and adopt the "functionally-related" test, requiring that all the provisions of the measure be interdependent, interrelated or necessary to form an interlocking package.[37] But UCLA Law Professor Daniel Lowenstein has pointed out difficulties with this test. A measure which called for the creation of parks in different parts of the state, for example, would not meet the functionally-related standard, even though most people would agree that such a measure would involve a single subject. The functionally related standard would presumably require each new park somehow to be dependent on all the other parks established by the proposal.[38]

To date, the courts have not adopted the functionally-related test. Proposition 9 (the Political Reform Act of 1974), for example, would probably have failed this test. Its provisions included lobbyist restrictions, campaign finance limits and disclosures and conflict of interest disclosures and prohibitions. The first court which heard the challenge to Proposition 9 (a Los Angeles County superior court) declared it unconstitutional on single-subject grounds. Yet the supreme court

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32. *Id.* at 255.

33. *Id.*

34. Perry v. Jordan, 34 Cal. 2d 87 (1949).

35. Ironically, the court may have chosen this somewhat liberal standard because if the court had ruled that the initiative which was about to be circulated was unconstitutional, it might have had to rule that the original earlier proposition placed on the ballot by the legislature and passed by the voters was also unconstitutional. The initiative proposed to repeal a legislative measure involving pensions for the needy, aged and blind.

36. FPPC v. Superior Court, 25 Cal. 3d 33, 55 (1979) (Manuel, J., dissenting); Brosnahan v. Brown, 32 Cal. 3d 236 (1982) (Bird, C.J., Broussard, J., and Mosk, J., dissenting).

37. Brosnahan v. Eu, 31 Cal. 3d 1 (1982).

38. Lowenstein, *supra* note 29.

overruled this decision, despite an argument by supreme court Justice Wily Manual that the initiative failed to meet the single-subject standard. Manual maintained that the court should have applied the functionally related test, but he also contended that the measure failed the reasonably germane standard. In his view, the regulation of the campaign finance process had nothing to do with the regulation of lobbyists, and these two subjects did not relate to conflicts of interest by state and local employees.[39]

Other complex initiatives have survived single-subject challenges. The Schmitz initiative contained a prohibition on school busing related to race, a prohibition on teachers' organizations making campaign contributions and a prohibition on teachers' right to strike. The California Supreme Court allowed the petition for this initiative to be circulated, prohibiting the attorney general from ruling that the proposed initiative violated the single-subject rule.[40] Proposition 13, the 1978 property tax relief measure, lowered property taxes for both businesses and individuals. It was upheld by the supreme court six months after its passage. No supreme court justice felt it violated the single-subject rule.[41]

Proposition 8, the Victims' Bill of Rights Act in 1982, was narrowly upheld on single-subject grounds by a 4-to-3 vote. Although its title indicated that it was drafted to assist victims, the measure also changed the right to bail, altered the use of prior convictions for sentence enhancement and stated that students and staff of schools had the inalienable right to attend campuses which are safe, secure and peaceful. Using the reasonably germane standard, the majority upheld the proposition, finding that the provisions of the measure all worked to enhance the "rights of criminal victims."[42]

As noted above, two recent cases have resurrected the single-subject rule and used it to strike down initiatives. These are the only cases to invalidate initiatives on single-subject grounds since adoption of the rule in 1948. The first case nullified a 1988 no-fault insurance measure. While the measure was being circulated, the Third District Court of Appeal ruled that it violated the single-subject rule because one of its provisions, which regulated campaign contributions, was neither reasonably germane nor functionally related to the rest of the initiative, which dealt with insurance.[43] The section stated that no law restricting campaign contributions could be stricter or easier on insurance companies, consumer groups or trade associations than on citizens as a whole. It also stated that no elected state official could be disqualified from participating in a decision affecting a campaign contributor which was an insurance company, a consumer organization or a trade

39. FPPC v. Superior Court, 25 Cal. 3d 33, 57 (1979) (Manuel, J., dissenting).

40. Schmitz v. Younger, 21 Cal. 3d 90 (1978). Schmitz successfully challenged the attorney general's refusal to title the measure because the attorney general felt that the proposed measure violated the single-subject rule. The court ordered the attorney general to title the measure but refused to rule on whether it violated the single-subject rule. The proponent failed to receive enough signatures to qualify the measure for the ballot.

41. Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208 (1978).

42. Brosnahan v. Brown, 32 Cal. 3d 236 (1982).

43. Although the stricter "functionally related" standard has been advocated in dissenting opinions, it has never been accepted as the sole standard by any California court. The two recent decisions striking down measures on single-subject grounds used both the "reasonably germane" and "functionally related" tests in their decisions, saying that the initiatives in question failed to meet either one of them.

association.[44] The court ruled that the inclusion of this one section in the initiative invalidated the entire measure. Immediately after the decision was issued, insurance companies circulated another measure identical to the one kept off the ballot except for deletion of the section on campaign contributions. The new initiative qualified for the ballot in less than 48 days (one of the shortest times ever for qualification of an initiative), but it was defeated in the November 1988 election.

The second case invalidating an initiative for single-subject rule violations involved Proposition 105, enacted in 1988. Called the "Public's Right to Know Act," the measure required "disclosures" of information in such diverse areas as household toxic products, seniors' nursing homes, seniors' health insurance, initiative campaigns and companies investing in South Africa. An intermediate appellate court ruled that the proposition clearly violated both the "reasonably germane" and "functionally related" tests.[45]

The courts have rarely invalidated legislation (in contrast to initiatives) for single-subject rule violations. A 1987 California Supreme Court decision illustrates the court's reluctance to overturn legislation on this ground. As was so often the case each year, the legislature had enacted a cleanup bill to the state budget.[46] The bill contained 150 sections covering more than 20 different codes. Many of the sections in the cleanup bill, however, were substantive provisions which should have been included in separate bills. The legislation, for example, allowed concession contracts for state parks to exceed 20 years, permitted veteran homes to be appointed guardians of the estates of veterans and mandated that reports of agencies in the department of consumer affairs be given to the director before being sent to the legislature.

The supreme court noted that if this legislation were upheld in the face of the single-subject rule, a substantial portion of the many thousand statutes adopted during each legislative session could be combined in a single measure, even though their provisions had no relationship to one another or to any single subject (other than impacting state expenditures in the budget bill). Yet despite this conclusion, the court upheld the legislation. It merely warned the legislature not to use this shotgun approach to legislation in the future and allowed the bill to become law. In other words, the court applied the single-subject rule—but only prospectively. The court explained that applying its ruling retroactively would open the door to dozens of lawsuits on other sections of this cleanup bill and perhaps other similar bills adopted since 1979.[47]

3. The Commission's Recommendation: Retain the Court's Current Single-Subject Test

The California Supreme Court has interpreted the constitutional single-subject rule to mean that an initiative or legislative measure meets the test and is valid if its provisions are "reasonably germane."[48] This test is a slight modification of the standard set down in 1987 for measures put on the ballot by the legislature. That test

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44. *See* California Trial Lawyers Ass'n v. Eu, 200 Cal. App. 3d 351 (1988).

45. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).

46. A "cleanup bill" proposes additional legislation to make corrections to a previously passed bill which contains flaws or typographical errors. When complex legislation (such as the budget bill) is enacted, a "cleanup bill" is almost always necessary.

47. Harbor v. Deukmejian, 43 Cal. 3d 1078 (1987).

48. Raven v. Deukmejian, 52 Cal. 3d 336 (1990).

states that a measure meets the single-subject standard if either the provisions in the measure are "reasonably germane" or "functionally related" to each other.[49]

Until recently, persons who were frustrated by the scope and breadth of initiatives expressed concern that the courts were upholding too many initiatives against single-subject attack. They argued that a tightening of the rule would reduce the size and complexity of ballot propositions. In an apparent response to this frustration and for the first time since the single-subject rule was adopted in 1948, a 1988 appellate court ruling kept an insurance measure off the ballot because it violated the single-subject rule. Another 1991 appellate court ruling invalidated Proposition 105 for single-subject reasons.

During the 43 year history of the single-subject rule, courts and commentators have offered several different definitions of a "single-subject." The Commission has carefully considered these alternative definitions and has concluded that all have unacceptable difficulties. Accordingly, the Commission does not recommend that the present judicial interpretation of the phrase "single-subject" be changed, either by the courts or by vote of the people. The current definition of the rule—that the provisions of an initiative will meet the single-subject test if its provisions are "reasonably germane"—has recently been used by the courts both to invalidate two initiatives on single-subject grounds and to uphold two initiatives against single-subject attack.[50] Hence, it appears that the present interpretation is neither too tolerant of initiatives nor too vague for adequate enforcement by the courts. Although the definition of "single subject" lacks a degree of precision, greater precision was not found in any of the alternatives discussed below.

a. Functionally Related or Interdependent Test

Justice Stanley Mosk has emerged as the leading proponent of a stricter test than is now being applied by the California Supreme Court. He suggests that the court abandon the reasonably germane test altogether and apply the more stringent test that a measure's provisions be "functionally related or interdependent" with each other. Mosk argues that the reasonably germane test is too vague and allows sweeping initiatives to be enacted. He says that almost any measure can meet the test that its provisions be reasonably germane.[51]

One commentator, Steven W. Ray, has also argued for adoption of the "functionally related" test. He suggests that the courts use stricter tests for initiatives and retain the looser "reasonably germane" test for legislative ballot measures.[52] He reasons that legislative measures are subject to many more checks and balances—legislative hearings, bill analyses by committee staff, amendments to improve the bill, debates in two houses and final review by the Governor—and that as a result the courts can tolerate a greater degree of imprecision in them. In contrast, initiative measures cannot be amended and must be voted up or down in their entirety.[53] Ray also recommends that the court encourage more pre-election

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49. Harbor v. Deukmejian, 43 Cal. 3d 1078 (1987).

50. Kennedy Wholesale v. State Board of Equalization, 53 Cal. 3d 245 (1991); Raven v. Deukmejian, 52 Cal. 3d 336 (1990).

51. *Raven,* 52 Cal. 3d at 356 (Mosk, J., dissenting).

52. Steven W. Ray, The California Initiative Process: The Demise of the Single-Subject Rule, 14 Pac. L.J. 1095 (1983).

53. Although Ray is correct that the legislative process offers more expertise in drafting and amending than the initiative process, in reality the legislative process is not as good as the ideal and the ballot measure process is not as bad as some would allege. Veteran legislative observers decry the end of the session marathons where a bill can be completely rewritten in conference committee (in one case, on a cocktail napkin in Frank Fat's Restaurant), rushed to the floor, debated for less than a

challenges, making it possible for them to declare initiatives invalid before their enactment by the voters. In his view, prior judicial review will make it politically easier for the courts to declare initiatives unconstitutional.[54]

A constitutional amendment, recently introduced by Senate Minority Leader Ken Maddy (R-Fresno), would require that initiatives simultaneously meet *both* the current and Justice Mosk's proposed test: that each provision must be "reasonably germane" to the general objective or purpose of the measure (the current court test) *and* all provisions of an initiative must be "reasonably interdependent" (the Mosk test).[55] The Maddy constitutional amendment was not approved by the legislature in the 1992 session.

The Commission believes that the courts should not apply two different tests to ballot measures—a more stringent one for citizen-sponsored initiatives and a less restrictive one for measures placed on the ballot by the legislature. This could give too much power to the legislature and legislative ballot measures. In 1990, for example, the legislature placed an alcohol tax measure on the ballot (Proposition 126) as an alternative to an *initiative* which imposed higher alcohol taxes (Proposition 134). Under the Ray and Maddy proposals, the legislative ballot measure would have been subject to a less stringent single-subject standard than the citizen-sponsored initiative. In addition, the test proposed by Justice Mosk and endorsed by Senator Maddy narrows the scope of the single-subject rule too drastically. Such a test could mean that initiatives which most people believe are within a single-subject (such as the Political Reform Act) would be ruled invalid.

b. Public Understanding Test

Professor Lowenstein has suggested a different test to define the single-subject rule: an initiative would meet the test if it encompassed only a single subject in the "public's understanding" of that phrase. Courts would be required to conduct "a reading of the public mind" to determine whether the public thought the proposal contained a single subject.[56] The courts would look not just to the text of the measure but also to articles, books, television and radio programs and past legislation to see if the items in the initiative were thought of as addressing the same subject. The courts would not consider the debate on the initiative itself, since all the provisions of the initiative naturally would be discussed together. Instead, the courts would determine whether the issues in the measure had been linked together or were considered separate *prior* to the initiative going on the ballot. Using this test, Lowenstein concludes that the 1974 Political Reform Act (Proposition 9) and the 1982 Victims' Bill of Rights (Proposition 8) would both meet the single-subject standard. The Schmitz busing and teacher measure, however, might not have complied.

The Lowenstein approach, however, appears to possess as much vagueness as the other standards being considered. It would place a burden on the courts to try to

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few minutes and passed. The legislature then adjourns and the Governor must either sign or veto the bill in its entirety. By contrast, initiatives are debated for months, editorial boards are wooed by both sides and voters are allowed to read the arguments for and against (and even the text of the measure which is printed in the back of the ballot pamphlet).

54. If the supreme court decides to change the standard of what constitutes a single subject, it should do so in the same way it ruled on the 1987 legislative budget. It should apply its new criteria prospectively, not retroactively, so that initiative proponents can craft their proposals in ways that will meet the new standard.

55. Senate Constitutional Amendment 3 (1991). Senate Constitutional Amendment 47, introduced by Senator Maddy in 1990, passed the senate and reached the floor of the assembly where it died because of reasons unrelated to the merits of the proposal.

56. Lowenstein, *supra* note 29, at 971.

determine whether the topics covered in the measure had been linked prior to the time the measure made it to the ballot. It is unclear how the courts could do this—a poll? Moreover, proponents (and opponents) could attempt to manipulate the public discussion prior to the time the measure was placed on the ballot.

c. Overall Conceptual Coherence Test

The Commission devised and considered a third possible definition of the single-subject rule which might be worthy of further study. This approach would attempt to clarify the meaning and scope of the rule by focusing attention on the objectives it seeks to encompass. Under this test, the courts would review three factors when applying the single-subject rule: (i) whether voters are likely to be confused by multiple topics in the initiative; (ii) whether the initiative has fallen prey to logrolling; and (iii) whether the initiative lacks overall conceptual coherence.[57] If an initiative failed on any of these three factors, it would not meet the single-subject rule. The advantage of this approach is that it spells out the actual concerns the courts have used in reviewing single-subject appeals. Its disadvantage is that its three factors are still somewhat subjective and might simply complicate the courts' task in applying the present interpretation of the rule.

Ultimately, the determination whether an initiative violates the single-subject rule is a complex one, requiring the courts to analyze a number of often conflicting considerations. Tightening up the test—for example, by adopting the "reasonably interdependent" standard as some officials have proposed—would encourage the courts to invalidate measures which are perfectly acceptable to the public and which lack potential for voter confusion or logrolling. In the last three years, the courts have shown a greater willingness to apply the current definition of single subject (the provisions of an initiative must be "reasonably germane") with greater vigor. For this reason, the Commission believes the courts should be allowed to develop the current standard more precisely before legislative or initiative attempts are made to rewrite the constitution.

C. Mandatory Judicial Review of Initiatives Before Elections Is Not Desirable or Practicable in the Commission's View

The Commission recommends that no significant changes be made in the way the courts currently review initiatives—either before circulation, during circulation, after an initiative qualifies for the ballot or after its passage.

One potential reform involves the question whether the courts should review *all* initiatives *before* they are circulated or placed on the ballot, either for single-subject rule violations or other constitutional infirmities. Only one state, Florida, automatically requires its supreme court to review an initiative to determine if it complies with the single-subject rule once the initiative has gathered 10% of the signatures necessary to place it on the ballot.

The Commission believes that early judicial review of initiatives in California is not practicable. Since only one-third of the initiatives on local ballots are enacted, automatic court review at any stage prior to passage would substantially increase court congestion. It would increase the costs of circulating an initiative, since all proponents would have to hire attorneys to represent them in court. And it would place the courts under tremendous time pressure to make decisions within the deadlines imposed on them.

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57. An alternative version of this last factor might be to determine whether a "reasonable voter" would have been "surprised" to learn that the specific provisions being challenged were included in the initiative under question.

In California, the courts have generally handled review of initiatives prior to the time they qualify for the ballot in the same way they treat legislation before it has been approved by the governing body. The courts will neither provide advisory opinions on legislation nor usually interfere with the initiative process until the measure is enacted into law. As the California Supreme Court said in 1982, "[i]t is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election, rather than to disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity."[58]

Only seven state initiatives have been invalidated by California courts prior to the election. Three early supreme court rulings kept initiatives off the ballot on technical grounds—improper form[59] or misleading titles.[60] A fourth case removed an initiative from the ballot because it attempted to enact, in the court's view, a constitutional "revision" rather than an "amendment."[61] A fifth supreme court case removed an initiative from the ballot because it did not attempt to adopt a "statute" and thus could not be presented to the voters.[62]

A sixth 1983 supreme court decision dealt with the unusual question whether a reapportionment plan enacted as an urgency measure by the legislature (thus preventing the electorate from considering a referendum to repeal it) could be superseded by a competing reapportionment plan subsequently adopted by initiative. In a highly controversial decision, the court ruled that since the state constitution permitted approval of only one reapportionment plan per decade, the people could not vote on a second one since the legislature had already enacted a plan.[63] And a seventh 1988 appellate court decision blocked the circulation of an initiative by applying the "single-subject" rule to an insurance initiative which also contained a campaign finance limitation.[64]

One Los Angeles County initiative—the only one to qualify county-wide in the past 45 years—was kept off the ballot by the California Supreme Court. Ironically, the case involved the construction of court buildings. The county board of supervisors voted to erect superior and municipal court buildings in downtown Los Angeles, but an initiative was circulated and qualified to move the buildings to a different location. The supreme court ruled that an initiative did not have the power to stop the supervisors' decision to erect a court building.[65] The court stated that the board's decision was "an administrative function delegated by the state"[66] and thus not subject to an initiative. Ironically, the buildings were never built on the sites selected by the board.

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58. Brosnahan v. Eu, 31 Cal. 3d 1, 3 (1982).

59. Mersy v. Stringham, 195 Cal. 672 (1925).

60. Boyd v. Jordan, 1 Cal. 2d 468 (1934); Clark v. Jordan, 7 Cal. 2d 248 (1936).

61. McFadden v. Jordan, 32 Cal. 2d at 330 (1948).

62. The initiative attempted to order the legislature to pass a resolution supporting the balanced budget constitutional amendment then pending before the United States Congress. The court ruled that an initiative could not order a legislature to act. American Federation of Labor v. Eu, 36 Cal. 3d 687 (1984).

63. Legislature of the State of California v. Deukmejian, 34 Cal. 3d 658 (1983). Justice Frank Richardson was the lone dissenter. Richardson is currently a member of the California Commission on Campaign Financing.

64. California Trial Lawyers Ass'n v. Eu, 200 Cal. App. 3d 351 (1988).

65. Simpson, v. Hite, 36 Cal. 2d 125, 222 P.2d 225 (1950).

66. *Id.* at 228.

Prevailing supreme court decisions allow an initiative opponent, who believes that the measure violates the state or federal constitution, to challenge it in court during the circulation period. Although the courts are reluctant to intervene at this early stage, they have been willing to do so in extreme cases. Initiatives such as the 1983 Sebastiani reapportionment initiative, the 1984 balanced budget initiative and the 1988 no-fault insurance measure have thus been removed from the ballot. The current system of judicial review, which allows but does not encourage lawsuits to block circulation during the initiative stage, appears preferable to a cumbersome system of mandatory prior judicial review.

D. Conclusion

California courts are reluctant to invalidate initiatives, particularly before they appear on the ballot. The courts nearly always allow the electorate to decide whether the initiative should be approved or not. This judicial restraint gives the voters the opportunity to debate the issues and also frees the courts from being forced to consider cases which many times will be rendered moot by the electorate voting no. After initiatives are approved, the courts give deference to them but do not hesitate to invalidate measures which are clearly unconstitutional or superseded by state or federal law.

CHAPTER 10

Implementing the Commission's Recommendations

"While people recognize that they can be deceived and certain interests spend disproportionate amounts of money on initiatives, they still like the idea of having the opportunity to vote on issues [through the ballot initiative process]."

— Mervin Field, The California Poll[1]

"The opinion of the people will always be found to be the best army. They may be led astray for the moment, but will soon correct themselves."

— Thomas Jefferson[2]

Nearly all participants in Los Angeles area ballot initiatives recognize that the process can be improved. Opinions vary sharply, however, as to the improvements that are necessary. Some supporters of the initiative process would make initiatives easier to qualify and pass. They argue that sizable increases in the Los Angeles area's population and the recent change in the number of signatures needed to qualify a city initiative now make it far more difficult to circulate and

1. *Quoted in* William Endicott, *A Tool for Reform Runs Amok,* Los Angeles Daily Journal, July 18, 1990.

2. *Quoted in Initiative Process Lets People Decide Issues,* Vacaville Reporter, Sept. 3, 1990.

qualify initiatives than in 1903 when the initiative process was created in Los Angeles, and that the emergence of high-spending campaigns has shifted control over initiatives to moneyed interests. The initiative process should be reformed, they believe, to make it easier once again for grassroots citizens groups and volunteers to enact direct legislation.

Some opponents of initiatives, including local public officials and business interests, would make initiatives much harder to circulate and enact. These opponents contend that California's policy agenda is increasingly being set by ill-conceived ballot initiatives which undermine the power of elected representatives and confuse the average voter. The initiative process should be curtailed, they argue, to make it more difficult to formulate local policy directly through citizen-enacted measures.

Almost 70% of voters, however, still believe strongly in the initiative process although many also believe it has "gotten out of control" (72%) and state they would support "significant changes in how it works" (71%). A strong majority believes special interests have acquired too much power by spending money to promote their side of an issue (86%), that the voters often lack enough information on the issues to make informed decisions (84%) and that financial disclosures should be increased (66%) and contribution limits considered (over 50%). (See further discussion and reference to the cited poll in Chapter 2, "Impact of Ballot Initiatives.")

In the course of formulating its recommendations, the Commission carefully considered these views together with all recent initiative reform legislation introduced in the state legislature during the past 12 months. After extensive deliberations, the Commission has concluded that initiative processes in the Los Angeles area must be retained, although they require considerable improvement. The Commission is aware that implementation of any reforms to the local ballot initiative process may be difficult. Those with a vested interest in the status quo, those who feel the Commission's recommendations go too far and those who feel they do not go far enough, may oppose them. But the Commission has been careful to devise a comprehensive and interrelated package of reforms which, taken as a whole, can be implemented without tilting significantly in favor of either the supporters or the opponents of the initiative process. The Commission wishes to emphasize that its proposed reforms are balanced and interrelated. Although individual reforms might be enacted separately, the acceptability of the entire package might thereby be weakened.

A. The Commission Recommends a Comprehensive and Balanced Package of Reforms

The Commission's recommendations would significantly change the way that local initiatives are drafted, circulated, debated and voted upon by the public. The proposed reforms also respond to criticisms of the initiative process from both its supporters and its opponents. The Commission's recommendations are intended to allow the initiative process to function as a responsible and effective part of Los Angeles area governance well into the next century.

1. Comprehensive Solutions

The Commission has concluded that the Los Angeles area's initiative process is beset by a number of problems: initiatives are too inflexible, the county board of supervisors and city councils play an insignificant role in the initiative process, initiative qualification is too easy with paid circulators and too difficult with volunteers, voters often find initiatives too complex and hard to understand, concise and accurate information about initiatives is not readily available, money plays too

important a role in the process and the courts have invalidated successful initiatives in their entirety because some of their provisions conflict with those of other initiatives. The Commission's recommendations are designed to help redress these problems.

a. Flexibility in Drafting

Current law in California makes the initiative process too inflexible. Once statutory language is drafted by proponents and a measure is placed in circulation for signatures, the wording of the measure cannot be changed unless another ballot measure is enacted to amend the language of the original proposition, or unless the initiative's proponents allow the board of supervisors or city council to amend its provisions after passage. This inflexibility ties the hands of the local governing body with language often approved by the voters many years earlier. When and if circumstances change, the local governing body cannot quickly respond where the initiative does not permit amendments by the board or council. Instead, it must place an amendment to the initiative on the ballot (thus adding to the burden on the voter) and hope for passage. This lack of flexibility also means that during the election campaign the proponent must defend initiative provisions which the proponent has discovered to be faulty but which cannot be corrected. Proponents are barred from making improvements to an initiative that they deem desirable, however minor.

The Commission recommends making the text of an initiative appropriately amendable at several important points in the process—after the hearing conducted by the board or city council by either the proponent or the local governing body with the proponent's consent, or by the board or city council after the measure has been adopted by the voters. The proponent will be able to modify the language of the initiative within four days after the mandatory hearing on the initiative, so long as the amendments are consistent with the initiative's original purposes and intent. If the measure is adopted by the electorate, then the board or city council has the right to amend the initiative by a 60% majority, or if a five member board, by an 80% majority, provided that the amendments further the purposes of the initiative and follow certain other procedures designed to ensure that the measure is not weakened by last minute changes.[3]

b. Participation by the Board or City Council

Although initiatives have become a key element in the process by which laws are enacted in the state, the local governing body now plays a minor role during most initiative debates. Although the board or city council is required to hold a hearing on an initiative before it is placed on the ballot, the local body has no power to amend an initiative.

The Commission makes several recommendations which will enhance participation by the board or city council in the process. Once an initiative qualifies for the ballot, the board or council must hold a hearing on the measure within 30 days. Expert witnesses and others can testify on the strengths and weaknesses of the initiative. The board or city council will have the option of passing the measure as is or offering amendments which the proponent can accept or reject. If the proponents of the initiative accept the amendments, the measure is withdrawn from the ballot. After an initiative is enacted, the board or city council may amend it as a matter of right, so long as the amendments are consistent with the initiative's "purposes and intent," it is in print for at least ten days, and it is enacted by a 60% super-majority, or if a five member body, by an 80% super-majority.

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3. For a more extensive discussion of these proposals, *see* Chapter 3, "Initiative Drafting and Amendability."

This procedure creates an incentive for the local governing body to negotiate a compromise with the proponent over the terms of the measure. It creates a process that will generate additional information about the initiative. It allows the board or city council later to correct errors or omissions in the measure. And it encourages the parties to resolve the merits of the initiative through the local legislative process without a direct vote by the people. Under the Commission's recommendations, supervisors and city councilmembers will be encouraged to apply their expertise to pressing local problems instead of simply abdicating their power and responsibility to the voters.

c. Diminished Use of Charter Amendments

The Commission believes that too many initiatives are amending city and county charters. The Commission therefore recommends that charter amendments, whether placed on the ballot by initiative petition or vote of the local governing body, should require for passage either a 60% super-majority vote in one election or a majority of those voting in two consecutive elections. Proponents, however, will only have to qualify charter amendments once. Initiative proponents will also be discouraged from seeking to "lock in" their proposals by requiring future super-majorities for amendment. They will ensure that proposals amending the charter are clearly desired by the public. They will also encourage proponents to draft statutory rather than charter measures and thus begin the process of reducing the size of the charters. And they will generate laws which can be more easily amended when the need arises.[4]

d. Simplified Initiatives

Many voters are confused and upset with the complicated choices they are asked to make. They believe that initiatives are too long and complex. Voters are not paid to be supervisors or city council members, and they resent being confronted with so many complicated questions which could best be handled by a full-time professional body. In the November 1990 election, voters signaled their frustration with the length and complexity of statewide ballot initiatives and legislative measures by rejecting nearly all of the propositions on the ballot.

The Commission has proposed a 5,000-word limit on all local ballot measures. This limit will require proponents to simplify and shorten their initiatives to make them less intimidating to the electorate.[5] It may also help the initiative's supporters on election day, since the Commission's data indicate that shorter initiatives are likely to receive more votes.[6]

e. Enhanced Voter Information

Voters are inundated with too much complex information and at the same time given too little concise and accurate information. They are deluged with paid slate mailers which provide little substantive information other than an exhortation to vote "yes" or "no" on a particular measure and which often deceptively conceal the true identities of the mailers' sponsors. Radio and television advertising saturates the airways during the last two weeks of the election, but much of it is one-sided and often misleading. A massive ballot pamphlet is sent to every voting household, but it contains so much detailed and abstract information that many voters are afraid to open it, much less read it.

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4. These recommendations are discussed in Chapter 5, "Voting Requirements."

5. *See* Chapter 3, "Initiative Drafting and Amendability," for a discussion of this recommendation.

6. *See* Chapter 3, "Initiative Drafting and Amendability," for an examination of the correlation between the number of words and the success of initiatives.

Under the Commission's proposals, voters will be sent a new "summary" ballot pamphlet three weeks before the election. This foldout summary will succinctly state, among other things, the key issues in the initiative, the pro and con arguments, the leading supporters and opponents and the largest contributors to the supporters and opponents of each measure.[7] It will also state the board or city council vote on each measure. For those voters who want a quick guide of what the propositions do, who supports, opposes and is funding them, this short-form pamphlet should be extremely useful. At the same time, voters will still have the opportunity to consult the complete ballot pamphlet. The Commission has also presented a number of recommendations to make the larger pamphlet more readable and useful.

f. Improved Financial Disclosures

Money continues to play a dominant role in the initiative process. Anyone with sufficient funds can qualify a measure by merely hiring a professional circulation firm. Unlimited additional sums can be spent to influence the voters during the campaign. Despite this onslaught of information, voters often seem more and more confused. The ballot pamphlet may provide too much information, while television commercials and the "yes/no" recommendations of slate mailers provide too little. The dominance of money in high-spending initiative campaigns tends to provide the voters with one-sided and even deceptive information that can distort the electoral result.

Although U.S. Supreme Court rulings have made it extremely difficult to limit contributions to or expenditures by initiative campaigns, the Commission recommends several ways to mitigate the role of money in the process. The identity of each measure's financial backers should be disclosed to voters at an early stage in the process. Interested voters and the press should be given access to more frequent campaign statements. Media advertisements should disclose the identities of those who are paying for them. And the Commission recommends continued intensive analysis of facts and arguments that could cause the U.S. Supreme Court to accept responsible limitations on initiative campaign contributions and expenditures.

2. Balanced Reforms

The Commission has sought to balance its recommendations so that, taken as a whole, they will improve the initiative process without tilting either for or against one side in the initiative debate. In some instances the Commission's recommendations would give initiative proponents specific benefits—enabling them, for example, to amend initiatives before placing them on the ballot. In each case, however, these proponent benefits are counterbalanced with checks and safeguards—providing opponents, for example, with more time to analyze a measure, or giving the local governing body the power to amend initiatives after enactment.

Over its 80-year history, California's initiative process has acquired a semi-sacrosanct status. Even vigorous opponents of the initiative process are reluctant to criticize it publicly for fear they will be charged with "undermining" the inherent right of the people to vote on important state concerns. As a result, reform proposals, no matter how well thought out, are likely to be met with skepticism at best. The Commission has therefore strived to balance its recommendations so that they respond to the legitimate criticisms of both initiative opponents and supporters. Its proposed reforms seek to improve the initiative process by making it a more

7. *See* Chapters 6, "News Coverage and Paid Advertising," and Chapter 7, "The Ballot Pamphlet," for a discussion of these recommendations.

responsible and effective part of the Los Angeles area's governmental decisionmaking machinery.

Thus, for example, the Commission recommends that proponents may amend all initiatives shortly after qualification, but that the local governing body may amend them after enactment. If only one of these recommendations were adopted, then it might be argued that either the supporters or opponents of initiatives had been strengthened. By linking both recommendations together, the Commission believes that it has achieved a neutral result. On the one hand, initiative proponents will be helped, since they can fine tune their initiatives after they have been circulated but before they reach the ballot. On the other hand, the board's or city council's powers will be enhanced by giving it a limited opportunity to amend any initiative after enactment. Acting together, these recommendations will both improve the way laws are enacted and tend to restore public confidence in the initiative *and* local legislative processes.

The vote of each local elected official on every initiative which qualifies would be recorded and sent to every voter in the ballot pamphlet. Voters will thus be informed by seeing whether their local elected officials voted yes or no on important ballot issues. Elected officials will undoubtedly be lobbied by both sides of an initiative since their vote will provide an early indication of the measure's popularity. Individual elected officials can now avoid the responsibility of informing their constituents how they feel about a particular initiative by simply refusing to take a position on it, particularly if it is controversial. In exchange for their required participation in the initiative process, elected officials will be given power to negotiate the contents of measures before the election as well as the ability to amend them afterwards.

Other aspects of the Commission's package increase disclosure requirements. For example, the initiative must contain a notice that the proponent is free to amend the text of the measure so long as those amendments further the purposes and intent of the initiative.

Proponents would be required to submit additional campaign disclosure information. Under current law, the proponent is not required to file campaign statements until much if not all of the signature circulation process is completed. The Commission recommends that the proponent be required to file a disclosure report within 30 days after the proponent receives the initiative's title and summary from the county counsel or city attorney's office. These measures will ensure that the public receives relevant information on the identities of the initiative's financial backers.

B. The Commission's Recommended Reforms Will Require Constitutional Amendments, Legislative Amendments or City Charter Changes

The rules for California's local initiative process are contained both in the state statute books (primarily in the Elections Code) and in some city charters.[8] The constitution gives the legislature broad power to regulate the initiative process by adopting laws which do not have to be submitted to the voters for approval. These powers allow the legislature to determine how initiatives are circulated, presented to the public on the ballot and certified by the secretary of state.[9] The constitution allows the legislature to enact initiative procedures for both statewide and local initiatives.

8. Cal. Elec. Code §§3500 *et seq.* (West Supp. 1991).

9. "The legislature shall provide the manner in which petitions shall be circulated, presented and certified, and measures submitted to the electors." Cal. Const. art. II., §10.

The constitution, amended in 1911 when the sections on the initiative process were added, itself contains little language defining specific initiative procedures. The constitution specifies for state initiatives how many signatures are needed to qualify a constitutional amendment or statutory initiative, when an initiative must qualify in order to be put on the ballot, the number of subjects (one) which may appear in any initiative, when an initiative becomes effective, what happens if two or more initiatives are enacted at the same election, how the legislature may amend an initiative and who should prepare the title and summary for the initiative. For local initiatives, however, the constitution directs the state legislature or local charter city to enact the rules. Nearly all of the Commission's recommendations, therefore, can be implemented by the legislature through statutory amendment. A few will require constitutional amendments, and some can be adopted at the local level.

Implementation of the Commission's proposals, therefore, can be triggered by the legislature, city council (if a charter city), by a constitutional amendment to affect all city charters or by citizen initiative. The legislature can place constitutional amendments on the ballot by a two-thirds vote of both houses, without the approval of the Governor, and it can place a statutory amendment on the ballot by a majority vote and the approval of the Governor. (Some of the statutory changes proposed by the Commission, such as amendments to the Political Reform Act, must be approved by a two-thirds vote of the legislature.) The legislature can also submit the reforms as a package containing both constitutional amendments and statutory legislation which would be adopted contingent upon the approval of the constitutional amendment by the electorate.

Most of the Commission's proposals can be added to the Elections Code or Government Code, while a few sections must be included in the state constitution or in a city charter. Any initiative which contained the Commission's recommendations could be presented to the voters as a combined constitutional and statutory amendment.

1. Constitutional Amendments or City Charter Amendments

The Commission has proposed four reforms which will require constitutional amendments to apply them to all charter cities or individual city charter amendments for enactment: the requirement that the city council must vote on any initiative before it is put on the ballot, the recommendation that a super-majority vote of the electors is needed to enact any measure which itself mandates future super-majority votes, the requirement that charter amendments need a 60% vote in one election or majority vote in two successive elections to pass and the provision allowing the city council to amend any initiative after enactment if the amendment furthers the initiative's original "purposes and intent." The Commission believes that the legislature can require charter counties and general law cities and counties to comply with these recommendations by a statute rather than through constitutional amendment since the state constitution gives the legislature much more latitude over charter counties and general law cities and counties as opposed to charter cities.

a. A Vote of the Local Legislative Body on Each Initiative

The Commission believes that one of the most important changes in the initiative process concerns the recommendation that the city council be required to take a vote on each initiative that qualifies for the ballot.[10] In order to compel a city council in a charter city to vote on a qualified ballot initiative, a state constitutional amendment or an amendment to the charter will be needed.

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10. *See* Chapter 3, "Initiative Drafting and Amendability," for further discussion of this proposal.

The Commission recommends that the city or county be given 60 days to consider any initiative measure. If the board or council approves the measure or amends it with the agreement of the proponent, then the initiative will be withdrawn from the ballot. If the local governing board rejects the measure, then it will appear on the ballot at the next election. In either event, the board or council must take a floor vote on the initiative so that the voters will know how their local representatives—as well as the entire local governing body—feel about the proposal.

This provision modifies the existing requirement that the governing bodies of cities and counties must consider an initiative before it goes on the ballot, and that if they adopt it the measure will not be placed on the ballot. In the case of local measures, however, the proposal must appear on the ballot unless the council or board approves it exactly as written, without deletions or amendments.[11]

b. Super-Majority Vote Requirements

The constitution states that a measure is adopted when it is approved by a majority of those voting upon it.[12] Proposition 136, an initiative defeated in the November 1990 election, would have required that any initiative enacting a special tax would have to receive a two-thirds vote before it could be adopted. Although the measure barely lost, receiving 48% of the vote, its passage would have allowed a simple majority of Californians voting in 1990 to authorize a mere 34% of future Californians to block any special tax increase, even though an overwhelming (but less than two-thirds) majority might favor such a tax increase. The Commission proposes that any local measure which requires a future super-majority vote must itself pass by at least the same super-majority.[13] Assemblymember Robert Campbell (D-Richmond) introduced a similar proposal for state measures in 1991 (Assembly Constitutional Amendment 20), but it failed to pass the assembly. Adoption of the Commission's recommendations for local measures would require a constitutional amendment or charter amendment.

c. Vote Requirement for Charter Amendments

As indicated above, the constitution states that a ballot measure is enacted when it is approved by a majority of those voters who have voted either yes or no on the proposition.[14] One of the Commission's most important proposals would require that amendments which *add* language to a city charter or county charter must receive a 60% vote in the election, or in the alternative a 50% plus 1 vote in two consecutive elections, for passage. This proposal is designed to encourage initiative proponents to draft statutory rather than charter initiatives. This recommendation would require a state constitutional amendment or a city charter amendment for adoption.

Senator Rebecca Morgan (R-Los Altos Hills) introduced a constitutional amendment requiring a two-thirds vote on *all* state initiative proposals (Senate Constitutional Amendment 11). Because the proposal also lowers the vote for local bond measures from two-thirds to a simple majority, it met with intense opposition from taxpayer groups and stalled in the state senate.

Senator Barry Keene (D-Benicia) introduced a proposal somewhat similar to the Commission's recommendation, except that his proposal would require a majority of *registered* voters to approve a statutory initiative and a two-thirds vote of all *registered* voters to adopt a constitutional amendment (Senate Constitutional

11. Cal. Elec. Code §4010 (West Supp. 1991).
12. Cal. Const. art. II, §10.
13. *See* Chapter 5, "Voting Requirements," for a discussion of this recommendation.
14. Cal. Const. art II, §10(a).

Amendment 4). Senator Leroy Greene (D-Sacramento) introduced a proposal which would have made it harder for any initiative to be adopted. His Senate Constitutional Amendment 21 would have required a majority of all registered voters to approve any initiative measure. Neither of these proposals passed the first committee in the state senate.

d. Amendments After Enactment of Initiatives

The Commission believes that the local governing body should have the flexibility to amend initiatives so long as those amendments further the original "purposes and intent" of the measure. The state constitution or local city charter must be amended to accomplish this recommendation. The Commission proposes that any ordinance amending an initiative must be in print at least 12 days and pass by a super-majority of at least 60%, or if only five members are on the local governing body, by an 80% voter. The text of an initiative may permit the board or council to amend it by a vote of less than 60%, but it may not mandate a super-majority above 60%.[15]

A recent superior court ruling has refused to invalidate a legislative amendment to insurance reform Proposition 103, even though the proponents of the initiative strenuously argued that the amendments did not further the purposes of the measure. The superior court judge ruled that a court cannot second-guess a legislative finding that the amendments further the purposes of the initiative.[16] The Commission's proposal would specifically authorize the courts to determine whether or not the amendments further the purposes of the initiative.

2. Statutory Amendments

Most of the Commission's recommendations can be implemented by statutory amendments enacted by the state legislature, since the constitution gives the legislature the power to establish many local initiative procedures. If these proposals later require modification, the legislature can enact the appropriate amendments without a vote of the people. Alternatively, these proposed amendments can be adopted by a statutory initiative. The recommendations which should be adopted by state statute rather than by constitutional amendment include the following.

a. 5,000-Word Limit on All Initiatives

The Commission's proposed 5,000-word limit on initiatives does not need to appear in the state constitution because the constitution allows the legislature to specify how initiatives are "submitted to the electors."[17] The 5,000-word limit will only apply to words added to the statute books, not to words repealed or words which repeat existing law.[18] The concept of limiting words in an initiative has never been proposed by any California legislator.

b. Public Hearing on All Qualified Initiatives

Perhaps one of the most important recommendations stemming from the Commission's study is to include the local legislative body as an active participant in the initiative process. Making the council or board an active participant requires first of all that the elected officials scrutinize each initiative and share their

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15. *See* Chapter 3, "Initiative Drafting and Amendability," for a discussion of this proposal.

16. Amwest Surety Insurance Co. v. Wilson, Case No. C 704 879 (Los Angeles County Super. Court, Mar. 21, 1991).

17. Cal. Const. art. II, §10(e).

18. This recommendation is discussed extensively in Chapter 3, "Initiative Drafting and Amendability."

perspectives with the initiative sponsors and the public. Currently, local legislative bodies are allowed by state law to conduct a public hearing on any initiative within 30 days of certification of sufficient signatures for ballot qualification. The Commission recommends that local legislative bodies be *required* to conduct a hearing on all initiatives within 30 days of certification. All analyses, testimony and recommendations would be transcribed and distributed within three days after conclusion of the hearing to the proponents, press and public.

c. Proponent Amendments After the Measure Qualifies for the Ballot

Under the Commission's proposal, proponents may amend their initiatives no later than four days after receiving the transcript of the hearing.[19] The amendments must further the purposes and intent of the measure and be subject to review by the city attorney, county counsel and a court.

d. Notification That Proponent May Amend the Initiative

Any person who signs an initiative should be informed that the proponent is entitled to amend the proposal as long as the amendments further the "purposes and intent" of the measure. The notice should be prominently placed at the top of the petition in red ink, so that the person who is considering signing the petition understands that the initiative may be changed.[20]

e. Notice of Major Contributors During the Circulation Drive

The Commission believes that petitions should contain a notice identifying the major contributors to the petition drive.[21] The top of the petition should contain a notice stating who is paying for the circulation. SB 661 by Senator Frank Hill (R-Hacienda Heights), containing a measure similar to the Commission's recommendation, passed the legislature but was vetoed by the Governor. It would have required initiative proponents to put at the top of their petitions the names of any contributors who gave $5,000 or more to the initiative drive. The Governor vetoed the bill for reasons related to other provisions.

f. Eliminate Notification Requirement

The Commission does not see any reason for an "intent to circulate" a petition to be required to be posted in three public places or published in a newspaper of general circulation. No such requirement exists for state measures.

g. Standardize Petition Circulation Procedures

The current procedures for circulating a local petition are a patchwork collection of laws which should be standardized. All signature thresholds for ballot qualification should be based on the last gubernatorial vote. Circulation periods for charter amendments and ordinances should be the same as should all petition formats. All of these recommendations can be adopted by the legislature and applied to both cities and counties.

h. Improved Signature Verification Procedures

The Commission believes that too many signatures are being subjected to the verification process and that an equally accurate count can be made by examining fewer signatures. AB 2125, which the legislature passed in 1991, reduced the

19. *See* Chapter 3, "Initiative Drafting and Amendability," for a discussion of this proposal.

20. This recommendation is discussed in Chapter 4, "Circulation and Qualification."

21. This proposal would amend the Political Reform Act of 1974 and thus would need a two-thirds vote in the legislature. For a discussion of this recommendation, *see* Chapter 4, "Circulation and Qualification."

random verification from 5% to 3% of the signatures submitted for state measures.[22] The Commission believes that no city or county should have to verify more than 1,500 signatures for any petition when it conducts its random count.[23]

i. Additional Campaign Statements During Circulation Period

Initiative proponents currently disclose the source of their funds every six months.[24] The Commission, however, believes that the initiative proponent should disclose sources of funds within 30 days after the city attorney or county counsel has titled the petition.[25]

j. Disclosure of Sponsorship in Campaign Advertisements

The courts have recently invalidated Proposition 105, an initiative approved by the voters in 1988 that established invaluable disclosure requirements in campaign advertisements of the two largest funding sources behind the campaign. The Commission recommends that comparable disclosure requirements be established for state and local ballot measure campaigns.

k. Improved Disclosure on Slate Mailers

Deceptive advertising practices frequently associated with slate mailers highlight the need for additional disclosure requirements on this form of campaign advertising as well. Each page of a slate mailer should specify that the mailer is not sent by an official party organization, and all paid ballot measure listings should identify the campaign's two major funding sources directly adjacent to those listings.

l. Summary Chart Provided to Voters Three Weeks Before the Election

The ballot pamphlet, which contains the entire text of each measure as well as arguments and analyses, is an important and impartial source of information to a large number of voters who want detailed information about measures they are considering. Voters need a condensed source of impartial information at the time most critical to their decisionmaking. The Commission suggests that the county registrar or city clerk send to each voter an executive summary of the ballot pamphlet three weeks before the election.[26]

m. Ballot Pamphlet Improvements

Other improvements in the readability and quality of information provided by local ballot pamphlets and sample ballots should also be considered. In addition to design improvements, such as using color and graphics, the information in ballot pamphlets and sample ballots can be better organized. "Legalese" ballot captions and summaries should be stricken and replaced with descriptions that target the 12th grade readability level. Competing ballot measures should be grouped together in the pamphlet and on the ballot using comparison charts and clearly labeled by the county counsel or city attorney that only one measure may go into effect. Supporters and opponents of each measure should be given one-half page each in side-by-side vertical columns for listing endorsements. (Endorsements are a valuable source of voter information.) The votes of county or city officials on each measure should also be listed. Finally, the complete texts of ballot measures should be printed at the back of the pamphlet or sample ballot.

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22. Cal. Elec. Code §3521 (West Supp. 1991).

23. *See* discussion of this proposal in Chapter 4, "Circulation and Qualification."

24. The Political Reform Act requires campaign statements to be filed every six months while the circulation drive is conducted Cal. Gov't Code §84200 (West Supp. 1991).

25. This recommendation is discussed in Chapter 4, "Circulation and Qualification."

26. *See* Chapter 7, "The Ballot Pamphlet," for a discussion of this recommendation.

C. Conclusion

Most of those with whom the Commission consulted disagreed with both those who would discard the local initiative process and those who want to keep it as it is today. The Commission's consultants generally expressed support of the basic initiative process but recognized that the current system needs substantial reform. The Commission believes that its proposed recommendations will significantly improve the local initiative process and integrate it more effectively into the Los Angeles area's system of governance.

Appendices

APPENDIX A

Summary Checklist: Commission Recommendations for Reform of the Initiative Process in the Los Angeles Area

The following is a Summary Checklist of the Commission's recommendations for reform of the local ballot initiative process in the cities and county of Los Angeles, as well as other cities and counties throughout California and in other states. A complete understanding of these summary recommendations requires a careful reading of the full text of the chapter of the report in which they appear. Statutory language to implement the Commission's recommendations appears in Appendix B and is referenced to the chapters in which the recommendations are discussed. Appendix C contains a timetable to illustrate the application of the Commission's recommendations in practice.

INITIATIVE DRAFTING AND AMENDABILITY
(see Chapter 3)

1. Limit of 5,000 Words on All Ballot Measures

- No ballot measure can contain more than 5,000 words
- Strike out language and existing law repeated in the text would be excluded from the word limit

2. Public Hearing After Qualification

- After certification that an initiative qualifies for the ballot, the local legislative body (city or county) would be required to conduct a public hearing within 30 days
- Prior to the hearing, the measure could be referred to an appropriate agency or agencies for analysis
- All analyses, testimony and recommendations given at the hearing would be transcribed and distributed to the proponents, press and public

3. Amendments by Proponent After Public Hearing

- Proponents may amend their proposal within four days after receiving the transcripts of the hearing as long as such amendments further the "purposes and intent" of the original initiative
- Amendments must be submitted to the city attorney or county counsel for a determination of consistency with "purposes and intent" and may be renegotiated if given an adverse opinion

4. Proponent-Sanctioned Amendments by Local Governing Body During 60-Day Cooling-Off Period

- Local legislative body has 60-day "cooling-off" period to analyze initiative after it qualifies for ballot
- During cooling-off period, proponent may negotiate changes with local legislative body and take the following possible actions:
  - Withdraw initiative from ballot if enacted by the council or board
  - Withdraw initiative from ballot if council or board enacts an alternative version acceptable to proponent; proponent may condition withdrawal on provision in new law that future legislative amendments must be approved by up to a 60% majority (or 80% if the body is composed of only five members), be consistent with the law's "purposes and intent" and be printed and circulated 12 days before final vote
  - Withdraw initiative from ballot if council or board places an acceptable alternative measure on the ballot
  - Place original or proponent-amended version of initiative on ballot if council or board doesn't enact initiative, enacts an unacceptable amended version or places an unacceptable alternative measure on ballot

5. Mandatory Vote on Each Initiative

- Council or board must vote yes or no on all initiative proposals placed on ballot within 60 days of certification of ballot qualification
- Each official's name and vote on all initiatives must appear in ballot pamphlet or sample ballot

6. Amendments to Initiatives After Enactment

- Local legislative body can amend any initiative ordinance (but not charter amendment) after passage by a 60% vote (or 80% vote if body is composed of five members)
- Proponent can stipulate lower amendment percentage
- Amendments must be consistent with initiative's "purposes and intent"
- Amendments must be printed and circulated 12 days before final vote
- Courts have jurisdiction to review whether amendments further the "purposes and intent" of the initiative

CIRCULATION AND QUALIFICATION
(see Chapter 4)

7. Eliminate Notification Requirement

- Eliminate requirement that notice of "intent to circulate" be published or posted prior to petition circulation

8. Standardize Petition Circulation Procedures

- Signature thresholds for ballot qualification for all initiatives should be based on the last gubernatorial vote in the jurisdiction
- Circulation periods should be equivalent for ordinances and charter amendments
- Petition formats for ordinances and charter amendments should be the same

9. Additional Campaign Statements Filed During Circulation Period

- After the titling of the measure, the proponents must file within 30 days listing all contributions received up to seven days before filing

10. Notice of Major Contributors to Circulation Drive

- Ballot petitions must identify at their top and in bold type the names and affiliations of proponent's two largest contributors as of the date the official caption and summary are released

11. Notice that Proponent May Amend Initiative

- Ballot petitions must contain a notice at the top that the proponent may make amendments to the initiative that are consistent with the measure's "purposes and intent."

12. Improved Signature Verification Procedures

- Initiative can qualify for ballot if number of randomly sampled valid signatures shows proponent has gathered 105% of the number need to qualify (dropped from 110%)
- To conduct random sample: (i) if 500 or fewer signatures are submitted, clerks must verify (*i.e.,* examine) them all; (ii) if more than 500 signatures are submitted, clerks must verify 3% or 1,500 of them, whichever is less (currently set at 500 or 3%, whichever is more), provided that at least 500 must be verified

13. Possible Use of Polling and Other Alternative Methods of Ballot Qualification

- Conduct further research into public opinion polling and other alternative methods of ballot qualification

VOTING REQUIREMENTS
(see Chapter 5)

14. Vote Requirements for Passage of Charter Amendments and Revisions

- To add language to a city or county charter, a charter amendment or revision must *either* receive 60% of the electoral vote in one election *or* be approved by a majority vote in two successive elections

- To delete language from a city or county charter, a charter amendment or repeal need only be approved by a simple majority of those voting on the issue

15. Special Vote Requirements for Future Measures

- Measures imposing a special vote requirement for passage of future measures must themselves be adopted by the same special vote requirement and go into effect the day after the election

NEWS COVERAGE AND PAID ADVERTISING
(see Chapter 6)

16. Disclosure of Sponsorship in Advertisements

- Require all broadcast and print advertising to disclose each ballot measure's two largest funding sources (applies to both initiatives and legislative measures), by principal industry affiliation where applicable

17. Improved Disclosures on Slate Mailers

- Require each page of, and each piece of paper in, slate mailers to include, where applicable, disclaimer notices that mailer is not sent by an official party organization
- Require all paid ballot measure listings to identify their two largest funding sources in a disclosure placed directly adjacent to the listings

18. Additional Disclosure on Late Contribution Reports

- Require late contribution reports to cumulate all previous contributions made by late contributors to the ballot measure

19. Reinstatement of FCC's "Fairness Doctrine"

- Encourage the federal government to reinstate the Federal Communications Commission's "fairness doctrine" as it applies to ballot measures

20. Enhanced Journalistic Coverage

- Encourage the news media to provide accurate information about ballot measures and voluntarily comply with obligations of FCC's former "fairness doctrine"

THE BALLOT PAMPHLET
(see Chapter 7)

21. New "Summary Ballot Pamphlet" Included in the Local Ballot Pamphlet or Sample Ballot

- Print a new, one page, fold-out chart summarizing all initiatives and include it in the local ballot pamphlet or sample ballot
- Chart should list summary of initiative with costs and impacts, pros and cons, supporters and opponents, votes of local legislative body and five largest contributors on each side
- Chart should contain most recent financial contribution data

22. Improved Information in Ballot Pamphlet or Sample Ballot

- Group competing initiatives together in ballot pamphlet and on ballot; use comparison charts
- Require city attorney or county counsel to place warning in ballot pamphlet and on ballot stating that if two conflicting measures are approved, only one may go into effect
- Require that full texts of initiatives be printed at back of pamphlet
- Give supporters and opponents up to one-half a page each in side-by-side vertical columns for listings of individual and organizational endorsements
- Improve financial disclosures in summary and regular ballot pamphlets
- List votes of city or county officials on each ballot proposition

23. Improved Ballot Pamphlet Design

- Vary type sizes for reading interest
- Use color, charts and graphics
- Place pro and con arguments side-by-side in vertical columns
- Conduct overall graphic redesign of pamphlet

24. Simplified Petition and Ballot Descriptions

- Apply 12th grade readability standard to all government-written materials, including the official caption and summary
- Use bulleted outlining to enhance readability
- Permit immediate court review before circulation if proponents challenge caption and summary within all local jurisdictions

THE INFLUENCE OF MONEY
(See Chapter 8)

25. Further Consideration of Campaign Finance Limitations

- Conduct additional research into desirability and constitutionality of:
  - limits on large contributions (perhaps during the qualification period)
  - limits on expenditures
  - limits on independent expenditures

26. Further Consideration of Broadcast Advertising Ceilings

- Conduct additional research into feasibility of limiting total differential amount that one side of initiative campaign could spend over the other on broadcast advertising

27. Further Consideration of "Voter Information Fund"

- Conduct additional research into feasibility of fee assessment on initiative contributions to be used to redress lopsided advertising campaigns

JUDICIAL REVIEW
(see Chapter 9)

28. Standards for Judicial Review

- Courts should retain the current definition of a "single subject" (involving provisions which are "reasonably germane" to each other)

APPENDIX B

Statutory Language for the Commission's Recommendations

(Organized by Chapters)

Throughout this report, the Commission has presented a number of recommendations which it believes should be made to improve the initiative process. This Appendix provides the statutory language for these recommendations. It is **organized by** chapter so that the full discussion of each item can be easily **referenced.**

INITIATIVE DRAFTING AND AMENDABILITY

(see Chapter 3)

1. Limit of 5,000 Words on All Ballot Measures

Sections 3701.1 (county) and 4001.5 (municipal) shall be added to the Elections Code:

No initiative or measure put on the ballot by the city council/county board of supervisors may contain more than 5,000 words, excluding language which is repealed or which repeats existing law.

2. Public Hearing After Certification of Ballot Qualification

Sections 3708.5 (county) and 4009.7 (municipal) shall be added to the Elections Code:

(a) No later than 30 days after certification that an initiative has qualified for the ballot, the city council/county board of supervisors shall hold and complete a public **hearing** which shall receive testimony on the initiative. The proponent of the initiative **and** any other person interested in the hearing shall be given at least three days notice of the hearing.

(b) All analyses, testimony and recommendations given at the hearing shall be transcribed and issued to the proponents, press and public within three days following conclusion of the hearing.

3. Amendments by Proponents Permitted After Public Hearing

Sections 3708.6 (county) and 4009.8 (municipal) shall be added to the Elections Code:

After an initiative qualifies for the ballot and within four days after receiving the **transcripts** of the hearing on the initiative, the proponent may amend the **initiative, provided** that the amendments further the purposes and intent of the **initiative. The proponent** must immediately submit such amendments in writing to the **county counsel/city** attorney for review. The county counsel/city attorney shall **determine, within** seven days, whether such amendments further the purposes and **intent of the** initiative and notify proponent and the local legislative body in writing. The **proponent** shall have two days to cure any deficiencies. Final jurisdiction to

review the determination of purposes and intent on an expedited basis shall be with the Superior Court.

Sections 3709, 3711 (county) and 4010, 4011 (municipal) shall be amended for conformity with the public hearing recommendations as detailed in Recommendation 12 of this appendix, "Standardize Petition Circulation Procedures."

4. Mandatory Vote on Each Initiative

Sections 3708.5 (a) (county) and 4009.7 (a) (municipal) shall be added to the Elections Code as follows:

No later than 60 days after the clerk certifies that an initiative has qualified for the ballot, the city council/county board of supervisors shall take a recorded vote of its members on the provisions of the initiative. Each official's name and vote on all initiatives, as well as the vote of the total membership, shall appear in the ballot pamphlet.

5. Proponent-Sanctioned Amendments by Legislative Body Permitted During 60-Day Cooling-Off Period

Sections 3708.5(b) (county) and 4009.7(b) (municipal) shall be added to the Elections Code:

If, within a 60-day period following certification that an initiative has qualified for the ballot, a majority of the members of the local legislative body approves the initiative, or approves an amended version of the initiative which is endorsed by the proponent, and the Mayor concurs with either action, the approved version shall become law and the initiative shall not appear on the ballot. If the local legislative body approves an amended version of the initiative and the Mayor and the proponent concurs, the amended version shall appear on the ballot and the original version of the initiative shall be withdrawn by the proponent.

6. Amendments to Initiatives After Enactment

Section 3719 (county) of the Elections Code shall be amended as follows:

~~No ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance. In all other respects,~~ ~~an~~ An ordinance proposed by initiative petition and adopted by the electorate shall have the same force and effect as any ordinance adopted by the board of supervisors. An initiative ordinance adopted by the board of supervisors of the county, or by the vote of the people, may be amended by the board only so long as the amendments further the purposes and intent of the initiative, are in print at least 12 days before a final vote, and are enacted by a 60 percent vote of the membership of the legislative body or an 80 percent vote of the membership if the body is composed of five members. An initiative may specify a lesser vote requirement for amendments and may reduce the number of days amendments must be in print. The superior court of the jurisdiction shall be empowered to review whether an amendment furthers the purposes and intent of an initiative ordinance.

Section 4013 (municipal) of the Elections Code shall be amended as follows:

[Last sentence] ~~No ordinance proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.~~ Any initiative ordinance adopted by the city council, or by the vote of the people, may be amended by the

council only so long as the amendments further the purposes and intent of the initiative, are in print at least 12 days before a final vote, and are enacted by a 60 percent vote of the membership of the legislative body or 80 percent of the membership if the body is composed of five members. An initiative may specify a lesser vote requirement for amendments and may reduce the number of days amendments must be in print. The superior court of the jurisdiction shall be empowered to review whether an amendment furthers the purposes and intent of an initiative ordinance.

CIRCULATION AND QUALIFICATION
(see Chapter 4)

7. Eliminate Notification Requirement

Sections 4003, 4004 (municipal) shall be deleted and Section 3702.5 (b) (county) shall be amended as follows:

~~Section 4003. A notice of intention and the title and summary of the proposed measure shall be published or posted or both as follows:~~

~~(a) If there is a newspaper of general circulation, as described in Section 6000 et seq. of the Government Code, adjudicated as such, the notice, title, and summary shall be published therein at least once.~~

~~(b) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, the notice, title, and summary shall be published at least once, in a newspaper circulated within the city and adjudicated as being of general circulation within the county in which the city is located and the notice, title, and summary shall be posted in three (3) public places in the city, which places shall be those utilized for the purpose of posting ordinances as required in Section 36933 of the Government Code.~~

~~(c) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, and there is no newspaper of general circulation adjudicated as such within the county, circulated within the city, then the notice, title, and summary shall be posted in the manner described in subdivision (b).~~

~~Section 4004. Within 10 days after the date of publication or posting, or both, of the notice of intention and title and summary, the proponents shall file a copy of the notice and title and summary as published or posted together with an affidavit made by a representative of the newspaper in which the notice was published or, if the notice was posted, by a voter of the city, certifying to the fact of publication or posting.~~

~~If the notice and title and summary are both published and posted pursuant to subdivision (b) of Section 4003, the proponents shall file affidavits as required by this section made by a representative of the newspaper in which the notice was published certifying to the fact that the notice was published and by a voter of the city certifying to the fact that the notice was posted.~~

~~These affidavits, together with a copy of the notice of intention and title and summary, shall be filed with the clerk of the legislative body of the city in his or her office during normal office hours as posted.~~

(b) The county clerk shall furnish a copy of the ballot title and summary to the proponents of the proposed measure. ~~The proponents shall, prior to the circulation of the petition, publish the Notice of Intention, and the ballot title and summary of the proposed measure in a newspaper of general circulation published in that county, and file proof of publication with the clerk.~~

8. Notification That Proponent May Amend the Initiative

Sections 3702.5(d) and 4002.5(c) shall be added to the Elections Code:

The proponent shall place at the top of each petition the following notice in at least 8-point bold type: **"The proponent may later amend the initiative measure set forth in this petition before it appears on the ballot if the amendments are consistent with this initiative's purposes and intent."**

9. Improved Signature Verification Procedure

Sections 3708 (county and municipal) shall be amended as follows:

(a) [Last sentence] Such a random sampling shall include an examination of ~~at least 500 or 3 percent of the signatures, whichever is greater~~ all signatures if fewer than 500 are submitted, or the lesser of 3 percent or 1,500 signatures if more than 500 are submitted, provided that at least 500 signatures are examined.

(b) If the statistical sampling shows that the number of valid signatures is within 95 to ~~110~~ 105 percent of the number of signatures of qualified voters to declare the petition sufficient, the elections official shall examine and verify each signature filed.

10. Notice of Major Contributors to Circulation Drive

Sections 3702.5(e) and 4002.5(d) shall be added to the Elections Code:

The proponent shall place at the top of each petition the following information, current as of the day the initiative is titled, contained in a notice in at least 8-point bold type: **"This initiative is being funded by** [insert names of the two largest funding sources to the petition campaign as determined by using Government Code Section 84506], **currently the two largest contributors to this campaign."**

11. Additional Campaign Statements Filed During the Circulation Period

Section 84200.9 shall be added to the Government Code:

(a) Proponents of a state or local ballot measure who control a committee formed or existing primarily to support the qualification of a state or local ballot measure shall file a campaign statement 30 days after the measure is officially titled. The closing date for the period covered by the statement shall be seven days prior to the deadline for filing the statement.

(b) Committees formed or existing primarily to support or oppose the qualification of a measure and proponents of such a ballot measure who control a committee formed or existing primarily to support the qualification of a measure shall file a semi-annual campaign statement no later than July 31 for the period ending June 30 and no later than January 31 for the period ending December 31.

(c) Committees formed or existing primarily to support or oppose the qualification of a measure and proponents of such a measure who control a committee formed or existing primarily to support the qualification of a measure shall file a campaign statement 21 days after any petition is filed, or 21 days after the deadline for filing petitions, whichever is earlier. The closing date for the period covered by the statement shall be seven days prior to the deadline for filing the statement.

12. Standardize Petition Circulation Procedures

Sections 3709 (county) and 4010 (municipal) shall be amended as follows:

[Section deleted and replaced with the following text.] If the initiative petition is signed by not less than 15 percent of the entire vote cast within the jurisdiction for all candidates for Governor at the last gubernatorial election preceding the circulation of petitions, and contains a request that the ordinance be submitted to a vote of the people at a special election, the local legislative body shall, if failing to enact the original measure or an amended version acceptable to the proponents, call a special election to take place not less than 88 days nor more than 103 days following conclusion of the public hearing for submission to a vote of the people of the original initiative or the proponent-amended version of the original initiative.

Sections 3711 (county) and 4011 (municipal) shall be amended as follows:

[Section deleted and replaced with the following text.] If the initiative petition is signed by not less than 10 percent of the entire vote cast in the jurisdiction for all candidates for Governor at the last gubernatorial election preceding the circulation of petitions, and the ordinance petitioned for is not required to be, or for any reason is not, submitted to the voters at a special election, and is not passed in the original or amended form acceptable to proponents, the original initiative or the proponent-amended version of the original initiative shall be submitted to the voters at the next regular election occurring not less than 88 days after conclusion of the public hearing.

Sections 3702.5 (d) (county initiative ordinances) and 4001 (b) (municipal initiative ordinances) shall be added for conformity with Section 4082 (initiative charter amendments):

The petition shall set forth the full text of the proposed measure in no less than 10-point type.

Section 4090 (charter amendments) shall be amended for conformity with Sections 3705 (county ordinances) and 4006 (municipal ordinances) as follows:

[Last sentence] The petition shall be filed not more than ~~200~~ 180 days after the date ~~on which the notice of intent to circulate was published or posted, or both~~ of receipt of the title and summary, or after receipt of an amended title or summary or both, whichever occurs later.

VOTING REQUIREMENTS
(see Chapter 5)

13. Vote Requirement for Adoption of Charters, Charter Amendments and Charter Revisions

Article 11, Section 3 (a) of the State Constitution is amended as follows:

For its own government, a county or city may adopt a charter by a ~~majority~~ 60 percent vote of its electors voting on the question at one election or by a majority vote of its electors voting on the question at two consecutive elections. The charter is effective when filed with the Secretary of State. Any subsequent amendment or revision which adds language to a charter shall be enacted in the same manner. Any amendment or repeal which only deletes language from the charter shall be approved by a majority of those voting on the measure. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede and existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effective of legislative amendments.

14. Special Vote Requirement for Future Measures

Article II, Section 11 (b) shall be added to the Constitution:

(b) Any measure which would require a future vote of the electorate that is more than a majority of those voting in order to enact such a future measure shall itself receive at least the vote which it requires. Any measure which changes a vote requirement for ballot measures shall go into effect the day after the election on which it is approved.

NEWS COVERAGE AND PAID ADVERTISING

(see Chapter 6)

15. Disclosure of Sponsorship in Advertisements

Section 84503 shall be added to the Government Code:

(a) "Advertisement" means any general or public advertisement which is authorized and paid for by a committee [committee includes an individual] for the purpose of supporting or opposing a measure.

(b) "Advertisement" does not include a communication from an organization to its members, a campaign button smaller than 10 inches in diameter, a bumper sticker smaller than 60 square inches, or other advertisement as determined by regulations of the Fair Political Practices Commission.

Section 84504 shall be added to the Government Code:

"Industry" means those individuals and persons who derive economic benefit from the manufacture, sale, or distribution of a like or similar product, commodity, or service, including, but not limited to, professional services.

Section 84505 shall be added to the Government Code:

"Cumulative contributions" means the cumulative contributions of a committee for the period beginning with January 1 of the year prior to the year during which the measure is to be voted upon and ending with the closing date for the campaign statement whose filing deadline precedes the dissemination to the public of an advertisement by seven days or more. A committee may optionally compute its cumulative contributions using only items required to be individually itemized on state campaign statements.

Section 84506 shall be added to the Government Code:

Any advertisement for any statewide ballot measure or measures shall include a statement that each of the following, where applicable, is a major funding source:

(a) Any industry which is both the largest industry contributor to the committee and whose combined cumulative contributions to the committee are $500,000 or more, or are $50,000 or more and constitute 25% or more of all contributions.

(b) A person whose cumulative contributions to the committee are $100,000 or more and who is the largest contributor.

(c) Corporations as a group when their combined cumulative contributions to the committee are $100,000 or more and constitute 50% or more of all contributions, and unions as a group when their combined contributions to the committee are $100,000 or more and constitute 50% or more of all contributions.

(d) If there are more than two funding sources, the committee is only required to disclose the first two applicable sources, in the order they are listed above.

Section 84507 shall be added to the Government Code:

Whenever a major funding source which is required to be disclosed is a noncandidate controlled committee or nonsponsored committee, in addition to the disclosure required, the committee placing the advertisement shall also disclose the applicable major funding source or sources to it, in the order listed above.

Section 84508 shall be added to the Government Code:

In addition to the requirements of Section 84507, the committee placing the advertisement or persons acting in concert with that committee shall be prohibited from creating or using a noncandidate controlled committee or a nonsponsored committee to avoid, or that results in the avoidance of, the disclosure of any individual, industry, business entity, controlled committee, or sponsored committee as a major funding source.

Section 84509 shall be added to the Government Code:

If candidates or their controlled committees, as a group or individually, meet the contribution thresholds for a person or industry as defined in this article, they shall be identified by the controlling candidate's name.

Section 84510 of the Government Code shall be added as follows:

Any advertisement for any local ballot measure or measures shall include a statement that each of the following, where applicable, is a major funding source:

(a) Any industry which is both the largest industry contributor to the committee and whose combined cumulative contributions to the committee are $50,000 or more, or are $5,000 or more and constitute 25 percent or more of all contributions.

(b) A person whose cumulative contributions to the committee are $10,000 or more and who is the largest contributor.

(c) Corporations as a group when their combined cumulative contributions to the committee are $10,000 or more and constitute 50 percent or more of all contributions, and unions as a group when their combined contributions to the committee are $10,000 or more and constitute 50 percent or more of all contributions.

(d) If there are more than two funding sources, the committee is only required to disclose the first two applicable sources, in the order they are listed above.

16. Improved Disclosures on Slate Mailers

Section 84305.5 of the Government Code shall be amended to read:

(a) No slate mailer organization shall send a slate mailer unless:

(1) The name, street address, and city of the slate mailer organization are shown on the outside of each piece of slate mail and on ~~at least one of the inserts~~ every insert included with each piece of slate mail in no less than 8-point roman type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's street address is a matter of public record with the Secretary of State's Political Reform Division.

(2) At the top of ~~or bottom front~~ each side or surface ~~of at least one insert~~ of a slate mailer or at the top of ~~or bottom of one~~ each side or surface of a postcard or other self-mailer there is a notice in at least 8-point roman, boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

NOTICE TO VOTERS

THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization), NOT AN OFFICIAL PARTY ORGANIZATION.
~~Appearance is paid for and authorized by each~~ All candidates and ballot measures ~~which is~~ designated by an * have paid for their listing in this mailer. ~~Appearance~~ A listing in this mailer does not necessarily imply endorsement of other candidates or measures listed in this mailer.

(3) Any reference to a ballot measure which has paid to be included on the slate mailer shall also comply with the provisions of Section 84503 et seq. ~~The name, street address, and city of the slate mailer organization as required by paragraph (1) and the notice required by paragraph (2) may appear on the same side or surface of the insert.~~

[Remainder of this section omitted for reasons of space.]

17. Additional Disclosure on Late Contribution Reports

Section 84203(e) shall be added to the Government Code:

A late contribution report shall also include the cumulative total of all contributions made by the contributor to the candidate or committee.

THE BALLOT PAMPHLET
(see Chapter 7)

18. New Summary Chart Mailed to Voters Before the Election

Sections 3787 (b) (county) and 4015.6 (municipal) shall be added to the Elections Code as follows:

The clerk shall prepare and distribute as an enclosure for the ballot pamphlet or sample ballot sent to each voter a one-page chart containing a short summary of the official caption, summary and fiscal impact of each ballot measure, a list of the top five major funding sources supporting and opposing each measure as determined by Government Code Section 84506, a list of endorsements for and against prepared by the proponents and opponents, respectively, principal arguments for and against prepared by the proponents and opponents, respectively, and a listing of a roll call vote of the city council/county board of supervisors on each measure.

19. Grouping of Ballot Measures

Section 10218.5 shall be added to the Elections Code:

Notwithstanding Section 10218, the Attorney General, County Counsel or City Attorney, respectively, shall determine which measures on the same ballot potentially conflict with each other and shall group these measures together in the same part of the ballot. The legal determination as to whether measures conflict is reviewable in a final and expedited hearing in the Superior Court of appropriate jurisdiction. Such measures shall be accompanied by a warning label stating that the measures appear to conflict with each other and that it is therefore likely that only the provisions of the one receiving the most votes will become law, subject to a final court ruling. If a constitutional amendment and a statutory change conflict, or

a charter amendment and an ordinance conflict, the label shall state that if the constitutional amendment or charter amendment passes by a 60% or better vote or by a simple majority in two successive elections, its provisions will prevail over the proposed statute or ordinance.

20. Endorsements Listed in the Ballot Pamphlet

Sections 3788(b) (county) and 4015.7 (municipal) shall be added to the Elections Code:

The ballot pamphlet or sample ballot shall contain up to but no more than one full page of persons, with their organizations if applicable [person includes an organization], who have indicated their support or opposition to each measure. These persons shall be designated by the respective individuals or organizations responsible for the preparation of the pro and con ballot arguments.

21. Votes on Initiatives Placed in the Ballot Pamphlet or Sample Ballot

Sections 3788(c) (county) and 4015.8 (municipal) shall be added to the Elections Code:

Each name and vote on all initiatives, by individual members of the city council/county board of supervisors as well as the vote of the total membership, shall appear in the ballot pamphlet or sample ballot.

22. Official Caption and Summary Written in Simple Language

Sections 3702.5 (a) (county) and 4002.5 (a) (municipal) shall be amended as follows:

[Add last sentence] <u>The official caption and summary shall be written in clear and concise language which, if practical, is to be comprehensible at a 12th grade reading level or less.</u>

23. Require Full Text in Ballot Pamphlet or Sample Ballot

Sections 3787 (c) (county) and 4015.6 (municipal) shall be added to the Elections Code:

Ballot pamphlets and sample ballots prepared and distributed for local elections shall contain the full text of each ballot measure at the back of the pamphlet.

APPENDIX C

Procedures and Timetables for Municipal Ballot Measures Under the Commission's Proposed Recommendations

(For April 14, 1992 General Election)

The following chart lists the *maximum* time periods available to proponents to qualify an initiative under the Commission's proposed reforms, although in practice most proponents use less. The timetable given here is for an initiative petition drive to qualify for the April 14, 1992, municipal general election.

	Date	*Days Before Election*
Proponent submits text of initiative to city attorney for title and summary	Mar. 21	*390 days*
City attorney returns title and summary; proponent's 180-day circulation period begins	Apr. 5	*375 days*
Proponent files campaign statement listing contributions and expenditures	May 6	*344 days*
Proponent must turn in all petitions	Oct. 2	*195 days*
County clerk must finish verification of signatures and determine sufficiency of petitions	Nov. 13	*153 days*
60-day cooling-off period begins for city council to consider initiatives which have qualified	Nov. 13	*153 days*
City council must hold and complete public hearings on initiative	Dec. 13	*122 days*
City prepares and issues transcript of the hearing	Dec. 16	*119 days*
Deadline for proponent to amend initiative	Dec. 20	*115 days*

	Date	*Days Before Election*
City attorney approves "purposes and intent" of amendments	Dec. 27	*108 days*
Proponents may renegotiate amendments given an adverse legal determination	Dec. 30	*106 days*
Last day for city council to vote on all initiatives	Jan. 13	*92 days*
Ballot arguments must be submitted	Discretion of City Clerk	
Rebuttal arguments must be submitted	10 days after filing deadline for arguments	
Ballot pamphlet copy available for public inspection	Discretion of City Clerk	
First pre-election campaign statements due	Mar. 5	*40 days*
Second pre-election campaign statements due	Apr. 2	*12 days*
Mailing of ballot pamphlet and summary ballot	At least 10 days prior to election	
Election Day — April 14, 1992		

APPENDIX D

State-by-State Comparisons of Initiative Provisions

Twenty-three states and the District of Columbia provide for some use of the initiative process. Fifteen of these states authorize initiatives for both constitutional amendments and statutory provisions, while two allow initiatives only for constitutional amendments and seven (including the District of Columbia) permit it only for enactment of statutes. (See Table D.1.) Three additional states allow citizens only to petition against legislative acts through popular referenda.

Table D.1

STATE PROVISIONS FOR INITIATIVE AND POPULAR REFERENDUM, 1990

State	Direct Initiative	Indirect Initiative	Both	Popular Referendum Only
Alaska		x(S)		
Arizona	x			
Arkansas	x			
California	x			
Colorado	x			
District of Columbia	x(S)			
Florida	x(C)			
Idaho	x(S)			
Illinois	x(C)			
Kentucky				x
Maine		x(S)		
Maryland				x
Massachusetts		x		
Michigan	x(C)	x(S)		
Missouri	x			
Montana	x			
Nebraska	x			
Nevada	x(C)	x(S)		
New Mexico				x
North Dakota	x			
Ohio	x(C)	x(S)		
Oklahoma	x			
Oregon	x			
South Dakota	x			
Utah			x(S)	
Washington			x(S)	
Wyoming		x(S)		

Note: A mark (x) designates the form of initiative process used for both statutory and constitutional questions. (C) = constitutional amendment only; (S) = statutory only.

Source: California Commission on Campaign Financing Data Analysis

States use two basic forms of the initiative process: the direct initiative and the indirect initiative. The direct initiative allows the public to vote directly on statewide legislation. The indirect initiative provides for some degree of involvement by the legislature, the extent of which varies from state to state. Up to 1988, there were 10 states that employed the indirect initiative: Alaska, Maine, Massachusetts, Michigan, Nevada, Ohio, South Dakota, Utah, Washington and Wyoming. South Dakota repealed the indirect process in 1988 for lack of use, leaving only the direct procedure. Michigan, Nevada and Ohio offer the indirect initiative for statutes and the direct initiative for constitutional amendments. Utah and Washington allow either the direct or indirect initiative for statutes but do not allow either process for constitutional amendments.

Alaska and Wyoming have established a variant of the indirect initiative process. Instead of requiring that a qualified initiative proposal be submitted to their legislatures for action, they only require that a qualified initiative cannot be placed on the ballot until after a legislative session has convened and adjourned. If the legislature enacts legislation that is "substantially the same" as the initiative proposal, the initiative is removed from the ballot.

California at one time provided for both the direct and indirect initiative process for statutes and constitutional amendments. From 1911 to 1966, the indirect route was used infrequently; four indirect initiatives qualified for the ballot and only one was adopted by the legislature.[1] A 1966 constitutional revision removed the indirect initiative process from California politics.

A. Drafting Procedures (see Chapter 3)

Ten states require the secretary of state's office or the attorney general to review initiative proposals prior to circulation for proper form only. In Arkansas, the attorney general has the additional authority to reject a proposal if it utilizes misleading terminology. Illinois and Nebraska offer no assistance to proponents in drafting initiatives. California offers optional drafting assistance by the legislative counsel or secretary of state if requested by proponents; otherwise no review of form or substance is provided.

Through the indirect process, Massachusetts and Ohio provide drafting assistance near the end of the circulation period. Both states allow amendments to the original proposal: Massachusetts permits adjustments in wording that are "perfecting in nature"; Ohio allows proponents to accept any changes recommended by either house of the legislature (although proponents cannot recommend changes). In Alaska, the legislature may offer minor amendments to an initiative proposal and enact a law that is "substantially the same."

Oregon, Idaho, Montana and Washington mandate extensive scrutiny of a proposal's form and substance by a designated governmental office. In Washington, for example, the office of code reviser—staffed by 10 lawyers and 25 support personnel—is authorized to write the proposal on behalf of the proponents. Colorado requires that all initiatives be subject to review in a public hearing prior to petition circulation. Florida sends all initiatives that garner 10% of the requisite qualification signatures to the state supreme court for review of compliance with the single-subject rule.

1. The indirect process was used so infrequently largely because filing requirements prevented any final action on an indirect measure for nearly a two-year period.

B. Petition Circulation (see Chapter 4)

Procedures for petition circulation vary widely among the states. These procedures include preparation of the petition, circulation deadlines, signature requirements and geographic distribution of signatures.

1. Petition Preparation

At two points in the petition process, an official summary and title must be prepared. A *circulation title* must be prepared for the signature petitions, and a *ballot title* must be prepared for the ballot pamphlet (if there is one) and the ballot. Frequently these titles are one and the same. Procedures for writing the circulation title range from allowing proponents to write their own title, as in Arizona and Florida, to a committee of two proponents and two opponents and the attorney general writing the title, as in Montana. California places the responsibility for drafting both the circulation title and the ballot title with the attorney general. Nine states, but not California, provide for expedited court challenges to the circulation title.

All states require official review and approval of ballot titles and summaries. Arizona, Arkansas, Florida, Illinois, Ohio and Oklahoma permit proponents to write the ballot title, but it is subject to approval by the attorney general or secretary of state. Oklahoma additionally requires that the ballot title be certified by the superintendent of public instruction for readability at the eighth-grade level. Eleven states place responsibility for drafting the ballot title and summary with the attorney general, secretary of state or comparable official. Seven states assign the task to a special committee or drafting board. Colorado and Oregon allow public participation in drafting the ballot title. California and 14 other states make available expedited court review of contested ballot title wording.

2. Circulation Period and Signature Requirement

The amount of time in which proponents may circulate their initiative petitions ranges from as little as 90 days in Oklahoma to no time limit in Arkansas, Nevada, Ohio, Oregon and Utah. California provides the third shortest time period for petition circulation at 150 days. All initiative states have set the signature threshold for ballot qualification at some percentage of the voting public, rather than an absolute number of signatures.[2] Most states calculate the signature threshold as a percentage of votes cast in the last gubernatorial election. Some states designate the threshold as a percentage of votes cast for other specific offices, such as the secretary of state (Colorado) or President (Florida). North Dakota requires signatures amounting to 2% of the voting age population for qualification of initiative statutes (4% for constitutional amendments). Wyoming has the toughest signature requirement of 15% of the total vote in the last election; only one initiative has ever qualified for the state ballot.

In all states except two, the signature requirement for constitutional amendments is higher than for initiative statutes. Four states require about twice as many signatures for constitutional amendments (Montana, North Dakota, Oklahoma and South Dakota). Seven states require one-third to one-half more

2. Prior to November 1978, North Dakota followed the Swiss model on the signature threshold. Ballot qualification required an absolute number of 10,000 signatures—the same number since 1918. The Progressives in California originally intended to have an absolute number signature threshold rather than a percentage. Progressive legislators favored a qualification threshold of no more than 50,000 signatures. However, the 50,000 ceiling clause was inadvertently omitted in the authorizing legislation. The mistake was not discovered until the bill had already been approved by one house of the legislature.

signatures, while two states require no more signatures for constitutional amendments than statutes (Colorado and Nevada). California has set the qualification threshold for constitutional amendments 37.5% higher than initiative statutes (8% and 5%, respectively). Ten states require that qualification signatures for initiative statutes or constitutional amendments be gathered from areas distributed throughout the state—typically, this includes a specified percentage of signatures from a third or more of the state's counties. California has no geographical distribution requirement.

C. Subject Limitations

Twelve of the 22 jurisdictions that authorize use of the initiative for the adoption of statutes impose a single-subject rule on the content of the proposal, as do 13 of the 17 states allowing initiative constitutional amendments. The standard for defining single subject varies. The most common legal definition of single subject is expressed in the constitution of Montana: "each bill . . . shall contain only one subject, clearly expressed in its title." Art. V, §11. Other variants speak of a "single-object" or "related or mutually dependent" parts. One of the more popular single-subject limitations used for constitutional amendments requires that initiatives be written so that electors may vote for or against each amendment separately.

The single-subject rule is the most commonly invoked restriction on subject matters open to initiatives. However, states have other important subject limitations. Virtually all states prohibit initiatives from adopting policies that are beyond permissible boundaries for the legislature. Many states restrict initiatives in the subject areas of taxes or appropriations. Nevada, for example, forbids any appropriations by initiative unless the measure also includes a tax sufficient to cover the appropriations. Alaska and Wyoming prohibit initiatives from dedicating revenues, making or repealing appropriations, creating courts, and affecting the judicial process. Several states, including California, distinguish between constitutional amendments, which are permitted, and constitutional revisions, which are not.[3]

In an effort to minimize voter confusion, some states require that initiatives be drafted in such a way that a "yes" vote does not actually mean "no" on the public policy being debated. States that attempt to address this problem usually do so during the drafting stage of the initiative process. Arizona further stipulates that the ballot shall specify the effect of a "yes" and "no" vote.

D. Pre-Election Judicial Review (see Chapter 9)

The courts have the responsibility to review legislative measures, including legislation adopted by initiatives. A relatively new style of judicial review is gaining some acceptance across the nation—pre-election judicial intervention intended to prevent a measure from being submitted to the voters. The legal challenges basically fall into three categories: (1) the measure is substantively invalid because it conflicts with a federal or state constitutional provision; (2) the measure has not followed

3. Prior to the single-subject rule, one major standard used by the courts in California to determine if a measure addressed a legitimate subject for initiatives was whether the proposal *revised* the constitution rather than merely *amended* it. Art. 18, §2 of the California constitution clearly states that a constitutional revision may only be conducted by a constitutional convention. In McFadden v. Jordan, 32 Cal. 2d 330, 330-31 (1948), the court ambiguously defined the difference between a constitutional amendment and a constitutional revision as a matter of degree in which "each situation must be resolved upon its own facts and change is not a mere amendment whenever less than all sections are altered." That year, the people approved an amendment to the constitution which required all initiatives to contain only one subject.

certain procedural requirements; and (3) the measure does not address the proper subject matter for initiatives.

Most states permit pre-election judicial intervention for procedural compliance. Somewhat fewer states allow early court intervention on the grounds of proper subject matter. Generally, the courts refrain from pre-election intervention on constitutional grounds. While a few states review initiatives which are clearly unconstitutional on their face, the courts usually prefer to wait and see if the measure is adopted.

E. Conflicting Propositions

The counter initiative is a new strategy for undermining an initiative proposal that is becoming increasingly popular in California. Instead of opposing a popular measure, opponents run an alternative initiative that conflicts in whole or in part with the original measure. A problem develops when two or more counter initiatives are approved by the voters. Most states have adopted a policy addressing conflicting propositions. Fifteen states plus the District of Columbia have determined that if two or more conflicting initiatives receive voter approval, the one with the most affirmative votes controls. In several states this policy has required further clarification since several counter initiatives have only contradicted specific provisions of another initiative, not the entire initiative. California has changed its state policy regarding conflicting initiatives. Previously, the courts were empowered by the state constitution only to invalidate those provisions of conflicting initiatives that were incompatible. A recent state supreme court ruling states that all the provisions of the dominant initiative that provide a comprehensive policy scheme go into effect, and that the conflicting initiative that gained fewer votes is invalid in its entirety. Alaska, Illinois, Montana and Wyoming have no policy regarding conflicting propositions.

Some states have developed other methods to deal with conflicting propositions. In Utah, for instance, the Governor makes the initial decision whether provisions conflict and declares which proposition controls based on the highest number of votes. Electors may challenge this determination within 30 days. In Washington, Maine and Massachusetts, the ballot is designed to minimize the impact of conflicting propositions. In Washington, voters are asked on the ballot to express two preferences: first, between either measure or neither; second, between one or the other. Maine also forces voters to chose between competing propositions or against both, with a warning that a "yes" vote for both measures will invalidate the ballot. In Massachusetts, the legislature is empowered to designate which initiatives conflict with each other. Voters are then encouraged to choose between one or the other.

F. Ballot Pamphlet (see Chapter 7)

All initiative states distribute a description and analysis of ballot measures, but only 14 states distribute a ballot pamphlet.[4] Fourteen states inform the electorate about ballot measures through publication in major newspapers.[5] Five states—Idaho, Montana, Ohio, Utah and Wyoming—use both methods. States that use the newspaper as their medium for voter information use a variety of styles and format. Some states will even publish the texts in the newspapers; most publish an

4. States that distribute ballot pamphlets are: Alaska, Arizona, California, Idaho, Illinois, Maine, Massachusetts, Montana, Nevada, Ohio, Oregon, Utah, Washington and Wyoming.

5. States that disperse information about ballot measures through the newspapers are: Arkansas, Colorado, District of Columbia, Florida, Idaho, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Utah and Wyoming.

impartial analysis along with argument for and against. The state pays for the newspaper notices.

Typically a voters' pamphlet includes the official ballot title, an "impartial" analysis by a governmental agency and arguments and rebuttals for and against each measure. Only five states—California, Maine, Nevada, Oregon and Utah—specifically mandate that a fiscal impact statement be printed in the pamphlet. All states, except Ohio, print the entire texts of all propositions in their voters' pamphlet. Five states including California print the texts at the end of the pamphlet like appendices to a booklet;[6] the remainder print the texts together with the analyses.

Both Oregon and Montana make use of a "committee system" for drafting voters' pamphlet analyses in order to minimize bias. In Oregon, a committee of two proponents and two opponents is formed to write the summary. The proponents on the committee are the chief petitioners; the opponents are selected by the secretary of state. These four people then select a fifth committee member of their choosing. Montana establishes a similar committee for each analysis; however, the fifth committee member is the attorney general.

Massachusetts makes full use of legislative hearings to assist in voter information. A summary of the majority and minority reports of the legislative committee that conducted public hearings on the proposal is printed in the pamphlet. Committee members representing both the majority and minority opinions on the issue draft a brief summary of their reasons for supporting or opposing the measure, and this summary along with the names of all majority and minority committee members are included on the appropriate summary.

Every state except two that distribute ballot pamphlets include pro and con arguments in the booklet; some states include pro and con arguments in their newspaper publications.[7] States utilize a variety of means to limit the number and length of pro and con arguments. These include fees, selection procedures and outright prohibition of arguments. Most states that assess a fee for publication of arguments provide some form of alternative non-financial means of access, such as signature petitions.

G. Campaign Finance (see Chapter 8)

A series of court rulings have severely impacted the ability of states to regulate financial activity in initiative campaigns. Thus far, the courts have voided restrictions on payment for signatures, limitations on campaign expenditures and restrictions on campaign contributions.

By far the most popular government restriction on the conduct of campaigns is public disclosure of campaign contributions and expenditures and of sponsors of campaign advertisements. Every state that employs the initiative process requires some form of disclosure of campaign contributions for *candidate* races. All but one of these states also require some form of disclosure of either contributions and/or expenditures for *initiative* campaigns. Only Utah does not impose any disclosure requirements on campaign committees supporting or opposing initiatives.

Generally, initiative campaign committees must disclose the names of contributors who have given more than a given threshold amount. The triggering

6. Massachusetts, Montana, Nevada and Washington print the texts of measures at the back of the ballot pamphlet, as does California since 1990.

7. States that do not include arguments in the ballot pamphlet or newspaper notice are: Maine, Michigan, Nevada, North Dakota and Wyoming.

threshold ranges from a low of *any* size contribution in Florida, Ohio and Wyoming to a high of $500 in Nevada. California, Idaho, Michigan, Oregon and Washington further require that political committees identify out-of-state contributors.

Some of the more unusual reporting requirements concern specific expenditures. For example, Arizona mandates that free broadcast time awarded under the Federal Communications Commission's "fairness doctrine" be reported by the beneficiary as a contribution. A dozen states require persons who make independent expenditures for or against ballot propositions to file their own reports.[8] Oregon stipulates that initiative proponents must file a preliminary campaign finance statement prior to petition circulation stating whether signature gatherers will be paid for their services.[9] The benefit of this early disclosure in Oregon is not at all clear, however, since no statement whether circulators are being paid is printed on the petition.

Beginning in 1976, federal law has allowed voluntary expenditure ceilings in presidential campaigns in exchange for public financing. A number of states provide similar public financing schemes for statewide candidate elections. In addition, some states have created a pool of funds for candidate campaigns from a tax checkoff or surcharge. No state has adopted such proposals for initiative campaigns. Two states, however, provide a tax credit for donations to initiative campaigns. Alaska provides a credit up to $50 for such contributions, and Oregon allows up to $25.

H. Amending State Constitutions via Initiative (see Chapter 5)

All states but Delaware require that constitutional amendments be approved by a vote of the people. Thirty-two states impose restrictive procedures upon the legislature for a constitutional amendment. These restrictive procedures include either a two-thirds vote of both houses of the legislature (as in California), or legislative approval of the amendment in two consecutive sessions, or both. Ten states require only a majority vote by the legislature in a single session to begin amending the constitution.

Seventeen states permit constitutional amendment via initiative. States vary considerably in the requirements for initiative constitutional amendments. Four states require signatures equal to 15% of the last gubernatorial vote (or comparable statewide vote) in order to qualify a constitutional amendment. Nearly all initiative states, however, require more signatures for qualification of a constitutional amendment than qualification of an initiative statute.

In most states, including California, ratification of either legislative constitutional amendments or initiative constitutional amendments require a simple majority vote of the people. Five non-initiative states impose some form of super-majority vote of the people for ratification of constitutional amendments.[10]

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8. States requiring persons to report independent expenditures are: Alaska, Arkansas, California, District of Columbia, Florida, Idaho, Maine, Michigan, Missouri, Nebraska, Oregon and Washington.

9. Or. Rev. Stat. §250.045(4) (1988).

10. The non-initiative states that require super-majority voter approval of constitutional amendments are: Hawaii (majority on amendment must be at least 50% of total votes cast; or at a special election, a majority on the amendment must be at least 30% of the total number of registered voters), Minnesota (majority must be at least 50% of all votes cast); New Hampshire (two-thirds approval of those voting on the issue); New Mexico (certain franchise and education subject matters require approval of three-fourths of those voting in the state and two-thirds of those voting in each county), and Tennessee (majority of all citizens voting for Governor).

Four initiative states mandate some form of special vote requirement for popular ratification of amendments to the constitution. Nebraska and Massachusetts require ratification by a majority vote so long as that majority amounts to at least 30% or 35% of total votes cast in the statewide election, respectively. Illinois mandates that a constitutional amendment must be approved either by a three-fifths majority or by a majority of all those voting in the statewide election. Nevada imposes majority voter approval in two consecutive statewide general elections.[11]

Besides a special vote requirement for popular ratification of amendments to the constitution, Massachusetts additionally requires that all initiative constitutional amendments receive the votes of at least 25% of a joint session of the legislature in two consecutive sessions before the measure is placed on the ballot. In the course of legislative hearings, the proposal may be amended by a 75% vote of the joint session with or without the proponent's consent.

I. Amending Initiative Statutes

Eleven states and the District of Columbia allow their legislatures to amend or repeal an initiative statute at any time after their adoption by a simple majority vote of both houses. Six states—Alaska, Arizona, Nevada, Utah, Washington and Wyoming—impose limited restrictions on their legislatures for amending initiative statutes. Nevada, for example, prohibits legislative amendment or repeal for three years after passage of an initiative. Alaska and Wyoming permit simple majority amendments at any time but prohibit or restrict repeal for two years after enactment of the initiative. (See Table D.2.)

Four states impose major restrictions on legislative amendments. California requires that any effort to amend or repeal initiative legislation must be approved by the voters. (In California, an initiative itself may specify other conditions for amendment besides voter approval, such as a super-majority legislative vote.) Michigan requires a three-fourths vote of the legislature to amend or repeal an initiative (unless otherwise specified by the initiative). Arkansas imposes a two-thirds legislative vote requirement, and North Dakota requires a two-thirds legislative vote but only in the first seven years after enactment.

11. In addition to the four states that impose some form of super-majority vote for approval of constitutional amendments, two states require a super-majority vote for passage of statutory initiatives. Washington requires a simple majority approval for all measures except those concerning gambling (which require 60% affirmative vote for passage). Wyoming requires that any statutory initiative receive voter approval equivalent to at least 50% of those voting in the last general election.

Table D.2

STATE PROCEDURES ON LEGISLATIVE AMENDMENT OF INITIATIVE LEGISLATION

Alaska	No repeal within 2 years; amendment anytime (Const. XI, §6).
Arizona	Amendments and repeal allowed unless the measure was approved by majority of registered voters (Const. art. 4, pt. 1, §1(6)).
Arkansas	By 2/3 vote of all members of each house (Const. amend. no. 7).
California	No amendment unless otherwise permitted by the initiative (Const. art. 2, §10(c)).
Colorado	Both repeal and amendment (by court ruling).
District of Columbia	Both repeal and amendment probably permitted (no statutory indication or judicial ruling on the matter).
Florida	Initiative applies only to constitutional amendments, any changes of which must be approved by popular vote.
Idaho	Both repeal (by court ruling) and amendment (by common practice).
Illinois	Initiative applies only to constitutional amendments, any changes of which must be approved by the voters, and advisory questions.
Maine	Both repeal and amendment (by common practice).
Massachusetts	Both repeal and amend (Const. amend. art. 48, Gen. Prov. Pt. 6).
Michigan	Both repeal and amendment by 3/4 vote of each house or as otherwise provided by the initiative (Const. art. 2, §9).
Missouri	Both repeal and amendment (by court ruling).
Montana	Both repeal and amendment (by common practice).
Nebraska	Both repeal and amendment probably permitted (by common practice).
Nevada	Not within 3 years of enactment (Const. art. 19, §2).
North Dakota	By 2/3 vote of each house for seven years after passage, majority vote thereafter (Const. art. III, §8).
Ohio	Both repeal and amendment (by court ruling).
Oklahoma	Both repeal and amendment (by court ruling).
Oregon	Both repeal and amendment (by court ruling).
South Dakota	Both repeal and amendment (by court ruling).
Utah	May amend only at subsequent sessions (Utah Code Ann. §20-11-6).
Washington	Repeal or amend by 2/3 vote of each house during first 2 years of enactment, majority vote thereafter (Const. art. II,§41).
Wyoming	No repeal for two years; amendment at any time (Const. art. 3, §52(f)).

Court Decisions

Arizona	Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617 (1952)
Colorado	Zimmerman v. Herder, 122 Colo. 456, 223 P.2d 197 (1950)
Idaho	Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943)
Missouri	Halliburton v. Roach, 230 Mo. 408, 130 S.W. 689 (1910)
Ohio	Singer v. Cartledge, 129 Ohio St. 279, 195 N.E. 237 (1935)
Oklahoma	Ex parte Haley, 202 Okla. 101, 210 P.2d 653 (1949)
Oregon	Pierce v. Shisher, 119 Or. 141, 249 P. 358 (1926)
South Dakota	Richards v. Whisman, 36 S.D. 260, 154 N.W. 707 (1915)

Source: California Commission on Campaign Financing Data Analysis

APPENDIX E

The Commission's Data Analysis Project: The Impact of Money on the Local Initiative Process in the Los Angeles Area

To assess the influence of money on the Los Angeles area's local initiative process, the Commission conducted an extensive computerized analysis of all initiatives (and rival city council measures) on Los Angeles area local ballots between 1983 and 1991. (See Table E.1 for a complete list of initiatives included.)

In total, the Commission analyzed 40 measures in 20 cities. The Commission's study encompassed over 4,000 individual contribution and expenditure entries from campaign disclosure statements amounting to over $30 million.

The Commission utilized a sophisticated computer software program (Microsoft *Excel 4.0*) for both database development and statistical analysis. It specified contribution records for each initiative campaign by general contribution source (business, individual, labor, political party, broadbased organization or officeholder), size of contribution, date of contribution (either during the qualification or the campaign period) and in-state or out-of-state origin. The Commission entered the names of all contributors giving $1,000 or more to determine the identities of each ballot measure's major funding sources.

The Commission classified expenditures into nine specific categories subsumed under two larger categories: *spending on voter contacts*—broadcast, campaign literature/direct mail, newspaper advertising, outdoor advertising and signature gathering/surveys; and *spending on overhead*—general expenses, fundraising, professional consulting and travel. The Commission also coded expenditures for the period of time in which they were made (during the qualification period or the campaign period).

In constructing its Data Analysis Project, the Commission obtained hundreds of pages of campaign statements from the city clerks' offices from cities across the Los Angeles basin. In most instances, initiative campaign committees had correctly prepared their campaign statements. In some cases, initiative campaign committees had failed to fill out their forms properly. Whenever possible, the Commission attempted to rectify errors of addition, subtraction or deletion.

In its analysis, the Commission had difficulty separating the data for combined initiative campaigns—where one committee, for example, raised and spent money to support or oppose *two* campaigns. Opponents of two 1991 Burbank city growth control initiatives Propositions A and B, for example, combined their efforts, forming a "No on A/B" campaign effort. The Commission divided some of these data in half and allocated them equally to each appropriate campaign. In other cases, the Commission was unable determine how dollars were allocated to each specific campaign and, where so indicated, left the combined campaign finance information intact.

The following tables round off all percentages and dollar figures to the nearest tenth of a percent and dollar respectively. Under-$100 contributions are not included in tables showing contributions by source, since state law only requires candidates to furnish contribution source information for contributors of $100 or more. In addition, under-$100 expenditures are not included in tables showing spending by type, since state law mandates that candidates only provide detailed vendor information for expenditures of $100 or more.

List of Appendix E Tables

Overall

Contribution Patterns

Expenditure Patterns

Comprehensive Tables

Table E.1

LOCAL BALLOT MEASURES STUDIED BY THE COMMISSION

Los Angeles Area Initiatives (and Rival Council Measures), 1983 to 1991

City (Prop.)	Election Yr.	Subject	Total Expenditures
Azusa ("A")	1987	Development of Local Golf Course	$115,301
Azusa ("B")	1987	Sale/Preservation of Local Golf Course	$115,301
Burbank ("A")	1985	At-Large/District Elections	$9,336
Burbank ("A")	1991	City Growth Controls	$333,132
Burbank ("B")	1991	City Growth Controls	$356,809
Burbank ("C")	1991	Sale of School Property	$17,162
Cerritos ("H")	1986	Term Limits for City Officials	$27,109
Culver City ("1")	1990	Building Height Limits	No Spending
Culver City ("2")*	1990	City Council Rival to Prop. 1	$1,086
Claremont ("A")	1986	Land Zoning Change	$187,744
Hermosa Beach ("J")	1987	Use of Railroad Right of Way	$12,391
Hermosa Beach ("C")	1989	Use of Beachside Land Parcel	$3,791
Hermosa Beach ("E")	1989	Use of Greenbelt Area/Leash Law	$5,046
Hermosa Beach ("F")*	1989	City Council Rival to Prop. E	No Spending
Hermosa Beach ("G")	1991	Use of Beachside Land Parcel	$6,894
Hermosa Beach ("H")*	1991	City Council Rival to Prop. G	No Spending
La Canada-Flintridge ("A")	1986	Land Zoning Changes	$17,246
Los Angeles ("U")	1986	City Growth Controls	$368,788
Los Angeles ("V")	1986	Shifting Jobs to Peaceful Purposes	$585,303
Los Angeles ("O")	1988	Ban Pacific Palisades Oil Drilling	$3,306,436
Los Angeles ("P")	1988	Allow Pacific Palisades Oil Drilling	$8,226,914
Manhattan Beach ("Z")	1984	Zoning Railroad Right of Way	$8,721
Manhattan Beach ("E")	1988	Land Zoning	$19,701
Paramount ("FF")	1988	Reduction in Housing Density	$31,899
Pasadena ("G")	1988	City Growth Controls	$169,093
Pasadena ("1")*	1989	City Council Rival to Prop. 2	$57,541
Pasadena ("2")	1989	City Growth Controls	$93,550
Rancho Palos Verdes ("L")	1989	Residential View Preservation	No Spending
Rancho Palos Verdes ("M")*	1989	City Council Rival to Prop. L	$147,829
San Fernando ("L")	1986	Lease of Police Facility	No Spending
San Gabriel ("1")	1987	City Growth Moratorium	$58,277
Santa Clarita ("P")	1990	City Annexation of Land	$162,068
Santa Monica ("S")	1990	Beachside Hotel Development	$75,754
Santa Monica ("T")	1990	Moratorium on Hotel Development	$244,438
Santa Monica ("Y")	1990	Elected City Attorney	$194,978
Santa Monica ("Z")*	1990	City Council Plan for Hotel Development	$546,760
South Pasadena ("1")	1983	Height and Parking Limit Variances	$55,778
Torrance ("A")	1990	Use of Chemical at Local Oil Refinery	$819,048
West Hollywood ("AA")	1990	Establishment of a Card Club	$331,150
Westlake Village ("Z")	1987	City Council Compensation/Expenses	No Spending

*Measures placed on the ballot by city councils in response to initiatives.

Source: California Commission on Campaign Financing Data Analysis Project

CONTRIBUTION TABLES

LOS ANGELES AREA LOCAL INITIATIVES, 1983 TO 1991

Table E.2
Sources of Contributions*: Overview

	Sm/Med. Cities	L.A. City	Total
Business	$3,407,422	$9,004,060	$12,411,482
	87.3%	74.3%	77.5%
Individual	$332,616	$943,222	$1,275,838
	8.5%	7.8%	8.0%
Labor	$14,558	$8,475	$23,033
	0.4%	0.1%	0.1%
Political	$1,800	$750	$2,550
	0.0%	0.0%	0.0%
Broadbased	$80,801	$26,500	$107,301
	2.1%	0.2%	0.7%
Officeholders	$66,362	$2,137,465	$2,203,827
	1.7%	17.6%	13.8%
Total	***$3,903,559***	***$12,120,472***	***$16,024,031***
	100%	***100%***	***100%***

Table E.3
Sources of Contributions*: Qualification Period Only

	Sm/Med. Cities	L.A. City	Total
Business	$373,212	$433,900	$807,112
	73.6%	49.2%	58.1%
Individual	$133,730	$70,569	$204,299
	26.4%	8.0%	14.7%
Labor	$0	$5,000	$5,000
	0.0%	0.6%	0.4%
Political	$0	$0	$0
	0.0%	0.0%	0.0%
Broadbased	$411	$100	$511
	0.1%	0.0%	0.0%
Officeholders	$0	$372,101	$372,101
	0.0%	42.2%	26.8%
Total	***$507,353***	***$881,670***	***$1,389,023***
	100%	***100%***	***100%***

*Contributions of $100 or More.

Table 4
Sources of Contributions*:
Support v. Opposition

	SMALL/MED. CITIES		L.A. CITY	
	Support	***Opposition***	***Support***	***Opposition***
Business	$997,450	$2,409,972	$4,315,585	$4,688,475
	77.8%	91.9%	72.1%	76.5%
Individual	$176,630	$155,986	$479,463	$463,760
	13.8%	5.9%	8.0%	7.6%
Labor	$0	$14,558	$5,475	$3,000
	0.0%	0.6%	0.1%	0.0%
Political	$200	$1,600	$375	$375
	0.0%	0.1%	0.0%	0.0%
Broadbased	$56,190	$24,611	$18,500	$8,000
	4.4%	0.9%	0.3%	0.1%
Officeholders	$51,400	$14,962	$1,168,783	$968,682
	4.0%	0.6%	19.5%	15.8%
Total	***$1,281,870***	***$2,621,689***	***$5,988,181***	***$6,132,292***
	100%	***100%***	***100%***	***100%***

*Contributions of $100 or More.

Table 5
Contribution Size: Overview

(Shown by Dollar Amount, Number of Contributions and Percent of Total Dollars)

	Sm/Med. Cities	*L.A. City*	*Total*
Under $100	$232,404	$170,830	$403,234
	**	**	**
	5.6%	1.4%	2.5%
$100 to $999	$227,420	$144,630	$372,050
	1,084	656	1,740
	5.5%	1.2%	2.3%
$1,000 to $9,999	423,145	666,351	$1,089,496
	164	281	445
	10.2%	5.4%	6.6%
$10,000 to $49,999	354,724	641,000	$995,724
	17	36	53
	8.6%	5.2%	6.1%
$50,000 to $99,999	122,505	296,676	$419,181
	2	4	6
	3.0%	2.4%	2.6%
$100,000 to $999,999	2,775,765	2,485,398	$5,261,163
	9	6	15
	67.1%	20.2%	32.0%
$1 million & Over	0	7,886,417	$7,886,417
	0	1	1
	0.0%	64.2%	48.0%
Total	***$4,135,963***	***$12,291,302***	***$16,427,265***
	1,276	***984***	***2,260***
	100%	***100%***	***100%***

Table 6
Contribution Size by Funding Source:
Local Initiatives in Small and Medium-Sized Los Angeles Area Cities

(Shown by Dollar Amount, Number of Contributions and Percent of Total Dollars)

	Business	Individual	Labor	Political	Broadbased	Officeholder
$100 to $999	$42,893	$177,208	$1,758	$1,800	$1,111	$2,650
	150	911	4	4	3	10
	1.3%	53.3%	12.1%	100.0%	1.4%	4.0%
$1,000 to $9,999	268,705	99,738	12,800	0	24,790	17,312
	97	97	4	0	3	4
	7.9%	30.0%	87.9%	0.0%	30.6%	26.1%
$10,000 to $49,999	197,554	55,670	0	0	55,100	46,400
	11	3	0	0	2	1
	5.8%	16.7%	0.0%	0.0%	68.0%	69.9%
$50,000 to $99,999	122,505	0	0	0	0	0
	2	0	0	0	0	0
	3.6%	0.0%	0.0%	0.0%	0.0%	0.0%
$100,000 to $999,999	2,775,765	0	0	0	0	0
	11	0	0	0	0	0
	81.5%	0.0%	0.0%	0.0%	0.0%	0.0%
$1 million & Over	0	0	0	0	0	0
	0	0	0	0	0	0
	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total	***$3,407,422***	***$332,616***	***$14,558***	***$1,800***	***$81,001***	***$66,362***
	271	***1,011***	***8***	***4***	***8***	***15***
	100%	***100%***	***100%***	***100%***	***100%***	***100%***

Table 7
Contribution Size by Funding Source:
Los Angeles City Local Initiatives

(Shown by Dollar Amount, Number of Contributions and Percent of Total Dollars)

	Business	Individual	Labor	Political	Broadbased	Officeholder
$100 to $999	$23,633	$117,272	$2,475	$750	$500	$0
	74	571	5	2	4	0
	0.3%	12.4%	29.2%	100.0%	1.9%	0.0%
$1,000 to $9,999	$311,401	$329,950	$6,000	$0	$16,000	$3,000
	112	160	2	0	4	3
	3.5%	35.0%	70.8%	0.0%	60.4%	0.1%
$10,000 to $49,999	$340,000	$271,000	$0	$0	$10,000	$20,000
	19	15	0	0	1	1
	3.8%	28.7%	0.0%	0.0%	37.7%	0.9%
$50,000 to $99,999	$196,686	$0	$0	$0	$0	$99,990
	3	0	0	0	0	1
	2.2%	0.0%	0.0%	0.0%	0.0%	4.6%
$100,000 to $999,999	$245,923	$225,000	$0	$0	$0	$2,034,475
	1	1	0	0	0	4
	2.7%	23.9%	0.0%	0.0%	0.0%	94.3%
$1 million & Over	$7,886,417	$0	$0	$0	$0	$0
	1	0	0	0	0	0
	87.6%	0.0%	0.0%	0.0%	0.0%	0.0%
Total	***$9,004,060***	***$943,222***	***$8,475***	***$750***	***$26,500***	***$2,157,465***
	210	***747***	***7***	***2***	***9***	***9***
	100%	***100%***	***100%***	***100%***	***100%***	***100%***

EXPENDITURE TABLES

LOS ANGELES AREA LOCAL INITIATIVES, 1983 TO 1991

Table 8
Expenditure Pattern Breakout*: Overview

	Sm/Med. Cities	L.A. City	Total
Broadcast	$149,461 3.6%	$7,449,610 59.8%	$7,599,071 45.9%
Consultants	$985,915 24.0%	$1,219,096 9.8%	$2,205,011 13.3%
Fundraising	$17,311 0.4%	$72,728 0.6%	$90,039 0.5%
General	$910,380 22.2%	$727,914 5.8%	$1,638,294 9.9%
Literature†	$1,259,452 30.7%	$2,231,142 17.9%	$3,490,594 21.1%
Newspaper	$120,941 2.9%	$87,493 0.7%	$208,434 1.3%
Outdoor	$52,227 1.3%	$143,712 1.2%	$195,939 1.2%
Sig. Gathering/ Surveys††	$598,304 14.6%	$525,189 4.2%	$1,123,493 6.8%
Travel	$7,217 0.2%	$4,978 0.0%	$12,195 0.1%
Total	***$4,101,207*** ***100%***	***$12,461,862*** ***100%***	***$16,563,069*** ***100%***

*Expenditures of $100 or More.
†"Literature" includes all direct mail and campaign pamphlet expenses.
††"Sig. Gathering/Surveys" includes paid petition circulation and polling expenses.

Table 9
Expenditure Pattern Breakout*: Support v. Opposition

	SMALL/MED. CITIES		L.A. CITY	
	Support	***Opposition***	***Support***	***Opposition***
Broadcast	$5,212 0.4%	$144,249 5.4%	$3,523,287 57.1%	$3,926,324 62.4%
Consultants	$348,775 24.1%	$637,140 24.0%	$621,034 10.1%	$598,062 9.5%
Fundraising	$6,098 0.4%	$11,213 0.4%	$36,556 0.6%	$36,172 0.6%
General	$397,592 27.4%	$512,788 19.3%	$365,996 5.9%	$361,918 5.7%
Literature†	$453,990 31.3%	$805,462 30.4%	$1,137,321 18.4%	$1,093,821 17.4%
Newspaper	$10,802 0.7%	$110,139 4.2%	$43,747 0.7%	$43,747 0.7%
Outdoor	$8,128 0.6%	$44,099 1.7%	$82,856 1.3%	$60,856 1.0%
Sig. Gathering/ Surveys††	$217,130 15.0%	$381,174 14.4%	$352,363 5.7%	$172,826 2.7%
Travel	$959 0.1%	$6,258 0.2%	$2,023 0.0%	$2,956 0.0%
Total	***$1,448,686 100%***	***$2,652,522 100%***	***$6,165,182 100%***	***$6,296,681 100%***

*Expenditures of $100 or More.
†"Literature" includes all direct mail and campaign pamphlet expenses.
††"Sig. Gathering/Surveys" includes paid petition circulation and polling expenses.

Table 10
Expenditure Pattern Breakout*: Qualification Period Only

	Sm/Med. Cities	*L.A. City*	*Total*
Broadcast	$254 0.0%	$517,500 39.8%	$517,754 28.2%
Consultants	$207,631 39.0%	$156,466 12.0%	$364,097 19.9%
Fundraising	$440 0.1%	$0 0.0%	$440 0.0%
General	$126,468 23.8%	$91,187 7.0%	$217,655 11.9%
Literature†	$42,075 7.9%	$208,744 16.0%	$250,818 13.7%
Newspaper	$2,750 0.5%	$14,554 1.1%	$17,304 0.9%
Outdoor	$2,955 0.6%	$0 0.0%	$2,955 0.2%
Sig. Gathering/ Surveys††	$148,912 28.0%	$312,974 24.0%	$461,886 25.2%
Travel	$861 0.2%	$167 0.0%	$1,028 0.1%
Total	***$532,345*** ***100%***	***$1,301,591*** ***100%***	***$1,833,935*** ***100%***

*Expenditures of $100 or More.
†"Literature" includes all direct mail and campaign pamphlet expenses.
††"Sig. Gathering/Surveys" includes paid petition circulation and polling expenses.

Table 11
Voter Contacts v. Overhead Expenditures*: Overview

	Sm/Med. Cities	*L.A. City*	*Total*
Voter Contacts	$2,180,385 53.2%	$10,437,146 83.8%	$12,617,531 76.2%
Overhead	$1,920,823 46.8%	$2,024,716 16.2%	$3,945,539 23.8%
Total	***$4,101,207*** ***100%***	***$12,461,862*** ***100%***	***$16,563,069*** ***100%***

Table 12
Voter Contacts Expenditures Breakout*

	Sm/Med. Cities	*L.A. City*	*Total*
Broadcast	$149,461 6.9%	$7,449,610 71.4%	$7,599,071 60.2%
Newspaper	120,941 5.5%	87,493 0.8%	$208,434 1.7%
Literature†	1,259,452 57.8%	2,231,142 21.4%	$3,490,594 27.7%
Outdoor	52,227 2.4%	143,712 1.4%	$195,939 1.6%
Sig. Gathering/ Surveys††	598,304 27.4%	525,189 5.0%	$1,123,493 8.9%
Total	***$2,180,385*** ***100%***	***$10,437,146*** ***100%***	***$12,617,531*** ***100%***

*Expenditures of $100 or More.
†"Literature" includes all direct mail and campaign pamphlet expenses.
††"Sig. Gathering/Surveys" includes paid petition circulation and polling expenses.

DATA SUMMARY
LOS ANGELES AREA LOCAL INITIATIVES

Small & Medium-Sized Cities vs. L.A. City

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SMALL/MEDIUM-SIZED CITIES			L.A. CITY		
Business	$3,407,422	87.3%	Business	$9,004,060	74.3%
Individuals	332,616	8.5%	Individuals	943,222	7.8%
Labor Organizations	14,558	0.4%	Labor Organizations	8,475	0.1%
Political Parties/Clubs	1,800	0.0%	Political Parties/Clubs	750	0.0%
Broadbased Org's	80,801	2.1%	Broadbased Org's	26,500	0.2%
Officeholders	66,362	1.7%	Officeholders	2,137,465	17.6%
Total	**$3,903,559**	**100.0%**	**Total**	**$12,120,472**	**100.0%**

CONTRIBUTION SIZE

SMALL/MEDIUM-SIZED CITIES			L.A. CITY		
Under $100	$232,404	5.6%	Under $100	$170,830	1.4%
$100 to $999	227,420	5.5%	$100 to $999	144,630	1.2%
$1,000 to $9,999	423,145	10.2%	$1,000 to $9,999	666,351	5.4%
$10,000 to $49,999	354,724	8.6%	$10,000 to $49,999	641,000	5.2%
$50,000 to $99,999	122,505	3.0%	$50,000 to $99,999	296,676	2.4%
$100,000 to $999,999	2,775,765	67.1%	$100,000 to $999,999	2,485,398	20.2%
$1 million & Over	0	0.0%	$1 million & Over	7,886,417	64.2%
Total	**$4,135,963**	**100.0%**	**Total**	**$12,291,302**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SMALL/MEDIUM-SIZED CITIES		L.A. CITY	
Mobil Oil Corp.	$741,404	Occidental Petroleum Corp.	$7,886,417
Santa Monica Beach Hotel (M. McCarty)	$459,766	Councilman Zev Yaroslavsky Comm.	$920,111
Azusa Country Clb. (J.E. Johnson)	$227,950	State Controller Gray Davis Comm.	$900,000
National Broadcasting Co. (NBC)	$182,059	Councilman Marvin Braude Comm.	$314,354
Claremont Park Partnership ("Buck" Johns)	$182,030	Hughes Aircraft	$245,923

EXPENDITURE PATTERNS (Amounts $100 or More)

SMALL/MEDIUM-SIZED CITIES			L.A. CITY		
Broadcast Ads	$149,461	3.6%	Broadcast Ads	$7,449,610	59.8%
Consultants	985,915	24.0%	Consultants	1,219,096	9.8%
Fundraising	17,311	0.4%	Fundraising	72,728	0.6%
General	910,380	22.2%	General	727,914	5.8%
Campaign Mail/Pamphlets	1,259,452	30.7%	Campaign Mail/Pamphlets	2,231,142	17.9%
Newspaper Ads	120,941	2.9%	Newspaper Ads	87,493	0.7%
Outdoor Ads	52,227	1.3%	Outdoor Ads	143,712	1.2%
Paid Circulators/Surveys	598,304	14.6%	Paid Circulators/Surveys	525,189	4.2%
Trav./Accomodations	7,217	0.2%	Trav./Accomodations	4,978	0.0%
Total	**$4,101,207**	**100.0%**	**Total**	**$12,461,862**	**100.0%**
Total Cost Per Vote	**#DIV/0!**		**Total Cost Per Vote**	**$4.06**	

CITY OF AZUSA

Props. A/B • Determining Fate of Azusa Golf Course

Prop. A (Initiative Allowing Development) 1987 Result: Yes-46%/No-54%
Prop. B (Initiative Authorizing City Purchase/Preservation) 1987 Result: Yes-20%/No-80%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROPS. A/B SUPPORT			OPPOSITION		
Business	$229,080	100.0%	Business	$0	0.0%
Individuals	0	0.0%	Individuals	550	17.5%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	2,599	82.5%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$229,080**	**100.0%**	**Total**	**$3,149**	**100.0%**

CONTRIBUTION SIZE

PROPS. A/B SUPPORT			OPPOSITION		
Under $100	$0	0.0%	Under $100	$1,609	33.8%
$100 to $999	1,130	0.5%	$100 to $999	550	11.6%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	2,599	54.6%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	227,950	99.5%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$229,080**	**100.0%**	**Total**	**$4,758**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROPS. A/B SUPPORT		OPPOSITION	
J.E. Johnson (Azuza Country Clb.)	$227,950	Action Committee to Save Azusa Greens	$2,599
(No other contributors gave $1,000 or more.)		*(No other contributors gave $1,000 or more.)*	

EXPENDITURE PATTERNS (Amounts $100 or More)

PROPS. A/B SUPPORT			OPPOSITION		
Broadcast Ads	$130	0.1%	Broadcast Ads	$0	0.0%
Consultants	82,327	36.4%	Consultants	2,425	59.3%
Fundraising	0	0.0%	Fundraising	598	14.6%
General	17,314	7.7%	General	0	0.0%
Campaign Literature	66,700	29.5%	Campaign Literature	503	12.3%
Newspaper Ads	411	0.2%	Newspaper Ads	447	10.9%
Outdoor Ads	969	0.4%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	58,347	25.8%	Paid Circulators/Surveys	115	2.8%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$226,197**	**100.0%**	**Total**	**$4,088**	**100.0%**
Total Cost Per Vote	**$105.01**		**Total Cost Per Vote**	**$1.00**	

CITY OF BURBANK

Measures A • District Elections for City Council

1985 Election Result: Yes-42%/No-58%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$0	0.0%	Business	$250	18.5%
Individuals	2,920	100.0%	Individuals	1,100	81.5%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$2,920**	**100.0%**	**Total**	**$1,350**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$40	1.4%	Under $100	$4,941	78.5%
$100 to $999	0	0.0%	$100 to $999	1,350	21.5%
$1,000 to $9,999	2,920	98.6%	$1,000 to $9,999	0	0.0%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$2,960**	**100.0%**	**Total**	**$6,291**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION
Sidney Giddens	$2,920	
(No other contributors gave $1,000 or more.)		*(No contributors gave $1,000 or more.)*

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	0	0.0%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	40	1.4%	General	316	5.0%
Campaign Mail/Pamphlets	2,920	98.6%	Campaign Mail/Pamphlets	5,528	86.7%
Newspaper Ads	0	0.0%	Newspaper Ads	532	8.3%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$2,960**	**100.0%**	**Total**	**$6,376**	**100.0%**
Total Cost Per Vote	**$0.33**		**Total Cost Per Vote**	**$0.52**	

CITY OF BURBANK

Proposition A • City Growth Limits

1991 Election Result: Yes-20%/No-80%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$0	0.0%	Business	$320,846	97.5%
Individuals	1,750	100.0%	Individuals	8,375	2.5%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$1,750**	**100.0%**	**Total**	**$329,221**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$791	31.1%	Under $100	$720	0.2%
$100 to $999	1,750	68.9%	$100 to $999	7,000	2.1%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	7,289	2.2%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	314,933	95.5%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$2,541**	**100.0%**	**Total**	**$329,940**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT

(No contributors gave $1,000 or more.)

OPPOSITION (To Props. A & B)

National Broadcasting Co. (NBC)	$177,059
Warner Bros.	$173,701
Walt Disney Co.	$171,877
Lockheed Corporation	$107,228
Affiliated Property	$6,277

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$0	0.0%	Broadcast Ads	$3,183	1.0%
Consultants	0	0.0%	Consultants	71,853	21.9%
Fundraising	0	0.0%	Fundraising	1,665	0.5%
General	636	25.1%	General	135,825	41.3%
Campaign Mail/Pamphlets	1,379	54.5%	Campaign Mail/Pamphlets	61,232	18.6%
Newspaper Ads	406	16.0%	Newspaper Ads	8,391	2.6%
Outdoor Ads	0	0.0%	Outdoor Ads	8,502	2.6%
Paid Circulators/Surveys	109	4.3%	Paid Circulators/Surveys	36,510	11.1%
Trav./Accomodations	0	0.0%	Trav./Accomodations	1,393	0.4%
Total	**$2,530**	**100.0%**	**Total**	**$328,552**	**100.0%**
Total Cost Per Vote	**$0.86**		**Total Cost Per Vote**	**$30.91**	

**The campaign in opposition to Props. A and B in 1991 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. A and B opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

CITY OF BURBANK

Proposition B • City Growth Limits

1991 Election Result: Yes-32%/No-68%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$0	0.0%	Business	$320,846	97.5%
Individuals	20,704	84.9%	Individuals	8,375	2.5%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	3,675	15.1%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$24,379**	**100.0%**	**Total**	**$329,221**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$5,052	17.2%	Under $100	$720	0.2%
$100 to $999	2,900	9.9%	$100 to $999	7,000	2.1%
$1,000 to $9,999	8,466	28.8%	$1,000 to $9,999	7,289	2.2%
$10,000 to $49,999	13,013	44.2%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	314,933	95.5%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$29,431**	**100.0%**	Total	**$329,940**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION (To Props. A & B)	
Carolyn Berlin	$13,013	National Broadcasting Co. (NBC)	$177,059
Burbank Rancho Homeowners	$3,675	Warner Bros.	$173,701
Michael L. Scandiffio	$3,351	Walt Disney Co.	$171,877
Michael Staviopolis, MD	$1,440	Lockheed Corporation	$107,228
(No other contributors gave $1,000 or more.)		Affiliated Property	$6,277

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$240	1.0%	Broadcast Ads	$3,183	1.0%
Consultants	1,750	7.1%	Consultants	71,853	21.9%
Fundraising	695	2.8%	Fundraising	1,665	0.5%
General	5,893	24.1%	General	135,825	41.3%
Campaign Mail/Pamphlets	13,488	55.1%	Campaign Mail/Pamphlets	61,232	18.6%
Newspaper Ads	418	1.7%	Newspaper Ads	8,391	2.6%
Outdoor Ads	529	2.2%	Outdoor Ads	8,502	2.6%
Paid Circulators/Surveys	1,187	4.8%	Paid Circulators/Surveys	36,510	11.1%
Trav./Accomodations	300	1.2%	Trav./Accomodations	1,393	0.4%
Total	**$24,500**	**100.0%**	**Total**	**$328,552**	**100.0%**
Total Cost Per Vote	**$5.65**		**Total Cost Per Vote**	**$30.91**	

**The campaign in opposition to Props. A and B in 1991 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. A and B opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

CITY OF BURBANK

Measure C • Prohibiting Sale of School Property

1991 Election Result: Yes-40%/No-60%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$0	0.0%	Business	$15,000	99.0%
Individuals	1,379	100.0%	Individuals	150	1.0%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$1,379**	**100.0%**	**Total**	**$15,150**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$30	2.1%	Under $100	$404	2.6%
$100 to $999	0	0.0%	$100 to $999	150	1.0%
$1,000 to $9,999	1,379	97.9%	$1,000 to $9,999	15,000	96.4%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$1,409**	**100.0%**	**Total**	**$15,554**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION	
S. Michael Stavropoulos	$1,379	National Broadcasting Co. (NBC)	$5,000
		Walt Disney Co.	$5,000
(No other contributors gave $1,000 or more.)		Warner Bros.	$5,000
		(No other contributors gave $1,000 or more.)	

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	0	0.0%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	571	35.4%	General	0	0.0%
Campaign Literature	0	0.0%	Campaign Literature	12,734	83.8%
Newspaper Ads	0	0.0%	Newspaper Ads	2,092	13.8%
Outdoor Ads	163	10.1%	Outdoor Ads	373	2.5%
Paid Circulators/Surveys	879	54.5%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$1,613**	**100.0%**	**Total**	**$15,199**	**100.0%**
Total Cost Per Vote	**$0.29**		**Total Cost Per Vote**	**$1.80**	

CITY OF CERRITOS

Proposition H • Term Limits for City Officials

1986 Election Result: Yes-56%/No-44%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$0	0.0%	Business	$13,500	44.8%
Individuals	128	39.0%	Individuals	11,005	36.6%
Labor Organizations	0	0.0%	Labor Organizations	100	0.3%
Political Parties/Clubs	200	61.0%	Political Parties/Clubs	900	3.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	4,600	15.3%
Total	**$328**	**100.0%**	**Total**	**$30,105**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$511	60.9%	Under $100	$90	0.3%
$100 to $999	328	39.1%	$100 to $999	8,905	29.5%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	21,200	70.2%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$839**	**100.0%**	**Total**	**$30,195**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT

(No other contributors gave $1,000 or more.)

OPPOSITION

J.H. Lobin	$5,100
Krausz Enterprises	$5,000
Friends of Dan Wong	$3,100
Pacific Village	$3,000
Cerritos Townhouse Investments	$1,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	7,500	28.7%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	853	100.0%	General	60	0.2%
Campaign Mail/Pamphlets	0	0.0%	Campaign Mail/Pamphlets	15,551	59.6%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	3,000	11.5%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$853**	**100.0%**	**Total**	**$26,111**	**100.0%**
Total Cost Per Vote	**$0.11**		**Total Cost Per Vote**	**$4.05**	

CITY OF CLAREMONT

Measure A • Land Zoning Change

1986 Election Result: Yes-16%/No-84%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$182,030	100.0%	Business	$600	42.9%
Individuals	0	0.0%	Individuals	800	57.1%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$182,030**	**100.0%**	**Total**	**$1,400**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$0	0.0%	Under $100	$4,365	75.7%
$100 to $999	0	0.0%	$100 to $999	1,400	24.3%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	0	0.0%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	182,030	100.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$182,030**	**100.0%**	**Total**	**$5,765**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION
William "Buck" Johns	$182,030	
(No other contributors gave $1,000 or more.)		*(No contributors gave $1,000 or more.)*

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	43,411	23.8%	Consultants	0	0.0%
Fundraising	0	0.0%	Fundraising	227	4.2%
General	31,908	17.5%	General	0	0.0%
Campaign Literature	23,727	13.0%	Campaign Literature	3,494	64.1%
Newspaper Ads	112	0.1%	Newspaper Ads	1,437	26.4%
Outdoor Ads	0	0.0%	Outdoor Ads	295	5.4%
Paid Circulators/Surveys	82,644	45.4%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	228	0.1%	Trav./Accomodations	0	0.0%
Total	**$182,030**	**100.0%**	**Total**	**$5,453**	**100.0%**
Total Cost Per Vote	**$138.85**		**Total Cost Per Vote**	**$0.83**	

CITY OF CULVER CITY

Measure 1 v. Measure 2 • Building Height Limits

Prop. 1 (Initiative) 1990 Election Result: Yes-61%/No-39%
Prop. 2 (Rival Council Measure) 1990 Election Result: Yes-53%/No-47%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. 1 SUP./PROP. 2 OPP

Business
Individuals
Labor Organizations
Political Parties/Clubs
Broadbased Org's
Officeholders
Total

According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition 1 or against Proposition 2.

PROP. 2 SUP./PROP. 1 OPP

Business
Individuals
Labor Organizations
Political Parties/Clubs
Broadbased Org's
Officeholders
Total

(No contributors gave $100 or more.)

CONTRIBUTION SIZE

PROP. 1 SUP./PROP. 2 OPP

Under $100
$100 to $999
$1,000 to $9,999
$10,000 to $49,999
$50,000 to $99,999
$100,000 to $999,999
$1 million & Over
Total

According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition 1 or against Proposition 2.

PROP. 2 SUP./PROP. 1 OPP

Under $100	$1,150	100.0%
$100 to $999	0	0.0%
$1,000 to $9,999	0	0.0%
$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%
Total	**$1,150**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. 1 SUP./PROP. 2 OPP

According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition 1 or against Proposition 2.

PROP. 2 SUP./PROP. 1 OPP

(No other contributors gave $1,000 or more.)

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. 1 SUP./PROP. 2 OPP

Broadcast Ads
Consultants
Fundraising
General
Campaign Literature
Newspaper Ads
Outdoor Ads
Paid Circulators/Surveys
Trav./Accomodations
Total
Total Cost Per Vote

According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition 1 or against Proposition 2.

PROP. 2 SUP./PROP. 1 OPP

Broadcast Ads	$0	0.0%
Consultants	0	0.0%
Fundraising	0	0.0%
General	0	0.0%
Campaign Literature	783	72.1%
Newspaper Ads	303	27.9%
Outdoor Ads	0	0.0%
Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%
Total	**$1,086**	**100.0%**
Total Cost Per Vote	**$0.29**	

CITY OF HERMOSA BEACH

Propositions J • Use of Railroad Right of Way

Prop. J 1987 Election Result: Yes-90%/No-10%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. J SUPPORT			PROP. J OPPOSE
Business	$383	5.2%	Business
Individuals	7,043	94.8%	Individuals
Labor Organizations	0	0.0%	Labor Organizations
Political Parties/Clubs	0	0.0%	Political Parties/Clubs
Broadbased Org's	0	0.0%	Broadbased Org's
Officeholders	0	0.0%	Officeholders
Total	**$7,426**	**100.0%**	**Total**

According to the City Clerk, no reportable funds were raised or spent against Prop. J.

CONTRIBUTION SIZE

PROP. J SUPPORT			PROP. J OPPOSE
Under $100	$5,786	43.8%	Under $100
$100 to $999	5,863	44.4%	$100 to $999
$1,000 to $9,999	1,563	11.8%	$1,000 to $9,999
$10,000 to $49,999	0	0.0%	$10,000 to $49,999
$50,000 to $99,999	0	0.0%	$50,000 to $99,999
$100,000 to $999,999	0	0.0%	$100,000 to $999,999
$1 million & Over	0	0.0%	$1 million & Over
Total	**$13,212**	**100.0%**	**Total**

According to the City Clerk, no reportable funds were raised or spent against Prop. J.

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. J SUPPORT		PROP. J OPPOSE
Karen/Allen White	$1,563	

(No other contributors gave $1,000 or more.)

According to the City Clerk, no reportable funds were raised or spent against Prop. J.

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. J SUPPORT			PROP. J OPPOSE
Broadcast Ads	$399	3.3%	Broadcast Ads
Consultants	7,030	57.3%	Consultants
Fundraising	0	0.0%	Fundraising
General	1,905	15.5%	General
Campaign Mail/Pamphlets	1,108	9.0%	Campaign Mail/Pamphlets
Newspaper Ads	0	0.0%	Newspaper Ads
Outdoor Ads	1,831	14.9%	Outdoor Ads
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys
Trav./Accomodations	0	0.0%	Trav./Accomodations
Total	**$12,273**	**100.0%**	**Total**
Total Cost Per Vote	**$3.98**		**Total Cost Per Vote**

According to the City Clerk, no reportable funds were raised or spent against Prop. J.

CITY OF HERMOSA BEACH

Propositions C & D • Beachside Land Development

Prop. C (Initiative Opposing Development) 1989 Election Result: Yes-47%/No-53%
Prop. D (Rival Council Measure) 1989 Election Result: Yes-28%/No-72%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. C SUPPORT			PROP. C OPPOSE/PROP. D SUPPORT
Business	$0	0.0%	Business
Individuals	3,692	100.0%	Individuals
Labor Organizations	0	0.0%	Labor Organizations
Political Parties/Clubs	0	0.0%	Political Parties/Clubs
Broadbased Org's	0	0.0%	Broadbased Org's
Officeholders	0	0.0%	Officeholders
Total	**$3,692**	**100.0%**	**Total**

According to the City Clerk, no reportable funds were raised or spent against Prop. C or on behalf of Prop. D.

CONTRIBUTION SIZE

PROP. C SUPPORT			PROP. C OPPOSE/PROP. D SUPPORT
Under $100	$30	0.8%	Under $100
$100 to $999	950	25.5%	$100 to $999
$1,000 to $9,999	2,742	73.7%	$1,000 to $9,999
$10,000 to $49,999	0	0.0%	$10,000 to $49,999
$50,000 to $99,999	0	0.0%	$50,000 to $99,999
$100,000 to $999,999	0	0.0%	$100,000 to $999,999
$1 million & Over	0	0.0%	$1 million & Over
Total	**$3,722**	**100.0%**	**Total**

According to the City Clerk, no reportable funds were raised or spent against Prop. C or on behalf of Prop. D.

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. C SUPPORT		PROP. C OPPOSE/PROP. D SUPPORT
Parker R. Herriott	$2,742	

(No other contributors gave $1,000 or more.)

According to the City Clerk, no reportable funds were raised or spent against Prop. C or on behalf of Prop. D.

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. C SUPPORT			PROP. C OPPOSE/PROP. D SUPPORT
Broadcast Ads	$0	0.0%	Broadcast Ads
Consultants	0	0.0%	Consultants
Fundraising	0	0.0%	Fundraising
General	887	23.4%	General
Campaign Mail/Pamphlets	2,453	64.7%	Campaign Mail/Pamphlets
Newspaper Ads	0	0.0%	Newspaper Ads
Outdoor Ads	0	0.0%	Outdoor Ads
Paid Circulators/Surveys	451	11.9%	Paid Circulators/Surveys
Trav./Accomodations	0	0.0%	Trav./Accomodations
Total	**$3,791**	**100.0%**	**Total**
Total Cost Per Vote	**$0.95**		**Total Cost Per Vote**

According to the City Clerk, no reportable funds were raised or spent against Prop. C or on behalf of Prop. D.

CITY OF HERMOSA BEACH

Propositions E & F • Greenbelt Land Use

Prop. E (Initiative Supporting Open Space) 1989 Election Result: Yes-44%/No-56%
Prop. F (Council Rival Measure) 1989 Election Result: Yes-57%/No-43%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. E SUPPORT

Business
Individuals
Labor Organizations
Political Parties/Clubs
Broadbased Org's
Officeholders
Total

(No contributor gave in an amount $100 or greater.)

PROP. E OPPOSE/PROP. F SUPPORT

Business
Individuals
Labor Organizations
Political Parties/Clubs
Broadbased Org's
Officeholders
Total

According to the City Clerk, no reportable funds were raised or spent against Prop. E or on behalf of Prop. F.

CONTRIBUTION SIZE

PROP. E SUPPORT			PROP. E OPPOSE/PROP. F SUPPORT
Under $100	$4,776	100.0%	Under $100
$100 to $999	0	0.0%	$100 to $999
$1,000 to $9,999	0	0.0%	$1,000 to $9,999
$10,000 to $49,999	0	0.0%	$10,000 to $49,999
$50,000 to $99,999	0	0.0%	$50,000 to $99,999
$100,000 to $999,999	0	0.0%	$100,000 to $999,999
$1 million & Over	0	0.0%	$1 million & Over
Total	**$4,776**	**100.0%**	**Total**

According to the City Clerk, no reportable funds were raised or spent against Prop. E or on behalf of Prop. F.

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. E SUPPORT

(No contributors gave $1,000 or more.)

PROP. E OPPOSE/PROP. F SUPPORT

According to the City Clerk, no reportable funds were raised or spent against Prop. E or on behalf of Prop. F.

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. E SUPPORT			PROP. E OPPOSE/PROP. F SUPPORT
Broadcast Ads	$0	0.0%	Broadcast Ads
Consultants	0	0.0%	Consultants
Fundraising	0	0.0%	Fundraising
General	3,757	77.0%	General
Campaign Mail/Pamphlets	0	0.0%	Campaign Mail/Pamphlets
Newspaper Ads	0	0.0%	Newspaper Ads
Outdoor Ads	1,124	23.0%	Outdoor Ads
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys
Trav./Accomodations	0	0.0%	Trav./Accomodations
Total	**$4,881**	**100.0%**	**Total**
Total Cost Per Vote	**$1.48**		**Total Cost Per Vote**

According to the City Clerk, no reportable funds were raised or spent against Prop. E or on behalf of Prop. F.

CITY OF HERMOSA BEACH

Propositions G & H • Beachside Land Development

Prop. G (Initiative Against Development) 1991 Election Result: Yes-41%/No-59%
Prop. H (Council Rival Measure) 1991 Election Result: Yes-51%/No-49%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. G SUPPORT			PROP. G OPPOSE/PROP. H SUPPORT
Business	$0	0.0%	Business
Individuals	8,000	100.0%	Individuals
Labor Organizations	0	0.0%	Labor Organizations
Political Parties/Clubs	0	0.0%	Political Parties/Clubs
Broadbased Org's	0	0.0%	Broadbased Org's
Officeholders	0	0.0%	Officeholders
Total	**$8,000**	**100.0%**	**Total**

According to the City Clerk, no reportable funds were raised or spent against Prop. G or on behalf of Prop. H.

CONTRIBUTION SIZE

PROP. G SUPPORT			PROP. G OPPOSE/PROP. H SUPPORT
Under $100	$30	0.4%	Under $100
$100 to $999	400	5.0%	$100 to $999
$1,000 to $9,999	7,600	94.6%	$1,000 to $9,999
$10,000 to $49,999	0	0.0%	$10,000 to $49,999
$50,000 to $99,999	0	0.0%	$50,000 to $99,999
$100,000 to $999,999	0	0.0%	$100,000 to $999,999
$1 million & Over	0	0.0%	$1 million & Over
Total	**$8,030**	**100.0%**	Total

According to the City Clerk, no reportable funds were raised or spent against Prop. G or on behalf of Prop. H.

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. G SUPPORT		PROP. G OPPOSE/PROP. H SUPPORT
Parker R. Herriott	$6,500	
Roger Dane Creighton	$1,100	
(No other contributors gave $1,000 or more.)		

According to the City Clerk, no reportable funds were raised or spent against Prop. G or on behalf of Prop. H.

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. G SUPPORT			PROP. G OPPOSE/PROP. H SUPPORT
Broadcast Ads	$1,775	26.5%	Broadcast Ads
Consultants	0	0.0%	Consultants
Fundraising	0	0.0%	Fundraising
General	2,981	44.5%	General
Campaign Mail/Pamphlets	992	14.8%	Campaign Mail/Pamphlets
Newspaper Ads	954	14.2%	Newspaper Ads
Outdoor Ads	0	0.0%	Outdoor Ads
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys
Trav./Accomodations	0	0.0%	Trav./Accomodations
Total	**$6,702**	**100.0%**	**Total**
Total Cost Per Vote	**$1.91**		**Total Cost Per Vote**

According to the City Clerk, no reportable funds were raised or spent against Prop. G or on behalf of Prop. H.

CITY OF LA CANADA-FLINTRIDGE

Proposition A • Residential Preservation Initiative

1986 Election Result: Yes-32%/No-68%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$0	0.0%	Business	$3,782	51.9%
Individuals	660	8.6%	Individuals	3,500	48.1%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	7,015	91.4%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$7,675**	**100.0%**	**Total**	**$7,282**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$868	10.2%	Under $100	$1,495	17.0%
$100 to $999	1,371	16.0%	$100 to $999	4,000	45.6%
$1,000 to $9,999	6,304	73.8%	$1,000 to $9,999	3,282	37.4%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$8,543**	**100.0%**	**Total**	**$8,777**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION	
Homeowners Assn of La Canada Flintridge	$6,304	Sport Chalet, Inc.	$3,282
(No other contributors gave $1,000 or more.)		*(No other contributors gave $1,000 or more.)*	

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	0	0.0%
Fundraising	0	0.0%	*Fundraising*	0	0.0%
General	1,634	19.3%	General	0	0.0%
Campaign Mail/Pamphlets	3,460	40.9%	Campaign Mail/Pamphlets	1,504	17.1%
Newspaper Ads	3,109	36.7%	Newspaper Ads	4,418	50.3%
Outdoor Ads	0	0.0%	Outdoor Ads	2,855	32.5%
Paid Circulators/Surveys	266	3.1%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$8,469**	**100.0%**	**Total**	**$8,777**	**100.0%**
Total Cost Per Vote	**$4.66**		**Total Cost Per Vote**	**$2.23**	

CITY OF LOS ANGELES

Proposition U • Citywide Growth Controls

1986 Election Result: Yes-69%/No-31%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$82,026	27.4%	Business	$2,200	93.6%
Individuals	16,900	5.6%	Individuals	150	6.4%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	100	0.0%	Broadbased Org's	0	0.0%
Officeholders	200,101	66.9%	Officeholders	0	0.0%
Total	**$299,127**	**100.0%**	**Total**	**$2,350**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$22,749	7.1%	Under $100	$270	10.3%
$100 to $999	5,200	1.6%	$100 to $999	2,350	89.7%
$1,000 to $9,999	12,140	3.8%	$1,000 to $9,999	0	0.0%
$10,000 to $49,999	10,000	3.1%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	171,676	53.3%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	100,111	31.1%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$321,876**	**100.0%**	**Total**	**$2,620**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION*
Councilman Zev Yaroslavsky Comm.	$100,111	
Councilman Marvin Braude Comm.	$99,990	*(No contributors gave $1,000 or more.)*
MCA, Inc.	$71,686	
Don Henley	$10,000	
Douglas-Emmett Realty	$8,400	

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	43,150	13.1%	Consultants	15,633	41.3%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	50,216	15.2%	General	6,859	18.1%
Campaign Mail/Pamphlets	50,805	15.4%	Campaign Mail/Pamphlets	1,749	4.6%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	184,612	56.0%	Paid Circulators/Surveys	12,400	32.8%
Trav./Accommodations	770	0.2%	Trav./Accommodations	1,209	3.2%
Total	**$329,553**	**100.0%**	**Total**	**$37,850**	**100.0%**
Total Cost Per Vote	**$0.74**		**Total Cost Per Vote**	**$0.20**	

**Opponent expenditures far exceed amounts raised. It is assumed that additional fundraising took place after the 12/31/86 campaign disclosure filing. The Los Angeles City Ethics Commission could not locate the opposition's 1987 campaign finance disclosure statements. They may have been purged.*

CITY OF LOS ANGELES

Proposition V • Jobs With Peace Initiative

1986 Election Result: Yes-37%/No-63%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT*			OPPOSITION		
Business	$850	5.1%	Business	$453,566	99.2%
Individuals	2,810	17.0%	Individuals	3,857	0.8%
Labor Organizations	2,475	15.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	10,400	62.9%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$16,535**	**100.0%**	**Total**	**$457,423**	**100.0%**

CONTRIBUTION SIZE

SUPPORT*			OPPOSITION		
Under $100	$21,191	56.2%	Under $100	$70	0.0%
$100 to $999	6,535	17.3%	$100 to $999	2,190	0.5%
$1,000 to $9,999	10,000	26.5%	$1,000 to $9,999	69,310	15.1%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	140,000	30.6%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	245,923	53.8%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$37,726**	**100.0%**	**Total**	**$457,493**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT*		OPPOSITION	
National Community Funds	$5,000	Hughes Aircraft	$245,923
Fund Exchange National Comm Fund	$5,000	TRW Inc., Electronics & Defense Sector	$30,000
(No other contributors gave $1,000 or more.)		Rockwell International	$25,000
		Teledyne, Inc.	$20,000
		Litton Industries	$15,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT*			OPPOSITION		
Broadcast Ads	$4,463	5.6%	Broadcast Ads	$407,500	91.3%
Consultants	1,775	2.2%	Consultants	6,320	1.4%
Fundraising	384	0.5%	Fundraising	0	0.0%
General	26,746	33.5%	General	9,256	2.1%
Campaign Mail/Pamphlets	2,242	2.8%	Campaign Mail/Pamphlets	7,798	1.7%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	22,000	27.5%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	22,325	27.9%	Paid Circulators/Surveys	15,000	3.4%
Trav./Accomodations	0	0.0%	Trav./Accomodations	494	0.1%
Total	**$79,935**	**100.0%**	**Total**	**$446,368**	**100.0%**
Total Cost Per Vote	**$0.59**		**Total Cost Per Vote**	**$1.10**	

**The Los Angeles City Ethics Commission could not locate the proponent committee's qualification period campaign finance disclosure statement. As a result, an additional $77,193 in contributions and $58,098 in spending are not reflected in this detailed breakout analysis. (The Cost Per Vote figure, however, is derived from the total spending figure.)*

CITY OF LOS ANGELES

Prop. O v. Prop. P • Oil Drilling in Pacific Palisades

Prop. O 1988 Election Result: Yes-52%/No-48%
Prop. P 1988 Election Result: Yes-34%/No-66%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. O SUP./PROP. P OPP.			PROP. P SUP./PROP. O OPP.		
Business	$477,401	14.5%	Business	$7,988,017	99.3%
Individuals	866,955	26.2%	Individuals	52,550	0.7%
Labor Organizations	5,000	0.2%	Labor Organizations	1,000	0.0%
Political Parties/Clubs	750	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	16,000	0.5%	Broadbased Org's	0	0.0%
Officeholders	1,937,364	58.6%	Officeholders	0	0.0%
Total	**$3,303,470**	**100.0%**	**Total**	**$8,041,567**	**100.0%**

CONTRIBUTION SIZE

PROP. O SUP./PROP. P OPP.			PROP. P SUP./PROP. O OPP.		
Under $100	$45,435	1.4%	Under $100	$3,922	0.0%
$100 to $999	124,705	3.7%	$100 to $999	3,650	0.0%
$1,000 to $9,999	553,401	16.5%	$1,000 to $9,999	21,500	0.3%
$10,000 to $49,999	436,000	13.0%	$10,000 to $49,999	55,000	0.7%
$50,000 to $99,999	50,000	1.5%	$50,000 to $99,999	75,000	0.9%
$100,000 to $999,999	2,139,364	63.9%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	7,886,417	98.0%
Total	**$3,348,905**	**100.0%**	Total	**$8,045,489**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. O SUP./PROP. P OPP.		PROP. P SUP./PROP. O OPP.	
State Controller Gray Davis Comm.	$900,000	Occidental Petroleum Corp.	$7,886,417
Councilman Zev Yaroslavsky Comm.	$820,000	Emerik Properties Corp.	$75,000
A.J. Perenchio	$225,000	Harold Livestock Comm. Co.	$40,000
Councilman Marvin Braude Comm.	$194,364	The Hope Cattle Co.	$15,000
Huntley Drive Associates	$50,000	Lillian Tomich	$5,000

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. O SUP./PROP. P OPP.			PROP. P SUP./PROP. O OPP.		
Broadcast Ads	$2,054,335	62.5%	Broadcast Ads	$4,983,312	60.6%
Consultants	310,894	9.5%	Consultants	841,324	10.2%
Fundraising	70,630	2.1%	Fundraising	1,714	0.0%
General	81,664	2.5%	General	496,404	6.0%
Campaign Literature	609,800	18.6%	Campaign Literature	1,558,748	19.0%
Newspaper Ads	10,179	0.3%	Newspaper Ads	77,314	0.9%
Outdoor Ads	96,662	2.9%	Outdoor Ads	25,050	0.3%
Paid Circulators/Surveys	50,100	1.5%	Paid Circulators/Surveys	240,752	2.9%
Trav./Accomodations	2,172	0.1%	Trav./Accomodations	333	0.0%
Total	**$3,286,436**	**100.0%**	**Total**	**$8,224,951**	**100.0%**
Total Cost Per Vote	**$3.12**		**Total Cost Per Vote**	**$11.13**	

CITY OF MANHATTAN BEACH

Proposition E • Building Height Limits

1988 Election Result: Yes-42%/No-58%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$980	44.4%	Business	$100	2.6%
Individuals	1,227	55.6%	Individuals	3,700	97.4%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$2,207**	**100.0%**	**Total**	**$3,800**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$3,225	59.4%	Under $100	$11,140	74.6%
$100 to $999	2,207	40.6%	$100 to $999	2,800	18.7%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	1,000	6.7%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$5,432**	**100.0%**	**Total**	**$14,940**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT

(No contributors gave $1,000 or more.)

OPPOSITION

Harry Prodromides $1,000

(No other contributors gave $1,000 or more.)

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$1,236	8.7%
Consultants	0	0.0%	Consultants	0	0.0%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	5,432	100.0%	General	4,374	30.7%
Campaign Mail/Pamphlets	0	0.0%	Campaign Mail/Pamphlets	3,653	25.7%
Newspaper Ads	0	0.0%	Newspaper Ads	3,534	24.8%
Outdoor Ads	0	0.0%	Outdoor Ads	102	0.7%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	1,329	9.3%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$5,432**	**100.0%**	**Total**	**$14,228**	**100.0%**
Total Cost Per Vote	**$1.13**		**Total Cost Per Vote**	**$2.14**	

CITY OF MANHATTAN BEACH

Proposition Z • Zoning Railroad Right of Way

1988 Election Result: Yes-47%/No-53%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION	
Business	$0	0.0%	Business	
Individuals	1,520	100.0%	Individuals	*(No contributor gave in an amount $100 or greater.)*
Labor Organizations	0	0.0%	Labor Organizations	
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	
Broadbased Org's	0	0.0%	Broadbased Org's	
Officeholders	0	0.0%	Officeholders	
Total	**$1,520**	**100.0%**	**Total**	

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$2,351	60.7%	Under $100	$3,967	100.0%
$100 to $999	1,520	39.3%	$100 to $999	0	0.0%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	0	0.0%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$3,871**	**100.0%**	**Total**	**$3,967**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT

(No contributors gave $1,000 or more.)

OPPOSITION

(No contributors gave $1,000 or more.)

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	0	0.0%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	376	8.3%	General	259	6.7%
Campaign Mail/Pamphlets	3,485	76.7%	Campaign Mail/Pamphlets	1,124	29.0%
Newspaper Ads	140	3.1%	Newspaper Ads	1,875	48.4%
Outdoor Ads	542	11.9%	Outdoor Ads	615	15.9%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$4,543**	**100.0%**	**Total**	**$3,873**	**100.0%**
Total Cost Per Vote	**$0.61**		**Total Cost Per Vote**	**$0.46**	

CITY OF PARAMOUNT

Proposition FF • Adjusting City Density

1986 Election Result: Yes-60%/No-40%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$8,106	61.5%	Business	$9,500	65.5%
Individuals	5,083	38.5%	Individuals	5,000	34.5%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$13,189**	**100.0%**	**Total**	**$14,500**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$2,972	18.4%	Under $100	$0	0.0%
$100 to $999	2,451	15.2%	$100 to $999	500	3.4%
$1,000 to $9,999	10,738	66.4%	$1,000 to $9,999	14,000	96.6%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$16,161**	**100.0%**	**Total**	**$14,500**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION	
Garfield Pacific Development Co.	$2,745	Bentall Properties	$5,000
Americana Mobile Home Park	$2,744	Joe N. Karetoff	$3,000
George E. Tanner	$2,582	Kartoff Industrial Park	$2,000
Alondra Associates	$1,667	Surfside Development	$1,000
D.L. & Dorothy Bendetti	$1,000	Ken McKenzie	$1,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	8,265	52.0%	Consultants	0	0.0%
Fundraising	908	5.7%	Fundraising	0	0.0%
General	2,183	13.7%	General	2,095	13.3%
Campaign Mail/Pamphlets	1,163	7.3%	Campaign Mail/Pamphlets	6,899	43.8%
Newspaper Ads	495	3.1%	Newspaper Ads	726	4.6%
Outdoor Ads	2,887	18.2%	Outdoor Ads	5,418	34.4%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	600	3.8%
Total	**$15,901**	**100.0%**	**Total**	**$15,738**	**100.0%**
Total Cost Per Vote	**$3.91**		**Total Cost Per Vote**	**$5.83**	

CITY OF PASADENA

Proposition G • Growth Limitations

1988 Election Result: Yes-30%/No-70%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$1,800	40.1%	Business	$147,488	93.8%
Individuals	2,694	59.9%	Individuals	6,300	4.0%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	3,212	2.0%
Officeholders	0	0.0%	Officeholders	300	0.2%
Total	**$4,494**	**100.0%**	**Total**	**$157,300**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$883	16.4%	Under $100	$1,719	1.1%
$100 to $999	1,694	31.5%	$100 to $999	6,718	4.2%
$1,000 to $9,999	2,800	52.1%	$1,000 to $9,999	77,462	48.7%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	73,120	46.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$5,377**	**100.0%**	**Total**	**$159,019**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION	
John M. McCoy Printers	$1,800	Pasadena Marketplace	$16,120
David Stover	$1,000	Issues Mobilization PAC	$16,000
(No other contributors gave $1,000 or more.)		Houk Development Corp.	$15,000
		Huntington Hotel Associates	$15,000
		Pasadena PAC	$11,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	1,074	19.6%	Consultants	75,050	46.2%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	3,891	71.0%	General	21,136	13.0%
Campaign Literature	0	0.0%	Campaign Literature	46,055	28.4%
Newspaper Ads	100	1.8%	Newspaper Ads	4,653	2.9%
Outdoor Ads	0	0.0%	Outdoor Ads	1,880	1.2%
Paid Circulators/Surveys	412	7.5%	Paid Circulators/Surveys	13,500	8.3%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$5,477**	**100.0%**	**Total**	**$162,274**	**100.0%**
Total Cost Per Vote	**$0.63**		**Total Cost Per Vote**	**$8.01**	

CITY OF PASADENA

Proposition 1 • City Growth Limits

(City Council Alternative to Proposition 2)
Prop. 1 1989 Election Result: Yes-25%/No-75%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$5,000	72.5%	Business	$15,383	33.3%
Individuals	1,900	27.5%	Individuals	18,987	41.1%
Labor Organizations	0	0.0%	Labor Organizations	2,500	5.4%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	9,300	20.1%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$6,900**	**100.0%**	**Total**	**$46,170**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$609	8.1%	Under $100	$913	1.9%
$100 to $999	2,900	38.6%	$100 to $999	3,308	7.0%
$1,000 to $9,999	4,000	53.3%	$1,000 to $9,999	23,031	48.9%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	19,831	42.1%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$7,509**	**100.0%**	**Total**	**$47,083**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION (To Props. 1 & 2)	
McGuire Thomas Partners	$3,000	Lary J. Mielke	$22,062
Montgomery Eng.	$1,000	Issues Mobilization PAC	$17,600
(No other contributors gave $1,000 or more.)		Topa-Palisades Assoc.	$5,000
		Peter J. Barthe	$5,000
		Charlotte Franklin	$5,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	15,060	30.1%
Fundraising	0	0.0%	Fundraising	481	1.0%
General	0	0.0%	General	1,732	3.5%
Campaign Mail/Pamphlets	7,430	100.0%	Campaign Mail/Pamphlets	24,159	48.3%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	3,023	6.0%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	5,062	10.1%
Trav./Accomodations	0	0.0%	Trav./Accomodations	486	1.0%
Total	**$7,430**	**100.0%**	**Total**	**$50,002**	**100.0%**
Total Cost Per Vote	**$2.43**		**Total Cost Per Vote**	**$6.92**	

**The campaign in opposition to Props. 1 and 2 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 1 and 2 opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

CITY OF PASADENA

Proposition 2 • City Growth Limits

1989 Election Result: Yes-57%/No-43%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$3,005	13.0%	Business	$15,383	33.3%
Individuals	20,052	87.0%	Individuals	18,987	41.1%
Labor Organizations	0	0.0%	Labor Organizations	2,500	5.4%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	9,300	20.1%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$23,057**	**100.0%**	**Total**	**$46,170**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$19,736	46.1%	Under $100	$913	1.9%
$100 to $999	20,907	48.9%	$100 to $999	3,308	7.0%
$1,000 to $9,999	2,150	5.0%	$1,000 to $9,999	23,031	48.9%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	19,831	42.1%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$42,793**	**100.0%**	**Total**	**$47,083**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION (To Props. 1 & 2)	
Mortimer Matthews	$2,150	Lary J. Mielke	$22,062
(No other contributors gave $1,000 or more.)		Issues Mobilization PAC	$17,600
		Topa-Palisades Assoc.	$5,000
		Peter J. Barthe	$5,000
		Charlotte Franklin	$5,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	835	2.0%	Consultants	15,060	30.1%
Fundraising	1,571	3.7%	Fundraising	481	1.0%
General	11,457	26.9%	General	1,732	3.5%
Campaign Mail/Pamphlets	28,485	66.9%	Campaign Mail/Pamphlets	24,159	48.3%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	3,023	6.0%
Paid Circulators/Surveys	201	0.5%	Paid Circulators/Surveys	5,062	10.1%
Trav./Accomodations	0	0.0%	Trav./Accomodations	486	1.0%
Total	**$42,549**	**100.0%**	**Total**	**$50,002**	**100.0%**
Total Cost Per Vote	**$6.02**		**Total Cost Per Vote**	**$6.92**	

**The campaign in opposition to Props. 1 and 2 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 1 and 2 opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

CITY OF RANCHO PALOS VERDES

Prop. L v. Prop. M • View Preservation

1989 Prop. L (Residential View Preservation Initiative) Election Result: Yes-37%/No-63%
1989 Prop. M (Rival Council Measure) Election Result: Yes-67%/No-33%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. L SUP./PROP. M OPP.		PROP. M SUP./PROP. L OPP.		
Business	*According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition L.*	Business	$146,634	99.3%
Individuals		Individuals	1,000	0.7%
Labor Organizations		Labor Organizations	0	0.0%
Political Parties/Clubs		Political Parties/Clubs	0	0.0%
Broadbased Org's		Broadbased Org's	0	0.0%
Officeholders		Officeholders	0	0.0%
Total		**Total**	**$147,634**	**100.0%**

CONTRIBUTION SIZE

PROP. L SUP./PROP. M OPP.		PROP. M SUP./PROP. L OPP.		
Under $100	*According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition L.*	Under $100	$0	0.0%
$100 to $999		$100 to $999	1,000	0.7%
$1,000 to $9,999		$1,000 to $9,999	16,500	11.2%
$10,000 to $49,999		$10,000 to $49,999	60,000	40.6%
$50,000 to $99,999		$50,000 to $99,999	70,134	47.5%
$100,000 to $999,999		$100,000 to $999,999	0	0.0%
$1 million & Over		$1 million & Over	0	0.0%
Total		**Total**	**$147,634**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. L SUP./PROP. M OPP.		PROP. M SUP./PROP. L OPP.	
	According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition L.	Palos Verdes Land Holding Co.	$70,134
		Landmark Land Co.	$20,000
		Bein, Frost & Associates	$15,000
		McCoy Construction Co.	$15,000
		J.M. Peters Co.	$10,000

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. L SUP./PROP. M OPP.		PROP. M SUP./PROP. L OPP.		
Broadcast Ads	*According to the City Clerk, no reportable funds were raised or spent on behalf of Proposition L.*	Broadcast Ads	$0	0.0%
Consultants		Consultants	17,000	11.5%
Fundraising		Fundraising	0	0.0%
General		General	58,409	39.5%
Campaign Literature		Campaign Literature	52,610	35.6%
Newspaper Ads		Newspaper Ads	650	0.4%
Outdoor Ads		Outdoor Ads	0	0.0%
Paid Circulators/Surveys		Paid Circulators/Surveys	19,056	12.9%
Trav./Accomodations		Trav./Accomodations	0	0.0%
Total		**Total**	**$147,725**	**100.0%**
Total Cost Per Vote		**Total Cost Per Vote**	**$10.84**	

CITY OF SAN GABRIEL

Proposition 1 • City Growth Moratorium

1987 Election Result: Yes-83%/No-17%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$792	22.1%	Business	$40,434	90.0%
Individuals	2,790	77.9%	Individuals	4,500	10.0%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$3,582**	**100.0%**	**Total**	**$44,934**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$8,577	70.5%	Under $100	$50	0.1%
$100 to $999	3,582	29.5%	$100 to $999	500	1.1%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	4,000	8.9%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	40,434	89.9%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$12,159**	**100.0%**	**Total**	**$44,984**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT

(No contributors gave $1,000 or more.)

OPPOSITION

Shyu Corporation	$40,434
Michael Rue	$2,000
Kahn Quan	$2,000

(No other contributors gave $1,000 or more.)

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	972	8.1%	Consultants	12,366	26.7%
Fundraising	655	5.4%	Fundraising	0	0.0%
General	6,257	52.1%	General	24,118	52.1%
Campaign Mail/Pamphlets	2,297	19.1%	Campaign Mail/Pamphlets	9,773	21.1%
Newspaper Ads	1,839	15.3%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$12,020**	**100.0%**	**Total**	**$46,257**	**100.0%**
Total Cost Per Vote	**$3.96**		**Total Cost Per Vote**	**$75.09**	

CITY OF SANTA CLARITA

Proposition P • City Annexation of Land

1990 Election Result: Yes-20%/No-80%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$58,690	88.4%	Business	$0	0.0%
Individuals	7,699	11.6%	Individuals	1,081	100.0%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$66,389**	**100.0%**	**Total**	**$1,081**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$92,645	58.3%	Under $100	$1,138	51.3%
$100 to $999	14,049	8.8%	$100 to $999	1,081	48.7%
$1,000 to $9,999	52,340	32.9%	$1,000 to $9,999	0	0.0%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$159,034**	**100.0%**	**Total**	**$2,219**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION
Newhall Land & Farm	$7,000	
Paragon Companies	$5,135	
American Beauty Investment	$5,000	*(No contributors gave $1,000 or more.)*
TMC Escrow	$5,000	
Anden Group	$5,000	

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	8,278	5.4%	Consultants	0	0.0%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	109,868	71.7%	General	756	32.8%
Campaign Mail/Pamphlets	29,235	19.1%	Campaign Mail/Pamphlets	1,190	51.6%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	360	15.6%
Paid Circulators/Surveys	5,857	3.8%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$153,238**	**100.0%**	**Total**	**$2,306**	**100.0%**
Total Cost Per Vote	**$38.31**		**Total Cost Per Vote**	**$0.14**	

CITY OF SANTA MONICA

Proposition S • Beach Hotel Development

1990 Election Result: Yes-61%/No-39%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION
Business	$10,500	13.7%	Business
Individuals	28,743	37.5%	Individuals
Labor Organizations	0	0.0%	Labor Organizations
Political Parties/Clubs	0	0.0%	Political Parties/Clubs
Broadbased Org's	37,500	48.9%	Broadbased Org's
Officeholders	0	0.0%	Officeholders
Total	**$76,743**	**100.0%**	**Total**

Prop. S was one of four measures on the 1990 ballot which addressed the McCarty hotel development plan. Rather than facing a traditional opposition campaign, Prop. S competed with other measures.

CONTRIBUTION SIZE

SUPPORT			OPPOSITION
Under $100	$821	1.1%	Under $100
$100 to $999	19,203	24.7%	$100 to $999
$1,000 to $9,999	20,140	25.9%	$1,000 to $9,999
$10,000 to $49,999	37,500	48.3%	$10,000 to $49,999
$50,000 to $99,999	0	0.0%	$50,000 to $99,999
$100,000 to $999,999	0	0.0%	$100,000 to $999,999
$1 million & Over	0	0.0%	$1 million & Over
Total	**$77,664**	**100.0%**	**Total**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION
Not Yet Miami	$37,500	
Connie Badt	$5,000	
Sand & Sea Club	$5,000	
Santa Monica Pier Leasers Assoc.	$5,000	
Peter/Sharon Jaquith	$1,600	

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION
Broadcast Ads	$0	0.0%	Broadcast Ads
Consultants	18,168	24.0%	Consultants
Fundraising	1,777	2.3%	Fundraising
General	18,810	24.8%	General
Campaign Mail/Pamphlets	25,989	34.3%	Campaign Mail/Pamphlets
Newspaper Ads	368	0.5%	Newspaper Ads
Outdoor Ads	0	0.0%	Outdoor Ads
Paid Circulators/Surveys	10,642	14.0%	Paid Circulators/Surveys
Trav./Accomodations	0	0.0%	Trav./Accomodations
Total	**$75,754**	**100.0%**	**Total**
Total Cost Per Vote	**$4.07**		

Prop. S was one of four measures on the 1990 ballot which addressed the McCarty hotel development plan. Rather than facing a traditional opposition campaign, Prop. S competed with other measures.

CITY OF SANTA MONICA

Propositions T & Z • Beachside Hotel Development

Prop. T (Allow Beach Development) 1990 Election Result: Yes-43%/No-57%
Prop. Z (City Council Measure/Repeal Devel. Plan) 1990 Election Result: Yes-61%/No-39%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

PROP. T SUP./PROP. Z OPP.			PROP. Z SUPPORT		
Business	$240,983	34.4%	Business	$3,250	4.6%
Individuals	460,516	65.6%	Individuals	54,583	77.1%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	8,000	11.3%
Officeholders	0	0.0%	Officeholders	5,000	7.1%
Total	**$701,499**	**100.0%**	**Total**	**$70,833**	**100.0%**

CONTRIBUTION SIZE

PROP. T SUP./PROP. Z OPP.			PROP. Z SUPPORT		
Under $100	$25	0.0%	Under $100	$2,953	4.0%
$100 to $999	750	0.1%	$100 to $999	31,553	42.8%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	20,000	27.1%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	19,280	26.1%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	700,749	99.9%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$701,524**	**100.0%**	**Total**	**$73,785**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

PROP. T SUP./PROP. Z OPP.		PROP. Z SUPPORT	
Michael McCarty	$574,222	Douglas Badt	$19,280
Maguire Thomas Partners	$126,527	Palisades Beach Property Owners Assn.	$8,000
(No other contributors gave $1,000 or more.)		Friends of Herschal Rosenthal	$5,000
		Kahn & Stein	$2,500
		M.S. Gummer	$1,500

EXPENDITURE PATTERNS (Amounts $100 or More)

PROP. T SUP./PROP. Z OPP.			PROP. Z SUPPORT		
Broadcast Ads	$4,680	0.7%	Broadcast Ads	$0	0.0%
Consultants	157,898	22.3%	Consultants	10,009	12.1%
Fundraising	0	0.0%	Fundraising	492	0.6%
General	148,748	21.0%	General	717	0.9%
Campaign Mail/Pamphlets	194,392	27.5%	Campaign Mail/Pamphlets	70,617	85.1%
Newspaper Ads	21,788	3.1%	Newspaper Ads	394	0.5%
Outdoor Ads	2,993	0.4%	Outdoor Ads	773	0.9%
Paid Circulators/Surveys	174,011	24.6%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	2,332	0.3%	Trav./Accomodations	0	0.0%
Total	**$706,841**	**100.0%**	**Total**	**$83,002**	**100.0%**
Total Cost Per Vote	**$27.82**		**Total Cost Per Vote**	**$4.29**	

CITY OF SANTA MONICA

Proposition Y • Elected City Attorney

1990 Election Result: Yes-42%/No-58%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$2,900	27.8%	Business	$1,000	2.0%
Individuals	7,550	72.2%	Individuals	29,986	61.2%
Labor Organizations	0	0.0%	Labor Organizations	7,458	15.2%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	700	1.4%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	9,862	20.1%
Total	**$10,450**	**100.0%**	**Total**	**$49,006**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$22,993	68.8%	Under $100	$13,186	21.2%
$100 to $999	8,450	25.3%	$100 to $999	27,969	44.9%
$1,000 to $9,999	2,000	6.0%	$1,000 to $9,999	21,137	33.9%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$33,443**	**100.0%**	**Total**	**$62,292**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION	
Rena Case Hubbard	$1,000	City Atty. Robert M. Myers	$8,212
Lowes Hotel	$1,000	Public Attorney's Union	$5,800
(No other contributors gave $1,000 or more.)		Mary Patricia Dougherty	$4,125
		George Crook	$2,000
		Alicia W. Cortrite	$1,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	0	0.0%
Fundraising	0	0.0%	Fundraising	3,723	6.8%
General	22,782	64.7%	General	7,561	13.8%
Campaign Mail/Pamphlets	11,618	33.0%	Campaign Mail/Pamphlets	43,683	79.5%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	788	2.2%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$35,188**	**100.0%**	**Total**	**$54,967**	**100.0%**
Total Cost Per Vote	**$2.73**		**Total Cost Per Vote**	**$3.09**	

CITY OF SOUTH PASADENA

Proposition 1 • Building Height Limits

1983 Election Result: Yes-53%/No-47%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$0	0.0%	Business	$58,091	97.1%
Individuals	1,331	100.0%	Individuals	1,750	2.9%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$1,331**	**100.0%**	**Total**	**$59,841**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$2,682	66.8%	Under $100	$289	0.5%
$100 to $999	1,331	33.2%	$100 to $999	2,470	4.1%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	5,000	8.3%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	52,371	87.1%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$4,013**	**100.0%**	**Total**	**$60,130**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT

(No contributors gave $1,000 or more.)

OPPOSITION

Huntington Capitol Corp.	$52,371
First Arroyo Bank	$5,000

(No other contributors gave $1,000 or more.)

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$0	0.0%
Consultants	0	0.0%	Consultants	19,505	37.9%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	725	19.1%	General	2,846	5.5%
Campaign Literature	3,075	80.9%	Campaign Literature	15,186	29.5%
Newspaper Ads	0	0.0%	Newspaper Ads	2,056	4.0%
Outdoor Ads	0	0.0%	Outdoor Ads	1,386	2.7%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	10,491	20.4%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$3,800**	**100.0%**	**Total**	**$51,470**	**100.0%**
Total Cost Per Vote	**$1.50**		**Total Cost Per Vote**	**$22.98**	

CITY OF TORRANCE

Proposition A • Oil Refinery Chemical Ban

1990 Election Result: Yes-26%/No-74%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$5,950	10.4%	Business	$757,154	99.7%
Individuals	5,000	8.7%	Individuals	200	0.0%
Labor Organizations	0	0.0%	Labor Organizations	2,000	0.3%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	400	0.1%
Officeholders	46,400	80.9%	Officeholders	0	0.0%
Total	**$57,350**	**100.0%**	**Total**	**$759,754**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$4,370	7.1%	Under $100	$30	0.0%
$100 to $999	950	1.5%	$100 to $999	2,350	0.3%
$1,000 to $9,999	10,000	16.2%	$1,000 to $9,999	16,000	2.1%
$10,000 to $49,999	46,400	75.2%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	741,404	97.6%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$61,720**	**100.0%**	**Total**	**$759,784**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION	
Councilman Dan Walker Comm.	$46,400	Mobil Oil Corp.	$741,404
S. Doane	$2,000	Instrument Specialists Co.	$2,000
Ileen Garcia	$1,000	Irwin Industries, Inc.	$1,000
Stephan R. Cramer	$1,000	Lovco Construction, Inc.	$1,000
Fuji Realty	$1,000	Stone, Webster Engineering Corp.	$1,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$130,880	17.3%
Consultants	1,000	1.6%	Consultants	210,594	27.8%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	0	0.0%	General	28,903	3.8%
Campaign Literature	60,627	98.4%	Campaign Literature	219,079	28.9%
Newspaper Ads	0	0.0%	Newspaper Ads	48,997	6.5%
Outdoor Ads	0	0.0%	Outdoor Ads	3,295	0.4%
Paid Circulators/Surveys	0	0.0%	Paid Circulators/Surveys	115,673	15.3%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$61,627**	**100.0%**	**Total**	**$757,421**	**100.0%**
Total Cost Per Vote	**$12.41**		**Total Cost Per Vote**	**$53.43**	

CITY OF WEST HOLLYWOOD

Proposition AA • The Establishment of Card Clubs

1990 Election Result: Yes-23%/No-77%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$293,867	100.0%	Business	$34,150	80.3%
Individuals	0	0.0%	Individuals	8,180	19.2%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	200	0.5%
Total	**$293,867**	**100.0%**	**Total**	**$42,530**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$0	0.0%	Under $100	$535	1.2%
$100 to $999	100	0.0%	$100 to $999	4,530	10.5%
$1,000 to $9,999	0	0.0%	$1,000 to $9,999	14,000	32.5%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	24,000	55.7%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	293,767	100.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$293,867**	**100.0%**	**Total**	**$43,065**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $1,000 or More)

SUPPORT		OPPOSITION	
West Hollywood Club	$293,767	Californians for Fair Business Practices	$24,000
		Luckman Management	$8,000
(No other contributors gave $1,000 or more.)		A.J. Perenchio	$5,000
		Irwin Winkler	$1,000
		(No other contributors gave $1,000 or more.)	

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$3,755	1.3%	Broadcast Ads	$0	0.0%
Consultants	110,133	38.4%	Consultants	16,500	37.0%
Fundraising	0	0.0%	Fundraising	2,375	5.3%
General	84,810	29.6%	General	0	0.0%
Campaign Mail/Pamphlets	70,045	24.4%	Campaign Mail/Pamphlets	24,636	55.3%
Newspaper Ads	1,905	0.7%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	15,962	5.6%	Paid Circulators/Surveys	1,029	2.3%
Trav./Accomodations	0	0.0%	Trav./Accomodations	0	0.0%
Total	**$286,610**	**100.0%**	**Total**	**$44,540**	**100.0%**
Total Cost Per Vote	**$107.55**		**Total Cost Per Vote**	**$5.09**	

APPENDIX F

Definitions and Tables of "Pearson Correlation" and "Partial Correlation" Analysis

Statistical analyses, such as the Pearson and Partial Correlations used in this study, have a tendency to bewilder all but social scientists trained in mathematical concepts. As a result, the Commission chose to place the actual correlation coefficients in an Appendix rather than in the text. For those interested in examining the statistical calculations, a brief explanation of the Pearson and Partial Correlations is provided below, followed by tables of statistical correlations which provided the basis for some of the Commission's findings.

Pearson Correlation (Pearson product-moment correlation)

The Pearson Correlation is among the most widely respected statistical measures of an association between two variables. It might be used, for example, to measure the relationship between educational level and voting. The Pearson Correlation consists of three major components: the *direction* of a relationship (indicated by a positive or negative number); the *strength* of the relationship (indicated by the size of the number); and the likelihood the relationship is due to more than *chance* (indicated by the level of significance).[1]

Direction. A positive Pearson Correlation indicates that the two variables being tested for a relationship move in the same direction: that is, as one variable increases so does the other. In measuring the relationship between level of education and voter turnout, for example, a positive Pearson Correlation suggests that as educational level increases, so does the likelihood of voting. A negative Pearson Correlation indicates a converse relationship.

Strength. The strength of a correlation is measured by the Pearson Correlation as a number ranging from ".0000," indicating no relationship at all between two variables, to "1.0000," indicating a perfect relationship between variables. A Pearson Correlation of +1.0000 is a perfectly positive relationship, while a -1.0000 is a perfectly inverse relationship. Rarely can a perfect relationship be found between two variables in the social sciences.

Chance. Any relationship between two variables potentially has some element of chance. A well-educated person who usually does not vote may have decided to cast a ballot in one particular election because a friend was running for office, rather than as a function of that voter's level of education. How likely is the positive correlation between level of education and voter turnout for society as a whole a true relationship between these two variables rather than a matter of chance attributed to unique individual motivations? If the level of significance is at 95% confidence or better (meaning the probability of error is less than or equal to 5% [P≤.05]), the relationship is believed due to more than mere chance.

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1. For a discussion of the mathematics of Pearson and Partial Correlations, *see* Sam Kash Kachigan, Multivariate Statistical Analysis (1982).

Correlation coefficients in themselves do not provide a causal explanation of any particular relationship. When a correlation is identified between two variables, the causal connection between these variables must be derived through theory. This theory, *plus* the discovery of a strong correlation coefficient when computed with real data, permits a fairly high level of confidence that a causal relationship between the variables has been confirmed.

Drawing on the charts below, for example, a Pearson Correlation between the size of a state's voting age population and the number of initiatives in circulation of +.7180 at a significance level of P=.001 indicates a strong (.7180 on a scale of .0000 to 1.000) positive (+) relationship with a very low probability of error (one-tenth of one percent). It shows that the larger the voting age population, the more initiatives are likely to be in circulation. Conversely, the mildly negative Pearson Correlation between voting age population and the percentage of titled initiatives qualifying for the ballot of -.1679 at a significance level of P=.416 suggests there is little, if any, association between the two variables beyond chance.

Partial Correlation (Partial Correlation coefficient)

The Partial Correlation is similar to the Pearson Correlation except it describes the relationship between two variables while adjusting for the effects of one or more additional variables—that is, it factors the effects of the additional variables out of the analysis. For example, people with a high level of education are more likely to vote. But higher educated people also tend to have higher incomes. Levels of education and levels of income can both affect voting behavior. If one wanted to measure only the impact of education—not education *and* income—on voter turnout, a Partial Correlation would then be appropriate. It allows one statistically to measure the relationship between education and voter turnout while *neutralizing* the potential effects of income.

Table F.1

PEARSON CORRELATIONS AMONG THE STATES SHOWING THAT VOTING AGE POPULATION AND ABSOLUTE NUMBER OF SIGNATURES REQUIRED, NOT PROCEDURAL REQUIREMENTS, PRINCIPALLY AFFECT THE NUMBER OF TITLED AND QUALIFIED INITIATIVES

	% of VAP Signatures Required for Qualification*	*Absolute Number of Signatures Required*	*Months Allowed for Petition Circulation*	*VAP*
Number of Titled Initiatives	-.3294 P=.168	.6676** P=.002	-.1344 P=.583	.7180** P=.001
Number of Qualified Initiatives	-.2682 P=.298	.5283* P=.029	-.2093 P=.420	.7247** P=.001
Qualification Rate	.0950 P=.168	-.2127 P=.288	.0793 P=.754	-.1679 P=.416

*Voting age population.

Note: As can be seen above, voting age population is the primary determinant among these factors of a state's initiative activity, thus implying that procedural requirements have very little impact on initiative activity. The above figures represent the extent to which a relationship exists between three procedural factors in the qualification process—the percentage of voting age population signatures required for qualification, the absolute number of signatures required for ballot qualification, and the time period allowed for petition circulation—and three measures of initiative activity—the number of titled initiatives within a state, the number of qualified initiatives, and the percentage of titled initiatives which qualify for the ballot (qualification rate). A correlation analysis is also provided for the factor of a state's voting age population (VAP) and initiative activity. The unexpected positive correlation between absolute number of signatures required for ballot qualification and number of titled initiatives is only an accidental reflection of the impact of a state's voting age population. In Table G.2, a partial correlation analysis that neutralizes the influence of voting age population reveals that a strong *negative* correlation actually exists between number of signatures required for ballot qualification and initiative activity. A positive Pearson correlation (a positive number, such as .7180) indicates that the two variables being correlated move in the same direction—that is, as one increases so does the other. A negative correlation indicates a converse relationship. A significant relationship exists only when P=.05 or less, otherwise any relationship between variables could be the result merely of chance. One asterisk (*) denotes a significant relationship of .05 or less. Two asterisks (**) denote a strong statistical relationship of .01 or less.

Source: California Commission on Campaign Financing Data Analysis Project

Table F.2

PARTIAL CORRELATIONS AMONG THE STATES SHOWING THAT THE NUMBER OF SIGNATURES REQUIRED HAS THE STRONGEST EFFECT ON THE NUMBER OF INITIATIVES QUALIFYING FOR THE BALLOT

	% of VAP Signatures Required for Qualification*	*Absolute Number of Signatures Required*	*Months Allowed for Petition Circulation*
Number of Titled Initiatives	.0177 P=.474	-.0092 P=.487	-.1908 P=.240
Number of Qualified Initiatives	.1492 P=.291	-.5925** P=.008	-.2465 P=.179
Qualification Rate	.2897 P=.138	-.2170 P=.210	.0959 P=.362

*Voting age population.

Note: As can be seen above, the absolute number of signatures required for ballot qualification negatively impacts the number of initiatives qualifying for the ballot when controlling for a state's voting age population. The above figures represent the extent to which a relationship exists between three procedural factors of the qualification process—the percentage of voting age population signatures required for qualification, the absolute number of signatures required for ballot qualification, and the time period allowed for petition circulation—and three measures of initiative activity—the number of titled initiatives within a state, the number of qualified initiatives, and the percentage of titled initiatives which qualify for the ballot (qualification rate). *The correlations are controlled for voting age population, meaning that the impact of a state's population on initiative activity has been factored out of the analysis.* A positive Partial correlation (a positive number, such as .2897) indicates that the two variables being correlated move in the same direction—that is, as one increases so does the other. A negative correlation indicates a converse relationship. A significant relationship exists only when P=.05 or less, otherwise any relationship between variables could be the result merely of chance. One asterisk (*) denotes a significant relationship of .05 or less. Two asterisks (**) denote a strong statistical relationship of .01 or less.

Source: California Commission on Campaign Financing Data Analysis

Table F.3

PEARSON CORRELATIONS SHOWING THAT LESS POPULAR MEASURES COST MORE TO QUALIFY

18 Most Expensive Initiative Campaigns

Qualification Expenditures

	Broadcast	*Signature Gathering*	*Professional Services*	*Overall Cost*
Favorable Public Opinion	-.4776 P=.072	-.4166 P=.122	-.6633** P=.007	-.5807* P=.023

All Initiative Campaigns (1976-1990) in Which Opposition Expenditures Are Less Than or Equal to Proponent Expenditures

Total Qualification Expenditures

Percentage of Votes Received	-.7186** P=.000
Election Approval	-.6871** P=.000

Note: As can be seen above, initiative proposals that are relatively unpopular generally cost more to qualify for the ballot. Additionally, the more that is spent for ballot qualification, the fewer votes the proposal usually receives on election day and the greater the likelihood of voter rejection. The above figures represent the extent of the relationship between qualification expenditures for initiatives and public support of the measures. A negative relationship means that the higher the qualification costs, the lower the public support. "P" designates the consistency or significance of the relationship. A significant relationship exists only when P=.05 or less, otherwise any relationship could be due merely to chance. "Favorable Public Opinion" in the first part of this table is derived from the Mervin Field California Poll. One asterisk (*) denotes a significant relationship of .05 or less. Two asterisks (**) denote a strong statistical relationship of .01 or less.

Source: California Commission on Campaign Financing Data Analysis Project

Table F.4

PEARSON AND PARTIAL CORRELATIONS SHOWING THAT HEAVY ONE-SIDED OPPOSITION SPENDING SIGNIFICANTLY AFFECTED VOTING RESULTS IN CALIFORNIA, 1976-1990†

	Percentage of Vote Gained	Voter Approval
All Campaigns		
Expenditures in Support	-.1120 P=.386	-.2129 P=.097
Expenditures in Opposition	-.3272* P=.015	-.4027** P=.002
Heavy One-Sided Campaigns		
Expenditures in Support	-.2152 P=.177	-.2451 P=.122
Expenditures in Opposition	-.4036** P=.009	-.4486** P=.003
Partial Correlations Controlling for Opposition Expenditures		
Expenditures in Support	-.0240 P=.432	-.1097 P=.215
Partial Correlations Controlling for Support Expenditures		
Expenditures in Opposition	-.3175** P=.010	-.3809** P=.002

Note: As can be seen above, spending in opposition to a measure, especially heavy one-sided spending, significantly affects voting behavior and election results. The same cannot be said of spending in support of an initiative. A positive correlation indicates that the two variables being correlated move in the same direction—that is, as one increases so does the other. A negative correlation indicates a converse relationship. A significant relationship exists only when P=.05 or less, otherwise any relationship between variables could be the result merely of chance. One asterisk (*) denotes a significant relationship of .05 or less. Two asterisks (**) denote a strong level of significance of .01 or less.

†The insurance reform counter initiatives—Propositions 100, 101, 103, 104—along with Proposition 99 on the 1988 general election ballot are excluded from this analysis because of their atypical patterns of campaign expenditures. If these 1988 counter initiatives are included, the significance of the relationship between opposition spending and election result is lost.

Source: California Commission on Campaign Financing Data Analysis Project

APPENDIX G

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:

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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

Herbert E. Alexander, Director, Citizens' Research Foundation
Kim Alexander, Policy Analyst, California Common Cause
John Allswang, Department of History, California State University
Anthony Alperin, Deputy City Attorney, City of Los Angeles
Mike Arno, American Petition Consultants
Ed Arnold, Elections Division, California Secretary of State's Office

Ethel Baxter, Division of Elections, Florida Secretary of State's Office
Larry Berg, Unruh Institute of Politics and Government, University of Southern California
Larry Bevens, Manager, Elections Division, Oregon Secretary of State's Office
Leah Bishop, Attorney, O'Melveny & Myers
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Bill Boyarksy, *Los Angeles Times*
Yvonne Brathwaite Burke, Jones, Day, Reavis & Pogue
Willie Brown, Assembly Speaker, State of California
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Julie Hansen, Voter Revolt
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APPENDIX H

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APPENDIX I

Examples of Ballot Pamphlets from California and Other States and Localities

The Commission has proposed that Los Angeles area cities and counties graphically redesign their ballot pamphlets to increase readability. (For a detailed discussion of recommended changes, see Chapter 7, "The Ballot Pamphlet.") The use of color, charts and improved design features would substantially enhance the ballot pamphlet's usefulness to voters.

A number of other states and localities have designed their ballot pamphlets in ways that make the information they contain accessible and easy to read. This Appendix contains portions of innovative ballot pamphlets used by Santa Monica and San Francisco and by two other states. An excerpt of the existing California Ballot Pamphlet is also presented. Included are the following:

- *Santa Monica Ballot Pamphlet* (Proposition S, Nov. 1990)
- *San Francisco Ballot Pamphlet* (Proposition R, Nov. 1988)
- *California Ballot Pamphlet* (Proposition 131, Nov. 1990)
- *Massachusetts Ballot Pamphlet* (Proposition 3, Nov. 1990)
- *Utah Ballot Pamphlet* (Proposition 1, Nov. 1986)

SANTA MONICA BALLOT PAMPHLET

PROPOSITION S

PROPOSITIONS

PROPOSED INITIATIVE ORDINANCE

SECTION I: **PURPOSE**

The purpose of this initiative ordinance is to add a new overlay district to the City of Santa Monica's Zoning Districts. This initiative ordinance is necessary to protect the public health, safety and welfare of present and future residents of the City of Santa Monica [the "City"] by avoiding the deleterious effects of uncontrolled growth in the Beach Overlay District and preserving the unique and diverse character of the Santa Monica oceanfront.

This purpose is achieved by limiting the proposed proliferation of excessive hotel, motel and large restaurant development within the Beach Overlay District. Such development ignores the need to preserve Santa Monica's greatest physical asset - its oceanfront setting, view, and access to coastal resources - and to maintain its beach and oceanfront parks as open recreational area for present and future generations.

SECTION II: **FINDINGS**

The people of the City find that:

1. The proposed new Beach Overlay District is consistent in principle with the goals, objectives, policies, land uses and programs specified in the City's General Plan.

2. The public health, safety and general welfare require the adoption of this new overlay district for the following reasons:

a. The circulation system on the Pacific Coast Highway and related arterials and feeder streets is currently operating at or near capacity, causing the transportation system to be neither safe nor efficient.

b. Unbridled growth in the City and neighboring communities has resulted in contamination of our beaches and of Santa Monica Bay. The Bay has been subjected to frequent contamination by raw sewage. These incidents threaten not only the public health and safety of all citizens but also the beauty and the economic and recreational value of our seashore.

c. The recreational character of our ocean front is being eroded by the negative impacts of accelerated growth, among them: proliferation of hotels, motels and large restaurants, and inappropriate land uses causing loss of open space, impaired view corridors, worsening traffic conditions, and degradation of our environment. To preserve the current mix of land uses and thereby preserve the unique character of the Santa Monica oceanfront, it is necessary to prohibit further proliferation of hotels, motels and large restaurant development.

d. Major development projects threaten to overburden the existing infrastructure within the City to such a degree that the health, safety and general welfare of Santa Monica residents are threatened.

e. The spillover effect of additional traffic volumes resulting from continuing excessive development in the Beach Overlay District will increase the frequency and intensity of unacceptable levels of service, not only on roadways within the Beach Overlay District but also in adjacent major commercial areas and established residential areas of the City.

SECTION III: **BEACH OVERLAY DISTRICT**

The Beach Overlay District shall include all of the following described area of the City of Santa Monica: Beginning at the intersection of the northern City boundary line and the Pacific Ocean, thence northeasterly along the north City boundary line to the intersection of the center line of Ocean Avenue and said north City boundary line, thence southeasterly along the centerline of Ocean Avenue to Neilson Way, thence continuing southeasterly along the centerline of Neilson Way to the southernmost City boundary line, thence southwesterly along the southern City boundary line to the Pacific Ocean, thence northwesterly along the Pacific Ocean to the point of beginning.

The following areas are excluded from the Beach Overlay District:

a. The Santa Monica Pier platform and up to a maximum of 140,000 square feet of new development to be erected on the platform after the effective date of this initiative ordinance.

b. That portion of the Residential-Visitor Commercial District described as follows: that portion of the Beach Overlay District seaward of the centerline of Ocean Avenue and lying between the Santa Monica pier on the north and Seaside Terrace on the south, and the Promenade on the west;

SANTA MONICA BALLOT PAMPHLET

The above described Beach Overlay District includes all areas of the City of Santa Monica as defined in this section except those exemptions listed above.

SECTION IV: **SUBCHAPTER 4V**

Subchapter 4V is hereby added to Chapter 1 [Comprehensive Land Use and Zoning Ordinance], Article 9, [Planning and Zoning] of the Santa Monica Municipal Code, to read as follows:

Subchapter 4V. Beach Overlay District.

Section 9035.08 Purpose.

The purpose of this initiative ordinance is to add a new overlay district to the City of Santa Monica's Zoning Districts. This initiative ordinance is necessary to protect the public health, safety and welfare of present and future residents of the City of Santa Monica [the "City"] by avoiding the deleterious effects of uncontrolled growth in the Beach Overlay District and preserving the unique and diverse character of the Santa Monica oceanfront.

This purpose is achieved by limiting the proposed proliferation of excessive hotel, motel and large restaurant development within the Beach Overlay District. Such development ignores the need to preserve Santa Monica's greatest physical asset - its oceanfront setting, view, and access to coastal resources - and to maintain its beach and oceanfront parks as open recreational area for present and future generations.

Section 9035.2. Permitted Uses. Subject to the provisions of Section 9035.5 the following uses shall be permitted in the Beach Overlay District:

[a] All uses listed as permitted uses within the district in which the parcel is located.

[b] Open space, public beaches, parks, incidental park structures, gardens, playgrounds, recreational buildings, recreational areas.

[c] Public parking.

Section 9035.3. Uses Subject to Performance Standards Permit. Subject to the provisions of Section 9035.5, the following uses may be permitted in the Beach Overlay District subject to the approval of a Performance Standards Permit:

[a] All uses listed as subject to performance standards permits in the district in which the parcel is located.

Section 9035.4. Conditionally Permitted Uses. Subject to the provisions of Section 9035.5, the following uses may be permitted in the Beach Overlay District subject to the approval of a Conditional Use Permit:

[a] All uses listed as conditionally permitted uses in the district in which the parcel is located.

Section 9035.5. Prohibited Uses.

[a] Hotels, motels.

[b] Restaurants and/or food service facilities of more than 2000 square feet and/or exceeding one story in height.

[c] Any use not specifically listed in Section 9035.2.

Section 9035.6. Recreational Use. Any building or area within the Beach Overlay District currently in use as a recreational building or recreational area shall not be removed or demolished except to replace said building or area with open space or substantially similar recreational use or uses.

SECTION V: **DEFINITIONS**

Subchapter 1, Section 9000.3 Chapter 1 [Comprehensive Land Use and Zoning Ordinance], Article 9, [Planning and Zoning] of the Santa Monica Municipal Code, is hereby amended to add a definition for recreational building as follows:

Recreational Building. Incidental park structures such as restrooms and maintenance facilities, community rooms, locker rooms and showers servicing persons using the beaches or ocean, playing courts, playgrounds, picnic areas, public swimming pools.

SECTION VI: **INCORPORATION INTO LAND USE PLAN.**

This initiative ordinance shall be included as a part of any land use plan and local coastal program adopted by the City of Santa Monica and shall be submitted to the Coastal Commission for its approval and/or certification to the extent required by law.

SANTA MONICA BALLOT PAMPHLET

PROPOSITIONS

SECTION VII: **ENFORCEMENT.**

As provided by existing law, a violation of any provision of Subchapter 4V is a misdemeanor. In addition, any taxpayer or elector of the City may enforce any provision of Subchapter 4V by an action at law or equity. The prevailing plaintiff shall be awarded attorney's fees and costs in accordance with the Code of Civil Procedure.

SECTION VIII: **VESTED RIGHTS.**

Any approvals granted prior to the effective date hereof for developments which are not in compliance with this initiative ordinance, and which have no common law or statutory vested rights obtained through the exercise of good faith reliance on lawfully issued permits and substantial construction pursuant thereof shall be null and void.

SECTION IX: **EFFECTIVE DATE.**

The effective date of this initiative ordinance shall be that mandated by the state Elections Code.

SECTION X: **MODIFICATION.**

This ordinance may only be amended or repealed by the voters of the City of Santa Monica.

SECTION XI: **SEVERABILITY.**

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions thereof which can be implemented without the invalid provisions, clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF PROPOSITION S

This measure was placed on the ballot by initiative petition and proposes to adopt an ordinance to establish new restrictions related to certain types of commercial development along the coastline in Santa Monica.

The measure would establish a Beach Overlay District which includes the area bounded by the Pacific Ocean on the west, by the City boundary on the north, by the centerline of Ocean Avenue and Neilson Way on the east, and by the City boundary on the south. The Beach Overlay District would expressly exclude the Santa Monica Pier platform and 140,000 square feet of new development on the platform. The Beach Overlay District would not include that portion of the Santa Monica Pier that extends into the Pacific Ocean. In addition, the measure expressly excludes from the Beach Overlay District the area bounded by the Pier on the north, by the centerline of Ocean Avenue on the east, by Seaside Terrace on the south, and by the Promenade on the west.

This measure would amend the City's Zoning Ordinance by prohibiting hotels and motels in the newly established Beach Overlay District. The measure would also prohibit restaurants of more than 2000 square feet or exceeding one story in height in the Beach Overlay District. This measure would amend the Zoning Ordinance to prohibit the demolition or replacement of any recreational building or area within the Beach Overlay District except where the building or area were replaced by open space or by a substantially similar recreational use or uses.

This measure would create a situation where any development approval which is not in compliance with this measure and which has no common law or statutory vested right would be nullified.

This measure would require that its contents be included in any land use plan or local coastal program adopted by the City and that the measure be submitted to the California Coastal Commission to the extent required by law.

This measure contains provisions which are in conflict with provisions in Proposition T ("Santa Monicans for A Liveable Environment" initiative). Pursuant to Elections Code Section 4016, if the provisions of two ordinances adopted at the same election conflict, the ordinance receiving the highest number of affirmative votes shall control.

ROBERT M. MYERS, City Attorney

SANTA MONICA BALLOT PAMPHLET

ARGUMENT IN FAVOR OF PROPOSITION S

The Save Our Beach measure has one purpose: To preserve true public access to our coast by prohibiting the construction of hotels or large restaurants along Santa Monica's beachfront. This protection is needed to guarantee our precious coastline is insulated from politically driven over-development. Once in place, this guarantee cannot be removed unless you vote to remove it.

Since 1984 the City has permitted the number of hotel rooms to double - over 70% of those hotel rooms have been built in our coastal zone. We are already well on the way to what amounts to a defacto privatization of our beachfront.

We cannot depend on the California Coastal Commission to protect our beach. Weakened by pro-development political forces, the Commission can no longer function in the original spirit of the Coastal Act. Today, nearly 50% of California's beaches are privately owned.

Santa Monica's ongoing commercial building boom has damaged our residential quality of life and environmental health. It has exposed our coastline to intrusive hotel development, increasing pollution of our air and water, clogging our streets, and burdening public safety services.

The ONLY exemption provision in Save Our Beach concerns the municipal Pier [plus one block south]. We recognize that this area needs revitalization, for residents and visitors alike. Save Our Beach is a *managed growth* measure, designed to enhance the accessibility and scale of our most treasured – and most vulnerable – asset: the beachfront.

For Santa Monica, for our children and for generations to come, vote YES to preserve public access to our coast. Vote YES to protect our fragile environment. Vote YES to Save Our Beach.

LAUREL ROENNAU, 25 year Santa Monica Resident
SHARON JAQUITH, 10 year Santa Monica Resident
SHARON GILPIN, 17 year Santa Monica Resident

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION S

Vote No on the Save Our Beach*club* proposition.

The Club owner paid to have Proposition S put on the ballot. He decided to save the beach from hotels right after his hotel proposal for the site at 415 PCH was rejected by the City.

If he is so against hotels, why did he plan to build one?

THE TRUTH IS that Proposition S is a typical diversion. It gets everyone looking in one direction while the real action happens elsewhere.

The real action is the private club which is entering its tenth year on a month-to-month lease. Its tainted history is full of similar diversions.

The Club won't get away with it this time.

This time, there is an attractive alternative to the private club – a community center which will draw 200,000 people annually including seniors and children, not only to a truly public beach club, but to art and environmental programs provided 12 months a year.

A small hotel will produce desperately needed revenues to pay to keep our beaches and parks clean and safe for everyone.

Previously the private Club avoided being kicked off the public land by discrediting the proposed alternatives and then asked to stay until some other use could be found.

They tried it this time too. But the City Council saw through them and approved the hotel and community center.

NO MORE TRICKS. NO MORE PRIVATE CLUB.

VOTE NO ON PROPOSITION S.

DUANE NIGHTINGALE, Immediate Past President, SM Chamber of Commerce
PAUL ROSENSTEIN, Member, SM Planning Commission
LYNDEN KEATING, Senior Activist

SANTA MONICA BALLOT PAMPHLET

ARGUMENT AGAINST PROPOSITION S

The beachfront is dotted by private clubs, islands of privilege from a bygone era.

One Club has occupied public park land for thirty years, the last nine on a month to month lease.

Until now, the savvy Club owner has protected himself by lining up politicians to shield the Club from efforts to dislodge it in the State Legislature.

When the City decided to demolish the Club and replace it with a fully public use, the Club owner raised virtually all the funds to put Proposition S on the ballot.

Proposition S specifically allows the private club to continue and rules out the City's plan for a small hotel and community center which can produce badly needed revenues and increased public access.

The City plans to use revenues from this site to pay for more beach law enforcement, cleanup and maintenance.

Community leaders who supported the City's plan but wanted more money to stop Bay pollution and for park security and maintenance created Santa Monicans for a Livable Environment (SMiLE) and sponsored Proposition T.

Proposition T does more for the beaches and parks than Proposition S.

Proposition S protects the private Club and eliminates our opportunity to protect our real natural resource – our beach and the Santa Monica Bay.

Supporters of Proposition S suggest increased fees or even taxes on Santa Monicans to pay for increased security and cleanup of our parks and beaches.

Santa Monicans are paying their fair share already. Only one in five beach users is a Santa Monica resident.
SAY NO TO THE SELFISH PRIVATE BEACH CLUB!
SAY NO TO BAY POLLUTION, BEACH CRIME, FILTHY BATHROOMS AND DIRTY BEACHES!
SAY NO TO NEW TAXES!
VOTE NO! ON PROPOSITION S!

DUANE NIGHTINGALE, Immediate Past President, SM Chamber of Commerce
PAUL ROSENSTEIN, Member, SM Planning Commission
LYNDEN KEATING, Senior Activist

REBUTTAL TO ARGUMENT AGAINST PROPOSITION S

The argument against Prop S is nothing more than an erroneous slur against a very genuine and grassroots effort to Save Our Beach. Prop S qualified for the ballot because 85 Santa Monicans gathered over 10,000 resident signatures. The campaign has been financed by over 275 individuals from throughout our community.

FACT: Prop S DOES NOT allow the beach club to continue. Prop S DOES save that facility for 100% PUBLIC ACCESS.

FACT: Prop S DOES NOT "eliminate" protection of our beach. Prop S DOES protect our beach from hotel development.

FACT: Prop S DOES NOT "suggest" taxes for parkland security. Prop S DOES stop an increase of environmental impacts resulting in traffic congestion, sewage overflows, polluted air - which DOES cost us money.

Don't be fooled by the developers' cynical attempts to distort Proposition S's truly preservationist intent. The fact that Prop S DOES preserve Santa Monica's beachfront is why two hotel developers completely financed Prop T [SMLEy] Vote No on T!

– Say YES to S and the preservation of beach public access [including our parkland facility at 415 PCH]!
– Say YES to S and the conservation of our precious beachfront natural resources!
– Say YES to S and Save Our Beach!

Join the Sierra Club and your neighbors and VOTE YES ON PROPOSITION S!

LAUREL ROENNAU
SHARON JAQUITH
SHARON GILPIN
Save our Beach Committee

SAN FRANCISCO BALLOT PAMPHLET

Renegotiate USS Missouri MOU

R

PROPOSITION R

Shall homeporting of the U.S.S. Missouri in San Francisco be paid for solely with federal defense funds and be subject to a Memorandum of Understanding requiring that a minimum of 351 new jobs go to qualified City residents and requiring job creation through contracts with civilian companies with apprenticeship agreements?

YES 284 ➡
NO 285 ➡

Analysis

by Ballot Simplification Committee

THE WAY IT IS NOW: In August 1987 the City and the U.S. Navy signed a non-binding Memorandum of Understanding ("MOU") to homeport the U.S.S. Missouri at the Hunters Point Naval Station Annex in San Francisco. The 1987 MOU calls for the City to take actions in support of homeporting at the City's expense. The 1987 MOU calls for the City to seek hiring, training and apprenticeship programs that give priority to Bayview-Hunter's Point residents, minorities and women for jobs resulting from homeporting.

THE PROPOSAL: Proposition R is an ordinance that would require the United States to pay from national defense dollars all costs of homeporting the U.S.S. Missouri in San Francisco. Proposition R also would require that the homeporting be done under a new Memorandum of Understanding, which would provide (1) that a minimum of 351 new jobs go to qualified City residents and (2) that job creation be supported through contracts with civilian companies with qualified and approved apprenticeship agreements.

A **"YES" VOTE MEANS:** If you vote yes you want to require that the United States pay from national defense dollars all costs of homeporting the U.S.S. Missouri in San Francisco. You want to require that the homeporting be done under a new Memorandum of Understanding, which would provide (1) that a minimum of 351 new jobs go to qualified City residents and (2) that job creation be supported through contracts with civilian companies with qualified and approved apprenticeship agreements.

A **"NO" VOTE MEANS:** If you vote no, you do not want to require that the United States pay all the costs of homeporting the U.S.S. Missouri in San Francisco. You do not want to require that the homeporting be done under a new Memorandum of Understanding, which would provide (1) that a minimum of 351 new jobs go to qualified City residents and (2) that job creation be supported through contracts with civilian companies with qualified and approved apprenticeship agreements.

Controller's Statement on "R"

City Controller John C. Farrell has issued the following statement on the fiscal impact of Proposition R:

"Should the proposed initiative ordinance be approved, in my opinion, in and of itself, it would not affect the cost of government. However, as a product of its future application, costs and revenues could be affected in an indeterminate amount dependent upon specific terms and conditions of a possible Memorandum of Understanding between the City and the Navy to be negotiated at a future time."

How "R" Got on the Ballot

On August 10, the Registrar of Voters received an ordinance signed by the Mayor.

The City Charter allows the Mayor to place an ordinance on the ballot in this manner.

LEGAL TEXT OF PROPOSITION R IS ON PAGE 98

Notice to Voters: Propositions R and S are competing measures. In the event that both measures are approved by the voters, the one receiving the highest affirmative vote will prevail and the other will fail of passage.

SAN FRANCISCO BALLOT PAMPHLET

R Renegotiate USS Missouri MOU

OFFICIAL ARGUMENT IN FAVOR OF PROPOSITION R

As a candidate, I opposed the USS Missouri homeporting plan for many reasons.

After becoming Mayor I looked at it again — this time as I faced the largest deficit in the City's history. To do my job I had to place the economic factors at the top of the list. I asked all the questions. I reviewed the financial costs and benefits.

Placing Proposition R on the ballot was the only way I could think of to make sure that you recognize that your vote to bring the Missouri here means spending City dollars to pay to bring the Missouri here. And that will mean the money must be taken from other City services.

Frankly, after all the controversy over the last round of budget cuts I think the taxpayer has the right to make an informed choice about who pays the bill.

Proposition R simply states that if the Missouri comes to San Francisco the Navy should pay for it; the 351 jobs promised should go to San Franciscans and be performed under union contracts.

Elections are choices.

I have placed Proposition R on the ballot to focus attention on the real choice. The choice is not about patriotism. The choice is about how you want to spend your money.

In this election you can choose to give millions to the Navy as they demand or spend that money to benefit our city more directly. The decision should not be made lightly. The sum of money is large. It's enough to provide in-home support services to 500 elderly people; or child care to 400 children; or shelter 700 homeless people for a year; or police protection for thousands.

That is how I see it. I trust your judgement.

Mayor Art Agnos

NO REBUTTAL TO THE OFFICIAL ARGUMENT IN FAVOR OF PROPOSITION R WAS SUBMITTED

PAID ARGUMENTS IN FAVOR OF PROPOSITION R ARE ON PAGE 154

TEXT OF PROPOSED ORDINANCE PROPOSITION R

Be it ordained by the people of the City and County of San Francisco:

That it shall be the law and official policy of the City and County of San Francisco that Navy homeporting of the U.S.S. Missouri in the City shall be undertaken solely at Federal expense with national defense dollars.

The implementation of the homeporting shall be in accordance with a Memorandum of Understanding to be negotiated between the City and County of San Francisco and the Navy to provide for a minimum of 351 new jobs for qualified San Francisco residents and to provide that job creation be supported through contracts with civilian firms with qualified and approved apprenticeship agreements. □

SAN FRANCISCO BALLOT PAMPHLET

Renegotiate USS Missouri MOU

OFFICIAL ARGUMENT AGAINST PROPOSITION R

Don't be fooled by Proposition R — the TROJAN HORSE INITIATIVE. Everybody knows the epic story of how the ancient Greeks ended the Trojan War by cleverly outwitting the enemy. Prop R is a modern day trojan horse that destroys the Missouri homeporting efforts. Designed to look like an appealing pro-Missouri proposal, Prop R is filled with conditions that actually kill the publicly supported efforts to bring home the Missouri.

VOTE NO ON PROPOSITION R — THE TROJAN HORSE INITIATIVE.

Proposition R was placed on the ballot by a mayor who has opposed the Missouri. In the wake of overwhelming public support for the Missouri, Prop R is a clever ploy to confuse voters, divide the pro-Missouri support and defeat Proposition S — the real pro-Missouri proposal. DON'T BE FOOLED!

Today, homeporting efforts are proceeding in 8 other cities. A Congressional directive requires every homeporting city to contribute a small share of the project's costs. That is the law and we must comply to receive the Missouri's economic benefits.

VOTE NO ON PROPOSITION R — THE TROJAN HORSE INITIATIVE.

The agreement negotiated between the City and the Navy requires a two million dollar Port (non-tax) expenditure for dredging to initiate homeporting — a small price to pay for the more than 5000 jobs and $190 million in benefits that ensue.

Proposition R is a TROJAN HORSE — It is being paraded as a free "gift" to San Franciscans who want the generous benefits of the Missouri. Congressional mandates prohibit "free" homeporting. If Proposition R passes, the Navy will be forced to move the Missouri to another port, like Honolulu or Long Beach, willing to offer more than nothing. DON'T BE FOOLED BY THE TROJAN HORSE INITIATIVE!

SUBMITTED BY THE BOARD OF SUPERVISORS

REBUTTAL TO OFFICIAL ARGUMENT AGAINST PROPOSITION R

The opponents of Proposition R are missing the point.

Proposition R focuses the Missouri debate on the question of whether or not the United States Navy has enough money to homeport the ship in San Francisco.

I want San Franciscans to ask themselves some questions . . .

Does the United States Navy need anyone's permission to port any ship in any Navy owned facility?

The answer is no.

Does the United States Navy receive adequate funding for its operations?

The answer is yes.

If San Francisco gives the Navy the funding they are demanding, where will that funding come from?

The answer is from other local services.

Is that how we want to use our local revenues?

That answer is up to you.

Mayor Art Agnos

PAID ARGUMENTS AGAINST PROPOSITION R ARE ON PAGES 155 TO 157

IMPORTANT NOTICE: YOUR POLLING PLACE MAY HAVE MOVED — CHECK BACK COVER FOR LOCATION.

SAN FRANCISCO BALLOT PAMPHLET

PAID ARGUMENTS IN FAVOR OF PROP R — RENEGOTIATE USS MISSOURI MOU

The City of San Francisco is currently facing continuing difficulties meeting its existing budget. There is NO reason whatsoever to ask the taxpayers of San Francisco to subsidize the United States Navy any further than we already do through our federal income tax. Simply put, the Navy should pay this bill, not us.

Supervisor Richard Hongisto

PROPOSITION R MEANS JOBS FOR SAN FRANCISCANS

The Businesses of the Hunters Point Shipyard is an association of the nearly 200 small businesses and 350 artists that have opened shops and studios the vacant land left behind when the Hunters Point Naval Shipyard closed in 1974. Our shops furnish jobs to nearly 1000 San Franciscans and contribute some $35,000,000 annually to the San Francisco economy. Our artists form the largest single community of Art professionals in the country. Homeporting as it is currently proposed would drive all of our members out of business or out of the City. They would be displaced to make way for on-base parking, a PX, tennis courts and other military-recreational facilities, which will employ no more than 160 City residents. That's a bad trade. Proposition R would allow the City to negotiate a better deal with the Pentagon so that businesses and artists could share the 650 acres of the shipyard with necessary Naval and civilian facilities.

Thomas Lacey, President, Businesses of Hunters Point Shipyard
Daniel K. Dillon, President, S.F. Jr. Chamber of Commerce
Paul H. Melbostad, Commissioner, Board of Permit Appeals
Alan D. Weaver
**Robert Barnes*, President, Golden Gate Business Association
Robert J. Bell
Richard L. Allman
Gwenn Craig
Steven M. Krefting, Treasurer, S.F. Democratic Party
James R. Samuelsen, American Van Lines GM/VP
Tab Bruckner
Ken Ireland, PointDesign
John Di Paolo, Artist
Tom Anderson, Sunset Fire Protection
Anthony L. Gray, Precision Transport Co.
Tony Dominski, West Edge Design
Clay Young, Finishworks of San Francisco
Fausto A. Vitello, High Speed Productions Inc.
Eric L. Swenson, Ermico Enterprises Inc.
Jane Fehon, Cuisine Cuisine Inc.
Dan Bowe, Cuisine Cuisine Inc.
Richard Linley, Linley Cabinets
Satoshi Kuriyama, Mokko Shop
Kingsley Moore, Patchwork Autos
Penny O'Connor, Golden Gate Heat Treating
Robert F. Christian, Christian Engineering
Christina Blomberg
* Identification Purposes Only

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Sharon L. Bretz, Issues Chair of Alice B. Toklas Gay Democratic Club
J. Filippelli
Ron Braithwaite, President, Alice B. Toklas Gay Demo. Club
Lester Olmstead-Rose, Pol Action Chair of Alice B. Toklas Gay Demo. Club
Douglas Yaranon, Minority Caucus Chair of Alice B. Toklas Gay Demo. Club
Nancy A. Noyce, M.D.
James Calder, Jonathan Freeman Designs Inc.
Sally Seymour, Sally's Deli
Lawrence Ferlinghetti, City Lights Bookstore
Matthew J. Rothschild
Jacques J. Terzian, The Point
Sally Bloomberg, Marjorie Baer Accessories
Margaret Lowinger, Artist
David Roberts, Pollock Design Studio
Gary Denmark, Artist, Partner "Surface Studio"
Elizabeth Chandler, Artist
Myra Moore, California Fire Protection
Elida Shalhan, Dymax Inc.
Wayne Pahl, Wayne Pahl Designs
Dennis M. Hall, Finishes By Paint
David Ginsberg, Ginsberg Collection

SAN FRANCISCO BALLOT PAMPHLET

PAID ARGUMENTS AGAINST PROP R — RENEGOTIATE USS MISSOURI MOU

Mayor Agnos says that Proposition R gives voters a choice — he knows better. A YES on R gives the Navy NO choice but to take the Missouri and its economic benefits elsewhere.

In an August 25, 1988 editorial entitled "Deceptive Move vs. The Missouri" the San Francisco Chronicle states:

"...the Navy is bound by congressional directive to obtain some financial contribution from a community participating in such a project. So if Proposition R passes, the Missouri plan capsizes. And with it go the jobs and economic benefits that homeporting the battleship is certain to bring."

The San Francisco Examiner put it this way, "Electoral Wolf in Ship's Clothing" in its August 18,1988 editorial:

"Why would a mayor who has consistently opposed homeporting sponsor a positive-sounding measure, when he could have simply opposed the supervisors' initiative? Because polls have shown that for reasons economic and patriotic, San Franciscans back the homeporting. Thus, Agnos has taken a course to torpedo the deal."

DON'T BE FOOLED BY MAYOR AGNOS' TROJAN HORSE INITIATIVE.

Bring home the Missouri. VOTE NO ON PROP R!

Supervisor Jim Gonzalez
Supervisor Tom Hsieh
Supervisor Willie B. Kennedy
Supervisor Bill Maher
Supervisor John Molinari

Proposition R will not bring the U.S.S. Missouri to San Francisco. In fact, it is cunningly designed to do just the opposite! It's one thing for the mayor to oppose homeporting the Missouri here, it's another matter, unworthy of a mayor, to use a dissembling technique to thwart homeporting.

Proposition R makes the Navy an offer it must refuse. Despite a duly executed and approved Memorandum of Understanding between the City and the Navy, Proposition R adds two new conditions to U.S.S. Missouri homeporting — conditions which the Navy, by order of Congress, cannot meet.

VOTE NO ON PROPOSITION R.

First, Proposition R requires the Navy to foot the whole bill for Missouri homeporting in San Francisco. This is a transparent dealbreaker. Congress has mandated that local ports contribute to homeporting costs. San Francisco's only investment is $2,000,000 for dredging from the $13,000,000 Port surplus, none of which is taxpayer funds. This modest investment compares favorably to an estimated annual economic benefit of $250,000,000.

Second, Proposition R stipulates that 351 San Francisco residents must be employed by the homeporting project. This is bizarre. The U.S.S. Missouri is expected to generate approximately 2,000 new civilian jobs in San Francisco alone. But the Navy cannot pledge a specific number of jobs, and it cannot legally promise to hire workers based on where they happen to live. Indeed, the mayor doesn't even require members of his own staff to live in San Francisco. It is a double standard to demand that homeporting jobs be given only to city residents.

VOTE NO ON PROPOSITION R.

If you oppose homeporting the U.S.S. Missouri, here's your ballot measure.

But if you favor homeporting, vote NO on Proposition R and YES on Proposition S.

State Senator Quentin L. Kopp

Congressional law (S.26381 and R.99-331) on Navy Homeporting requires each homeport to contribute a small financial share to the overall cost of homeporting ships. The rest is paid by the federal government. Mayor Agnos was informed of this requirement when he met with the Secretary of the Navy on May 16, 1988.

In August, Mayor Agnos put an initiative on the ballot to require the Navy to pay the full cost of homeporting — Prop. "R." Prop. "R" deliberately misleads the voters by suggesting we can get the Missouri for free. Mayor Agnos knows that if Prop. "R" passes, it will scuttle the homeporting of the USS Missouri and her flotilla in San Francisco.

VOTE NO ON PROP. "R" — THE TROJAN HORSE INITIATIVE!

VOTE YES ON PROP. "S" — DON'T GIVE UP THE SHIP!

Joe Mazzola, Business Manager
Plumbing and Pipe Fitting Local 38
Walter Johnson, General Secretary and Treasurer
San Francisco Labor Council
Stan Smith, General Secretary and Treasurer
San Francisco Bldg. and Construction Trades Council
Larry Mazzola, President
San Francisco Bldg. and Construction Trades Council
Paul Dempster, General Manager
Sailors of the Pacific
Chuck Mack, President, Western Conference
Teamsters Joint Council #7
Bob Morales, Secretary
Bay Area Union Labor Party

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

CALIFORNIA BALLOT PAMPHLET

131 Limits on Terms of Office. Ethics. Campaign Financing. Initiative Constitutional Amendment and Statute

Official Title and Summary:

LIMITS ON TERMS OF OFFICE. ETHICS. CAMPAIGN FINANCING. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

- Limits elected statewide officials to eight successive years in office; state legislators, Board of Equalization members to twelve successive years.
- Limits gifts to elected state, local officials.
- Enlarges conflict of interest prohibitions, remedies applicable to state, local government officials.
- Prohibits use of public resources for personal or campaign purposes.
- Authorizes special prosecutors.
- Establishes campaign contribution limits for elective offices.
- Provides partial public campaign financing for candidates to state office who agree to specified campaign expenditure limits.
- Substantially repeals campaign ballot measures, 68 and 73, enacted June, 1988.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown level of state revenues, possibly $12 million in 1990–91 and uncertain amounts thereafter, to be generated from state income tax check-off provisions for campaign financing; corresponding unknown revenue loss to state General Fund.
- Annual General Fund contributions of $5 million for campaign matching payments beginning January 1, 1992, amounts to increase in subsequent years.
- Unknown amount of state matching payments likely to be requested under measure for campaign financing by candidates for state office.
- State General Fund administrative costs of approximately $1.5 million in 1990–91, $3 million annually for subsequent years.

Analysis by the Legislative Analyst

Background

Existing state law prohibits elected officials from participating in activities or having interests which conflict with properly carrying out their duties or responsibilities. State law limits the amount of gifts that state and local officials may accept. In addition, state elected officials are prohibited from accepting honorariums, while local elected officials may accept limited honorariums.

State law also contains restrictions on the financing of political campaigns. These provisions restrict the amount of funds that may be contributed to all candidates for state and local elective office. They also prohibit transfers of campaign funds between candidates or their campaign committees. State law also prohibits spending public funds for campaign expenses.

California law allows a state taxpayer to claim an income tax credit of up to $50 for political contributions. This tax credit will expire on January 1, 1992.

Currently, there is no limit on the number of terms that elected officials may serve.

Proposal

In summary, this measure:

- Sets limits on the number of consecutive terms that an elected state official can serve in office;
- Places restrictions on the conduct of elected officials, candidates, and staff;
- Changes existing campaign finance laws; and
- Allows candidates for state office to receive public funds if they agree to comply with limits on campaign spending.

Limits on Terms of Elected State Officials. This measure sets the following limits on the terms of elected state officials, beginning with this election:

- Two *consecutive four-year terms* for the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and Insurance Commissioner;
- Three *consecutive four-year terms* for Members of the Board of Equalization and the Senate; and
- Six *consecutive two-year terms* for Members of the Assembly.
- After an individual has been out of office for *one full term*, he or she may serve additional terms, subject to the limits described above.

Restrictions on Conduct. This measure restricts the conduct of elected officials as follows:

- Reduces from $250 to $100 the maximum amount of gifts that *state* elected officials may accept from a single source in a calendar year. The maximum amount *local* elected officials may accept is reduced from $1,000 to $100.
- Prohibits *local* elected officials from accepting any honorariums.
- Prohibits most legislative employees from lobbying before the Legislature for 12 months after leaving employment.
- Prohibits elected state officials, some state employees, and state-employed consultants from using state resources for personal or political use.
- Establishes within the Office of the Attorney General a Special Investigation and Prosecution Unit. This unit will

CALIFORNIA BALLOT PAMPHLET

coordinate the investigation and prosecution of elected and non-elected state officials, judges, court commissioners, and candidates for state elective office. This unit also may assist local law enforcement and prosecution agencies with investigation and prosecution activities related to local officials and candidates for local elective office.

Campaign Finance Revisions. This measure revises existing state laws restricting campaign contributions and the use of these funds for noncampaign purposes. Specifically, the measure:

- *Contribution Limits for Independent Committees.* Establishes contribution limits for committees formed to support or oppose candidates, but which are not controlled by a candidate.
- *Total State Contribution Limits.* Establishes total contribution limits on campaign contributions that can be made to state candidates by different categories of contributors during each two-year election cycle. Persons are limited to total contributions of $40,000, political committees to $100,000, and small-contributor political action committees to $400,000. Further, the measure prohibits a state candidate from accepting more than one-third of his or her contributions from contributors other than individuals (excluding political party committees), and more than one-sixth from political party committees.
- *Nonelection-Year Fund Raising.* Prohibits candidates from asking for or accepting contributions during defined nonelection-year periods.
- *Tax Credit for Campaign Contributions.* Repeals the existing personal income tax credit for political campaign contributions, effective for the 1990 tax year.

Partial State Funding for State Office Candidates. This measure allows state funds to be provided to candidates for state elective office on a matching basis, if they agree to follow campaign expenditure limits. The specific provisions of the measure include:

- *Qualification Requirements.* To receive state funds, a candidate must collect a specified minimum level of private contributions. In addition, candidates may not contribute more than a specified amount per election from their personal funds. Further, the candidate must be opposed by a candidate who has either qualified for state matching funds *or* collected a minimum level of private contributions.
- *Maximum State Matching Funds.* Each state candidate may qualify to receive up to the following maximum amounts of public funds for each election:

Office	Primary Election	General (and Other Elections)
Governor	$2,225,000	$3,600,000
Superintendent of Public Instruction	975,000	975,000
Other Statewide Officials	750,000	1,200,000
Board of Equalization	212,500	350,000
State Senate	212,500	350,000
State Assembly	125,000	200,000

The actual amount of state funds provided to a candidate is based on the amount of private funds received by the candidate. Private contributions received from sources within a candidate's district are matched at a higher rate than other contributions.

- *Expenditure Limits.* Candidates who accept state matching funds must agree to limit their campaign expenditures. These limits are equal to *twice* the amounts shown above for each office. The spending limits do not apply to expenditures made for purposes of legal defense and officeholder expenses. The spending limits on candidates who accept state matching funds are removed, however, if an opposing candidate who does not accept matching funds receives contributions or spends more than the spending limit.
- *Source of Funds.* The public funds provided to candidates would be paid for in two ways. First, the measure appropriates $5 million per year from the General Fund, adjusted for increases in cost of living and population, to help pay these costs. Second, the measure sets up a new income tax check-off program. Under this program, state income taxpayers may voluntarily designate that part of their income tax payments (up to $5 for single tax returns, and up to $10 for joint returns) be used to finance state campaign matching payments.

Administration and Enforcement. The State Fair Political Practices Commission has the primary responsibility for administering and enforcing the provisions related to public campaign financing.

Fiscal Effect

Limits on Terms of Office. This provision would not have any fiscal effect.

Source of Funds for Campaign Financing. State funds for matching payments would come from two sources: (1) an income tax check off and (2) a state General Fund contribution.

- *Income Tax Check Off—Revenue Loss.* The amount of funds that would be generated from this check off is unknown. If taxpayer participation is similar to that for the Presidential Election Fund, the annual revenues will be about $12 million in 1990–91. In future years, the amount could be higher or lower depending upon the level of funds requested in prior elections and projections of the amount needed for future elections. Because the check off reduces the amount a taxpayer owes the state, there would be a corresponding reduction in annual state General Fund revenues.
- *State Contributions—Increased Costs.* The measure requires annual General Fund contributions of $5 million for campaign matching payments, beginning in 1991–92. In the first two years, these costs would be essentially offset by savings due to the elimination of the existing personal income tax credit for political campaign contributions. In subsequent years, this offset would not occur because the tax credit expires under existing law as of January 1, 1992.

Expenditures for Campaign Financing. The amount of state funds that would be spent for matching payments in any year is unknown and depends upon several factors. These include the number of candidates requesting funds, the amount of private contributions received by these candidates and the amount of funds actually available in that year. If the level of funds requested by candidates in an election year exceeds the amount actually available, eligible candidates may not receive an allocation of matching payments, or the full amount specified in this measure.

Administrative Costs. The state will incur administrative costs of about $1.5 million in 1990–91 and $3 million annually thereafter as a result of this measure. These costs will be paid from the General Fund.

For text of Proposition 131 see page 101

CALIFORNIA BALLOT PAMPHLET

131 Limits on Terms of Office. Ethics. Campaign Financing. Initiative Constitutional Amendment and Statute

Argument in Favor of Proposition 131

It's time for some big changes in Sacramento. Time to limit how long politicians can stay in office. Time to reform a political process that's out of control.

Prop. 131 will send a message from California voters: We're fed up with self-dealing, corruption and pandering to special interests by politicians. The people must be back in control.

Since 1983 a State Senator is as likely to be convicted as lose an election. Votes in the Legislature are traded for a $3,000 payment over breakfast. The S&L scandal—a bonanza of fat campaign contributions for politicians—will cost every taxpayer $2,500.

These are symptoms of a political system in which, all too often, politicians do not serve you. Rather, once in office too many serve themselves and the wealthy special interests who pay for their campaigns.

It's time to say "Enough."

PROPOSITION 131 MAKES FAIR, COMMON SENSE REFORMS THAT ARE ALREADY PROVEN WINNERS. IT WILL CLEAN UP CORRUPTION. AND IT WON'T RAISE YOUR TAXES ONE PENNY.

Proposition 131 will:

LIMIT HOW LONG POLITICIANS CAN STAY IN OFFICE.

If the President can only serve two terms, why should state lawmakers be able to hang on forever?

Proposition 131 will give people with different viewpoints, including women and minorities, a real chance.

LIMIT HOW MUCH POLITICIANS CAN SPEND ON THEIR CAMPAIGNS.

Where does a politician find $2,000,000 to run for a job that pays $44,000 a year? From special interests, that's where. An open invitation to corruption—and to expensive, dirty campaigns.

Proposition 131 will make state politicians adhere to strict spending limits.

PUT AN END TO HUGE SPECIAL INTEREST CONTRIBUTIONS.

Insurance companies, oil and chemical companies, developers and other special interests routinely pour millions into California legislative campaigns.

Proposition 131 will crack down on this outrageous influence buying with strict limits on total contributions.

PUT TEETH IN THE ENFORCEMENT OF POLITICAL CORRUPTION LAWS.

Political crimes can do just as much damage as street crimes. Accusations of corruption need swift investigation. But the Legislature refuses to fund real enforcement of the ethics laws.

Proposition 131 will establish a political corruption unit in the Attorney General's office and authorize independent special prosecutors.

ESTABLISH *VOLUNTARY* PUBLIC FINANCING AT NO COST TO TAXPAYERS.

Proposition 131 will stop Sacramento lobbyists and wealthy special interest contributors from controlling candidates. Instead, candidates who get small donations from people who actually live and work in their districts will receive matching funds from a special clean government fund.

Only those who want to contribute to the fund will do so. It won't cost one penny in additional taxes. But it will pry state government out of the clutches of special interests.

Politicians and lobbyists hate Proposition 131 because it will end their cozy back-room deals forever. But that's exactly why one million Californians signed petitions to put it on the ballot. And that's exactly why you should vote for it.

PUT THE PEOPLE BACK IN CONTROL. LIMIT POLITICIANS' TERMS. CLEAN UP STATE GOVERNMENT. VOTE YES ON PROPOSITION 131!

RALPH NADER

JOHN PHILLIPS
Chair, California Common Cause

JOHN VAN DE KAMP
Attorney General of California

Rebuttal to Argument in Favor of Proposition 131

THE LIE: 131 "won't cost an additional penny in taxes."

THE TRUTH: Proposition 131 *shifts* millions in tax dollars we now use for education, prisons, and health care into the political campaigns of California politicians. We taxpayers will be either asked to *raise taxes* or cut vital services to pick up the tab for their political campaigns.

THE LIE: 131 will "end huge special interest contributions."

THE TRUTH: This measure would *match*—dollar for dollar—at least 25% of special interest contributions made by insurance, oil and chemical company executives and land developers with *our tax dollars.*

THE LIE: 131 will " *limit* " how much politicians can spend on their campaign.

THE TRUTH: The "limit" is optional. Politicians can choose not to follow it. But if candidates for Governor do agree to the "limit," they can spend $11,700,000—with up to half of that supplied by us taxpayers.

THE LIE: 131 will "limit how long politicians can stay in office."

THE TRUTH: 131's "limits" don't affect legislators until the next century. But they get our tax dollars for the very next election!

In 1988, voters passed tough laws on campaign contributions—*at no cost in taxes.*

This June we passed more tough new laws against corruption—*at no cost in taxes.*

Measure 131 would change those new reform laws—before they've had a chance to work—spending millions of taxpayers dollars.

Vote no on 131!

W. BRUCE LEE, II
Executive Director, California Business League

WENDELL PHILLIPS
President, California Council of Police and Sheriffs

DAN STANFORD
Former Chair, Fair Political Practices Commission

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CALIFORNIA BALLOT PAMPHLET

Limits on Terms of Office. Ethics. Campaign Financing. Initiative Constitutional Amendment and Statute 131

Argument Against Proposition 131

Don't be fooled.

Before you vote, look at the fine print. All of it. Page after page, subject after subject.

When you do, you'll discover the *first* problem with Proposition 131—it contains too many subjects.

Parts of 131 may sound good, but other parts are *wrong* and represent *a step backward for real political reform.*

But instead of letting us vote separately on each subject, the backers of Proposition 131 are forcing us into voting on the whole thing.

Why? Because buried in all the fine print is a scheme allowing the politicians to use *our* tax dollars for *their* election campaigns.

$12,000,000.00 OF OUR TAX DOLLARS TO POLITICIANS

That's right. $12,000,000.00 in the first year—which isn't even an election year! In future years it will be many millions more.

California faces a massive budget crisis. Every dollar we give to politicians for their expensive campaigns means *more cutbacks in schools, law enforcement, health care and other essential services.*

Is it really fair to give tax dollars to politicians while we cut services to the aged, blind and disabled?

Worse yet, 131 allows our tax dollars to go to FRINGE EXTREMIST GROUPS LIKE LYNDON LA ROUCHE to promote their causes, no matter how much we disagree with their views or how few votes their candidates may get.

TAX DOLLARS WON'T BUY REAL REFORM

What do we get for giving politicians our tax dollars? NOTHING!

Does 131 eliminate special interest contributions? NO! It *makes special interest contributions even more valuable by matching them dollar for dollar with our taxes.*

In fact, 131 actually *doubles* the maximum contribution large special interest PACs can make to *$10,000.00* per candidate, per year.

Does 131 impose limits on campaigns spending? Not really. Unless you think "limiting" *each candidate* for governor to $11,700,000.00 is a real limit.

And remember, *50%* of each candidate's $11,700,000.00 can come from *your tax dollars*.

131 REPEALS REAL REFORMS PASSED BY THE VOTERS

131 repeals Proposition 73, the political reforms we overwhelmingly passed in 1988. Proposition 73 imposes tough new limitations on campaign contributions and *prohibits* use of taxpayer dollars to pay for political campaigns.

Why repeal Prop. 73 when it's already working—*without* using our tax dollars? In the first half of this election year, *campaign contributions to state legislators fell by over 40%* compared to the same period in 1988.

131 MEANS MORE BUREAUCRATIC WASTE

131 mandates spending $1,200,000.00 to create a permanent "special prosecutor's" office under the Attorney General.

The truth is, if the Attorney General were doing his job, we wouldn't need a special prosecutor's office. This is just an expensive cosmetic ploy that may look good but eats up more of our tax dollars.

VOTE NO ON PROPOSITION 131

LET'S GIVE THE *REAL* REFORMS WE'VE ALREADY PASSED A CHANCE TO WORK. LET'S KEEP OUR TAX DOLLARS WORKING FOR *US*, NOT THE POLITICIANS.

VOTE NO ON 131.

DAN STANFORD
Former Chair, Fair Political Practices Commission

HOWARD OWENS
President, Congress of California Seniors

TOM NOBLE
President, California Association of Highway Patrolmen

Rebuttal to Argument Against Proposition 131

Two simple things to remember about Proposition 131: Why we need it. And why the politicians oppose it.

WE NEED TERM LIMITS

Proposition 131 limits how long politicians can stay in office. Public service shouldn't be lifetime tenure!

Sacramento legislators and lobbyists don't want term limits, because that would end their lifetime lock on power.

WE NEED CAMPAIGN REFORM

Politicians don't want campaign reform, because that gives ordinary citizens real power in who gets elected.

The anti-131 forces like the status quo, but the cost to us is *tremendous:* budget deficits, environmental pollution, traffic and growth disasters, government that doesn't work.

PROP. 131 OFFERS REAL CHANGE

Politicians controlling the campaign against 131 use scare tactics and misleading information to obscure the facts. You deserve better.

In fact, Proposition 131 will:

- *Cut campaign spending dramatically,* while favoring small individual contributors over large special interest groups.
- *Encourage "citizen representatives" to run for office* with voluntary, public financing to compete against incumbents and lobbyists.
- *Save you money* by eliminating special interest control of spending.

Not a dime of your taxes will go to any politicians or any political group unless you say so. Public financing is purely voluntary, unlike the other ways politicians spend your taxes. And *no funds will be cut from places where we really need our taxes to go.*

Over 1,000,000 Californians signed the Clean Government Initiative because they want to derail the Sacramento gravy train.

They'll vote YES on Prop. 131. *You should, too.*

TOM McENERY
Mayor, City of San Jose

JOAN CLAYBROOK
President, Public Citizen

DAVID BROWER
Founder, Friends of the Earth

MASSACHUSETTS BALLOT PAMPHLET

QUESTION THREE: LAW PROPOSED BY INITIATIVE PETITION 5

3 Changing Laws Concerning State Taxes and Fees

Do you approve of a law summarized below, *on which no vote was taken by the Senate or House of Representatives before May 2, 1990?* ☐ YES ☐ NO

Summary: This proposed law would change the state income tax rate, affect language contained in certain tax provisions, and regulate the setting of fees by state agencies and authorities.

The proposed law would set the state income tax rate on Part B taxable income (in general, earned income) at 4.25% for 1991 and 4.625% for 1992, except for income from unemployment compensation, alimony, Massachusetts bank interest, rental income, pension and annuity income, and IRA/Keogh deductions, which would be taxed at 5%.

The proposed law also provides that the fee imposed by any state agency or authority shall be no more than the fee that was in effect on or before June 30, 1988. The state Secretary of Administration would determine the amount to be charged for any service, registration, regulation, license, fee, permit or other public function, except for the rates of tuition or fees at state colleges and universities or any fees or charges relative to the administration and operation of the state courts. Any increase or decrease in a fee, or the establishment of any new fee, would require the approval of the Legislature. Any increase in a fee would not apply to persons 65 years of age or older. No state agency or authority could collect any fee which exceeds the administrative costs directly incurred by the state agency or authority to produce and process the application for any license or permit. The Secretary of Administration must report information concerning fees to the Legislature on an annual basis.

The proposed law provides that for tax periods commencing on or after January 1, 1991, language in certain provisions of the Massachusetts general laws relating to taxes shall be the same as it was on August 2, 1989, or the effective date of the proposed law, whichever language yields less tax revenue. The tax provisions affected include sections relating to the surtax on business income, corporate excise taxes, S corporation taxes, taxes on security corporations, taxes on Part A income (in general, unearned income), bank taxes, excise taxes on alcoholic beverages and cigarettes, excise taxes on deeds, estate taxes, payments to the Commonwealth relating to horse and dog racing, payments to the Commonwealth relating to boxing and sparring matches, taxes on utility companies, gasoline taxes, taxes on insurance companies, excise taxes on motor vehicles, taxes on urban redevelopment corporations, sales tax, use tax, room occupancy excise tax, property taxes, and taxes on proceeds from raffles and bazaars.

The proposed law also contains a provision that if any sections of the law are held to be invalid, all other sections of the law are to remain in effect.

What your vote will do:

A YES vote would make the proposed changes in laws concerning state taxes and fees.

A NO vote would not make the proposed changes in laws concerning state taxes and fees.

As required by law, the summary above was written by the State Attorney General and the statements describing the effect of a "yes" or "no" vote were written by the Secretary of State.

Question 3 is continued on the following page ☞

MASSACHUSETTS BALLOT PAMPHLET

QUESTION THREE: CHANGING LAWS CONCERNING STATE TAXES AND FEES 6

Arguments:

In favor: Vote "YES" on Question 3; roll back taxes and fees while sending politicians the message that it's time for a change.

Massachusetts citizens pay the sixth highest taxes in the country, yet *Financial World* rates us the third worst-managed state. This high taxation/bad management combination hurts our economy and threatens the jobs that provide all the money for state and local services.

During the last seven years, the Dukakis Administration increased state spending from $6.944 to $13.356 billion (92%), almost three times the rate of inflation!

Taxpayers must demand that elected officials repair the damage from years of patronage, arrogance, and abuse of power, or the future will bring more of the same.

A "Yes" vote on Question 3, though difficult, will require them to restructure and prioritize. The alternative is to give up on making government work, and pay a billion dollars more in taxes every year.

Against: The people behind this radical idea claim it's a painless way to control spending. What they don't tell you is that their proposal will devastate our weakened economy.

This reckless proposal will cost Massachusetts $6 billion over three years, and even rollback $1 billion already collected and spent.

Proponents don't want you to think about these consequences:

- Our bond rating, already the worst in the nation, will drop even lower, and the budget crisis will go unsolved.
- Funding for our children's education, which now ranks 48th in the country, will be dramatically cut back. The same is true for elder programs, public safety, environmental and many other community services.
- Billions in federal funds for major construction projects will be lost, costing us 20,000 new jobs.
- When state aid to cities and towns is cut, local property taxes will have to go up.

Vote NO on Question 3. Don't be fooled.

IMPORTANT: As provided by law, the above 150-word arguments are written by proponents and opponents of each question, and reflect their opinions. The Commonwealth of Massachusetts does not endorse these arguments, and does not certify the truth or accuracy of any statement made in these arguments. The names of the individuals and organizations who wrote each argument, and any written comments by others about each argument, are on file in the Office of the Secretary of State.

Legislative committee reports

Joint Committee on Taxation Majority Report

H. 4005 is an initiative petition which would severely reduce state taxes and fees. The Massachusetts Taxpayers Foundation has estimated that over the first three years of the petition, more than $1.5 billion in revenues would be cut. This petition would also give fee-setting authority to the Legislature.

It is the majority position of the Joint Committee on Taxation that this petition should not become law. Recent revenue shortfalls have forced the state to make deep cuts in state services and to reduce significantly the size of the state work force. Because aid to cities, towns and school districts are a large part of the state budget, state cuts have required reductions in local services. Local education programs have been particularly hard hit along with fire and police protection and local road construction, repair and maintenance. Since the spring of 1988, the number of state employees has dropped to the same level as in 1980.

The tax and fee cuts proposed in this initiative petition would significantly worsen the current fiscal crisis at both the state and local level and could cause severe damage to the state economy. Tax revenue collections dropped sharply this year for the first time in 15 years as the economy continues to falter. While cuts in certain critical state responsibilities such as medical care for the needy and elderly have been held to a minimum, other important state programs have been cut ranging from environmental protection and highway construction to higher education. The cuts in education funds, at both the state and local levels, are particularly troubling because the Massachusetts economy depends on an edu-

Question 3 is continued on the following page ☞

MASSACHUSETTS BALLOT PAMPHLET

Legislative committee reports, continued

cated work force. In addition, a cut-back in investment in our highways, airports and other components of public infrastructure would harm business activity.

Passage of this petition would force the state, and by extension its municipalities, to move beyond restructuring and cost cutting. It would require the elimination of a wide range of services which have traditionally benefitted the Massachusetts economy and its residents and provided a safety net for needy residents.

This petition would unquestionably make Massachusetts a more difficult and less desirable place to live and operate a business. H. 4005 should not become law.

SENATORS
John W. Olver
Paul J. Sheehy
Richard A. Kraus
Mary L. Padula
Brian P. Lees
Theodore J. Aleixo
REPRESENTATIVES
John H. Flood
Frank A. Emilio
Eleanor Myerson
Mark Roosevelt
Robert A. Havern III
William J. Glodis
Daniel E. Bosley
Byron Rushing

Minority Report

H. 5004 is an initiative petition filed by Citizens for Limited Taxation.

The proposed legislation would follow the present effective eighteen-month increase in the state income tax rate with an effective eighteen-month reduction in the state income tax rate. This would return to taxpayers the approximate amount of the increase enacted last year, after the bonds for which it was enacted are paid off. It has been estimated by the Massachusetts Taxpayers Foundation that this would return approximately $246 million to taxpayers the first year. That amount is roughly 2% of a $12 billion state budget.

The second part of the proposed legislation would roll back all state agency fees and public authority fees to their June 30, 1988 rates, then require a vote of the legislature for future fee increases. During the presidential campaign, the Governor was given unilateral power to raise agency charges (e.g. Registry of Motor Vehicle fees) to help "balance" the Massachusetts budget. Authority fees (e.g. water and sewer charges from the Mass Water Resource Authority) have always been raised without legislative input. This legislation requires a House and a Senate vote on all fee increases, giving taxpayers and ratepayers some representation on the subject.

Finally, the proposed legislation would repeal increases in most existing taxes that might occur this year. Even prior to being on the ballot, this initiative petition has been successful in limiting tax increases this year, because any tax increase passed this year would be repealed if this petition is approved by the voters.

The intent of the initiative petition is to exert some citizen taxpayer control over the current budget crisis. Instead of taking the easy way out by raising taxes, legislators must attempt to set priorities and downsize a state government whose spending grew 71%, or five billion dollars, in the six years of the "Massachusetts Miracle". If federal reimbursements and local aid are removed from the equation, the Governor's proposed FY'91 budget shows and 87% increase over FY'83—more than 10% per year.

If instead of cutting spending the state chooses to raise taxes yet again—after there has been $1.1 billion increase in taxes, fees and fines already—then another tax increase will be inevitable next year, and the year after that, unless this bill ends the upward spiral. A minority of the committee members is concerned about the negative effect of yearly major tax increases on the state economy, and what this negative effect would have on the state's ability to provide necessary services. It is time the Legislature permanently regained control over agency fees and exerts some influence over authority fees.

Given that all petitions must be written over one full year before appearing on the ballot, and that since the writing of this petition there has been an unexpected decline in revenue, it may be necessary to postpone implementation of this initiative.

Most important of all, it is time that the Legislature acts to restore confidence in state government. For these reasons, a minority of the committee, after due deliberation, recommends H. 5004 ought to pass.

REPRESENTATIVES
Augusta Hornblower
Peter G. Torkildsen

See full text of Question 3 on page 17

UTAH BALLOT PAMPHLET

For ○

Against ○

Proposition No. 1

PROPERTY TAX EXEMPTION FOR NON-PROFIT HOSPITALS AND NON-PROFIT NURSING HOMES

Vote cast by the members of the 1986 Legislature on final passage:
HOUSE (75 members): Yeas, 61; Nays, 9; Absent or not voting, 5.
SENATE (29 members): Yeas, 25; Nays, 2; Absent or not voting, 2.

Official Ballot Title:

Shall Article XIII, Section 2 be amended to allow property owned by a nonprofit entity that is used exclusively for hospital or nursing home purposes to be exempt from property tax; and to provide an effective date of January 1, 1986?

IMPARTIAL ANALYSIS

Proposal

The state constitution provides for the taxation of property. Any exemption from the property tax must also be included in the constitution. The Utah Constitution has always allowed property used exclusively for "charitable purposes" to be exempt from property taxes. Property owned by a non-profit entity used exclusively for hospital or nursing home purposes was considered exempt from property taxes under the charitable exemption until the Utah Supreme Court issued an interpretation of this language in 1985. The court decided that, in determining if a non-profit hospital deserves the charitable exemption, the following six factors must be weighed:

1. whether the hospital exists to provide a service, without expecting to be paid;
2. whether donations and gifts play a large role in supporting the hospital;
3. whether patients are required to pay for services;
4. whether the income from all sources (including gifts) is greater than operating and other expenses;
5. whether those who may benefit from the charity are restricted to certain groups, or unrestricted;
6. whether the hospital provides financial benefit to any private person or interest.

Many non-profit hospitals and nursing homes that were previously tax exempt find it difficult to meet the court's new requirements. As a result, they will be required to pay property taxes. If Proposition 1 passes, non-profit hospitals and nursing homes would be exempt from property taxes without having to meet the court's requirements. If Proposition 1 fails, the Utah Supreme Court's requirements would be used to determine if individual non-profit hospitals and nursing homes should be taxed.

Effective Date

If approved by the voters, this amendment would apply to the tax year beginning January 1, 1986. Taxes imposed on certain non-profit hospitals and nursing homes under the requirements of the Supreme Court's 1985 decision would not have to be paid for 1986.

Fiscal Impact

If the proposed constitutional amendment is adopted, non-profit hospitals and non-profit nursing homes will not have to begin paying property taxes. If it is not adopted, non-profit hospitals and nursing homes will begin to pay property taxes to local governments and school districts. The estimated property tax revenue from non-profit hospitals and nursing homes will be $7 to $10 million per year.

UTAH BALLOT PAMPHLET

Arguments For

A vote in favor of Proposition 1 will prevent an increase in hospital costs which would occur if non-profit hospitals were required to pay property taxes. Non-profit hospitals, like Primary Children's Medical Center, LDS Hospital, McKay Dee, Utah Valley, St. Benedict's, St. Mark's and Holy Cross, and non-profit nursing homes have always been exempt from property taxes. Money received by non-profit hospitals above their actual operating costs goes to replace worn out equipment and provide new services. If they are forced to use that money to pay property taxes, they will be unable to replace outdated equipment and facilities unless prices are increased. The money for the new property taxes would have to come from increased hospital charges. ***It is estimated that non-profit hospitals will have to raise their room rates over $10 a day to pay the new property taxes.***

This new tax on non-profit hospitals will tax the sick, the elderly, and the poor. Since taxing non-profit hospitals will force them to increase their charges, taxing them will really tax only the sick. The sicker you are, the more tax you will pay. The elderly will be particularly hard-hit. They rely heavily on hospitals, and most live on fixed incomes. The poor, who are ill more often, will also have to pay more for their misfortune. ***Taxes on non-profit hospitals and non-profit nursing homes will be paid by those who can least afford it!***

Non-profit hospitals provide charitable services that government would otherwise have to provide. Non-profit hospitals provide millions of dollars in charity health care every year. They provide free or low-cost health care to thousands of people who need it but cannot pay. Non-profit hospitals also write off millions of dollars in debts from people who cannot pay their total hospital bills. Taxing non-profit hospitals would reduce the amount of charity care available, and could leave many people without health care. Government would have to use tax dollars to provide health care to people that non-profit hospitals now provide. ***Non-profit hospitals exist only to serve the community.***

Non-profit hospitals and non-profit nursing homes have always been tax free in Utah. Since statehood, the Legislature has considered non-profit hospitals and non-profit nursing homes exempt from property taxes. Proposition 1 would clarify in the constitution that non-profit hospitals and non-profit nursing homes are tax exempt. ***The Legislature, by passage of SJR 4 by a two-thirds majority of both houses, demonstrated that it does not want to tax non-profit hospitals and non-profit nursing homes.***

This is a new tax. A vote in *favor* of Proposition 1 will not increase property taxes since non-profit hospitals and non-profit nursing homes have never been taxed in Utah.

Vote **"FOR"** Proposition 1!

Senator Warren E. Pugh
5124 Cottonwood Lane
Salt Lake City, Utah 84117

Senator Fred W. Finlinson
720 Shiloh Way
Murray, Utah 84107

Rebuttal to

Arguments in Favor of Proposition No. 1

Proposition 1 is unnecessary. It changes a system that is working well and does not need to be changed.

We should not give tax-exempt status to all hospitals and nursing homes - only non-profit charitable hospitals and nursing homes! To be tax-exempt, non-profit hospitals shoud be charitable. Truly charitable hospitals will be able to demonstrate that they deserve the tax exemption. They will always be tax-free, as they are now. Hospitals that do not provide charity service should not be tax-free just because their corporate structure is non-profit!

If Proposition 1 passes, non-profit hospitals would not have to prove that they are charitable before obtaining a tax exemption. They could possibly offer no charity care, and still be tax-exempt. This is not right! If this exemption is placed in the constitution, non-profit hospitals and nursing homes will not be reviewed at all. ***If we defeat Proposition 1, counties will continue to examine these hosptials, and grant a tax exemption if it is deserved.***

Hospital costs will not rise if Proposition 1 is defeated! Supporters claim hospital costs will increase, because non-profit hospitals will have to raise rates to cover taxes. Defeating Proposition 1 will merely allow the county commissioners to continue to evaluate them. Non-profit hospital rates are often no lower than for-profit hospital rates. Non-profit hospitals charge what people will pay, not what the service costs them. Their rates will not change if Proposition 1 fails.

Why should taxpayers subsidize non-profit hospitals when they can't prove they offer charity, and cost the same as for-profit hospitals?

Representative Joseph M. Moody
72 West 100 North
Delta, Utah 84624

Representative Spencer Wyatt
204 East Elberta Drive
Ogden, Utah 84404

UTAH BALLOT PAMPHLET

Arguments Against

By opposing Proposition 1, we do not intend to tax truly charitable hospitals. The constitution does not have to be changed to make charitable hospitals tax-exempt. The present constitution and Utah Supreme Court rulings provide a method for charitable hospitals to be tax-exempt if they meet certain requirements. For example, because Shriner's Hospital and Primary Children's Medical Center provide much charity care, they have never paid property taxes, If they remain charitable, they probably never will. ***Proposition 1 is unnecessary!***

Non-profit hospitals are often no different than for-profit hospitals. In the past, hospitals were not taxed because they cared for the sick and poor. They were often operated by religious groups only to provide a public service. Because hospitals were genuine charities and served a public purpose, they deserved tax exemptions. Now, there is little difference between many non-profit hospitals and hospitals run for profit. Non-profit hospitals are big businesses, often run by large corporations. Some supposedly charitable hospitals even turn away or sue patients who cannot pay. These hospitals should not receive property tax exemptions. ***It is time to tax big-business hospitals unless they really are charities.***

If a hospital or nursing home does not provide charity care, then it should pay property taxes. If this amendment passes, any hospital or nursing home that is set up to be non-profit would be tax-exempt, even if it gives no charity care at all. There will be no incentive for hospitals to provide charity care. Only charitable non-profit hospitals should be tax exempt! ***By defeating Proposition 1, we encourage hospitals to be true charities.***

Proposition 1 is too vague, and could allow hospitals to avoid taxes unfairly. The field of health care changes every day. Given the way the amendment is worded, it is difficult to know how it might be interpreted. Clinics and other medical facilities might qualify as tax-exempt if they are set up as non-profit corporations. Passing this amendment could encourage many institutions to set up as non-profit corporations just to avoid taxes. County boards of equalization could not review the status of these hospitals and nursing homes. Now, counties can require non-profit hospitals to pay taxes, depending on how much charity care they give. ***Let's not give tax exemptions that aren't justified!***

Unfair tax exemptions cause higher taxes for everyone. If nursing homes and hospitals take unfair advantage of this amendment to avoid paying taxes, we will lose tax dollars. All taxpayers will have to pay more to make up for the loss. One of the reasons that property taxes are so high now is there are relatively few people in the state who are required to pay property taxes. ***Proposition 1 would leave other taxpayers with an unfair tax burden.***

Vote "AGAINST" Proposition 1!

Representative Joseph M. Moody
72 West 100 North
Delta, Utah 84624

Representative Spencer Wyatt
204 East Elberta Drive
Ogden, Utah 84404

Rebuttal to

Arguments Against Proposition No. 1

The Utah State Legislature passed overwhelmingly Proposition 1 by a vote of 25 to 2 in the Senate, and 61 to 9 in the House of Representatives. The Legislature passed this proposition:

I. **To clarify the recent Utah Supreme Court rulings on property tax exemptions.** Unless Proposition 1 is passed, these rulings may take several years and hundreds of thousands of dollars in hearings and legal expenses to clarify, resulting in increased cost to patients. Non-profit hospitals like Primary Children's Medical Center, which provide millions of dollars in charity care, may be taxed because the court's rulings are vague and difficult to apply.

II. **Non-profit hosptials and for-profit hospitals ARE different.** All revenue generated by non-profit hospitals is used to provide new equipment, facilities, and services for the communities they serve. For-profit hospitals distribute a portion of their earnings to investor owners. Non-profit hospitals have no investor owners, only exist to benefit the communities they serve, and under traditional American law have been exempt from taxes.

III. **To continue an exemption which has existed since statehood.** The proposition is clear and precise. ***Only non-profit*** hospitals and nursing homes as defined by state statute will qualify for exemption. No new exemptions will be created.

IV. **To avoid a new tax on the sick, the elderly, and the poor,** those who can least afford it. The proposition will avoid a new regressive sick tax of the worst kind: the sicker you are the more you will pay.

Vote "**FOR**" Proposition 1. Avoid a new sick tax.

Senator Warren E. Pugh
5124 Cottonwood Lane
Salt Lake City, Utah 84117

Senator Fred W. Finlinson
720 Shiloh Way
Murray, Utah 84107

APPENDIX J

Proposed Summary Ballot Pamphlet

The Commission recommends that local governments insert into their local ballot pamphlets a new summary voters' pamphlet outlining key ballot measure issues. (For a full discussion of this recommendation, see Chapter 7, "The Ballot Pamphlet.") The following example, using three Santa Monica ballot initiatives presented to the voters in 1990 for illustrative purposes, demonstrates how the new Summary Ballot Pamphlet might appear.

In this proposed new Summary Ballot Pamphlet, the city attorney or county counsel would prepare the "Summary of Main Provisions" (this example condenses the existing Santa Monica city attorney's Official Title and Summary). "Arguments" would be supplied by the proponents and opponents (this example uses condensed arguments from the originals). The new Summary would use up to five endorsements supplied by the proponents and opponents (this example uses endorsements taken from the original ballot pamphlet). "Major Contributors" uses actual figures taken from the Commission's Data Analysis Project (see Appendix D). "Council Vote" results were mocked-up for purposes of this example; under the Commission's recommendations, the city council or county board of supervisors would be required to vote on each ballot initiative.

City of Santa Monica Ballot Measures

	SUMMARY	ARGUMENTS	
	OF MAIN PROVISIONS	PRO	CON
R AFFORDABLE HOUSING Charter Amendment *Placed on the Ballot by City Council*	• **Requires the city council to mandate that at least 30% of all newly constructed multi-family housing (on an annual basis) be permanently affordable and occupied by "low" and "moderate" income households.** • **Half of the designated "affordable" housing would be reserved for "low" income households (defined as households earning not more than 60% of median income in L.A. County).**	*Prop. R will ensure that as years pass we will provide housing in our community to meet the needs of all of our diverse population. It will help to ensure that young people who grow up here will be able to find a place to live in their own home town. While our community will have many affluent families, we also will have many families of modest means.*	*This is one of those bad ideas that a tired city council attempts to add to a ballot at the last minute. Of course housing for low and moderate income persons is a concern but this extreme approach to the problem will make Santa Monica's housing environment very expensive. Private incentives, not public housing, is the best way to address a housing shortage.*
S BEACH DEVELOPMENT RESTRICTIONS Initiative Ordinance *Placed on the Ballot by Petition Signatures*	• **Establishes Beach Overlay District in which commercial construction would be limited (from the city boundary in the north and south to the centerline of Ocean Avenue and Neilson Way to the east).** • **New hotels would be prohibited in the zone and new restaurants restricted to one story in height and less than 2,000 square feet in size.** • **The Santa Monica Pier is excluded from zone restrictions.**	*Proposition S preserves public access to the coast by prohibiting the construction of hotels and large restaurants. The city has allowed hotel rooms along the beach to double since 1984. Let's stop this de facto privatization of the coastline. Don't be fooled by Proposition T which allows construction of the Santa Monica Beach Hotel.*	*Proposition S was placed on the ballot by one private club owner who had his hotel construction plans at the beach rejected by the city council. Proposition S specifically allows the private clubs to continue operations and rules out the city's plans for a small hotel and community center which can increase public access to the beach coastline.*
T BEACH DEVELOPMENT RESTRICTIONS Initiative Ordinance *Placed on the Ballot by Petition Signatures*	• **Establishes a three-year moratorium on new construction along the beach of hotels proposed after May 15, 1989.** • **Exempts the Santa Monica Beach Hotel.** • **Creates a Beach Overlay District in which development standards would be modified to reduce building height limits to three stories.** • **Earmarks 50% of transient occupancy tax to clean-up the beaches.**	*Without raising taxes, this measure will put $3 million per year for the next 10 years into cleaning up the beaches and maintaining parks. Proposition T also prohibits the construction of any more large hotels along the coastline permanently. Say yes to public access; vote for Proposition T.*	*No argument filed.*

November 6, 1990

ENDORSEMENTS		MAJOR CONTRIBUTORS		COUNCIL VOTE
FOR	AGAINST	FOR	AGAINST	
Dennis Zane *Santa Monica Mayor* **Ken Genser** *Santa Monica City Councilman* **Ralph Mechur** *Chairman, Santa Monica City Planning Commission*	**John Jurenka** *Santa Monica Resident* **K.B. Huff** *Santa Monica Resident*	*No single contributor gave $1,000 or more in support.*	*No single contributor gave $1,000 or more in opposition.*	***TOTAL VOTE*** Yes: 6 No: 1 ***BY MEMBER*** John Doe--Yes Richard Doe--No Jane Doe--Yes Robert Doe--Yes Sarah Doe--Yes Joan Doe--Yes James Doe--Yes
Laurel Roennau *Resident* **Sharon Jaquith** *Resident* **Sharon Gilpin** *Resident*	**Duane Nightingale** *Past President, Chamber of Commerce* **Paul Rosenstein** *Member, Planning Commission* **Lynden Keating** *Activist*	**Not Yet Miami** $37,500 **Connie Badt** $5,000 **Sand & Sea Club** $5,000	*No single contributor gave $1,000 or more in opposition.*	***TOTAL VOTE*** Yes: 6 No: 1 ***BY MEMBER*** John Doe--Yes Richard Doe--No Jane Doe--Yes Robert Doe--Yes Sarah Doe--Yes Joan Doe--Yes James Doe--Yes
Peggy Lyons *Member, Santa Monica School Board* **Paul Rosenstein** *Member, Planning Commission*	*No endorsements filed.*	**Michael McCarty** $574,222 **Maguire Thomas Partners** $126,527	**Douglas Badt** $19,280 **Palisades Beach Property Owners Assn.** $8,000 **Friends of Herschal Rosenthal** $5,000	***TOTAL VOTE*** Yes: 6 No: 1 ***BY MEMBER*** John Doe--Yes Richard Doe--No Jane Doe--Yes Robert Doe--Yes Sarah Doe--Yes Joan Doe--Yes James Doe--Yes

This is the final report of the California Commission on Campaign Financing's two-year study of the initiative process in the Los Angeles area. It is the most comprehensive examination of the local initiative process ever undertaken.

The California Commission on Campaign Financing was formed in 1984 as a private, non-profit organization. The bipartisan Commission is composed of 24 Californians from the state's business, labor, agricultural, legal, political and academic communities.

The John Randolph Haynes and Dora Haynes Foundation of Los Angeles contributed special funding toward the Commission's study of local ballot initiatives in the Los Angeles area and helped make the Commission's research possible.