DEMOCRACY By INITIATIVE

Shaping California's Fourth Branch of Government

Report and Recommendations of the California Commission on Campaign Financing

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Organization of This Report

This report of the California Commission on Campaign Financing is published in two volumes. The first volume is devoted to an Introduction and Summary to the Commission's full report and includes, as an Appendix, a detailed outline of the contents of the second volume. The second volume contains the Commission's full report (including the Introduction and Summary), ten chapters of analysis, eleven Appendices of supplemental research, a Summary of the Commission's Recommendations (Appendix A), a draft of the statutory language to implement the Commission's recommendations (Appendix B) and a proposed Summary Ballot Pamphlet (Appendix K).

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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 California politics and policy. It is the fifth in a series of Commission reports on important policy problems confronting the State of California.

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 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. Craig Holman was the Commission's principal researcher. Janice Lark, office administrator, designed and coordinated the report's production. Susie Newman, Peter Vestal and Jerry Greenberg contributed early research to the project. Attorney Catherine Rich helped edit the final product. Virginia Currano, Julie Epps, Julie Hansen, Davina Perry and Sherry Yamamoto assisted in the Commission's Data Analysis Project. Robert Herstek designed the report's cover.

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 H to the full report.

The Commission's study of California's initiative process was funded by the William and Flora Hewlett Foundation, the James Irvine Foundation, the Ralph M. Parsons Foundation and the Weingart Foundation. In addition, the John Randolph Haynes and Dora Haynes Foundation contributed special funding toward the Commission's study of the initiative process in the Los Angeles metropolitan area, the results of which will be published separately in the near future.

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Professional Staff

Tracy Westen—Executive Director of the Commission; Assistant Professor of Law, Annenberg School for Communication and The Law Center, USC; President, Center for Responsive Government; Vice-President, California Channel (Cal-SPAN); former Deputy Director, Federal Trade Commission, Washington, D.C.

Robert M. Stern—Co-Director and General Counsel to the Commission; former General Counsel, California Fair Political Practices Commission; principal co-author of the Political Reform Act of 1974 (Proposition 9).

Janice Lark—Office Administrator and graphic designer for the Commission; experienced office manager and legal secretary for law firms in Boston and Los Angeles.

Matthew T. Stodder—Senior Researcher and Data Analysis Project Manager for the Commission; former U.S. Senatorial aide for voter registration and get-out-the-vote effort; intern to the California State Legislature.

C.B. Holman—Senior Researcher for the Commission; former Senior Researcher, Jesse M. Unruh Institute of Politics at the University of Southern California.

Susie Sugerman-Newman—Senior Researcher for the Commission; M.Ed., UCLA School of Education; teacher; freelance education consultant.

Introduction and Summary

Democracy by Initiative in California

The ballot initiative has become a major generator of state policy in California. 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 as rigorously and with such sweeping results as in California today. If California's trends continue to serve as a predictor for the nation's future, then other states with the initiative process will also begin to see the emergence of "democracy by initiative" as a new form of 21st century 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, Californians have used this power to write, circulate, debate and directly adopt many of the state's important laws. Insurance, education, income tax indexing, rail transportation, environment, toxic chemicals, term limits, lottery, property tax relief, handguns, reapportionment, rent control, crime prevention, cigarette taxes, wildlife protection and campaign financing—all have been addressed by the electorate through the initiative process. On many of these pressing issues, the elected state legislature and Governor failed to act or respond in a manner that would satisfy all interested parties.

The number of initiatives circulated, qualified and adopted in this state has now reached record proportions—jumping fivefold since the 1960s. (See Table 1.) Spending on initiative campaigns has also risen by as much as 1,200% in the past 14 years—peaking at $127 million in 1988. As the state confronts a growing list of problems, and as public confidence

in state government continues to wane, more and more individuals, business groups, special interests and even office-holders are choosing to advance their policy proposals through the initiative process instead of the legislative process.

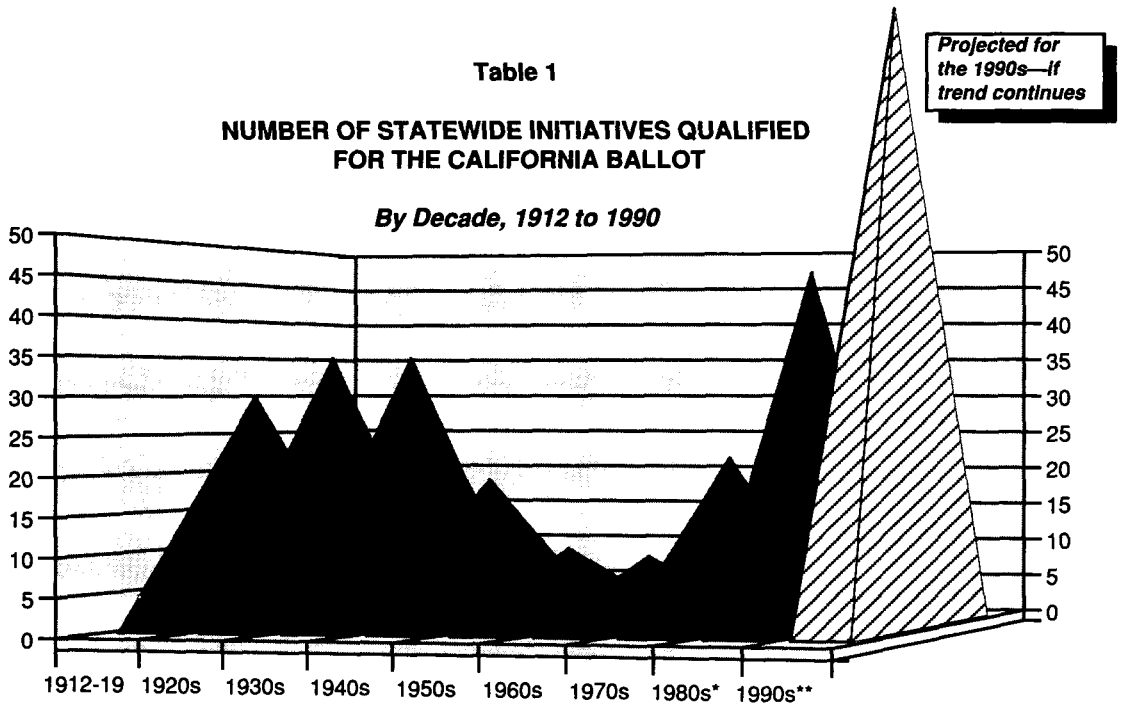
When early 20th century Progressives designed the ballot initiative in California, they envisioned a process that would act as a safety valve, enabling the citizens "to supplement the work of the legislature" when it failed or refused to act. Today's initiative process in California, however, has outstripped the Progressive's vision. *An emerging culture of democracy by initiative is transforming the electorate into a fourth and new branch of state government.* Voters now exercise many of the legislative and executive powers traditionally reserved for the first and second branches of government.

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

Table 1

NUMBER OF STATEWIDE INITIATIVES QUALIFIED FOR THE CALIFORNIA BALLOT

By Decade, 1912 to 1990



* Two of the 46 initiatives in the 1980s were ruled unconstitutional by the California Supreme Court after qualifying for the ballot.

** The number of initiatives qualifying for the ballot has more than doubled in each successive decade since the 1960s. In just one election year in the 1990s, 18 initiatives appeared on the ballot; if this trend continues, the 1990s could witness a new record number of initiatives.

Source: California Commission on Campaign Financing Data Analysis

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 legislature 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 initiative process in California:

- *Initiatives are frequently 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; legislators often cannot make amendments, enact improvements or eliminate oversights once an initiative is adopted.
- *The legislature plays an insignificant role in the process:* proponents with take-it-or-leave-it initiatives discourage the legislature from participating with proponents in the negotiation of compromises or improvements that might obviate the need for expensive elections.
- *The circulation and qualification process has become outmoded:* initiatives are too easy to qualify with paid circulators and too difficult to qualify with volunteers in the time available.
- *Initiatives are too easily used to amend the state constitution:* once enacted, constitutional amendments are extremely difficult to repeal and impair legislative flexibility.
- *Counter initiatives which conflict with and supersede each other are used as a tactic to confuse voters:* the effect of a recent California Supreme Court decision is to encourage the use of such measures.
- *Media campaigns disseminate incorrect or deceptive information:* misleading slate mailers and television 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 qualification and 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 the state is whether the initiative process can be improved to transform the electorate into 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 state governance.

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. California legislators have introduced 39 initiative-related bills in the 1991-92 legislative session, most of them seeking to modify or curtail the initiative process in some manner. (See Appendix E, "Summary of Legislation.")

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

- Limit the number of words in any ballot measure to 5,000;
- Extend the time period allowed to circulate signature petitions from 150 to 180 days;
- Identify major contributors on signature petitions, simplify verification procedures and explore the feasibility of alternative qualification methods which are less dependent on money;
- Require the Fair Political Practices Commission to hold a public hearing on the merits of any initiative that has gathered 25% of the required signatures for qualification;
- Require the legislature to hold a public hearing on each initiative within 10 days after it has qualified for the ballot;
- Allow the proponent to amend the initiative after the legislative 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 45-day "cooling-off" period in which the proponent and legislature can negotiate compromise legislation;
- Allow the legislature to enact the original or amended initiative into law and the proponent to remove the original initiative from the ballot during the "cooling-off" period;
- Require the legislature to vote on any initiative reaching the ballot, and require the secretary of state to publicize individual legislator's votes in the ballot pamphlet;
- 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 secretary of state to mail a new, short, summary ballot pamphlet in chart form to the voters three weeks before the election;
- Improve the format, clarity, readability and design of the existing ballot pamphlet; offer toll-free 800 numbers and other new sources of voter information;
- Require all amendments *adding* language to the state constitution to pass by either a 60% vote in one election or a majority vote in two immediately consecutive elections; allow amendments *repealing* language from the state constitution to pass by a simple majority vote in one election;

- Allow the legislature to amend any statutory initiative after passage, so long as the amendments are approved by a 60% vote of the legislature and are consistent with the initiative's original "purposes and intent";
- Encourage the courts to modernize First Amendment rulings to allow legislatures to consider contribution limits, expenditure ceilings, independent expenditure limitations and other remedies to address the distorting impact of high-spending, one-sided campaigns; and
- Encourage the California courts to reexamine decisions invalidating successful initiatives in their entirety when only particular provisions conflict with provisions of other initiatives enacted in the same election.

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 California

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, the courts, even the press.

It is somewhat ironic that the initiative process was an attempt to wrest control of the state's political process away from special interests, especially the Southern Pacific Railroad, in the early 1900s. The irony became apparent in 1990 when Southern Pacific itself took advantage of the initiative process by contributing significant financing to the ballot qualification of Proposition 116, an initiative passed by the voters to provide for $2 billion in bond measure financing to support rapid rail transit. Southern Pacific, like many other special interest groups, now uses the initiative process as a way to achieve goals it cannot obtain through the legislature.

The initiative, referendum and recall were first enacted at the local level in California when Dr. John Randolph Haynes convinced the voters of Los Angeles in 1903 to adopt his reform package. The statewide reform movement was aided by corruption and bribery trials of several prominent labor leaders and corporate executives that began in 1906. Five years later, after many futile attempts to persuade the legislature to adopt the initiative process, direct democracy became part of a package sponsored by newly elected Governor Hiram Johnson. In 1911, his first year in office, the legislature placed the three components of direct democracy—initiative, referendum, and recall—on the ballot, and they were overwhelmingly approved by the voters.

Attempts to weaken the process began almost immediately. After 17 measures qualified for the 1914 ballot, the voters in 1920 defeated an attempt to triple the number of signatures required to place a measure affecting taxes on the ballot. In 1943, the legislature

enacted a law limiting the time a proponent could circulate an initiative to no more than two years (before 1943, proponents could circulate for an unlimited time). Thirty years later, the legislature cut the circulation time to 150 days. California now has the third shortest circulation period of any state.

Up to 1966, proponents were required to collect signatures amounting to 8% of the votes for Governor at the previous election for both constitutional amendments and statutory initiatives. If proponents used the "indirect" initiative process for statutory initiatives, however, they only needed to gather signatures equal to 5% of the last vote for Governor. The "indirect" process required proponents to submit their proposal to the legislature for consideration before the measure could reach the ballot. Because the legislature only met in odd-numbered years for all matters other than the budget, the indirect process was rarely used, since it required proponents to begin circulation at least two-and-a-half years before the election. In 1966, the legislature and the voters repealed the "indirect" initiative. (The history of the ballot initiative in California is further detailed in Chapter 1, "History of Initiatives.")

How Initiatives Qualify for the Ballot in California Today

Before circulating a measure, initiative proponents must first submit their proposal to the attorney general's office. The attorney general obtains a fiscal analysis from the department of finance and the joint legislative budget committee and then provides the proponent with a title and summary which must be placed at the top of each petition. The proponent must pay the attorney general $200, a fee which is refunded if the initiative qualifies for the ballot.

Proponents currently need to obtain 384,971 valid signatures (5% of the vote in the last gubernatorial election) in order to place a *statutory* initiative on the ballot and 615,953 signatures (8% of the vote in the last gubernatorial election) in order to put a *constitutional* initiative on the ballot.

The number of valid signatures needed to qualify an initiative in 1992 is actually 9,000 less for statutory initiatives and 14,000 less for constitutional changes than in 1984, because the number of people voting in 1990 for Governor was less than the number voting for Governor in 1982. The number of registered voters, on the other hand, has risen from 11.6 million persons in 1982 to 13.1 million persons in 1992.

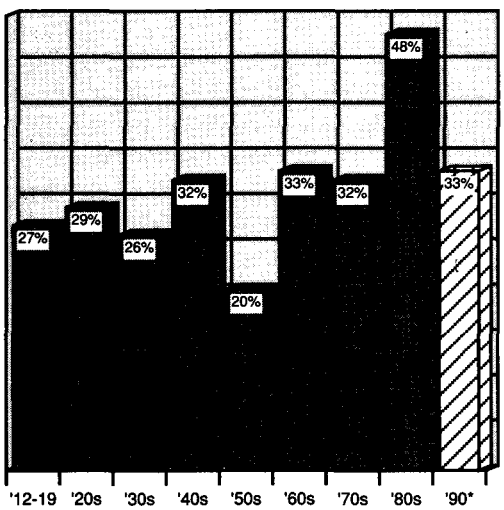
Signatures are generally raised from nearly every county in California in proportion to their population. Only one county—San Diego—routinely provides a disproportionate share of petition signatures. San Diego County contains 8% of the state's registered voters but averages 15% of the signatures on initiative petitions. Los Angeles County, on the other hand, comprises 26% of the state's voters and contributes about 27% of the signatures collected for initiatives.

The secretary of state must verify that a petition has obtained the required number of signatures at least 131 days before the next statewide primary, special or general election. All initiatives which qualify for the ballot require a simple majority of those voting on the measure to be enacted. If two measures cover the same subject and provisions are in conflict, the measure which receives the most votes may prevail in its

entirety, and none of the provisions of the other proposition, even though not in direct conflict, may go into effect. (For information on current initiative procedures, see Chapter 1, "History of Initiatives"; for comparative information on procedures in other states, see Appendix D, "State-by-State Comparisons.")

Table 2

CALIFORNIA INITIATIVES APPROVED AS A PERCENTAGE OF ALL INITIATIVES ON THE BALLOT
By Decade, 1912 to 1990



* Includes just one election cycle. In the 1990 primary election, voters approved three of five initiatives (60%) on the ballot. In the 1990 general election, just three of 13 initiatives (23%) were passed.

Source: California Commission on Campaign Financing Data Analysis

The Sweeping Impact of Ballot Initiatives in California

Ballot initiatives are increasingly shaping major state policies. Since 1978, California voters have approved 30 initiatives, many enacting sweeping reforms and some drastically curtailing the powers of government itself. Ballot initiatives have become "the main way to get big things done" in California, says Sacramento political consultant David Townsend (*California Business,* Feb. 1990).

The Number of Initiatives on the California Ballot Has Reached an All-Time High

In the first three decades following adoption of the ballot initiative in California (1911 to 1939), the number of initiatives qualifying for the ballot reached a high of 35 per decade, then began to diminish to a low of only nine in the 1960s. By the 1970s, however, the number of qualified ballot initiatives on the ballot began to rise. Ten initiatives qualified for the June and November 1972 ballots, covering such diverse subjects as property tax relief, marijuana legalization and the death penalty. A total of 22 initiatives qualified during the entire decade.

Proposition 13 (property tax relief), overwhelmingly approved by the voters in 1978, sparked a dramatic growth in initiatives. *Forty-six initiatives* qualified for the ballot (two were removed by the courts) in the 1980s—more than *double* the previous decade—and 18 initiatives qualified in each of the 1988 and 1990 election cycles. By 1988 and 1990, Californians were voting on more initiatives per election cycle than at any time in the 80-year history of the initiative. (See Table 1.) Although the 1992 primary, for the first time since 1968, will see no initiatives on the ballot, the 1992 general election is again expected to contain several controversial initiatives.

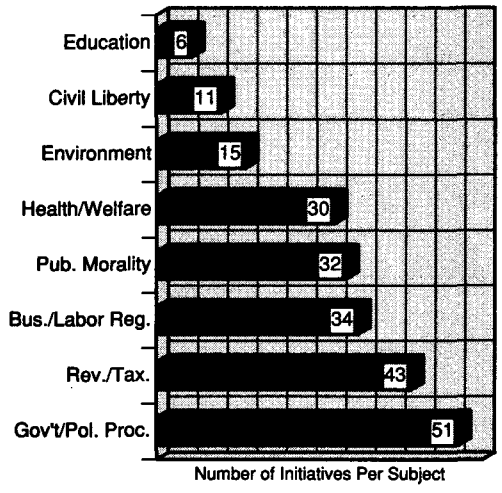
California Voters Are Also Adopting Initiatives in Record Numbers

In the 1970s, voters adopted only 32% of the 22 initiatives on the ballot. (See Table 2.) In the 1980s, even though 44 initiatives appeared on the ballot, the voters approved 48% of them—more than were approved in the 1940s through the 1970s combined.

The initiative approval rate reached a high point in the June 1990 election. The voters approved three of the five initiatives on the ballot for a record adoption rate of 60%. This trend, however, may not continue. Voters in November 1990 rejected 10 of the 13 measures on the ballot and passed only three (or 23%). A deepening economic recession coupled with a number of proposed tax increases and the longest ballot in California history may have been responsible.

Table 3

SUBJECT MATTERS OF CALIFORNIA INITIATIVES
1912 to 1990



Source: California Commission on Campaign Financing Data Analysis

In the most recent 1990 election, some voters faced as many as 100 separate decisions, including statewide candidates, judges, legislative candidates, county, special district and city candidates and state, county and city ballot measures. Yet surprisingly, voters apparently are not fatigued by long ballots, and their voting does not "drop off" toward the end. In some cases, more voters vote for ballot initiatives, such as Proposition 13 (property tax relief in 1978), than for candidates for Governor.

Initiatives appearing on June primary election ballots have a substantially better chance of approval than initiatives appearing on November general election ballots. Although "conservative" initiatives tend to fare somewhat better than "liberal" initiatives on June primary ballots, both conservative and liberal measures are much more likely to be approved in primary than in general elections. Since 1970, voters have approved about 56% of all initiatives on June primary ballots versus about 35% on November general election ballots.

Ballot Initiatives Are Exerting a Major Impact on the Life of the State

Since 1978, when Proposition 13 triggered a national movement toward property tax relief, voters have used ballot initiatives to change almost every aspect of California life. Approved initiatives, for example, have:

- reduced property taxes;
- eliminated gift and inheritance taxes;
- indexed income taxes;
- adopted a state lottery;
- enacted campaign finance reforms;
- guaranteed school funds;
- raised tobacco taxes;
- regulated toxic materials;
- rolled back auto insurance rates;
- reformed the criminal justice system;
- protected wildlife; and
- adopted term limits for state elected officials.

Since its inception, Californians have used the initiative process most frequently to address questions of governance and taxation. (See Table 3.) Three

recent initiatives, for example—Propositions 13 (1978), 4 (1979) and 98 (1988)—limited property taxes, restricted the growth of the state budget and earmarked at least 41% of the state's budget for education, respectively. And Proposition 140 in 1990 adopted term limits for all state officeholders, requiring the entire membership of the current state legislature to retire by 1998.

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

Many initiatives can be traced to stalled legislative efforts and governmental inaction. 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 resulted from the legislature's inability to adopt its own program or forge a compromise between competing consumer, trial lawyer and insurance interests.

The number of initiatives 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.

Officeholders Are Using the Initiative Process to Further Their Own Political Goals

In the November 1990 election, state or local officeholders promoted *over half* (8 of 13) the measures on the ballot. The Governor supported a prison labor measure, the Lieutenant Governor sponsored a crime package, the attorney general backed three initiatives and several legislators sponsored various other measures. Nearly all these proposals had been defeated by the legislature in previous years. The only initiatives which passed in November 1990—prison labor, gill nets ban and term limits—were sponsored by officeholders.

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 about $1 million, political consultants plus a small army of paid circulators can "guarantee" the qualification of almost any initiative. For millions 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 valid initiatives and bypass the legislative process altogether.

Critical Issues in the Ballot Initiative Process

Ballot initiatives in California suffer from a number of critical problems. These are particularly significant when they distort law and policy in the state for decades without the possibility of effective relief.

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).

Initiatives also contain serious omissions and oversights. Two unsuccessful AIDS initiatives in 1986 and 1988 were so poorly drafted that, even had they been enacted, they would not have changed public policy. Two initiatives which passed, one in 1984 and one in 1986, declared English the state's "official language" but forgot to specify the consequences of that declaration. Their impact has been nominal.

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 Too Long and Too Complex

Before 1988, California voters rarely faced excessively long initiatives. Proposition 9 (income taxation) in 1980 was only 77 words long, and most initiatives in the 1980s contained between 1,000 and 3,000 words. Before 1988, only two initiatives in the 1980s exceeded 5,000 words—Proposition 15 (gun control) in 1982, and Proposition 37 (lottery) in 1984. In the 1988 and 1990 elections, however, voters had to wade through 13 initiatives each exceeding 5,000 words. Several were longer than 10,000 words, and one (Proposition 131, ethics, campaign finance reform and term limits) was so long (15,633 words) that the attorney general's summary did not include all its provisions.

Ballot measures are increasingly inflated because proponents fear legislative tampering and try to close every loophole. Some initiatives add provisions (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," Section A-3.)

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 constitutional-

ity of ballot initiatives before signature circulation begins. Proponents can draft an initiative, circulate it, place it on the ballot and campaign for its successful enactment—all without any mandatory or meaningful public hearing. 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," Sections B-1, C).

The Legislature Is Discouraged From Participating in the Initiative Process

The California constitution designates the legislature as the state's principal policy body. The legislature has access to expert staff, outside consultants, extensive research capabilities, testimony from interested parties and its own accumulated expertise to make the best possible decisions. Yet none of this expertise is applied to ballot initiatives. Although the legislature must hold public hearings on initiatives that qualify for the ballot, the hearings typically have no useful effect. Neither the legislature nor the proponent can amend the text of the initiative following the hearing, even if significant flaws are identified. If the legislature enacts legislation which is comparable or even identical to that of the initiative, *the measure cannot be removed from the ballot.* If the initiative passes, *it cannot be amended without another vote of the people.*

Not surprisingly, many initiative proponents view the legislature as irrelevant or hostile and ignore it altogether. Proponents do not seek legislative advice, and legislators see themselves as powerless to affect initiatives. *California law thus virtually eliminates any incentive for legislative involvement in the initiative process.* (See generally Chapter 3, "Initiative Drafting and Amendability," Section C-3.)

Even After Enactment, California Law Blocks Legislative Amendments

California is the only state in the nation which prohibits the legislature from amending initiatives without the proponent's permission. Unless an initiative specifically allows for legislative amendments, only another ballot measure placed on the ballot by the legislature or by petition circulation and approved by the voters can correct errors or address new concerns—a time consuming and costly procedure.

A 1922 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 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.

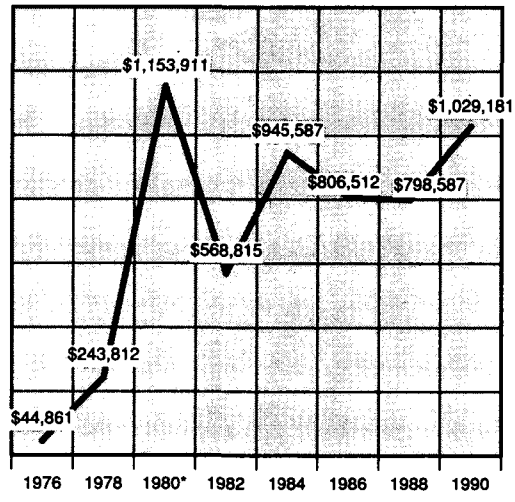
The California legislature has generally been respectful of initiatives, not amending them without the tacit approval of proponents. The 1974 Political Reform Act (Proposition 9), for example, permitted legislative amendments, and the legislature has since amended it 150 times without significant public 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," Sections B-2, C-4.)

Table 4

RISING INITIATIVE QUALIFICATION COSTS

Median Petition Circulation Expenditures for California Initiatives

By Election Year, 1976 to 1990



* 1980 showed unusually high petition circulation costs because only four initiatives qualified for the ballot, and two of them (income tax reduction Prop. 9 and rent control Prop. 10) spent very large amounts on direct mail qualification. 1990, in contrast, witnessed a high median qualification cost despite a large number of initiatives; more than $1 million each was spent on qualifying 10 of 18 initiatives on the ballot.

Source: California Commission on Campaign Financing Data Analysis Project

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

Every state with an initiative process requires proponents to gather enough signatures to demonstrate the measure's popular support. In California, proponents must obtain valid petition signatures from 384,971 registered voters to place a *statutory* change on the ballot and signatures from 615,953 registered voters to put a *constitutional* amendment on the ballot. Although California qualifies more initiatives for the ballot than any other state, it only provides 150 days in which to collect the necessary signatures, the third shortest circulation period of any state. Only Oklahoma (90 days) and Massachusetts (90 days plus 30 days after legislative consideration) impose a shorter time period, and these states require far fewer signatures for qualification than does California.

The architects of the initiative process assumed that volunteers and grass-roots organizations would circulate petitions, explain measures to potential signatories and obtain signatures backed by thoughtful consent. Today, 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 an era in which virtually any initiative can be qualified if the backer has enough money to pay for paid circulators, signature collection 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.

In 1976, the median initiative qualification cost was about $45,000. By 1990, the median cost had exploded to more than $1 million. (See Table 4.) Money rather than breadth or intensity of popular support has become the primary threshold for determining ballot qualification in most instances. Yet petitions do not disclose the identities of the circulation drive's principal financial backers.

California's 150-day circulation period is sufficient for those with money—some initiatives have been qualified in under 50 days at a cost of several million dollars—but too short for volunteer circulation drives. Only two initiatives have spent more than $500,000 and not qualified. (See Chapter 4, "Circulation and Qualification.")

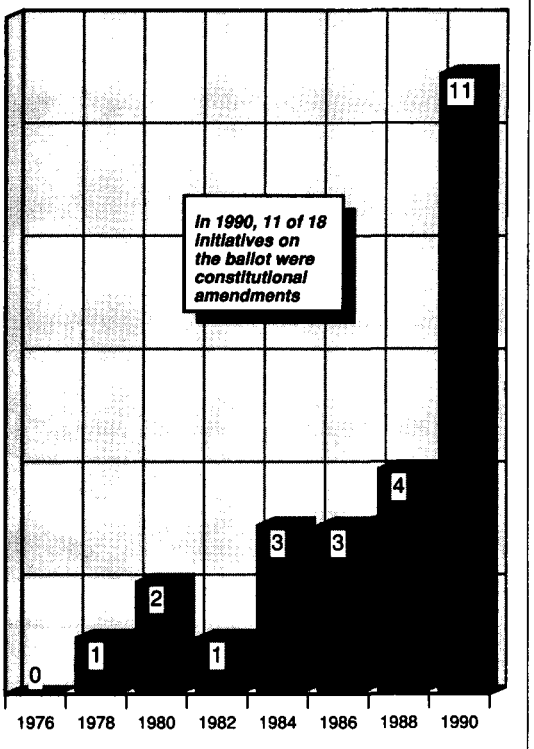
Initiatives Are Too Easily Used to Amend the State Constitution

California allows citizen initiatives to amend both the state's statutes and the state's constitution. Each requires a simple majority vote for approval, although initiative constitutional amendments require more signatures to qualify for the ballot. Constitutional initiatives have historically been far fewer in number and harder to pass, but recent elections have seen a sharp reversal in this trend. In 1990, for the first time in California history, initiative constitutional amendments outnumbered initiative statutory amendments on the ballot. Eight of the 13 initiatives on the November 1990 ballot and three of the five June 1990 initiatives were constitutional amendments. (See Table 5.)

Table 5

THE INCREASING NUMBER OF CONSTITUTIONAL INITIATIVES APPEARING ON THE CALIFORNIA BALLOT

By Election Year, 1976 to 1990



Source: California Commission on Campaign Financing Data Analysis

The trend toward constitutional initiatives is troubling. Because constitutional amendments are more costly to place on the ballot than statutory amendments, the resulting constitutional amendments are more permanent—in some instances enshrining ill-considered policies into state law. Constitutional amendments prevail over conflicting statutory amendments at the same election, allowing supporters of a constitutional measure to "trump" competing statutory initiatives on the same ballot. The ease of constitutional amendments has also aggravated the disturbing growth of "counter initiatives" in recent years. (See generally Chapter 5, "Voting Requirements.")

One-Sided and Deceptive Media Campaigns 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 party affiliations, personality traits, incumbents' records or candidates' personal histories. Initiatives are often more difficult to comprehend than candidates.

Initiative voters are particularly dependent on television advertising, as 75% of the population cites television as its principal source of news and information. 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 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. Long ballots and voter skepticism also contribute to initiative defeats.

Slate mailers are another potent source of voter information. 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. Broadcasters believe that a thorough substantive discussion of most measures is not "saleable" 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 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 the secretary of state to mail a detailed "Ballot Pamphlet" to the home of every registered voter over a month before each election. Each measure in the ballot pamphlet contains a title and summary prepared by the attorney general, an analysis of fiscal impact prepared by the legislative analyst, "pro" and "con" arguments submitted by the proponents and oppo-

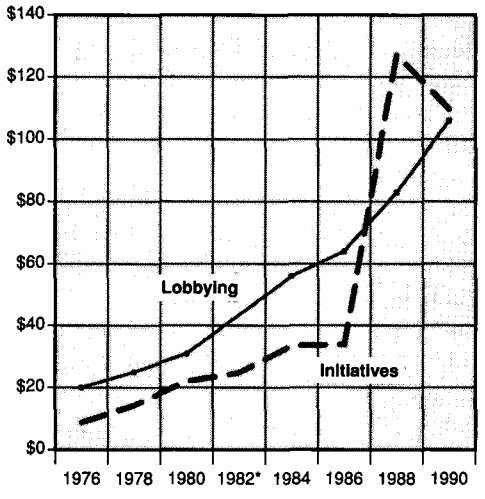
nents and the text of the measure (which the secretary of state has recently moved to the back of the pamphlet). It need not list key "endorsers" or "opponents," major campaign contributors, positions of legislators or groupings of legislators by political party affiliation.

Table 6

EXPENDITURES TO INFLUENCE PUBLIC POLICY

Money Spent Lobbying State Government vs. Money Spent Lobbying the Public on Initiatives

(In millions of dollars)



* The Fair Political Practices Commission did not compile lobbying expenditure information for 1982.

Sources: Lobbying—California Fair Political Practices Commission; Initiatives—California Commission on Campaign Financing

Sixty-nine percent of California voters view the voter's ballot pamphlet an "important" source of information. Yet the November 1990 pamphlet was so massive (222 pages in length) that it would have taken the average voter *10 hours to read* (excluding the actual initiative texts). The ballot pamphlet is thus potentially useful to voters, but it is often too long and composed of excessively "legalistic" prose—deterring many voters from using it effectively or at all. (See generally Chapter 7, "The Ballot Pamphlet.")

High-Spending Campaigns Dominate Elections

In 1911, frustrated by the spectacle of wealthy special interests using money to bribe legislators and influence legislation, California citizens enacted the initiative to bypass the legislature and its moneyed contributions altogether. Today, 81 years later, money often dominates the initiative process even more than it does the legislative process. California's initiative process has now become a costly battleground, besieged by sophisticated and expensive media weaponry. Provided in sufficient quantities, money can qualify and frequently defeat any ballot measure.

Since 1956, the 18 most expensive initiative campaigns in California have spent over $225 million. The most expensive ballot measure campaign in California history and in the nation (involving five insurance proposals including the winning Proposition 103) occurred in 1988, when insurance companies, trial lawyers and consumer groups squared off in an $80 million battle. In both the 1988 and 1990 elections, more money was spent to influence California voters on initiative measures than was spent lobbying the California legislature on thousands of bills. (See Table 6.)

Ballot access today is less a drive for broadbased citizen support than an exercise in fundraising strength. Volunteer signature gatherers have largely given way to legions of expensive paid circulators. One company single-handedly qualified an initiative in 1984, and one individual contributed over $1 million to qualify a measure in 1990.

(For further information on the influence of money on ballot qualification, see Chapter 4, "Circulation and Qualification," Sections E and G, and Chapter 8, "The Influence of Money.")

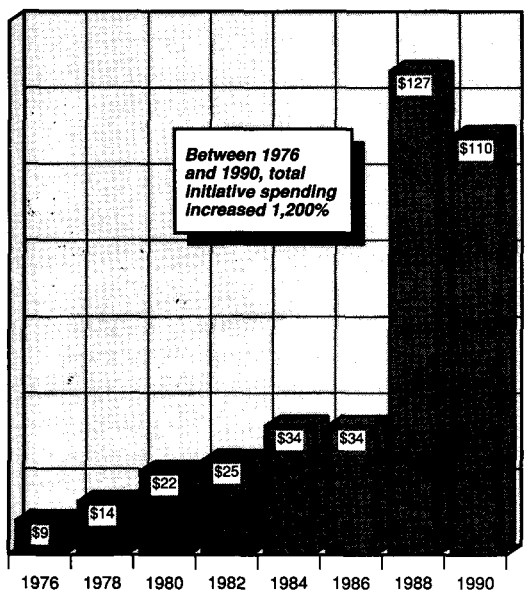
Table 7

RISING INITIATIVE CAMPAIGN EXPENDITURES

Total Spending by California Initiative Campaigns

By Election Year, 1976 to 1990

(In millions of dollars)



Source: California Commission on Campaign Financing Data Analysis Project

Campaigns were once waged in precincts by volunteers and low cost media; today they rely almost exclusively on paid consultants, media buyers and expensive broadcast advertising. The explosive growth in costly campaigns has unbalanced and distorted the information available to the voters. Opponents have outspent underfunded initiative proponents in some campaigns by almost 20-to-1, and one ballot measure contest witnessed broadcast advertising differentials of 400-to-1.

The Commission's Data Analysis Project examined over 110,000 separate contribution and expenditure entries totaling $568 million and dating back to 1956. It revealed the following significant trends:

- Spending on initiative campaigns has *jumped 1,200%* in the past 14 years. In 1976, total spending for all initiative campaigns was $8.9 million; in 1988, initiative spending peaked at $127 million; in 1990, initiative spending reached nearly $110 million. (See Table 7.)
- Business is the largest source of initiative spending—giving over three-fourths (83%) of the funding received by the 18 high-spending initiatives since 1956. Individuals gave only 8%, broadbased organizations 3%, labor 3%, officeholders 2% and political parties 1%. In 1990, businesses once again were the dominant source of funding. (See Table 8.)
- Businesses spend enormous amounts when they perceive their industries to be threatened. The tobacco industry spent $22 million in 1988 unsuccessfully opposing Proposition 99 (increased cigarette taxes). The insurance industry spent over $61 million in 1988 on five insurance initiatives, unsuccessfully opposing Proposition 103. And the alcohol industry spent $38 million in 1990 to defeat Proposition 134 (alcohol tax).
- Most contributions come in large amounts from a handful of individuals, businesses or organizations. In the 1990 contests, *67% of all the money raised came in $100,000-plus contributions from just 141 contributors,* and 37% came from donors of $1 million or

more. (See Table 9.) One alcohol company spent over $8.3 million; one individual spent over $5 million.

- Small donor contributions, by comparison, are generally insignificant. In 1990, contributions of less than $1,000 accounted for 78% of the total *number* of contributions but *just 6% of the dollar amount contributed.*
- Political parties rarely involve themselves in initiative campaigns, except for reapportionment. Republican organizations funded nearly half (44%) of the money for Propositions 118 and 119, which would have established reapportionment commissions; Democratic organizations successfully spent $5 million to oppose them.
- Initiative campaigns now spend nearly three-quarters of all their money on voter contacts: television, radio, literature, petition circulation and newspaper and outdoor advertising. In contrast, candidates running for local office only spend about 38% on voter contacts, or about half the percentage spent by ballot measure committees. In the 1950s, initiative campaigns spent 32% of all their voter contact expenditures on broadcast advertising, with 26% on newspaper ads and 24% on literature. By 1990, initiatives were spending 76% on broadcast advertising and minimal amounts on newspaper ads and literature.
- Officeholders contributed nearly $10 million to initiative campaigns in 1990—sponsoring 11 initiatives and opposing four. In 1990, officeholders also created "initiative committees" to receive campaign contributions in excess of existing state contribution limits on "candidate committees."
- 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 F, "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. Although the courts have completely invalidated six of 35 initiatives approved by California voters since 1964 and partially invalidated another eight, they have left 60% fully intact and 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.

In 1990, the California Supreme Court entirely struck down Proposition 68, a successful campaign finance reform initiative based on a model law proposed by this Commission, in favor of Proposition 73, a competing campaign finance initiative receiving more votes. In past decisions, the courts had only invalidated *individual provisions* in conflict

with each other. Here, however, the court stated that "when two or more measures are competing initiatives, either because they are expressly offered as 'all-or-nothing' alternatives or because each creates a comprehensive regulatory scheme related to the same subject," then the *entire measure* receiving fewer affirmative votes will be invalidated. The court's ruling appeared to ignore the plain wording of the California constitution, which allows the courts to invalidate only *"provisions"* of initiatives in conflict.

In late 1990, the supreme court used a second ground to invalidate a portion of an initiative, ruling that it improperly *"revised"* the constitution instead of *"amending"* it. The court struck down part of Proposition 115 (protecting crime victims) because it removed from the courts the power to interpret criminal statutes in accordance with the California instead of the federal constitution. Currently, the constitution allows the legislature to place constitutional "revisions" on the ballot but prohibits citizens from using initiatives to do so.

A 1991 appellate court ruling used a third ground for invalidating an initiative in its entirety. Invoking the "single-subject" rule, a state constitutional doctrine which limits initiatives to one subject, the court struck down 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

Californians cherish the initiative process. They now turn to the initiative almost instinctively—to address almost any problem—without first seeking a legislative solution.

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

In a perfect or near-perfect system of representative democracy, ballot initiatives might be unnecessary. Elected officials would be closely attuned to the public's needs and desires; voters would be well informed on the issues of the day; and legislators would be open to arguments on their merits. 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 today such a legislative system does not exist in California or in any other state—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, *The New Gold Rush: Financing California's Legislative Campaigns* (1985). Until these problems are resolved, the need for the initiative process will remain. (See generally Chapter 2, "Impact of Ballot Initiatives," Sections D, E-1.)

The Public Supports Retention and Improvement of the Initiative Process

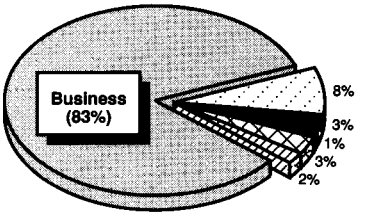
Californians clearly wish to keep their right to decide public policy through the initiative process, although they acknowledge the need for change. Today, a strong two-thirds (66%) of the voting public hold a favorable view of the initiative process.

At the same time, 72% of voters agree that the initiative process has "gotten out of control in California elections." Voters complain about misleading television 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," Section E-2.) The time is clearly ripe to consider thoughtful and responsible modifications to California's initiative process.

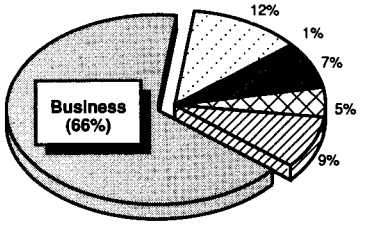
Table 8

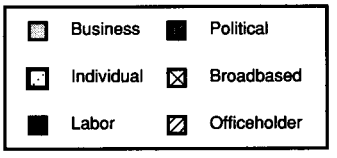
SOURCES OF CONTRIBUTIONS TO CALIFORNIA INITIATIVE CAMPAIGNS

The 18 Most Expensive Initiatives In California History



All 1990 Initiatives





Source: California Commission on Campaign Financing Data Analysis Project

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 the state 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 should be retained but significantly modernized in California. 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 into California's other branches of government.

Over 80 years have passed since California 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 fund-raising 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 California's ballot initiative 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 for the 18 highest spending initiatives in California history and all the 18 initiatives in the June and November 1990 California elections. 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 California's 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 through 9, and a "Summary of Recommendations" appears in Appendix A.)

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

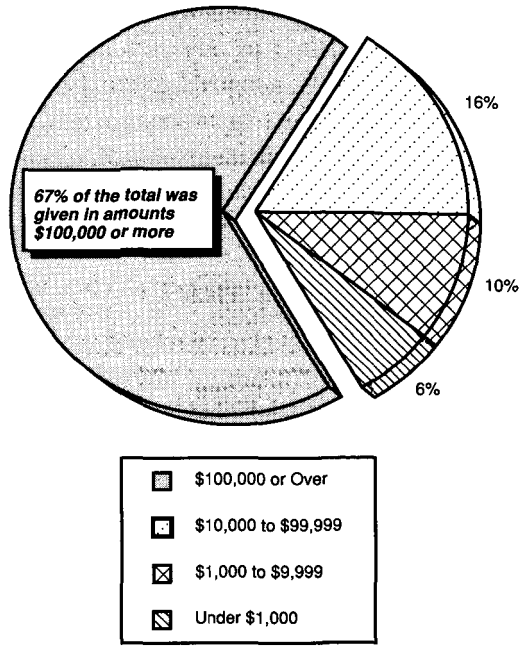
The Commission recommends that a reasonable limit of no more than 5,000 words of new language be placed on all ballot propositions—legislative measures, initiatives and constitutional amendments. Strikeout language and existing law repeated in the texts of initiatives would not be included in the limit. 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, 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. Measures placed on the ballot by the legislature in recent years have rarely exceeded 5,000 words in length.

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 legislation 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," Section D-1.)

Table 9

THE DOMINANCE OF LARGE CONTRIBUTIONS IN 1990 CALIFORNIA INITIATIVE CAMPAIGNS



Source: California Commission on Campaign Financing Data Analysis Project

(2) A Public Hearing Should Be Conducted on the Merits of Any Initiative Once It Has Gathered 25% of the Signatures Required for Qualification

The Commission recommends that all initiative proposals be reviewed at a public hearing conducted by the Fair Political Practices Commission (FPPC) once petitioners have gathered 25% of the signatures required for qualification. Signature collection could continue unabated throughout the hearing process. The FPPC would invite initiative proponents and opponents, outside experts, representatives of government and interested parties to comment on the proposal. It could commission special analyses when deemed necessary. The FPPC would not evaluate initiatives. Following the hearing, it would provide the initiative proponent with a transcript of the comments received.

A 25% administrative hearing will alert the legislature, press and public that an initiative is being circulated which will very likely qualify for the ballot. (Most initiatives gathering 25% of the necessary signatures eventually

qualify for the ballot.) A hearing will also provide potential petition signatories with early information on a measure's merits and flaws and encourage the legislature to consider alternative remedies.

Most importantly, an early administrative hearing will allow initiative proponents to ponder potential weaknesses and consider possible amendments before the initiative is placed on the ballot. Although other states such as Colorado conduct public hearings before circulation begins, the sheer number of initiatives in California would make this procedure impracticable. (For further discussion of this proposal, see Chapter 3, "Initiative Drafting and Amendability," Section D-2.)

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

The legislature should be required to conduct a public hearing on each initiative within 10 days after it has qualified for the ballot (which is approximately two months after the petition signatures are submitted to the county clerk, thus giving the legislature ample time to prepare for the hearing). Hearings can be conducted by each house separately or by a joint senate-assembly committee. Under the Commission's proposals, proponents will be able to make limited modifications to their initiative immediately after the legislative hearing. The legislature 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 legislative 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 Legislative Hearing

Within seven days after the legislative 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 attorney general within the seven-day period, and the attorney general 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 attorney general's satisfaction or seek final review in the Sacramento County 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, will motivate proponents to use the 25% administrative hearings effectively and will encourage the legislature 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 legislators 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 attorney general 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," Section D-3.)

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

Following the legislative hearing and any proponent amendments, the proponent and the legislature 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 legislature enacts a modified version of the initiative into law which is acceptable to proponents and signed by the Governor, the proponent will withdraw the initiative from the ballot. Or, with the consent of the proponent, the legislature 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 legislature fails to enact any acceptable legislation at all, or enacts a version of the initiative that is unsatisfactory to proponents, then the proponent can place the initiative in its original or proponent-amended form on the next statewide ballot.

Under the Commission's proposal, both proponents and legislators have incentives to negotiate an acceptable compromise. Proponents can avoid a costly election which they might lose; the legislature 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 legislators the opportunity to improve the drafting and quality of initiatives. (For further discussion, see Chapter 3, "Initiative Drafting and Amendability," Section D.)

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

After the secretary of state has certified an initiative as qualified for the ballot, the legislature is given 45 days in which to conduct its hearing and negotiate with the proponent. If a compromise is not reached within this 45-day period, the legislature is required to take a final roll call floor vote on the measure in its finalized form before it is placed on the ballot. The secretary of state must place a chart in the voter's ballot pamphlet to indicate how each legislator voted on each ballot measure.

A mandatory floor vote will encourage legislators to take their responsibilities seriously and negotiate with proponents in good faith. Legislators 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 legislators' positions. Vote totals arranged by political party affiliations will also give voters useful new information. (For further discussion of this proposal, see Chapter 3, "Initiative Drafting and Amendability," Section D-5.)

(7) The Legislature Should Be Allowed to Amend Any Initiative After Enactment by a Super-Majority Vote of 60%

California is the only state which prevents its legislature from amending an initiative after enactment, unless the measure itself permits such amendments. The Commission believes that the legislature should be able to amend initiatives to correct errors, resolve ambiguities and address unforeseen contingencies. At the same time, the legislature should not be given carte blanche to repeal or drastically alter initiatives. The Commission therefore recommends that the legislature be allowed to amend any initiative after its enactment, so long as the legislation is approved by a 60% vote of both legislative houses 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 legislature'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," Section D-6.)

(8) The Circulation Period Should Be Lengthened

The Commission believes the circulation period should be lengthened from 150 to 180 days. Paid circulators find it easy to qualify measures in 150 days; proponents relying on volunteers, particularly for constitutional amendments which require additional signatures, find the 150-day period extremely short. An extension of 30 days would place paid and volunteer circulators in a more equal position. (See Chapter 4, "Circulation and Qualification.")

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

The principal problem plaguing the initiative circulation and qualification process is that any proponent with $1 million 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) 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.

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

(c) 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."

(d) Signature Verification. Random sample signature verification procedures by the counties 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 county 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 counties and speed up the verification process.

(e) 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. Serious thought should be given to statewide (instead of county-by-county) verification. (For further discussion of initiative qualification techniques, see Chapter 4, "Circulation and Qualification.")

(10) The State Constitution Should Be Made Harder to Amend

California allows initiatives to amend both state statutes and the state constitution. Although constitutional amendments must pass a higher signature threshold for qualification—8% for constitutional amendments as opposed to 5% for statutory amendments—the higher threshold is no longer a significant impediment to well-financed special interest groups. Moreover, constitutional amendments are being used more frequently as part of a counter initiative strategy to undercut competing statutory initiatives. As a result, the California constitution is increasingly cluttered with amendments which cannot be changed without further amendments.

The Commission believes that initiative proponents should be encouraged to circulate statutory initiatives, not constitutional amendments. It recommends that any constitutional amendment proposing to *add* new language to the constitution 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 constitution should require only a simple majority vote in one election.

If a constitutional 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 statutory initiatives which can be subsequently amended by the legislature. (See Chapter 5, "Voting Requirements.")

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

The Commission recommends that no initiative or constitutional 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 pro-

posal would block such efforts as Proposition 136 in the November 1990 election, which sought to require a two-thirds vote for all future 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.")

(12) Current Methods for Initiating Constitutional "Revisions" Should Be Given Further Study

The California constitution allows constitutional initiatives to *"amend"* the constitution but not *"revise"* it. The courts have defined a "revision" as a significant constitutional change which, for example, changes the balance of power between the legislative and judicial branches of government. Constitutional "revisions" can only be initiated by the legislature—by its placing a "revision" on the ballot or calling for the convocation of a constitutional revision commission which can ask the legislature to place a change on the ballot.

The anomalous result of this arrangement is that certain constitutional changes can only be initiated by the legislature and not by citizen initiative. This situation seems unsatisfactory. The Commission believes more study should be given to the possibility of also convening constitutional revision commissions by initiative. (See Chapter 5, "Voting Requirements.")

(13) 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.")

(14) 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.")

(15) 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.")

(16) The State Should Mail a New Summary Ballot Pamphlet to Homes Three Weeks Before the Election

California voters deem the state's 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 state 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 mail it to the voters three weeks before the election. 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 legislative vote on the measure by party affiliation. The summary would enable voters to grasp the essential issues quickly without having to wade through hundreds of pages of text. (See Chapter 7, "The Ballot Pamphlet," and Appendix K.)

(17) The Existing Voters' Pamphlet Should Be Improved

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

(a) Better Information. Information in the ballot 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 attorney general 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 legislator's votes on all ballot measures should be listed to inform voters of their elected representatives' views.

(b) Improved Design. The entire ballot pamphlet 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.")

(18) New Voter Information Services Should Be Considered

Advances in communications technologies suggest new ways of conveying information to voters. Alternative communications media such as 800 numbers and videotapes should be explored to make initiative information available more efficiently. (See Chapter 7, "The Ballot Pamphlet.")

(19) 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 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 of $100,000 per donor, 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 F, "Data Analysis Project.")

(20) California Courts Should Re-evaluate 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 three state constitutional grounds: that an initiative contained more than a "single subject"; that an initiative conflicted with another measure receiving more votes in the same election; and that an initiative improperly sought to "revise" the state constitution.

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.

The Commission believes, however, that the California Supreme Court should return to the earlier definition of the test by which the courts invalidated competing initiatives. Although the state constitution provides that only conflicting *"provisions"* of competing initiatives receiving fewer votes at the same election should fail, the court has recently announced it will invalidate entire competing initiatives receiving fewer votes when they are offered as "all-or-nothing alternatives" or create "comprehensive regulatory schemes." The Commission believes the court's new test is at odds with the wording of the state constitution and the undoubted intent of many voters—who cast their ballots for competing initiatives to enact as many reforms as possible. The new test may also encourage the use of more counter initiatives prepared and promoted for the sole purpose of invalidating an entire initiative should it receive a larger vote of the electorate. If so, the test will generate more ballot confusion and work for the courts.

The California Supreme Court has also recently invalidated an initiative because it sought to "revise" (instead of "amend") the state constitution. Although the court's conclusion may be correct, it effectively means that certain government reforms may only be placed on the ballot by the legislature—not by the people through the ballot initiative process. This situation seems unsatisfactory and warrants further careful study. (See Chapter 9, "Judicial Review.")

Implementing the Commission's Proposals

Implementation of any reforms to California's ballot initiative process will not be easy. After 81 often turbulent years, 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 legislature 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 administrative and legislative hearings before their measure is placed on the ballot; but the legislature must vote on the initiative and see their individual votes placed in the ballot pamphlet for public inspection. Proponents will receive a slightly longer circulation period; but they must identify their principal funding sources on signature petitions and in ballot petitions.

Most of the Commission's recommendations could be adopted immediately by the legislature or, after circulation of signature petitions, by a direct vote of the people on a statutory ballot initiative. Four of the Commission's recommendations—requiring the legislature to vote on all initiatives, allowing the legislature by a 60% vote to amend initiatives after their enactment, requiring a 60% vote in one election or a simple majority vote in two successive elections for adoption of constitutional amendments, and preventing the imposition of future super-majority vote requirements without their adoption by the same super-majority vote—would require constitutional amendments for enactment. The Commission's entire package of recommendations could thus be adopted by a single, integrated ballot measure, placed on the ballot by the legislature or by an initiative, which would combine both constitutional and statutory amendments.

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 governance well into the next century.

The Commission's Report

CHAPTER 1

Origins and History of the Ballot Initiative in California

"When all is said about the 39th session of the California legislature, just ended [which created the initiative process in California], it may be summed up in this: It freed the state from the corporate bonds which enslaved it for decades. It gave to the people the privileges of making and unmaking their laws, and of naming and removing their officials. It made hope spring again in the hearts of men and women who had long been held in the chains of political lawlessness. It thrust from power the Captains of Greed. Of all the legislatures ever in California it alone represented the real majority of the state."

— Frederick O'Brien,
Los Angeles Record[1]

At the turn of the century, excessive corporate influence over elected officials and the legislative process sparked a popular rebellion against government corruption that swept through much of the West. Progressive reformers rode the crest of this rebellion, seizing control of California government by winning the governorship and occupying a majority of the seats in the state legislature. With this victory for the reform movement, California launched itself upon a course of self-governance which placed significant reliance on the electorate to formulate public policy through the ballot box.

1. Frederick O'Brien, *What 1911 Legislature Did,* Los Angeles Record, Mar. 28, 1911.

In 1911, with the Progressives in control, the California State Legislature placed on the ballot, and the voters overwhelmingly approved, a set of three amendments to the California constitution adopting the *initiative,* the *referendum* and the *recall.* Each fundamentally changed the way the state was governed. Each enabled the people to act directly, without the involvement of the legislature or Governor—by enacting legislation and constitutional amendments, rescinding bills passed by the legislature or recalling elected officials from office.

The *initiative* empowered citizens to draft their own proposed laws, circulate petitions to raise the required number of signatures and then place their proposed laws on the ballot for a vote of the people.[2] The legislature had always been able to submit proposed laws and constitutional amendments to a vote of the people; such ballot propositions are referred to as "legislative ballot measures" to distinguish them from initiatives and referenda. The *referendum* allowed voters to repeal laws enacted by the legislature by raising sufficient signatures to put those laws to a vote of the people.[3] And the *recall* enabled citizens to gather a sufficient number of signatures to remove an elected official from office by popular vote.[4] Although the

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2. "Initiative," Cal. Const. art. II, §8. The initiative included the right to circulate *statutory* or *constitutional* initiatives.

3. "Referendum," Cal. Const. art. II, §9. There are two distinct types of referenda. The "petition" referendum discussed above is a direct democracy technique allowing citizens to challenge acts of the legislature. Exempted by a provision of the state constitution from such challenges in California are bills calling for elections, new taxes, most appropriations, urgency measures approved by a two-thirds vote of both chambers and certain emergency measures intended to protect public safety. Petition referenda are permitted in 24 states.

A second form of referendum that should not be confused with the direct democracy technique is called "compulsory referenda." Every state except New Jersey mandates that some legislative acts, such as constitutional amendments, local charters and bond issues, must be approved by the voters through compulsory referenda. Some states even allow legislatures the option of submitting a legislative proposal to the voters for approval. These referenda involve no citizen-initiated legislation. Compulsory referenda were established in California by the 1879 state constitution. The Progressives later added the process of petition referendum.

Over the years, petition referenda have been used relatively infrequently. While there have been 691 compulsory referenda in California from 1912 through 1990, there have been only 39 petition referenda qualifying for the ballot over the same time period. Of these, 25 petition referenda, or 64.1% of the total, contained laws which were rejected by voters, as intended by the petitioners. (A "no" vote means the measure as passed by the legislature does not become law.) This stands in sharp contrast to the low rate of success for initiatives. Voters approved only 32% of the 224 initiatives that qualified for the ballot from 1912 through 1990.

It is difficult to qualify a petition referendum to the ballot. In 1964, the California Real Estate Association unsuccessfully attempted to qualify a referendum that would have annulled the Rumford Fair Housing law. After failing to qualify the referendum, the association later succeeded in qualifying a ballot initiative that would have accomplished the same result. One reason why a referendum qualification is so difficult lies in the brief 90-day signature collection period which begins as soon as the Governor signs the contested bill. In many cases, citizens who protest a legislative measure may find it less burdensome to pursue their own initiative rather than seek a referendum on the issue. The referendum does have some advantages, however. A contested law may not go into effect until after the petition referendum fails to garner enough signatures or, if qualified to the ballot, after the election. Proponents of referenda also historically have had a higher success rate in achieving their objectives than proponents of initiatives.

4. "Recall," Cal. Const. art. 2, §13. The recall of state officials in California, including constitutional officers, court officials and members of the legislature, has been attempted 78 times. Only three recall petitions qualified for the ballot, the last one being in 1914 against state Senator James Owens of Marin County. None has ever been approved by the voters. California Governors have faced 23 unsuccessful recall attempts, including seven against Governor Deukmejian, four

referendum and recall were adopted at the same time as the initiative, they have been used far less frequently and are not extensively discussed in this report.[5]

A. Early "Progressives" Create New Forms of "Direct Democracy"

Direct democracy in one form or another is an ancient tradition. The Homeric epic poems of the 9th or 8th century B.C. contain references to the voting rights of military and public assemblies in ancient Greece. Tacitus, the ancient historian, spoke of German military chieftains polling their soldiers for a roar of approval over battle plans or a rattling of spears in rejection. In 1309, a few Swiss cantons adopted a relatively modern form of referendum, allowing citizens to accept or reject proposed laws or policies by a popular vote. And the American colonies extensively used techniques of direct democracy, from the founding of the Plymouth colony through the New England town hall meetings in which the populace promulgated new policies and repealed ill-advised ones.[6]

The use of direct democracy persisted in the United States in a limited form after the American Revolution.[7] Massachusetts, for example, allowed voters to decide the fate of a new state constitution in 1778. By 1831, nearly every state entering the union had adopted the procedure of submitting constitutions to a popular vote.[8] From then on, however, states increasingly abandoned techniques of direct citizen formulation of policies and deferred to more traditional forms of representative government—until the Populist and Progressive movements of the late 19th and early 20th centuries.

Although the Populist and Progressive movements arose from distinctly opposite constituencies—Populists being more agrarian and concerned with economic issues, Progressives being more urban and concerned with governmental corruption—they shared a common fear of the corrupting influence of corporate monopolies and a common goal to institutionalize the initiative, referendum and recall.

The modern concept of the initiative first reached the United States in a series of British articles discussing Switzerland's system of direct democracy.[9] Shortly thereafter, in 1885, Father Robert Haire, a priest from South Dakota, and Benjamin Urner, a newspaper publisher and Greenback party activist, became the first American reformers to propose a similar initiative process in this country. James W. Sullivan picked up the idea and traveled to Switzerland to evaluate how the Swiss system of direct democracy functioned and to judge whether it could be adapted to

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against Governor Jerry Brown, and three each against Governor Pat Brown and Governor Ronald Reagan. Recall efforts against other state level offices include one against a Lieutenant Governor, one against an attorney general, one against the entire supreme court, five against Supreme Court Justice Rose Bird, 13 against various high court jurists, 11 against state senators and 23 against members of the assembly (five of which targeted assembly Democrats who supported a ban on assault weapons). Although the recall has been ineffective against state officers, it can be and has been a very viable threat against local officials. California Political Week, Apr. 15, 1991.

5. For further discussion of the referendum and recall, *see* Thomas Cronin, Direct Democracy: The Politics of Initiative, Referendum and Recall (1989).

6. Laura Tallian, Direct Democracy: An Historical Analysis of the Initiative, Referendum and Recall Process, at 10 (1977).

7. Austin Ranney, *United States of America*, in Referendums: A Comparative Study of Practice and Theory, at 68-69 (David Butler and Austin Ranney, eds. 1978).

8. Charles Lobinger, The People's Law, at 338 (1909).

9. Eugene Lee, *The Initiative and Referendum: How California Has Fared*, National Civic Review 69-76 (Feb. 1979)

the United States. Sullivan's published findings laid much of the groundwork for the American direct democracy movement.[10]

In 1898, South Dakota became the first state to adopt the initiative.[11] The movement for direct democracy quickly swept into local and state government through most western states and several eastern states.[12] During the next two decades, 21 additional states adopted the initiative or referendum.[13] No state subsequently adopted the initiative or referendum until 1959, when Alaska joined the Union. Wyoming obtained the initiative in 1968. Illinois followed suit in 1970 for constitutional amendments only, as did Florida in 1972.

The initiative did not appear in California until 1903 when the California legislature approved the process for the city of Los Angeles.[14] In 1911, California became the 10th state to adopt the initiative when voters approved the process by a three-to-one majority. Inadvertently, the Southern Pacific Railroad was the driving force behind the growth of popular support for the initiative process in California.

1. Domination of the State by the Southern Pacific Railroad

When four businessmen formed the Central Pacific Railroad in 1861, they created a politically powerful 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,

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10. The initiative and referendum had long been practiced in a few Swiss forest cantons since the early 1300s. Ironically, and as subsequently occurred in the United States, it was the corrupting influence of the railroads in Switzerland that ushered in widespread use of the initiative process in most other cantons and the Swiss central government by the middle of the 19th century. Demands for expansion of direct democracy followed a generous governmental subsidy given to a Swiss railroad in 1858 by the Legislature of Neuchatel.

11. Although South Dakota first adopted the initiative process, the first statewide initiatives themselves were presented to voters in Oregon. On June 6, 1904, voters in Oregon made history by voting on, and approving, the first two statewide initiatives ever placed on a ballot. The first initiative created a primary nomination system; the second permitted "local option" on liquor sales. David Schmidt, Citizen Lawmakers: The Ballot Initiative Revolution, at 8 (1987).

12. Direct democracy developed as largely a western phenomenon for several reasons. First, many western states were newly entering the union and were in the midst of designing their structures of government. Second, much of the detrimental impact of corporate monopolies on state and local political and economic systems were hardest felt in the agrarian West. Third, western states were already imbued in the agrarian revolt tradition due to the relative electoral success of the Populist party in this region.

13. Three states—Kentucky, Maryland and New Mexico—allowed their citizens to petition for a popular referendum but did not allow for other forms of direct democracy, such as the initiative.

14. Throughout most of the 1800s, state governments actively meddled in and regulated local governmental affairs. Cities were clearly subservient to state law in all areas of government. In 1875, Missouri was the first state to amend its constitution to allow cities with a population in excess of 100,000 to formulate their own charters. California followed suit in 1879 but provided that charters, after adoption by the city's voters, must be submitted to the legislature for ratification or rejection as a whole. Thus legislative approval for the initiative process in Los Angeles was required.

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.[15]

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."*[16]

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 in 1901 called the Southern Pacific, extended to the press, voting procedures and the judicial system.[17] It 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,[18] 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.[19] 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

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

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

17. 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* Tallian, *supra* note 6, at 6.

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

19. Culver and Syer, *supra* note 15, at 39.

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 that contained 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 projected regulatory scheme collapsed, and reformers made no further headway for another 30 years.

2. The "Progressive" Challenge to the Railroad's Power

Despite the effort of the early Populists, railroad monopolies throughout the country remained a dominant force. 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. A nationwide muckraking wave swept the country under the tutelage of Theodore Roosevelt.

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 things as gambling halls and Sunday saloons.[20] California's Progressive movement eventually leapfrogged these rural Populist concerns to become a broadbased coalition targeting government corruption. While a specific Progressive agenda was never set down, historians generally agree that it included:

- Expanding citizen participation in politics (initiative, referendum, recall, and the replacement of party nominating conventions with the direct primary);
- Taming unrestrained corporate influence on the political process (*e.g.*, expanding and strengthening the railroad commission);
- Protecting the environment (expanding conservation programs);

20. McFarland, *supra* note 18, at 388.

- 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.[21] 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.

a. John Randolph Haynes

John Randolph Haynes was instrumental in bringing direct legislation to Los Angeles. In 1903, he led California Progressives to a major victory by gaining voter approval of a new Los Angeles city charter that for the first time in California governance adopted the initiative, referendum and recall.[22]

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 to 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.[23]

b. 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.[24] Reuf was later charged with

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

22. McFarland, *supra* note 18, at 388.

23. By 1907, Los Angeles, Pasadena, San Diego, San Bernardino, Fresno, Sacramento and Vallejo had codified the initiative and referendum in their local charters.

24. 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.

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."*[25]

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.

3. 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. Anti-reform 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

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"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 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 6, at 34-35.

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

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.[26]

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.[27] 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."[28] 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.

4. 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.[29]

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, the only defeated measure on the ballot would have allowed public officials to ride the trains with passes issued by the railroad.[30]

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

27. Bell and Price, *supra* note 16, at 56.

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

29. 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.

30. 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

All this occurred despite a strong opposition drive championed by many of the state's major newspapers.[31] The *Los Angeles Times*, for example, ran a headline the morning of the election reading, "VICIOUS FIGHT ON FREAK LEGISLATION."[32] 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."[33]

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."[34]

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 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

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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.

31. 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.

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

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

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

public policies and remove unresponsive or corrupt officeholders. The initiative process had dawned in California.

5. 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.[35] 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.

Voters did, however, choose to make immediate use of the threat of a recall. The recall had originated in Los Angeles in 1903 at the insistence of John Randolph Haynes. It was first employed in that city following a scandal involving H.E. Huntington's street railway company. The city council agreed to sell the company three miles of land along the Los Angeles River at a bargain price and under false pretenses. The mere threat of a recall encouraged the council to reverse its decision, thus avoiding an actual ballot issue. A decade later, following statewide implementation of the Progressive program, two state legislators were removed from office for the first time through the recall.

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

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35. 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."[36]

B. California Voters Have Enacted Numerous Amendments to the Initiative Process Since Its Inception

Over the years, Californians have generally accepted the initiative process as a permanent part of the state's political institutions. Few have proposed its abolition although it has been modified a number of times. With relatively few exceptions, these modifications have not been intended to restrict the people's right to formulate policy through initiatives.[37] Instead, they have been designed to limit abuses of the system. Nonetheless, critics of the initiative process have attempted from time to time to weaken the system of direct legislation.

1. Early Unsuccessful Attempts at Modification

Between 1911 and 1922, opponents made 35 attempts to change or weaken the initiative process. One of the most serious threats came by initiative less than 10 years after its birth. Initiative opponents organized a group called the Anti-Single Tax League, playing on popular fear of a single tax, and qualified two separate initiative constitutional amendments, one in 1920 and another in 1922.[38] These

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

37. Most structural changes to the initiative process were intended to preserve the integrity of the system, such as the 1966 reduction in the signature threshold for statutory initiatives. Not all structural changes, however, were designed to improve the people's right to vote on public policy. Artie Samish, a self-proclaimed political boss in California history, once boasted about shortening the petition circulation period in order to protect the liquor industry from the grassroots Prohibition movement. Following an unsuccessful Prohibition ballot measure in 1948, Samish schemed to change the procedure for qualifying an initiative to the ballot: "I saw to it that the law pertaining to petitions was changed. Under the old law, the Drys could start taking signatures in 1940 and if they had enough by 1950 they could get their proposal on the ballot.

"The new law made it tougher. A group could file a petition with the attorney general for $200, then get a title from the secretary of state. [Instead of the previous unlimited circulation period] the group had 150 days to get the necessary signatures, with the right to petition for an additional 90 days. To qualify for a position on the ballot, 8% of the total vote of the last state election would be required.

"That made it terribly difficult for an initiative to qualify for the ballot. The expense of acquiring so many signatures in so little time was virtually prohibitive.

"Which is why the beverage industry was never threatened by local option thereafter." Arthur Samish and Bob Thomas, The Secret Boss of California, at 69 (1971).

In actuality, Samish grossly exaggerated the impact of a restricted circulation period and boasted of his own influence way beyond the facts. As early as 1943, the legislature had already restricted the circulation period to a potential maximum of two years. All qualification efforts were required to complete their drives within a single election cycle. Cal. Elec. Code §1407 (West 1944) (current version at Cal. Elec. Code §3513 (West 1977)). This time restriction obviously failed to deter qualification of the 1948 Prohibition initiative. And it was not until 1973 that the elections code was amended to restrict the circulation period to 150 days. Cal. Elec. Code §3507 (West 1974) (current version at §3513 (West 1977)).

38. Henry George, a Populist in the late 1800s, proposed revising the tax system in the United States by imposing a single tax on the rise of real estate values. George believed that social inequities came from the system of private land ownership in which landowners could enrich themselves solely through the rise in property values. Land took on value not because of anything the owner did but because people lived on it. Profits from land speculation, then, were seen by George as unearned income. Instead of allowing individuals to keep this unearned income, the single tax proposal would have awarded the wealth to the state. Enough wealth could be accumulated by this single tax that any

efforts sought to increase the signature threshold for qualifying for the ballot any initiative relating to the assessment or collection of taxes. The 1920 ballot measure proposed increasing the threshold from 8% to 25% of votes cast in the last gubernatorial election. Such a high threshold would have made it virtually impossible to qualify a tax initiative. Voters resoundingly rejected the measure. The second attempt proposed a 15% signature threshold. John Randolph Haynes described the reasoning behind these measures:

> *"What is the real reason? We do not have to go far to find it. The proponents of Number 7 desire to get sole control of taxation. They know that the 210,000 signatures that are required under the 15 percent requirement can be obtained only by great interests with enormous financial or other resources at their demand, and that it would be utterly impossible for the people as a whole to secure that number of signatures. On the other hand, inasmuch as it requires a two-thirds vote of both houses to pass any basic tax measure, and inasmuch as fourteen members of the senate are a little more than one-third of that body, all the special interests will need to block legislation is to induce fourteen members of the senate to think as they do on any tax measure; and they recognize the fact that it is easier to control fourteen members of the senate than the entire electorate of California.*
>
> *"Again, 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."*[39]

An overwhelming proportion of the electorate agreed with Haynes and rejected this measure by an even wider margin than in 1920.[40]

2. *Recent Amendments*

Following the adoption of the initiative process in 1911, few changes of significance were made until 1943. Since then, most reforms have entailed minor attempts to improve the system or clarify omissions or inconsistencies in the law. These changes included:

1943 Prior to 1943, the state constitution gave circulators an unlimited period of time to gather the signatures necessary to qualify an initiative for the ballot. In 1943, the legislature enacted a law which effectively limited the circulation period to no more than two years.[41] Despite this early attempt by the legislature to limit

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other taxes would become unnecessary. Additionally, George argued that by ending land speculation, the root causes of social inequality would cease to exist and individual enterprise could prosper with little need for government intervention in any other aspect of the economy. This was a popular idea among agrarians during the farm crises of the late 1800s, but as the Populist movement subsided in the early 1900s, the single tax became viewed as a confiscatory socialistic scheme.

39. *Quoted in* Tallian, *supra* note 6, at 41.

40. In November 1990, California voters also rejected a measure designed to limit the voters' right to change tax policy through the initiative process. Proposition 136, touted as a confirmation of the popular tax-cutting measure Proposition 13, would have required two-thirds voter approval of any initiative calling for an increase in special taxes. Since 1976, no initiative requiring revenues for programs has ever received two-thirds voter approval. Not even the popular Proposition 13 received two-thirds voter approval. Clearly, this initiative, like those of the Anti-Single Tax League, was designed to destroy the people's use of initiative in its most important function, taxation.

41. From 1943 to 1973, initiative proponents were required to submit "first petitions" within 90 days of receiving an official title and summary from the attorney general. Unlimited "supplementary petitions" could be submitted anytime thereafter as long as all petitions were turned

the number of initiatives appearing on the ballot, it is doubtful that it had any major impact.

1946 The state constitution was ambiguous as to whether the legislature had the authority to place on the ballot proposed amendments to initiatives. A constitutional amendment was ratified by voters in 1946, allowing the legislature to propose amendments to initiatives or constitutional amendments, effective upon approval by the voters, unless the original initiative specified that the legislature could amend initiatives without voter approval. (Art. 2, §10(c).)

1948 An initiative measure titled the "California Bill of Rights" proposed regulations on a variety of matters ranging from gambling to reapportionment. This confusing measure never appeared on the California ballot. The California Supreme Court ruled that it was a constitutional "revision" rather than a constitutional "amendment" and therefore not eligible for a vote by the people.[42] It did, however, stimulate a successful 1948 constitutional amendment designed to limit every initiative to a single subject. The amended constitution now reads: "An initiative measure embracing more than one subject may not be submitted to the voters or have any effect." (Art. 2, §8(d).)

1949 The legislature amended the Elections Code in 1949 to require the legislative counsel to prepare analyses of all measures on the ballot. These 500 word explanations appear in the voter's

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into the respective county clerks at least 130 days before the next general election. Petitions not submitted before that deadline were deemed invalid. Initiative proponents under this system could have had up to two years for a qualification drive. Cal. Elec. Code §1407 (West 1944) (current version at Cal. Elec. Code §3513 (West 1977)).

The maximum two-year circulation period required clarification by the courts. The elections code did not specify that petitions became invalid after the next general election. Instead, the law made reference only to the fact that a successful petition drive would qualify for the next general election ballot. This ambiguity led to a situation in which proponents of a Retirement Life Payment amendment to the constitution submitted petition signatures 15,000 shy of the qualification threshold for the November 1940 ballot. Voter turnout for the 1942 gubernatorial race, however, was abysmally low, resulting in a sharp reduction of the number of signatures needed for ballot qualification in 1944. The number of signatures submitted for the Retirement Life Payment qualification drive exceeded the new threshold, and so proponents pressed the state for placement of their initiative on the 1944 ballot. The California Supreme Court ruled that "framers of constitution never intended that initiative measures should remain alive year after year and qualify at a distant future election." Gage v. Jordan, 147 P.2d 387, 388 (1944).

42. McFadden v. Jordan, 32 Cal. 2d 330 (1948). Constitutional "amendments" and constitutional "revisions" are treated by law as distinct entities. The California constitution provides for constitutional amendments through initiatives, but it also allows for constitutional revisions only through constitutional conventions or action by the legislature. Cal. Const. art. 18, §2. The courts have respected the concept that amendments are to be treated differently than revisions. There are, however, no clear-cut guidelines for lawmakers or the courts to follow in distinguishing an amendment from a revision. This determination is made on a case-by-case basis and is a matter of degree. In determining whether a change is a revision, "each situation must be resolved upon its own facts and change is not a mere amendment whenever less than all sections of the constitution are altered." *McFadden,* 32 Cal. 2d at 331. The line of demarcation is whether the change is within the lines of the original instrument, in which case it is an amendment, or broader in scope so as to substantially alter the purpose of the constitution, in which case it is a revision. For a fuller discussion, *see* Chapter 9, "Judicial Review."

pamphlet preceding the arguments for and against the measures. The Political Reform Act of 1974 designated the legislative analyst, rather than legislative counsel, to write the analyses. (Elec. Code §3572; Gov't Code §88003.)

1950 The constitution was amended in 1950 to disallow the naming of individuals to any public office by initiative. In the comprehensive constitutional revision of 1966, which was submitted to a vote for final approval, this provision was expanded to prohibit the naming of a specific private corporation to perform any function or have any power or duty. (Art. 2, §12.)

1957 When the initiative process was adopted in 1912, the secretary of state made all decisions regarding the order of placement of initiatives and all other measures on the ballot. A 1957 statute limited the secretary of state's authority to the determination of ballot order for legislative ballot measures. Ballot positions for initiatives and referenda were to be determined by the order in which they qualified. A 1976 statute removed any remaining discretion by the secretary of state over ballot order. Even legislative ballot measures (measures placed on the ballot by the legislature) now appear in order of their approval by the legislature and are placed before initiatives on the ballot. (Elec. Code §10218.) (Since this is a statutory provision, the legislature can pass bills which override this provision so that particular measures are designated with specific ballot numbers—such as Proposition 1.)

1966 Prior to 1966, the signature threshold for both statutory and constitutional initiatives was 8% of the votes for Governor in the previous election. While signature requirements for constitutional amendments remained the same, the threshold requirement for initiative statutes was lowered to 5%, partly in response to the enormous number of signatures required and partly to encourage the submission to popular vote of statutory rather than constitutional initiatives. Art. 2 §8(b). In the same package of constitutional and election law changes, the "indirect initiative" was abolished.[43] For further discussion of the pros and cons of the indirect initiative process, see Chapter 3, "Initiative Drafting and Amendability."

1968 Although the California constitution seems to imply that initiatives should be submitted to the voters only during general or special elections, initiatives began appearing on primary election ballots following a 1968 statutory provision that led to

43. The "indirect initiative" was created as an alternative procedure in which proponents could submit their initiatives, once they had qualified, to the legislature for possible approval prior to a popular vote. If the legislature adopted the measure, it would be withdrawn from the ballot. Proponents were given an incentive to pursue the indirect rather than direct route: a lower signature requirement (5% as opposed to 8% of those voting in the last gubernatorial election). Despite this incentive, however, the indirect initiative process was rarely used because the filing procedures required nearly a two-year delay before action could be taken on an initiative. Between 1934 and 1966, 19 titled initiatives attempted the indirect route in California. Of these, only four qualified for a legislative hearing and just one, a 1936 fishing control measure, was approved by the legislature.

placement of legislative bond measures on primary ballots without a consolidated special election.[44]

1973 An almost unnoticed but dramatic restriction on the initiative process occurred in 1973 when the legislature limited the circulation period for ballot qualification to no more than 150 days.[45] This statute amended the prior time limit of up to two years that had been in effect since 1943. Prior to 1943, California had allowed an unlimited period of time for circulation of initiative petitions.

1974 The Political Reform Act of 1974 ushered in sweeping changes in the conduct of initiative campaigns, ranging from expenditure limits (later invalidated by the courts) to campaign finance reporting requirements. Although portions of this act were ruled unconstitutional,[46] many significant elements were retained, including California's campaign finance reporting requirements which are among the most extensive in the nation. The act also required improvements in the readability of the ballot pamphlet and provided voters with expedited court review of any inaccuracies in the pamphlet. It prevented counties from requiring initiative petitions to include the precinct number for each person signing the petition. "Precincting" had been an onerous burden, especially for volunteer circulators.

1975 The Elections Code was amended in 1975 to require that the attorney general include a fiscal impact analysis of a proposed measure in the official ballot title. (Elec. Code §3504.)

1976 When initiative petitions are submitted to the counties, the secretary of state orders the counties to determine the number of valid signatures on the petitions by comparing signatures and written addresses with county registration records. Prior to 1976, every signature had to be individually verified. A random signature-sampling system was established in 1976, substantially reducing the workload. If the total number of signatures submitted throughout the state equals at least 100% of the number required for qualification of the initiative, the secretary of state instructs the counties to verify the signatures on a random basis. In counties having more than 500 signatures

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44. No provision in the state constitution or Elections Code permits initiative measures to appear on primary election ballots. In fact, the constitution specifies that initiatives are to appear "at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election." Cal. Const. art. 2, §8(c). For further discussion of how initiatives began appearing on California's June ballot, *see* Chapter 5, "Voting Requirements."

45. Cal. Elec. Code §3507 (West 1974) (current version at Cal. Elec. Code §3513 (West 1977)).

46. In deference to the landmark U.S. Supreme Court ruling, Buckley v. Valeo, 424 U.S. 1 (1976), state courts have struck down major provisions of the California Political Reform Act of 1974. Expenditure ceilings on ballot propositions were voided by the California Supreme Court in Citizens for Jobs and Energy v. FPPC, 16 Cal. 3d 671 (1976). In Hardie v. Eu, 18 Cal. 3d 371 (1976), the court struck down provisions that limited expenditures for circulation of petitions. In later rulings, the United States Supreme Court in 1981 nullified a Berkeley, California municipal ordinance that established contribution limits for proponents and opponents of ballot measures. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981). For further discussion of these cases, *see* Chapter 8, "The Influence of Money."

on the petition, random sampling of 5% (a 1991 legislative amendment reduced the random sampling to 3%) or 500 signatures (whichever is larger) is conducted to determine the number of valid signatures. If the statewide statistical sampling shows that the estimated number of valid signatures is lower than 95% of the number required for qualification of the initiative, it does not qualify. If the sampling shows that the estimated number of valid signatures is over 110%, the measure automatically qualifies for the ballot. In cases where the sample indicates a number of signatures between 95% and 110% of the number required, verification of every signature is mandated. (Elec. Code §§3520, 3521.)

1982 Initiative measures in different elections were often given the same proposition number, creating some confusion. This procedure was changed in 1982. Today, proposition numbers are not to be repeated within any 20-year period. (Elec. Code §10219.5.)

3. Current Elements of the Initiative Process

Most ballot propositions are placed on the ballot without citizen petitions. The California legislature frequently uses its authority to place measures on the ballot in the form of compulsory referenda, bond measures and constitutional amendments. The initiative process, on the other hand, requires citizen-initiated ballot measures.

Proponents of an initiative must first submit the text of any proposed measure to the office of the attorney general and pay a filing fee of $200 prior to the petition circulation process. The filing fee is intended to finance part of the state costs associated with the submission of initiatives and to discourage frivolous proposals. It is refunded to proponents upon successful qualification. The filing fee was set in 1942 and has not increased since that date, even though the costs to the state associated with a single petition (not including election costs) have risen to more than $1,500 (a 1984 estimate).[47]

The attorney general prepares a title and brief (100-word) summary of each initiative. If the proposal has any fiscal impact on state or local government, the department of finance and the joint legislative budget committee prepare a fiscal impact statement and include it in the official summary. The title and summary must be printed on each petition. The secretary of state maintains a calendar of petition filing dates that mark the 150-day deadline for petition circulators to collect the required number of signatures for ballot qualification. Constitutional amendments require a number of signatures equivalent to 8% of the total votes cast in the last gubernatorial election; statutory initiatives and referenda require 5%. Initiatives are placed on the ballot at the next statewide election held at least 131 days between the time of qualification and the election date when voting on the measure will take place (31 days for referenda).[48]

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47. League of Women Voters, Initiative and Referendum in California: A Legacy Lost?, at 64 (1984).

48. Procedures for petitioning for a recall are different than for initiatives. At the state level, a recall petition must gather 12% of the total vote cast for that same office in the last general election within a period of 180 days. If the petition drive is successful, a special election is held with a two-part ballot. At the top of the ballot, voters are asked whether the official should be recalled. At the bottom is a list of various candidates wishing to replace the official. Each candidate must have gathered signatures of 1% of the vote cast in the last election in order to qualify as a nominee. The officeholder, of course, cannot be listed as a candidate. A simple majority vote determines whether the official is recalled. If the official is recalled, the candidate who collects the most votes is elected to serve out the

Each petition for an initiative or referendum must contain signatures from only one county. Once collected, these petitions are submitted to the appropriate county clerks for verification. The counties forward their count of raw signatures to the secretary of state, who then determines if the total number of raw signatures amounts to at least 100% of the required qualification threshold. If so, the counties conduct a random sample check for valid signatures with voter registration records. Approximately 5% of the raw signatures are checked. If the percentage of valid signatures in the sample indicate a high likelihood that proponents have gathered 110% of the required signature threshold, the measure is automatically placed on the ballot. If the sampling indicates that proponents have less than 95% of the threshold, the measure fails to qualify. If the sample indicates a figure somewhere between 95% and 110% then each signature must be individually verified.[49]

By law, the signatures on petitions must be kept confidential.[50] Names and addresses cannot be used for mailing or fundraising objectives. Direct mail signature-gathering services have been able to get around this law by designing a petition with a tear-away coupon for fundraising or including a separate fundraising envelope. In this manner, direct mail services not only gather signatures to qualify an initiative but also raise funds to defray the high costs of this signature-gathering mode.

All initiatives that qualify for the ballot require for enactment a simple majority of those voting on the measure, including measures (such as constitutional amendments) that otherwise require a two-thirds vote in the state legislature. Initiatives are required to address only one subject. If an initiative receives more "yes" than "no" votes, it becomes law. If major provisions of two or more propositions approved at the same election are in conflict, the measure receiving the most "yes" votes prevails in its entirety. (See Chapter 9, "Judicial Review.")

The legislature is prohibited from amending laws established by initiative unless the initiative itself allows legislative amendments. In the past 15 years, about 60% of all voter approved initiatives have permitted legislative amendments under stipulations spelled out in the initiative. Frequently, initiatives will specify that legislative amendments can only be made if they further the purposes of the measure. More often, initiatives will require a super-majority vote of the legislature for amendment. (See Chapter 3, "Initiative Drafting and Amendability.")

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remainder of the term. The signature threshold has discouraged all attempts to recall statewide officials.

49. Proposition 68, the campaign finance reform measure approved by voters on the June 1988 ballot, barely survived the signature verification process. Petitions for the measure were submitted to county clerks in 1986. The random check showed less than the 110% valid threshold needed for automatic qualification. Verification of each signature by the counties resulted in a determination that an insufficient number of valid signatures had been collected and thus the measure failed to qualify. Proponents spent roughly $50,000 of their own money to recheck the petitions and managed to find several thousand valid signatures that had not been counted. The initiative petition was deemed sufficient by the secretary of state and the proposition was placed on the next statewide election ballot and approved by a 53% vote. Proposition 68 was derived from a model law proposed by this Commission.

50. Cal. Elec. Code §29770 (West Supp. 1990). The statute providing for the confidentiality of petitions arose from concerns expressed by proponents of the 1972 marijuana decriminalization initiative (Proposition 19). Many voters expressed reluctance to sign the initiative petition out of fear that their names would be transmitted to police enforcement agencies or the media. Interview with Deborah Seiler, Consultant, Senate Elections Committee, in Sacramento, California (Aug. 8, 1990). A constitutional challenge to the confidentiality statute was rejected by an appellate court. Bilofsky v. Deukmejian, 124 Cal. App. 3d 825 (1981).

Constitutional amendment initiatives may be changed only through voter approval of another constitutional amendment. The legislature is always free to submit changes to any voter approved measure—statutory or constitutional—to the voters for approval (although a constitutional amendment requires a two-thirds vote by the legislature to be placed on the ballot).

Initiatives are also subject to constitutional review by the courts. Since 1911, several initiatives or individual initiative provisions have been ruled unconstitutional and void. Occasionally the courts have conducted their review prior to the election and removed the initiative from the ballot; more frequently, they have conducted their review after a measure's passage. (For further discussion, see Chapter 9, "Judicial Review.")

C. Conclusion and Summary: The Initiative System Is at a Crossroads

The initiative, referendum and recall in California were designed to give the citizenry tools to maintain a degree of control over public policy and the state's political agenda. It was the intent of the Progressives to provide a means for citizens to overrule the influence of special interest groups and keep the government in check. The initiative process was not meant to replace representative democracy but to supplement it.

Historically, California voters have used the state's system of direct democracy prudently. Prior to the 1980s, voters approved only about one-third of all initiatives placed on the ballot. A somewhat different pattern prevailed throughout the 1980s and in the first election of 1990 when close to half of all qualified initiatives were approved by voters. The November 1990 election witnessed a return to voter caution when only three of 13 initiatives were approved. It is obviously too early to tell whether the 1990 general election was an aberration.

Up to the present time, elimination of the initiative process has never been a serious issue in California. But today, changes in the political environment have created pressures to modify the system of direct democracy. Qualification costs have soared beyond the means of all but well-endowed groups or wealthy individuals. Special interests are increasingly willing to spend large sums of money to place their issues before the voters, thus contributing to an increasingly long and complex ballot and flooding the system with dollars, consultants and campaign professionals. In the past decade, many significant state policies have emerged from the initiative process. This growing reliance on ballot initiatives has provoked legislators and other critics to mount a serious effort to curtail the use of initiatives. If the system of direct democracy is to be preserved, Californians need to reexamine their continuing need for the initiative and consider modifying it in ways that will preserve its best features for the future.

CHAPTER 2

The Growing Impact of Ballot Initiatives

"Choose your issue . . . property tax reform, auto insurance, the death penalty, the coastal commission, the gas tax, tobacco tax, ethics, education and so on down the list. All come not from the legislature, but from the ballot."

— John Jacobs,
San Francisco Examiner[1]

When the Progressives of the early 20th century designed the ballot initiative process for California, they envisioned a clear policymaking relationship between the initiative and the state's representative branches of government. State government would retain its role as 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]

In the last two decades, however, these respective roles have been reversed to a significant degree. The initiative process has become a major if not the principal generator of important state policy, while state government often sits as an understudy responding to initiatives in a supplemental and reactive fashion. Columnist Dan Walters observes, "The legislature, at best, has become a political janitor, cleaning up the leavings of ballot measures."[3]

1. John Jacobs, *Duck Votes*, San Francisco Examiner, Mar. 22, 1990.
2. California Special Election Ballot Pamphlet, Arguments in Favor of SCA 22, Oct. 11, 1911.
3. Dan Walters, *Yeasty Ballot Being Brewed,* Sacramento Bee, Feb. 1, 1989.

This shift in power in California has created a new and fourth branch of government: the electorate. Unlike traditional models of state government in which legislation is enacted by the legislature, signed by the Governor and reviewed by the courts, the initiative process places legislative power directly in the hands of the people. It allows the voters to adopt legislation themselves, circumventing the legislature and Governor altogether. Even the courts have assumed a somewhat subdued attitude toward ballot initiatives, expressing reluctance to overturn them and risk interfering with the will of the people.

As a consequence, many of the most important state public policy questions of the past decade—involving property taxes, insurance, education, income tax equity, state lottery, transportation, environment, toxic chemicals, water, handguns, reapportionment, rent control, crime prevention, cigarette taxes, wildlife protection, government reform and drug abuse—have been dealt with directly by the people and not by their elected representatives. Ballot initiatives have increasingly shouldered the legislative and executive branches of government aside, leaving them to play the role of disgruntled observers, who are vocal in their complaints but powerless or unwilling to intervene.

The growing use of the initiative process to decide major policy questions has drawn both considerable criticism and support. Critics believe that ballot initiatives undermine normal state governmental processes. Supporters argue that they correct the excesses and shortcomings of the legislative process. All agree that the impact and influence of initiatives over statewide policy is substantial.

A. Ballot Initiatives Are Increasingly Shaping California's Public Policy

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

— Dan Walters,
Sacramento Bee, 1991[4]

Since 1978, California voters have approved 30 initiatives dealing with a wide range of important state issues. "It's now the main way to get big things done here," notes Sacramento political consultant David Townsend.[5]

1. Growing Numbers of Initiatives Qualifying for Ballot

Ballot initiative activity in recent years has become even more intense than in the first few decades following enactment of the initiative process. From 1912 to 1919, 30 initiatives qualified for the ballot; from 1920 to 1929, the number increased to 35 qualified initiatives; and from 1930 to 1939, the number of qualified initiatives steadied at 35. During the war-dominated decade of the 1940s, ballot measure activity declined substantially (just 19 initiatives reached the ballot). The number was nearly halved in the 1950s (to 10). The 1960s witnessed the lowest number of initiative measures to reach the ballot in a single decade (9).

Beginning in the 1970s and persisting into this decade, a new culture of government-by-initiative has emerged. After 30 years of moderate-to-low initiative activity, 22 initiatives qualified for the ballot in the 1970s. In the 1980s, the high point of this resurgence, 44 measures appeared on the ballot. And in the 1990 primary and general elections alone, 18 ballot measures were submitted for a vote. Indeed, voters faced more initiatives in the 10 years from June 1980 to November 1990 (64) than they did during the 38-year period from 1940 to 1978 (50). (See Table 2.1.)

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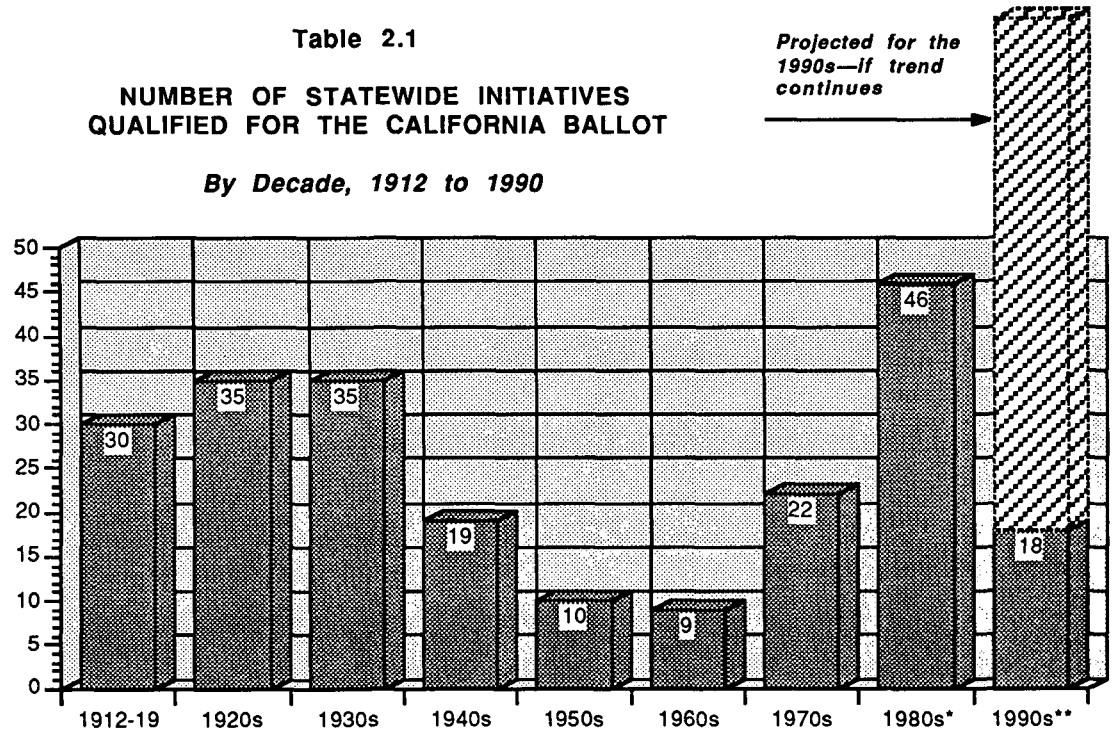
4. Dan Walters, *Ballot Driving Policy Wrangles,* Sacramento Bee, Aug. 29, 1991.

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

Table 2.1

NUMBER OF STATEWIDE INITIATIVES QUALIFIED FOR THE CALIFORNIA BALLOT

By Decade, 1912 to 1990



* Two of the 46 initiatives in the 1980s were ruled unconstitutional by the California Supreme Court after qualifying for the ballot.

** The number of initiatives qualifying for the ballot has more than doubled since the 1960s. In just one election year in the 1990s, 18 initiatives appeared on the ballot; if this trend continues, the 1990s could witness a new record number of initiatives.

Source: California Commission on Campaign Financing Data Analysis

One of the more dramatic changes in the history of direct legislation is the recent increase in the number of initiative proposals *attempting* to qualify for the ballot. The number of initiatives circulated in the 1970s broke all previous records by nearly threefold. That record in turn was broken in the 1980s as petitioners circulated 266 titled initiatives. The trend promises to continue; in the primary and general election cycles of 1990 alone, 69 initiative proposals were circulated. If this pattern continues, California may see as many as 300 initiatives circulated for ballot in this decade.

2. Increasing Numbers of Initiatives Adopted

Over the 80-year history of the California ballot initiative process, the voters have approved 72 (or 32%) of a total of 224 balloted initiatives.[6] Before the 1980s, this

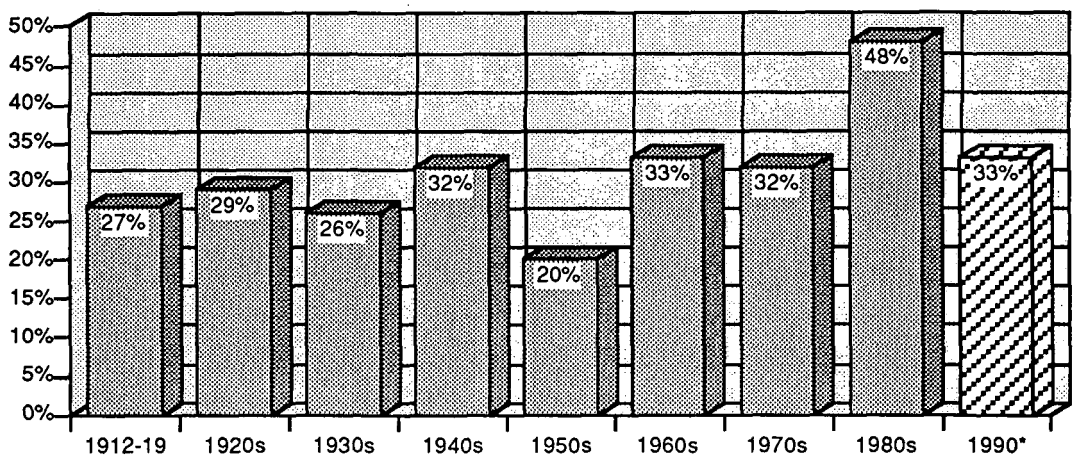
6. This figure (224 initiatives) includes two initiatives which were ruled unconstitutional by the California Supreme Court after their qualification. One was the Sebastiani reapportionment plan originally slated for a 1983 special election. In *Legislature of the State of California v. Deukmejian,* 34 Cal. 3d 658 (1983), the court ruled that a state constitutional provision specifying that reapportionment may occur only once within a 10-year period following the federal census precluded a further change in district boundaries through the statutory initiative. In *AFL-CIO v. Eu,* 36 Cal. 3d 711 (1984), a "Balance the Federal Budget" initiative was removed from the November 1984 ballot, leaving four blank pages, even after it had already been assigned a proposition number and allotted

approval rate did not vary substantially. In the 1980s, however, it began to rise and voters approved nearly half (48%) of all initiatives they considered. (See Table 2.2.) And in the June 1990 election, voters approved 60% of the initiatives on the ballot.

Table 2.2

PERCENTAGE OF BALLOTED INITIATIVES APPROVED

By Decade, 1912 to 1990



* Includes just one election year. In the 1990 primary election, voters approved three of five initiatives (60%) on the ballot. In the 1990 general election, just three of thirteen initiatives (23%) were approved.

Source: California Commission on Campaign Financing Data Analysis

The absolute *numbers* of initiatives approved have also risen. Before the 1980s, the highest number of initiatives approved in any decade was 10 (in the 1920s). But during the 1980s, the voters approved 21 ballot initiatives (more than were adopted in the 1940s, 1950s, 1960s and 1970s combined). In the two 1990 elections, the voters adopted six initiatives—more than were adopted in the 1950s and 1960s combined (five). (See Table 2.3.)

The November 1990 California election, however, may foreshadow a change in this trend. Voters rejected 10 out of the 13 initiatives on the ballot and passed only three (or 23%). Measures that would have raised taxes were defeated along with measures that would have restricted taxes; measures that would have preserved the environment were rejected along with anti-environmental measures. Columnist Peter Schrag observes, "Judging from this election, it appears that a lot of people would have voted a straight No ticket even if the Ten Commandments had been on the ballot."[7] The only three initiatives adopted by the electorate were a prohibition on fishing with gill nets (Proposition 132), establishment of a prison labor program (Proposition 139) and strict term limits for legislative and statewide offices (Proposition 140). The first two initiatives were relatively innocuous and faced little opposition; the last initiative directly attacked incumbent officeholders.[8]

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space in the ballot pamphlet. The court reasoned that the initiative process was not a legitimate procedure for proposing amendments to the U.S. Constitution.

7. Peter Schrag, *The Ghost of Initiatives Past,* Sacramento Bee, Nov. 14, 1990.

8. Most legislative measures put on the ballot were also defeated; only 3 of 18 were enacted by the voters.

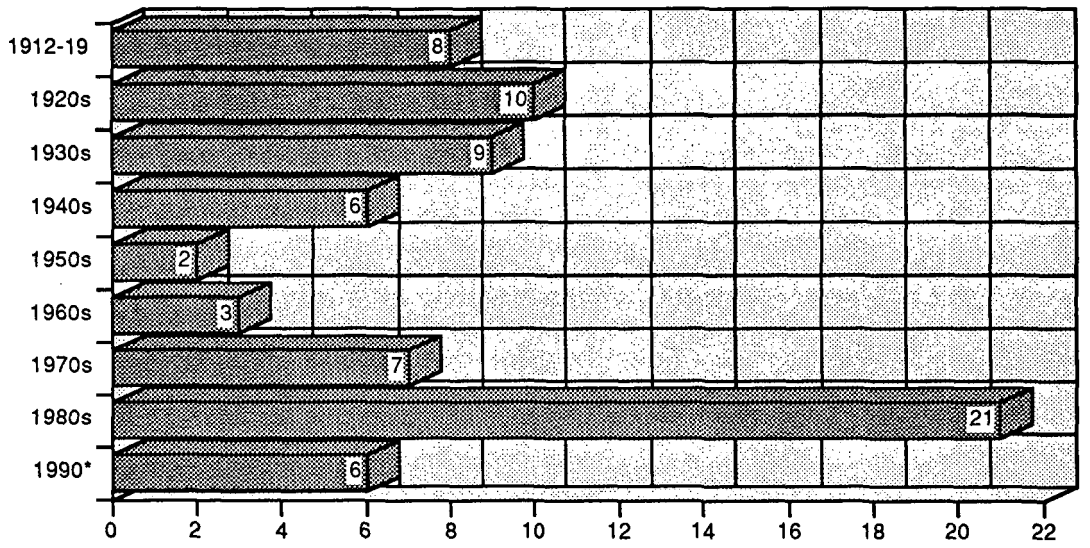
3. Wide-Ranging Impacts

Since 1978, when the adoption of Proposition 13 (property tax relief) triggered the surge toward greater reliance on ballot initiatives, Californians have used the initiative to decide a host of important policy questions. (See Table 2.4.) 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.

Table 2.3

NUMBER OF INITIATIVES APPROVED

By Decade, 1912 to 1990



* Includes just one election year. In the 1990 primary election, voters approved three of five initiatives (60%) on the ballot. In the 1990 general election, just three of thirteen initiatives (23%) were approved.

Source: California Commission on Campaign Financing Data Analysis

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 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.[9]

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

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

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.

Table 2.4

VOTER APPROVED 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

Throughout the history of ballot initiatives in California, the topics of reform have shifted in accordance with the needs of the times. As shown in Table 2.5, 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 in government; in the 1980s, government inefficiency and unresponsiveness became central themes.

Another revealing trend is the shift from 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[10]

Many trace the increase of initiatives to state government's 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 state legislature 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 legislature, have now transferred substantial resources to the initiative process, funding multimillion dollar campaigns to back affirmative and counter initiatives.

This movement toward ballot initiatives parallels a steady decline of public confidence in the legislature'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 legislature should handle the matter.[11]

1. Governmental Inaction

Governmental inaction stands as a prime cause of increased initiative activity. Many initiatives can 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 the state capitol. California has been ruled by a divided government—a Republican Governor and a Democratic-controlled legislature—from 1967 to 1975 and from 1983

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

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

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.

Table 2.5

SUBJECT MATTERS OF CALIFORNIA 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.

Procedural restraints also thwart legislative solutions. California, for example, is one of only a few states whose constitution requires the 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 the law require constitutional amendments. The legislature can only place such amendments on the 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 campaign costs and the need of legislators to raise ever-increasing sums has also contributed significantly to governmental inaction. Incumbents seeking to discourage challengers now raise massive campaign war chests in non-election years largely from contributors interested in affecting particular pieces of legislation. In 1977, legislative incumbents 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.[12] Ironically, while some legislative leaders decry the emergence of the initiative process as a major force in statewide policymaking, their unwillingness to support serious campaign finance reform has contributed to larger numbers 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.[13] Competing interests took their legislative battles from the nation's Capitol to the state capitols. In California, lobbying expenditures jumped from $30 million in 1980 to over $100 million in 1990.

These competing interest groups—using campaign contributions and armies of lobbyists—have grown in strength to a point where they can exert a *de facto* "veto power" over many pieces of legislation. 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."[14] 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.[15]

2. Conflicting Business and Special Interest Agendas

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

12. For a further discussion of the connection between campaign contributions and legislative inaction, *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).

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

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

15. Zelman, *supra* note 10.

"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

Perhaps further demonstrating the growing importance of ballot initiatives and the diminishing relevance of the 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. (See Table 2.6.) 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."[16]

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),[17] former Los Angeles County Supervisor Pete Schabarum (congressional term limits) and Governor Pete Wilson (welfare reform).[18]

4. Easy Access to Initiative Industry

The number of initiatives on the ballot are also increasing because an entire support industry has grown up to make initiative qualification and campaigning significantly easier than in earlier years. Confronted by a legislative process plagued with political wrangling and procedural roadblocks, many initiative proponents now find it easier and less time-consuming to take their proposals through the initiative process. The availability of an initiative industry which stands ready to offer pollsters, paid circulators, advertising agencies, media buyers, slate mailers, campaign managers and the promise that for $1 million they can virtually guarantee to qualify any measure for the statewide ballot has encouraged many groups to bypass the legislative process entirely.

The growing success rate of initiatives over the past decade has also encouraged a growing number of individuals and organizations to circulate

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

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

18. Calpeek, Nov. 18, 1991.

additional measures. 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).

Table 2.6

OFFICEHOLDER-SPONSORED INITIATIVES

1988 and 1990

1988 Initiatives

Officeholder	*Initiative*	*Subject*
Bill Honig	Proposition 71	Raising Gann Limit
George Deukmejian	Proposition 72	Transportation Tax
Ross Johnson	Proposition 73	Campaign Contribution Limits
Conway Collis	Proposition 95	Homeless Funding
Lloyd Connelly	Proposition 99	Tobacco Tax
John Van de Kamp	Proposition 100	Insurance Regulation
Richard Polanco	Proposition 101	Insurance Regulation
Bill Dannemeyer	Proposition 102	AIDS Reporting

1990 Initiatives

Officeholder	*Initiative*	*Subject*
Pete Wilson	Proposition 115	Criminal Justice Reform
Lloyd Connelly	Proposition 116	Rail Transportation Bond Act
Tom Heuning	Proposition 119	Reapportionment
T. Hayden/J. Van de Kamp	Proposition 128	Environmental Reform
John Van de Kamp	Proposition 129	Criminal Justice Reform
John Van de Kamp	Proposition 131	Term Limits/Campaign Reform
Doris Allen	Proposition 132	Ban on Gill Net Fishing
Leo McCarthy	Proposition 133	Drug Enforcement Sales Tax
Lloyd Connelly	Proposition 134	Alcohol Tax
George Deukmejian	Proposition 139	Prison Labor Program
Pete Schabarum	Proposition 140	Officeholder Term Limitations

Source: California Commission on Campaign Financing Data Analysis

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. This may have happened as a result of the November 1990 election. The sound defeat of 10 out of 13 initiatives on the 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 will appear on the

primary ballot in 1992. (For a more detailed discussion of the events surrounding the 1992 forest practices initiative, see Section D-5 below.)

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

From its very inception, California's initiative process has also drawn substantial criticism. Some charge that the ballot initiative fundamentally undermines the system of governance in California by circumventing the more responsible 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."[19] Brigham Young University political science professor David Magleby suggests the California ballot initiative process is disruptive of normal political institutions and represents single issue politics at its worst.[20]

Other critics 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."[21] 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."[22]

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 the state capitol. They point to 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 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.[23]

Members of the legislature are the most critical. 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."[24]

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

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

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

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

23. 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).

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

Assemblymember Sam Farr says, "We in the legislature . . . have not been very excited about initiatives because they bypass everything we're trying to do."[25] 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.[26]

Legislative Analyst Elizabeth G. Hill comments that it has been "difficult to rationally set priorities" when a substantial portion of the 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."[27]

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."[28]

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

The frequent involvement of the courts in reviewing initiative proposals has drawn considerable attention to deficiencies in drafting. Of the 21 voter approved initiatives since 1980, the courts have completely invalidated three[29] and partially invalidated eight.[30] 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.[31] 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

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

26. For a summary of the various initiative bills currently considered in the legislature, *see* Appendix E.

27. Hill, *supra* note 23.

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

29. The three 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.")

30. The eight 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.")

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

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."[32]

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 that occurs in the legislature. 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."[33] 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."[34] (For a thorough discussion of initiative drafting, see Chapter 3, "Initiative Drafting and Amendability.")

3. Encourages High-Spending, Deceptive Campaigns

Some critics contend that the many competing interests converging on California's initiative process have ignited massive campaign spending and deception in campaign techniques. As the stakes have risen in initiative battles, sometimes involving what certain industries see as near life-and-death consequences (recently tobacco, insurance and timber, for example), spending on sophisticated television advertising and direct mail has also grown. Between 1976 and 1988, total initiative spending climbed from $9 million to $127 million. In 1990, total initiative spending totaled $110 million, of which 64% ($70 million) was spent on broadcast advertising and direct mail.

The growing emphasis on 30-second television spots and direct mail, critics say, has encouraged simplified and sometimes deceptive campaigns. After conducting a thorough review of high-spending and one-sided initiative campaigns, UCLA law professor Dan Lowenstein concluded that the most successful initiative opposition campaigns were victorious because they relied on deceptive and confusing messages. Able to outspend their opponents by sizable margins, these successful opposition campaigns could use deceptive advertising in the knowledge that their underfunded opponents lacked the resources to pay for expensive media rebuttals.[35] In recent elections, high-spending opposition campaigns have expanded their techniques to include multimillion dollar "counter initiative" strategies, many of which also rely on deceptive advertisements or slate mailers. (For a further discussion of one-sided opposition spending, 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 the legislature 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

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

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

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

35. Daniel Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice and the First Amendment,* 29 UCLA L. Rev. 505 (1982).

and its other turn-of-the-century founders," writes columnist William Endicott.[36] "The initiative process was adopted in 1911 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 the "little guys," Voter Revolt.[37]

The lottery initiative (Proposition 37 in 1984) stands as the most celebrated instance of a successful "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.[38] 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."[39]

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."[40]

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. 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 have no end in sight."[41] 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."[42]

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36. Endicott, *supra* note 20.

37. Garamendi, *supra* note 33.

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

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

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

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

42. Kirsch, *supra* note 32.

(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 state 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 California. 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 government services and education. Political science professor Eugene Lee points out, "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."[43] 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."[44]

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."[45]

Several critical issues in recent years have landed on the state ballot after languishing in legislative inertia. In 1986, for example, the legislature's inability to forge a tort reform compromise between the insurance industry and the trial lawyers led to a multimillion dollar ballot battle over "deep pockets" Proposition 51. 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, one or more health insurance reform plans may 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."[46]

8. Undermines Political Parties

Some observers complain that the initiative process has led to the irrelevance and further deterioration of California's political parties. Political parties formerly staked out positions on key issues and pushed legislation to advance those interests. Today more and more issues are directed through the initiative process instead of

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43. *Quoted in* Roberts and Yoachum, *supra* note 39.

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

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

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

the legislative process. This siphoning of significant issues away from the legislature may further fragment the political parties and separate them from the voters. Party coalitions built around a cohesive policy agenda will be more difficult to form as voters are more swayed by single-issue politics. Furthermore, the initiative process may blur the normal party lines. Though elected officials of the majority party are given a mandate to rule, the minority party can go to the ballot instead of adhering to the rules and objectives of the majority.

9. 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 notes, "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?"[47] 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."[48]

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."[49] 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.*"[50] Voters clearly find it difficult to sort through a mass of complicated information and make informed choices when confronted with so many decisions.

10. Discourages Compromise

Unlike the legislative process where competing interests can engage in negotiation and compromise, critics maintain that the initiative process actually discourages compromise. *New York Times* columnist Tom Wicker writes, "[Interest groups] find it easier and surer to round up the necessary signatures, and pay for an emotional television campaign, than to slog through lengthy legislative procedures. . . . But committee deliberations, floor debate, procedural rules, give-and-take bargaining—dismaying though they are—can separate the useful sheep from the political goats."[51]

In recent years, well-heeled groups have chosen to qualify their own "counter initiatives" in response to measures that threaten their interests. Critics note that this strategy, while sometimes offering voters wide policy alternatives, does little to promote compromise. In June 1988, California voters may have attempted to forge a "compromise" between two competing campaign finance reform measures by passing both—Propositions 68 and 73. As a result of extensive litigation and various court decisions, "compromise" in the courts did not occur. Proposition 68, passing with fewer votes than Proposition 73, was thrown out, and subsequent court decisions have nullified most of Proposition 73. Voters were left with neither

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

48. Cabrera, *supra* note 34.

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

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

51. Tom Wicker, *Voters Were Legislators for a Day,* Los Angeles Daily Journal, June 11, 1990.

proposition. The courts have declared themselves reluctant to resolve conflicting initiatives. Commenting on the potential outcome of the 1988 battle over five competing insurance initiatives, state Supreme Court Chief Justice Malcolm Lucas asks, "Should we sit down in Solomon-like fashion and meld them together? Aren't we performing a legislative function once we do that?"[52] (For a further discussion of the courts' role in the initiative process, see Chapter 9, "Judicial Review.")

11. Allows Manipulation for Fundraising Purposes

Some observers have objected to the recent practice by some proponents of trading initiative provisions for promises of initiative funding or signatures. Four initiatives on the 1988 and 1990 ballots were partly constructed in this manner.[53] (For a more detailed discussion of "logrolling," see Chapter 8, "The Influence of Money.") "It's prohibited by law to trade money for law in the legislature, but it's perfectly legal—and presumably appropriate—to do it in the initiative process," comments state Senator Quentin Kopp. "If one of us received $35,000 to include a particular project in a bond issue, we'd be accused of being bribed or accused of participating in extortion. Do you have a different standard [for initiatives] so that you can promise somebody their favorite pork-barrel project if they'll put up a contribution or collect 5,000 or 10,000 signatures?"[54] In 1991, a Kopp bill to prohibit such practices passed the legislature and was signed by the Governor.

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[55]

To its staunch defenders, the initiative process is the "true sense of democracy."[56] For them the initiative process stands as the last resort for the people, the safety valve around an unresponsive and gridlocked state 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."[57]

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52. *Quoted in* Schrag, *supra* note 47.

53. Proponents of park bond Proposition 70 in June 1988, the proponents of tobacco tax Proposition 99 in November 1988, rail transportation bond Proposition 116 in June 1990 and alcohol tax Proposition 134 in November 1990 also included provisions in their initiatives in exchange for campaign donations. Dan Walters, *Cafeteria-Style Initiatives,* Sacramento Bee, Aug. 4, 1989.

54. *Quoted in* Steve Towns, *Bill Aims to Control Peddling of Initiatives,* Daily Recorder, March 16, 1989.

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

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

57. *Quoted in* Jost, *supra* note 19, at 464.

1. Allows the Public to Circumvent a Recalcitrant Governor and Legislature

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. Property tax reduction (Proposition 13 in 1978), establishment of the Coastal Commission (Proposition 20 in 1972) and officeholder term limitations (Proposition 140 in 1990), for example, would never have been adopted had it not been for the availability of the initiative process. "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.[58] 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."[59]

Commenting on the 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."[60] 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."[61]

2. Neutralizes Power of Special Interests

Supporters argue that the initiative process adds a critical counterweight to a state government that frequently is driven by special interests. 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.[62] In the 1985-1986 election cycle, for example, tobacco company contributions to 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.[63]

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."[64] 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

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58. *Quoted in* Roberts and Yoachum, *supra* note 39.

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

60. *Id.*

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

62. 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).

63. *Id.*

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

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."[65] 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."[66] "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.[67]

3. Makes Governmental Reforms Possible

Many initiative supporters believe that major government and political reforms would simply not occur if left to the legislature and the Governor. 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. The 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.

Initiative supporters also point to the federal government's inability to enact congressional campaign reform as a reason why the initiative process is needed in California. In the absence of a "national" initiative process, they say, the federal government has been under little pressure to pass meaningful campaign finance reform. In California, campaign finance reforms have been on the ballot four times in the past eight years.

The battle for campaign finance reform illustrates the need for the initiative process, supporters say. Many believe that campaign finance reform measures will never be addressed adequately by the legislature. In 1985, for example, assembly Speaker Willie Brown introduced a comprehensive package of campaign finance remedies which would have banned non-election year fundraising, limited legislative campaign contributions and placed ceilings on how much candidates could spend in exchange for partial public matching funds.[68] Although the speaker's legislative clout is legendary, the bill (AB 2681) did not pass the assembly floor, leaving many to speculate that the speaker had not really intended the bill to pass. This speculation was strengthened shortly thereafter when a nearly identical

65. *Id.*

66. *Quoted in* Feinsilber, *supra* note 45.

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

68. The measure was taken from a Model Law proposed by the California Commission on Campaign Financing in its publication, The New Gold Rush: Financing California's Legislative Campaigns (1985).

campaign reform initiative (Proposition 68) qualified for the June 1988 ballot and Brown and several of his colleagues raised substantial amounts of campaign dollars in an ultimately unsuccessful campaign to defeat it. When campaign reform Proposition 131 was placed on the 1990 ballot, legislators again mounted an opposition campaign to defend their interests—this time with success.

4. Stimulates Public Involvement in State Issues

Initiative process supporters say that ballot measures are also instrumental in raising greater public awareness of, and interest in, important state issues. Initiatives draw voters to the polls, and they inspire interest in statewide issues. 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. (For a further discussion of voter drop-off rates, see Chapter 5, "Voting Requirements.") 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."[69]

Some have likened the initiative process to a statewide "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."[70]

5. Exerts Pressure on the Legislature to Act Responsibly

Supporters of the initiative process maintain that the threat of a ballot measure is often necessary to pressure the legislature and Governor 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. "Legislatures 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."[71]

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 (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.

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69. Owens, *supra* note 55.

70. Fox and Rosenfield, *supra* note 67.

71. Owens, *supra* note 55.

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,[72] 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.[73] 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.[74] The compromise reached by the Governor and legislature subsequently broke down.

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

Conceived in 1911 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 now turn to the initiative almost routinely—to launch statewide debates over new issues and to trigger shifts in policy—sometimes before the legislature has had a chance to address the issues involved. (The planned 1992 "right to die" 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 altogether, to immunize laws against future amendments and to crystallize public opinion into defined state policy in compressed periods of time.

Although California's system of initiatives has significant flaws, the Commission has concluded, after much thought and deliberation, that the process itself should be retained but must also be 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 California's democratic tradition. Others were concerned that the initiative process had caused the state 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

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

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

74. 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.

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 California. Based on its research, the Commission has concluded that California's 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. 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 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 today or in any other state. 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.[75] The control of incumbents over reapportionment has often made it difficult for voters to oust officeholders and initiate legislative change. 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 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 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 government is still subject to special interest influence, important statewide policies are not addressed, needed legislation is derailed or blocked and the legislative and executive branches are frequently locked in unproductive battles. The fact that Californians *approved 21 initiatives* in the 1980s is alone a significant indication that the legislative process is not yet responsive to public needs. Until this structural situation significantly changes, Californians will need to retain the initiative power as a safeguard against legislative inaction and an implement for legitimate change. Twenty-two states (and the District of Columbia) have enacted some form of the initiative process; not one has repealed it.

The ballot initiative process is also important for making changes to the *structure of government itself*—changes which legislatures themselves find inherently difficult to make. Campaign finance, reapportionment, ethics and limits on terms of office, for example, are all reforms that legislatures typically resist. In

75. *See, e.g.,* California Commission on Campaign Financing, *supra* note 12.

California, as in other states, the initiative process is still necessary to trigger reforms in areas of this sort.

2. Public Support for Initiative Retention and Improvement

Californians also clearly wish to keep their right to decide public policy through the initiative process. Surveys conducted in California since 1979 have consistently demonstrated a strong positive view of the initiative process among the voting public. Yet while vast majorities believe that direct legislation is generally a good thing, a gradual erosion in the strength of that support clearly has occurred. The height of popularity for initiatives immediately followed Proposition 13, the 1978 tax-cutting initiative. In 1979, an overwhelming 83% of Californians expressed a positive overall opinion of the system of initiatives. Although support has lessened, the percentage of respondents expressing positive attitudes toward the initiative process is still very strong. Today two-thirds (66%) of the voting public view the initiative process in a favorable light.

While a very solid majority of Californians still support the initiative process, these voters are not reluctant to accept reforms. A 1985 California Public Interest Poll, conducted by USC's Institute of Politics and Government, indicates that some proposed reforms to the process would be very popular.[76] In response to the statement, "Generally, I like the initiative process in California, but I would like significant changes in how it works," 71% of respondents strongly or somewhat agreed; only 22% strongly or somewhat disagreed. The momentum for reform appears to come from a perception that moneyed interests are dominating initiatives. Of those surveyed, 66% wanted greater disclosure of financial interests behind advertising campaigns. Over half the respondents favored some level of contribution limits, while one-third opposed any contribution limits.

A 1984 Mervin Field survey asked voters what negative aspects they saw in the initiative process.[77] The voters pointed to the dominance of money and the lack of voter information. An overwhelming majority (86%) felt the system "allows special interest groups to gain power by spending money to promote only their side of an issue." Almost as large a percentage (84%) worried that "since many people do not follow politics regularly, they may not be able to make an informed decision on the issues they would be asked to vote on." The voters also supported measures that would determine, before an initiative was placed on the ballot, whether that initiative conformed to state law and was clear in its language.

By late 1990 voter dissatisfaction with the initiative process had grown to levels not indicated in the earlier Mervin Field polls. A *Los Angeles Times* poll found that 72% of likely California voters agreed with the statement, "The initiative process has gotten out of control in California elections." Only 20% of respondents disagreed. Foremost among voter complaints were the beliefs that political advertisements on television were misleading, that special interest groups had seized the initiative process for their own benefit and that many ballot measures were too complex for voters to understand fully.[78] Although this pessimism coincided with a rising distrust of politics in general, hostile reactions toward negative campaigning and one of the most complex and confusing ballot initiative campaigns in California history, it is reasonable to assume that voter dissatisfaction with the initiative goes

76. Institute of Politics and Government, *California Public Interest Poll,* University of Southern California, Feb. 1985.

77. Mervin Field, *The California Poll: Public Amenable to Proposed Changes,* June 5, 1985.

78. George Skelton, *Voters Say Initiatives Are 'Out of Control,'* Los Angeles Times, Nov. 4, 1990.

beyond one election. The time is now ripe to consider reasonable modifications to the initiative process.[79]

3. The Need for Significant Improvement

The initiative process in California today has virtually become a full-time partner in statewide policymaking. The simple apparatus set up more than 80 years ago however, remains virtually unchanged. The Commission believes that the initiative process itself must be improved and updated to reflect its importance as a significant aspect of government.

The initiative process in California 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 the legislature 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 the California constitution, leaving it 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;
- High-spending, one-sided campaigns often dominate and distort the electoral process; and
- The courts, while appropriately exercising judicial restraint, have recently invalidated all substantive provisions of successful initiatives because some of these provisions purportedly conflict with some provisions in other initiatives dealing generally with the same subject matter.

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 work more easily, fairly and flexibly. They assume that the initiative will continue to be a part of California's political landscape well into the distant future. They are therefore designed to retain the initiative process while adjusting it to the exigencies of modern political life in the next century.

79. Randall Rothenberg, *Voters Complain That Negative Campaigns Are Driving Them Away*, New York Times, Nov. 6, 1990.

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]

Ballot initiatives are rarely enacted without flaws. Like the laws passed by legislatures, 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 an initiative's text can be changed after the attorney general 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 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 legislature and Governor acting together, can amend that law to correct a single word, no matter how erroneous, flawed or outdated that initiative may be, unless the text of the initiative itself permits such legislative amendments.

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

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 legislative amendments.

By contrast, the legislative process is almost infinitely flexible. It is expressly designed to catch and correct errors in legislative bills before, during and even after their enactment. When a legislator introduces a bill, it is sent to one or more committees where legislative staff analyze it for problems. The bill's author may then redraft and resubmit it to the committee. Public hearings are then usually scheduled, allowing experts and the general public to comment. If the bill is reported out of committee, it continues through the gamut of legislative scrutiny in a series of additional committee and floor debates. At any point up to final legislative action, the bill can be amended by the author to accommodate criticisms or suggestions. If the bill is enacted into law and errors later discovered, the legislature may amend and correct the law at any time.

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

The Commission believes that California's 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 legislators 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 legislature should be vested with suitably limited authority to amend initiatives after their enactment.

A. Poorly Drafted 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.

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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 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).

Although this chapter focuses on the problems involved in drafting an initiative—and these problems are substantial—bills drafted by the legislature are plagued by similar shortcomings. Examples abound. For instance, the legislature passed a law requiring all Californians to have automobile insurance but overlooked restraints on insurance rates to make policies affordable. Partly due to this omission, demands for tort reform mounted, resulting in a compromise package between the insurance industry, trial lawyers, doctors and business that was hastily drafted on a napkin at Frank Fat's restaurant in Sacramento. Consumer interests were entirely neglected by this compromise, prompting Ralph Nader to seek redress through the initiative process. The insurance

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 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. The legislature is often forced to enact additional legislation to raise funding for measures enacted but not financed by the voters. And the state 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 the 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 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 would inevitably arise as administrative agencies and the courts attempted to define the measure's imprecise terminology.

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industry, trial lawyers and other interested groups followed suit, placing five insurance initiatives on the November 1988 ballot at a combined campaign cost in excess of $83 million. Oversights, omissions and hastily drafted laws by the legislature contributed to this crisis in the insurance industry. Tom Dresslar, *Legislature Held at Fault for Crisis in Auto Insurance,* Los Angeles Daily Journal, Oct. 17, 1988. Of course, the fact that drafting procedures in the state legislature are also flawed does not preclude the need to improve drafting procedures in the initiative process.

3. The state government is 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).

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

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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 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

Proposition 13 is not unique. Numerous other measures have fallen short of their goals or have clogged the courts and burdened administrative agencies with omissions and ambiguities in textual language. An analysis of the Victims' Bill of Rights (Proposition 8) by the Assembly Committee on Criminal Justice in 1982 concluded: "Although it is difficult to write a statute so precisely that there are no ambiguities, care in drafting can reduce the number of differing interpretations of a given set of words and phrases. Such care in drafting is largely absent from the initiative (Proposition 8) which is so loosely worded as to defy clear interpretation." The Committee noted, by way of illustration, that "if the authors' intent was to limit exclusion of evidence obtained through police misconduct, it is hard to understand why [the initiative] is written in a manner which operates to repeal the bulk of the California Evidence Code, thus wiping out criminal court rules ranging from authentication of documents to qualifications of expert witnesses."[9]

2. Omissions and Oversights

Some initiatives are drafted with no clear concept of the consequences of the measure as a piece of legislation. The unsuccessful AIDS initiatives sponsored by Lyndon LaRouche (Proposition 64, November 1986, and Proposition 69, November 1988), for example, were drafted so poorly that even if they had been approved by the voters, they would probably not have changed public policy. The clear intent of the LaRouche initiatives was to declare AIDS a socially contagious disease and institute a reporting program that would lead to the quarantine of those carrying the HIV virus. Both proposals called for placing the names of AIDS carriers on the list of reportable diseases maintained by the California Department of Health Services (DHS) for appropriate action. The authors apparently assumed that qualification for such listing would then warrant quarantine. In fact, AIDS is currently subject to the laws and regulations governing communicable diseases, including reporting the names of persons who meet the AIDS surveillance criteria to the DHS. Since there is no evidence that AIDS can be transmitted through casual contact, no health official in the state has ever recommended the option of pursuing quarantine actions. In all probability this policy would not have changed even with passage of the LaRouche measures. The text of the initiatives indicated that the authors did not understand existing public health policy.

In a similar vein, proponents seeking to make English California's official language (Proposition 63, November 1986) easily won an initiative election. Judging from an earlier initiative (Proposition 38, November 1984) by the same group calling for printing election ballots only in English, the objective of this measure was to discourage the accommodation of other languages in the public sector, especially in schools and government services. But the initiative's actual impact has been negligible at best. Declaring English an official language is in itself an ambiguous gesture, and the measure neglected to require that regulations be adopted to implement any specific objective. Although citizens have been given the right to sue the state for noncompliance, it is unclear what would constitute "compliance," and

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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. *Quoted in* League of Women Voters, *supra* note 4, at 40. Costly litigation because of a lack of review procedures is a common problem at the local level as well. For example, voters in a California county enacted an initiative that prohibited federal, state and local governments from restricting most uses of privately-held real estate, including implementation of state-mandated general plans and zoning requirements. The measure clearly was unconstitutional and it was invalidated by the courts after being approved by the voters. Patterson v. County of Tehama, 184 Cal. App. 3d 1546 (1986).

no lawsuits have been filed.[10] Hence, this proposition has generated no noticeable change in public policy.

Unintended consequences from ambiguously drafted initiatives spilled over into the 1990 elections. U.S. Senator Pete Wilson placed a "Speedy Trial/Crime Victims" initiative (Proposition 115, June 1990) on the ballot to coincide with his election campaign for Governor. Although the measure was intended to enhance Wilson's standing among voters, one of its provisions generated considerable controversy by deleting California's "right to privacy" clause from the state constitution. Wilson's rival candidate for Governor, John Van de Kamp, argued that the "right to privacy" clause protected existing abortion rights and therefore the measure posed a threat to the pro-choice movement—which Wilson had said he supported. Ironically, this apparently inadvertent omission in the drafting process might have subjected Wilson's candidacy to more harm than good.

On the other side, Van de Kamp sponsored three separate initiatives on the November 1990 ballot in the expectation of boosting his gubernatorial election chances.[11] In an effort to accentuate the "right to privacy" omission in Pete Wilson's Speedy Trial initiative, Van de Kamp placed his own criminal procedures measure on the ballot (Proposition 129). Unfortunately for Van de Kamp, the initiative also called for an expensive drug abuse prevention program to be financed by closing specific corporate tax loopholes. Upon learning that additional revenues could be obtained by closing these loopholes, the legislature beat Van de Kamp to the punch by quickly closing them and allocating the funds to other state programs. It was too late for Van de Kamp to amend his initiative in light of the sudden absence of the anticipated revenue source, and the measure was rejected by voters on election day. Had the measure been approved by the voters, the state would suddenly have had to raise $1.2 billion in new revenues.[12]

3. Excessive Length

A recent problem encountered with greater frequency in California is excessively long ballot 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.[13] 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).

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10. Telephone interview with Toni Galloway, Public Information Officer, California Attorney General's office (Jan. 24, 1990).

11. John Van de Kamp's three November election initiatives were: Proposition 128, a far-reaching environmental measure labeled "Big Green"; Proposition 129, Van de Kamp's answer to Pete Wilson's Speedy Trial initiative; and Proposition 131, an ethics, campaign finance reform and term limits package that cost him the support of many Democratic party officials.

12. Lack of drafting review procedures in Dade County, Florida, resulted in an embarrassing omission for proponents of a tax-cutting initiative in the mid-1980s. A group petitioned for an initiative to cut property taxes by 50%. The initiative's sponsors wanted to reduce property taxes from 8 mills per $1,000 of property value to 4 mills per $1,000 of property value. 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, and it lost.

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

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 measure (Proposition 131) at 15,633 words.[14] Indeed, as shown in Table 3.1, 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.

Long ballot initiatives might be justified if they were necessary to deal with pressing issues of the day—even though voters would be hard-pressed to understand them. But the lengthy measures referred to above dealt with matters arguably no more critical than the Victims' Bill of Rights in June 1982 (Proposition 8, 2,890 words), the Beverage Recycling Act in November 1982 (Proposition 11, 1,309 words), the Gann limit on legislative spending in June 1984 (Proposition 24, 4,322 words), the Ralph Nader-endorsed insurance reform measure in November 1988 (Proposition 103, 2,563 words), the term limits measure of November 1990 (Proposition 140, 604 words) or any of the other propositions written more concisely. Indeed, some observers have speculated that a principal reason why the November 1988 insurance reform measure (Proposition 103) was drafted in a readable 2,563 words, while the insurance industry measure (Proposition 104) contained 12,336 words, was partly a reflection of opposing election strategies. Consumer groups wanted voters to understand the basic elements of insurance reform, while the insurance industry wanted voters to give up on all insurance reforms as an issue too complex to be decided at the ballot box.

Several major factors tend to make ballot propositions tediously long. First, some initiative proponents are apparently so mistrustful of the legislature that they draft their initiative to address every conceivable contingency and close every potential loophole. Instead of presenting the public with a general set of easily understood principles, leaving the legislature to fill in the details, these proponents

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14. 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.

seek to minimize or eliminate altogether the ability of the legislature to fill in later statutory details. Long and complex initiatives are the result.

Table 3.1

ESTIMATED WORD LENGTH OF ALL INITIATIVES ON THE CALIFORNIA BALLOT, 1988 and 1990

Initiative	*Subject*	*Year*	*No. of Words**
Proposition 68	Campaign Finance	June 1988	6,522
Proposition 69	AIDS Quarantine	June 1988	374
Proposition 70	Wilderness Bond	June 1988	12,655
Proposition 71	Appropriations Limit	June 1988	759
Proposition 72	Transportation Funds	June 1988	1,034
Proposition 73	Campaign Finance	June 1988	1,419
Proposition 95	Homeless	November 1988	7,527
Proposition 96	AIDS Testing	November 1988	1,408
Proposition 97	Cal-OSHA	November 1988	738
Proposition 98	Education Funds	November 1988	2,440
Proposition 99	Tobacco Tax	November 1988	1,700
Proposition 100	Insurance Reform	November 1988	8,696
Proposition 101	Insurance Reform	November 1988	2,630
Proposition 102	AIDS Quarantine	November 1988	2,596
Proposition 103	Insurance Reform	November 1988	2,563
Proposition 104	Insurance Reform	November 1988	12,336
Proposition 105	Disclosure	November 1988	2,706
Proposition 106	Attorney Fees	November 1988	405
Proposition 115	Victims' Rights	June 1990	3,764
Proposition 116	Rail Bond	June 1990	5,401
Proposition 117	Wildlife Bond	June 1990	4,343
Proposition 118	Reapportionment	June 1990	4,356
Proposition 119	Reapportionment	June 1990	6,300
Proposition 128	"Big Green"	November 1990	13,665
Proposition 129	Drug Enforcement	November 1990	5,657
Proposition 130	"Forests Forever"	November 1990	10,838
Proposition 131	Campaign Finance	November 1990	15,633
Proposition 132	Gill Nets	November 1990	1,811
Proposition 133	Drug Enforcement	November 1990	3,448
Proposition 134	Alcohol Tax	November 1990	3,147
Proposition 135	Pesticide Regulation	November 1990	5,951
Proposition 136	Jarvis Taxes	November 1990	1,590
Proposition 137	Initiative Process	November 1990	95
Proposition 138	Timber Harvesting	November 1990	9,735
Proposition 139	Prison Labor	November 1990	1,627
Proposition 140	Term Limits	November 1990	604

*Words counted are all italicized proposed additions to statutory or constitutional law, and any enacting language pertinent to the initiative, such as severability clauses. Existing statutory or constitutional law repeated in the text of an initiative, and all strike-out language, are not included in the tabulation. Preambles are included in the word count.

Source: California Commission on Campaign Financing Data Analysis

Second, some authors apparently feel that if they are going to go to 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. An otherwise admirable

desire for comprehensiveness, however, can overwhelm the public's ability to absorb the meaning of the proposal. Instead of writing a thorough and precise campaign finance reform initiative in 1990, for example, Attorney General Van de Kamp drafted one of the longest initiatives in recent history (Proposition 131), encompassing comprehensive campaign finance reform, a detailed ethics package for public officials and a term limits proposal. Even the official summary in the state ballot pamphlet could not address all the aspects of this initiative.

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. Proponents of Proposition 70 (12,655 words), a $776 million park bonds measure on California's June 1986 ballot, promised local environmental groups that their pet projects would be included in the initiative if they pledged to support the qualification drive.[15] Those who raised money or gathered signatures were rewarded by having their favorite park acquisition projects added to the bond measure, regardless of where those projects fell in a ranking of priorities.[16]

Not only are long initiatives perplexing, they also tend to be rejected at the polls. A computer analysis by the Commission reveals 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.[17] It should come as no surprise that 11 of the 15 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 whose texts are overreaching in scope, conceal attempts to sow confusion or appear akin to pork-barrel legislation.

4. Complicated Wording

Poor drafting often takes the form of overly complicated wording. While complicated wording may help to overcome ambiguities in the text of an initiative and thus rarely contributes to "bad" legislation, it can frequently generate voter confusion. On the June 1976 ballot, for example, opponents of nuclear power placed the issue of limiting nuclear power plants before the voters. Proposition 15, labelled "Nuclear Power Plants," tried to restrict the development of nuclear power facilities across the state. It offered a complicated formula for reducing core power levels on existing and future plants unless full financial liability could be assured for any potential accident and for the storage and disposal of nuclear waste. The proposition was written in highly technical terms. Even the title prepared by the attorney general failed to explain the nature of the measure.

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15. The electioneering strategy of "buying" support for an initiative by drafting pet projects into it is not exclusively limited to excessively wordy initiatives. Proposition 99 (1,700 words), the tobacco tax initiative on the November 1988 ballot, earmarked some of the expected tax proceeds for fire prevention, fish and waterfowl protection and other state and local park maintenance and protection programs in return for $50,000 and a pledge by environmental groups to help gather signatures. The legislature in 1991 enacted a law (SB 424-Kopp) which prohibits initiative proponents from including an appropriation in an initiative in exchange for a campaign contribution.

16. Dan Walters, *A Smorgasbord of Measures*, Sacramento Bee, Oct. 27, 1988.

17. 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 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).

Pre-election and post-election surveys revealed that many voters were confused upon reading Proposition 15. One survey indicated that 56% of voters considered themselves somewhat or very confused, while only 44% considered themselves a little or not confused.[18] This voter confusion was reflected in how some voters cast their ballots. One month prior to the election, 18% of likely voters surveyed believed that a yes vote on Proposition 15 was in favor of the nuclear power industry. In a post-election survey, 14% of respondents incorrectly understood the meaning of a yes vote on the initiative.[19] The measure failed.

The desire of the attorney general to provide an ideologically "neutral" title and summary for an initiative proposal has contributed to voter confusion on other ballot measures. Proposition 10, for example, the anti-rent control initiative on the 1980 primary ballot, was not well understood by voters because of its title. A coalition of landlords circulated a petition intended to restrict rent control at the state and local level. The attorney general simply labeled the initiative "Rent Control." Although the title was changed to "Rent" when the measure finally qualified for the ballot, the new title was equally confusing to voters. One study estimated that three-fourths of the voters did not match their opinion on rent control with their vote on the measure. Twenty-three percent wanted to protect rent control but voted yes, and 54% were opposed to rent control but voted no. If this study is correct, the landlords' initiative would have won if it had been accurately labeled.[20]

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 may reject. The confused voter votes 'no.'"[21] 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.[22]

One study attempted to classify 133 ballot propositions across four states in terms of clarity for the purpose of testing the relationship between clarity and rejection rates.[23] A simple three-point scale of clarity was devised to account for the length of the measure, its readability and the inherent complexity of the issue. Each proposition was rated either high, medium or low in clarity and then noted for approval or rejection by the voters.

As Table 3.2 demonstrates, the study revealed a noticeable relationship between a measure's lack of clarity and its chances of being rejected by the voters.

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18. David Magleby, Direct Legislation: Voting on Ballot Propositions in the United States, at 142 (1984).

19. Survey of attitudes on the nuclear power initiative, Rand Corporation, Santa Monica, California, May-June 1976. A similar survey by Alexander Groth and Howard Schultz found that the elderly and those of a lower socioeconomic stratum were particularly prone to voting contrary to their opinions on Proposition 15. Alexander Groth and Howard Schultz, *Voter Attitudes on the 1976 California Nuclear Initiative,* Institute of Governmental Affairs Environmental Quality Series, No. 25 (1976).

20. Magleby, *supra* note 18, at 144.

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

22. 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).

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

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 measures in the high- and low-clarity ratings were roughly equivalent.

Further analysis of the 38 low-clarity propositions revealed that 14 involved high-spending campaigns, usually on the negative side. Thirteen of these 14 proposals were rejected by voters.[24] This is a rejection rate of 93% for low-clarity propositions involved in high-spending campaigns. In cases of low-clarity propositions in which no high spending occurred, fewer than half the low-clarity propositions were rejected.

Table 3.2

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 language in a ballot measure will not guarantee failure at the polls. But such a measure is highly vulnerable to opposition campaigns. An initiative that causes confusion among the voters is unlikely to become law if there is any concerted opposition.

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

24. 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.

5. Unconstitutional Provisions

In precisely the same manner as other forms of legislation, all initiatives are subject to potential review by the courts for compliance with constitutional and procedural requirements. The courts will consider invalidating initiatives on one of three general grounds: (1) whether the substance of the measure conflicts with a federal or state constitutional provision or a federal statute; (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.[25] Depending on circumstances, the courts can remove a measure from the ballot prior to an election or rule against the propriety of the voter-approved legislation or constitutional amendment 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.[26]

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 ruled that the state constitution's initiative and referendum provisions should be liberally construed to preserve maximum legislative power for the people.[27] Indeed, the court later announced it was the court's solemn duty jealously to guard the sovereign people's initiative power.[28]

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. Since 1964, the courts have struck down in whole or in part 14 of 35 initiatives approved by the voters and kept two off the ballot altogether.[29] (For a complete discussion of judicial involvement in the initiative process, see Chapter 9, "Judicial Review.")

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25. 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.

26. 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 rule 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).

27. *See* Blotter v. Farrell, 42 Cal. 2d 804 (1954); Hunt v. Mayor & Council of Riverside, 31 Cal. 2d 608 (1948).

28. Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208 (1978); Brosnahan v. Brown, 32 Cal. 3d 236 (1982).

29. In one case in which an initiative was removed from the ballot, the peremptory challenge came so late that the measure was numbered and the galleys of the ballot pamphlet sent to the printer. The California Supreme Court then struck the measure from the election. The secretary of state ordered the state printer to remove the description of Proposition 35 from the pamphlet, leaving four blank pages in the middle of the November 1984 booklet with the inscription: "There is no Proposition 35 at this election. Go to page 42."

Tellingly, opposition groups are no longer inclined to wait for passage of a measure before pursuing legal recourse. The courts today seem more willing to review measures prior to the election. Proponents drafting an initiative must be particularly careful to make themselves aware of the legal challenges that are likely to ensue. The more clearly and carefully an initiative is drafted, the more likely its proponents will get what they want in public policy.

B. California 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.[30]

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.[31] The legislative counsel has rarely refused. In 1989, however, the legislative counsel turned down three requests because they were "off the wall."[32]

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

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A similar situation happened in the state of Florida. An initiative proposal was printed on the state's ballot and ballot pamphlet. Immediately prior to the election, the Florida Supreme Court ruled the measure unconstitutional, forcing the secretary of state's office to stamp a green notice on every ballot notifying the voter that the initiative had been stricken from the ballot. Telephone interview with Eric Taylor, Elections Division, Florida Attorney General's office (Jan. 18, 1990).

30. 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.

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

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

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.[33]

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.[34] 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: 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. In fact, 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

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

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

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. 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 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.[35]

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. Before 1966, the California legislature only met in *odd-numbered* years to consider such general matters as indirect initiative proposals.[36] 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.[37] 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.

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. Compromises were impossible. It is little wonder that California's indirect initiative procedure was little used and ultimately repealed.[38]

Some have urged California to reinstate the indirect initiative and make it more attractive by offering a lower signature threshold.[39] Experience in other states

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35. 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.

36. The legislature also met in even-numbered years but only to consider the state budget. Other matters, such as proposals, could not be addressed.

37. Thus, a proponent might have to begin circulating an initiative by June 15, 1952, for example, to obtain enough signatures by the end of December 1952; the legislature would then have to consider it in 1953; and the initiative could then only appear on the ballot in November of 1954—since, at that time, initiatives could only appear on general and not primary election ballots.

38. 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%.

39. 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

suggests, 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.[40] (See discussion in Section C (3) below.)

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

California law expressly forbids legislative amendments to initiatives after their adoption unless the text of the initiative itself expressly permits amendments.[41] 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.

a. Ban on Amendments Without Prior Proponent Consent

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; and two-thirds of the members of each house had to approve the amendment.[42]

Since 1974, many initiatives 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. In 1988, 13 of the 16 statutory initiatives on the ballot (81%) permitted legislative amendments by the legislature. And in 1990, 13 of the 14 statutory initiatives on the ballot (93%) allowed legislative amendments.[43]

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the current direct initiative process. Assemblymember Sher's bills were not adopted in the 1991 legislative session.

40. 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.

41. Art. II, §10(c) of the California constitution states: "The legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval."

42. 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.

43. Initiatives which amend the constitution can only be changed by a vote of the people and thus are not included in these statistics.

Proponents are increasingly allowing the legislature to amend their initiatives for a number of reasons. First, they are becoming more sophisticated in drafting their measures and are hiring experienced lawyers for this purpose. These lawyers know that no complex law can be drafted perfectly, and few laws can be left in place for years without needing fine-tuning or additions.

Second, initiatives are becoming more complex, as they seek to adopt detailed solutions to perceived problems. Initiatives are not general policy statements asking the legislature to solve a problem. They contain specific, legal language that must be kept flexible for continued viability.

Finally, the legislature has generally been respectful of initiatives and has not sought to amend them without at least the tacit approval of the proponents, with one recent exception discussed below. The legislature has amended the Political Reform Act over 150 times. In virtually every instance, the Fair Political Practices Commission, the watchdog agency created by the Act and charged with its administration, has not objected.

b. Examples of Initiatives Prohibiting Amendments

Some measures, however, have not permitted legislative amendments. One of these, authorizing chiropractors to practice in California, illustrates the problems of lack of amendability. Enacted in 1922 by the people, the Chiropractic law has been amended seven times as a result of measures put on the ballot by the legislature—in 1948, 1960, 1970, 1972, 1976, 1978 and 1990. Nearly all these amendments have involved minor technical changes and have thus been costly to submit to the voters.

In November 1976, for example, the legislature put an amendment on the ballot to increase the membership of the Board of Chiropractic Examiners from 5 to 7 and to require that neither of the new members be licensed chiropractors. It also changed the eligibility requirements of colleges and the length of the license application period. Two years later in 1978, the legislature put another measure on the ballot to clean up the 1976 measure, which apparently was interpreted by a superior court in a manner unintended by the Board of Chiropractic Examiners.

A group called Mad as Hell Association wrote the ballot pamphlet argument against the measure. It consisted of a bit of doggerel, quoted in part below:

Why do we have to vote on trivia like this
When pollution, crime and high prices have caused our state to go amiss?
So let's tell the establishment we don't want more schemes
To fill the files with paper reams
Of needless statutes and codes
When pollution is choking us on the roads.
In the book of life is writ
That the legislature should know when to quit.
In 76 the chiropractic initiative was passed;
Why wasn't this law the last?[44]

Unaware that the legislature had no choice in the matter, the opponents urged voters: "Tell the legislature that unimportant issues should not be brought to the public to waste their time and money."[45] The measure was approved by a 76% vote, despite the unique and memorable argument against it.

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44. California Ballot Pamphlet, November 1978, p. 22.

45. *Id.* Although the legislature is required by the initiative to submit any amendments to a vote of the people, the legislature could conceivably place a proposition on the ballot that amends the Chiropractic Act to allow future legislative amendments without ratification by the voters.

Proposition 7 in 1978, sponsored by Senator John Briggs of Orange County, restored the death penalty to California. It also increased the penalty for second degree murder. Because Proposition 7 did not contain language allowing the legislature to amend its provisions, the legislature in 1988 was forced to put another measure on the ballot to increase the penalties for second degree murder of a police officer to 25 years to life. In addition, the measure prevented good behavior from being taken into account when serving time for such an offense. The bill to place the correcting measure on the ballot was passed 66 to 1 in the assembly and 24 to 0 in the senate. The voters approved it by an overwhelming 82% to 18% margin, the largest yes vote on any proposition on the June 1988 ballot.

Amendments such as these waste time and money. The public's confidence in both the initiative system and the electoral process is undercut.

c. Proponent-Sanctioned Super-Majority Vote of the Legislature for Amendments

Since 1976, only three initiatives have authorized the legislature to amend them by 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.

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.

Since 1976, only three initiatives have required *more* than a two-thirds vote of each house for amendments—Proposition 99, the tobacco tax enacted in 1988, Proposition 117, the successful mountain lion measure on the ballot in June 1990 and Proposition 134, an unsuccessful alcohol tax measure on the November 1990 ballot. These three measures mandated a four-fifths vote of the members of each house. All other measures have called for a two-thirds vote to enact amendments.

d. Other Proponent-Sanctioned Restrictions on Amendments to Initiatives

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 completely 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.[46]

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46. In 1977, the legislature enacted its annual budget bill but added language to the appropriation of the Franchise Tax Board's Political Reform Audit Division which limited the number of audits the

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.[47]

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.[48] 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,[49] 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.[50] 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

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board could conduct. The language was vetoed by Governor Brown, but the legislature insisted that its language should prevail despite the veto. Although the bill's language of the bill did not formally amend the Political Reform Act, the court ruled that the control language was an amendment to the Political Reform Act since it changed the number of audits required by the Act. As an amendment to the Political Reform Act, it was invalid since the budget bill had not been in print 20 days prior to the final passage of the bill. Franchise Tax Board v. Cory, 80 Cal. App. 3d 772 (1987).

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

48. 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.

49. 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).

50. 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.

included by not being specifically excluded[51]), but whether the legislative amendment could be deemed as "furthering the purposes" of the initiative.

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."[52]

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."[53] 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.

e. Examples of Initiatives Permitting Amendments

As noted above, the Political Reform Act of 1974 (Proposition 9) has been amended over 150 times by the legislature. Most of the amendments have been sponsored or supported by the Fair Political Practices Commission, the agency created by Proposition 9 and charged with administering and enforcing its provisions. Legislative amendments have increased the disclosure threshold, clarified filing requirements and added a number of significant sections to the act, including a revolving door restriction, a disqualification provision for receipt of

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

52. 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).

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

certain campaign contributions and expanded enforcement sections. Most of the amendments have strengthened the original language of the initiative.

Proposition 8, which dealt with the rights of victims of crimes, permitted legislative amendments by a majority vote on matters increasing sentencing and by a two-thirds vote on all other provisions. Its statutory sections have already been amended by the legislature eight times in the ten years since its passage.

Proposition 37, the 1984 lottery initiative, also allowed legislative amendments by a two-thirds vote and has been changed over 50 times. The amendments included expanding the list of those who could receive funding from the lottery, changing the dates of reports to the legislature, prohibiting false and misleading advertising for the lottery, establishing the rights of a deceased winner's family, prohibiting certain state employees in the controller's office from purchasing tickets or being given awards, allowing the director to investigate the criminal history of employees, retailers and suppliers and prohibiting commissioners and key staff members from working for lottery contractors for two years after leaving office (revolving door restrictions). It would have been impossibly cumbersome had all these revisions required voter ratification.

C. 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 3.3.) 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 and must be accepted or rejected as is. Thus, in these states proponents of initiatives are given little drafting help.[54]

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" 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

54. 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).

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.[55]

Table 3.3

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

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.

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

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.

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.[56]

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

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

the voters was recently ruled unconstitutional by the Idaho Supreme Court after the attorney general had earlier warned the proponents with a similar opinion.[57]

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.[58] 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.[59]

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 nongovernmental persons and entities will sometimes carry greater credibility with proponents than advice from governmental representatives.

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.[60] 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.

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.

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

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

59. 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).

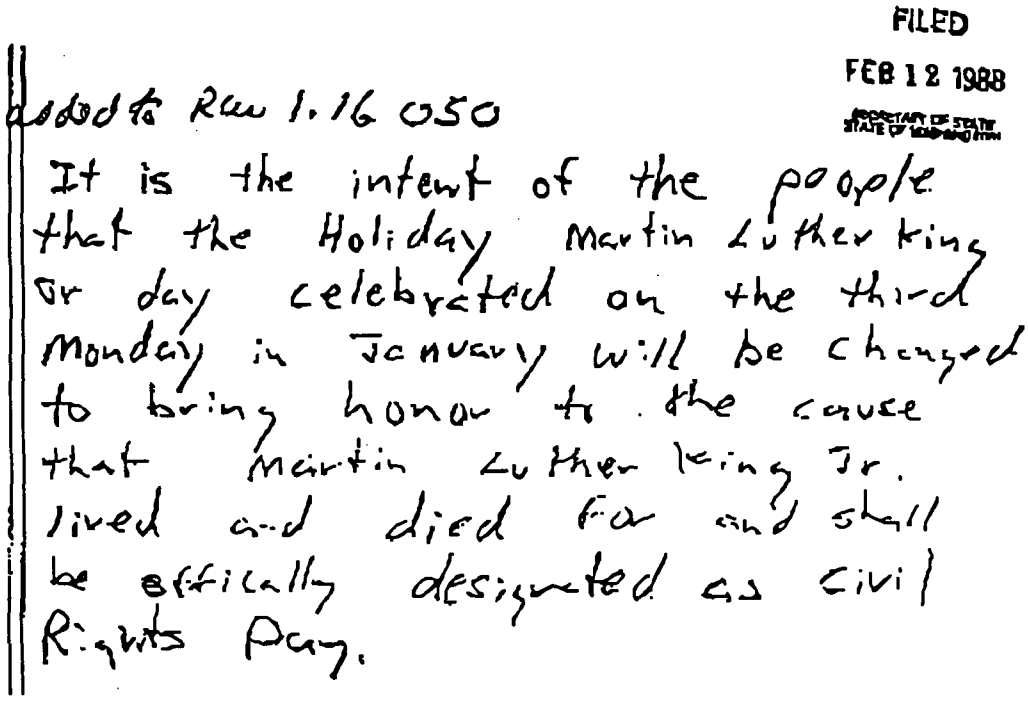
60. Telephone interview with Earl Thaxton, Principal Analyst, Colorado Legislative Council (Feb. 12, 1990).

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.[61]

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.[62]

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

Add 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 effically designated as civil Rights Day.

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

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

62. 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.

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.[63] If the legislature refuses to act, the original initiative then is placed on the ballot for ratification by the voters.[64] 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. If the legislatures enact legislation that is "substantially the same" as the initiative proposal, the initiative is removed from the ballot.[65]

The indirect initiative process has the potential to provide useful guidance in drafting initiatives. In almost every state that uses the indirect initiative process, however, the system provides 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.

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63. 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.

64. 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.

65. 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).

The intent behind the indirect process is fourfold. First, it allows the 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. The indirect process in most instances, however, brings the legislature and initiative proponents together for a hearing, thereby creating 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 adversarial relationship at this time 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, Massachusetts and Ohio, do not assist proponents in the initial draft 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.[66] A proposal eventually becomes law if passed by the

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

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.[67]

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.[68] 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.[69]

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 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

67. 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.

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

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

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.[70]

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 to refuse certification of initiative petitions if the subject 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 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.[71] 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.[72] 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.

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

71. 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).

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

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.[73] 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.[74]

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 requisite signatures.[75] 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.[76] 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

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73. 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).

74. 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.

75. 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.

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

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.[77]

c. Legislative Amendments After Enactment

California is the only state which prohibits the legislature from amending the text of an initiative statute after its enactment by the voters—unless the text of the initiative itself permits such amendments.[78] 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.[79]

Several states permit legislative amendments with no super-majority: Massachusetts, Alaska (but no amendments in the first two years), Arizona (but 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.[80]

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

78. 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).

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

80. 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).

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

The quality of public policy contained in an initiative can depend significantly on its 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 state and the courts feel burdened by the costs of defining and implementing a badly drafted measure.

All these problems, discussed in detail in the first part of this chapter, plague California's initiative process. In a state confronted with the largest number of initiatives every year—initiatives that fundamentally shape the objectives and policies of the state—it is ironic that California provides the least flexibility in drafting, amending or negotiating the content of initiatives. Of all the problem areas of the initiative process that must be addressed, the drafting of initiative legislation is one of the most important.

A constructive program to improve the drafting quality of 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 state's 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.

California's initiative process 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* proponents collect 25% of the signatures required for qualification, a hearing before the legislature, a procedure allowing proponents to amend their proposals under certain constraints *before* placing them on the ballot, an additional procedure allowing proponents to accept legislative amendments before or in lieu of placing a measure on the ballot, and provisions for limited amendment of initiatives by the legislature after their enactment.

1. 5,000 Word Limit

The Commission recommends that a reasonable limit be imposed on all ballot propositions—legislative ballot measures as well as initiatives and constitutional amendments—of no more than 5,000 words of new language.[81] 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.

Measures placed on the ballot by the legislature rarely exceed 5,000 words in length. Excessively long ballot measures almost exclusively involve initiatives, especially in recent years. 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.[82]

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 briefs and pleadings submitted to them, despite the complexity of the issues addressed.[83] The federal rules of judicial procedure limit interrogatories in civil

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81. Of course, constitutional "revisions" (in which the constitution is rewritten in its entirety) as opposed to amendments should be exempt from a word limit. For a further discussion of constitutional "revisions," *see* Chapter 9, "Judicial Review."

82. *See* discussion of initiative length in Section A-3 of this chapter.

83. *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.

cases to no more than 100 questions.[84] 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. Mandatory Review: Administrative Hearing at 25% Mark

The Commission recommends that all initiative proposals be the subject of a public hearing conducted by the Fair Political Practices Commission, once petitioners have gathered an unverified 25% of the gross signatures needed for ballot qualification. Signature gathering could continue unabated throughout the hearing and the signatures collected before the hearing would count toward the final qualification threshold.

The 25% hearing threshold is selected to separate serious initiative proposals from frivolous efforts. The Commission analyzed available data for signature collection drives from 1982 through 1990. The data it collected showed that the bulk of all initiatives which gathered at least 25% of the requisite signatures qualified for the ballot at the end of their signature drives. Professional signature-gathering firms advised the Commission that this conclusion agrees with their experience. The Commission considered lower thresholds to trigger the administrative hearing, but lowering thresholds appeared too easily attainable by initiative drives that in the end would fail to qualify for the ballot.

The proposed administrative hearing has several important benefits. First, it will send an "early warning signal" that an initiative will almost certainly qualify for the ballot. This will expose initiatives to early public scrutiny. Voters and the media will be alerted to the existence of a serious initiative and given an early chance to analyze it. An early administrative hearing will produce more thoughtful media analyses and encourage additional public dialogue.

Second, an early administrative hearing will give experts in the subject matter of the initiative an incentive to analyze the initiative carefully on its merits and present their views to the public. Besides inviting official governmental scrutiny of serious initiative proposals, the FPPC will have the latitude and budget to commission in-depth analyses of initiatives by outside experts (attorneys, economists and specialists in the initiative's substantive field—such as nutritionists, doctors, environmentalists and budget analysts), thereby placing detailed information on the public record at an early stage. All others interested in the pros and cons of a proposed measure will be able to study it with the benefit of expert advice.

Third, the administrative hearing will alert the legislature to the existence of a potential initiative. The legislature will thus be encouraged to conduct its own independent examination of the merits of the proposal, as well as the problems it purports to address. The legislature may decide to enact legislation on its own, or negotiate a legislative solution with the proponent, thus resolving an important problem and making a costly ballot campaign unnecessary.

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

Finally, an early administrative hearing will give the opponents of an initiative a chance to raise, and its proponents a chance to ponder, the initiative's potential weaknesses. The hearing may spot drafting ambiguities, oversights and unintended consequences. Because the Commission's package of initiative reforms would give proponents a subsequent chance to correct these inadequacies after the initiative qualifies for the ballot, the hearing will serve as a critical step leading toward the improved drafting of ballot measures.

A primary purpose of early initiative review is to provide proponents with information that may lead to useful modifications of their proposals and promote the drafting of better initiatives. In states like Colorado, where review is conducted *before* initiative titling, proponents are free to make wholesale changes in their proposals and resubmit them. But that freedom is lessened once an initiative is titled and petition circulation is underway. Wholesale redrafting of an initiative in circulation would require abandoning the signatures thus far collected and starting the circulation process anew. It is improbable that many initiative proponents would be willing to start all over again to correct fundamental problems highlighted at the 25% administrative hearing. Proponents would be more inclined to overlook or deny the existence of any serious problems and continue the qualification drive.

Under the Commission's proposal discussed below, however, proponents are given the opportunity to make changes to their initiative *after ballot qualification,* provided that those changes "further the purposes and intent" of the original measure. Consequently, proponents will have time to digest the criticisms, arguments and information offered at the administrative hearing and consider improvements to the test of the initiative while they gather the remaining signatures. The administrative hearing will have focused attention of both the press and proponents on potential problem areas of an initiative.

a. FPPC as the Hearing Agency

The Commission believes California's Fair Political Practices Commission is the most appropriate agency to conduct the administrative review process in a public hearing format. Upon notice of the secretary of state that initiative proponents have submitted a raw count of at least 25% of the required gross signatures, the FPPC would establish a hearing date and location, publish written notices of the hearing and mail such notices to all interested parties.

The legislative analyst, who is already required to compile a summary and analysis of qualified initiatives for the ballot pamphlet, would write a draft of the official analysis at this earlier time, subject to later modification if the initiative is amended. At the outset of the hearing, initiative proponents must submit a brief written statement in support of the measure that could, if desired, later serve as the "Argument For" section of the ballot pamphlet.

The role of the FPPC would be that of a convenor and organizer. It would not be required to prepare comments on the merits of initiative proposals. No other state agency carries a comparable credibility for organizing the administrative hearing. The Fair Political Practices Commission is not tied or obligated to the legislature and thus can be seen as neutral on policy issues. The FPPC is also eminently qualified to conduct the hearings as the state's political watchdog agency.

Some have suggested that if the initiative process is to be viewed as creating what might be described as a separate branch of government, then a new and independent state agency—perhaps called an "Initiatives Commission"—should be established to manage the process. Although there is some merit to this suggestion, it would create another layer of bureaucracy the Commission does not believe is needed. The expertise to handle the initiative process already exists in the state

governmental apparatus, and the Fair Political Practices Commission is well qualified to manage the review process.

b. Public Testimony

Public testimony by interested persons would be encouraged in the administrative hearing. The FPPC would invite and receive written comments and oral testimony from proponents, opponents and other interested parties, request other governmental agencies to file written comments, and if so desired, request analyses of an initiative by independent economists, academics, attorneys and/or other experts in the field. The FPPC would be given an appropriate budget to fund these independent analyses.

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 initiative proposal, would be compiled by the FPPC and given to the proponents, the press and any other interested persons within seven days. The set of materials would be placed on public record and could be used by the secretary of state to aid in preparing the voters' pamphlet upon the initiative's successful ballot qualification.

3. After Qualification: Legislative Hearing and Vote

After an initiative is certified by the secretary of state as having qualified for the ballot, the legislature would be required to hold a public hearing on the initiative within 10 days, either by a committee of each house or by a joint senate-assembly committee. The legislature must publicize the existence of the hearing with three days advance written notice. A final floor vote on the measure must then be scheduled to be taken within 45 days of the official notice of ballot qualification.

Ten days should provide sufficient time for the legislature to schedule and conduct hearings on qualified initiatives. The proponent's submission of signatures to the secretary of state will give the legislature at least a month's advance warning that a serious initiative proposal is about to qualify for the ballot. And the FPPC hearing conducted at the 25% signature collection point will provide the legislature with considerable advance notice and guidance on the issues that need clarification and analysis. 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 seven days of the legislative hearing, but before the final legislative vote, 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 attorney general, which would have seven 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 attorney general if an adverse opinion is issued or seek final review of that opinion in the superior court in Sacramento County.

Alternatively, proponents could negotiate with the legislature and agree upon a substitute measure encompassing changes in the proposal either consistent with or beyond its original "purposes and intent." If, after such negotiations, the legislature 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 legislature can place on the ballot an amended version of the original initiative which would include modifications that might go beyond the

measure's original "purposes and intent."[85] If the legislature fails 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 statewide ballot.

a. Possible Legislative Actions

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

- The legislature 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 legislature.
- The legislature 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 legislature 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 legislature 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 legislature 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 legislative measure can be placed on the ballot. Whenever the attorney general concludes that only one of the measures can become law, he must then alert the voters by placing a notice to that effect in the voters' pamphlet and on the ballot.

At each step in the negotiations with the legislature, 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."

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85. For example, Proposition 128 on the November 1990 ballot contained pesticide regulations, forest acquisitions, air pollution controls and marine and coastal resource protections. Dropping any one of these provisions might be deemed inconsistent with the measure's original "purposes and intent," and thus such amendments could not be made by the proponent alone. However, if the legislature were willing to enact the measure's pesticide regulations and forest acquisitions without its air pollution controls and marine protections, the proponent might agree to accept these amendments and withdraw the original initiative from the ballot, so long as the revised legislation became law before the election. The proponent might be motivated to accept such a compromise by public opinion polls indicating defeat of the measure if all provisions were retained, or by the discovery of flaws in the provisions to be discarded, or to avoid a costly election which might be lost. Alternatively, the proponent and the legislature could jointly agree to place the modified measure on the ballot without the disputed provisions. In either case, the final decision would either be made by the people's elected representatives (the legislators) or by the people themselves.

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" or "the prohibition of gill net fishing," 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) or that the permit fees on commercial fishermen be raised to $150. In most instances, signatories neither know nor care that the initiative affects the specific reporting threshold or raises fishing permit fees. The details are assumed to be adequately researched and planned by the proponents. To the extent that a "contract" is implied, it is with proponents to 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. Legislative Flexibility

A legislative 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 legislature 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 legislature in an attempt to reach a compromise that will avoid the initiative being placed on the ballot. Both the proponents and the legislature have the flexibility to consider alternative legislation in lieu of a ballot measure. The legislature is encouraged to consider a compromise to avoid an initiative which may seem extreme or tie the legislature's hands. 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 legislature will be less likely to wash its 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 legislative 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 several other states. First, the Commission's proposal emphasizes negotiations and legislative flexibility. Indirect initiative processes throughout the nation have woefully missed the opportunity of using the legislature'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 legislature. If the legislature in most indirect states enacts a modified version of the initiative acceptable to proponents, the original measure frequently must go on the ballot anyway.

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 the legislature 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 legislature. All final decisions must be made with the consent of the proponent. Ballot access is guaranteed unless the proponent wishes otherwise.

4. Cooling-Off Period

In several instances, the Commission's model initiative process makes use of "cooling-off" periods—periods of time between public review of an initiative proposal and eventual legislative negotiations. An initial cooling-off period is incorporated between the 25% administrative hearing and the later legislative hearing when proponents may make amendments to the initiative. During this period and while signatures continue to be collected, the proponent will have the opportunity to ponder the views expressed in the administrative hearing.

After an initiative qualifies for the ballot, as certified by the secretary of state, a legislative hearing must be held within 10 days and the public must be notified. The legislature, however, must take a final floor vote on the measure up to 45 days after notification from the secretary of state. This 45-day delay provides a time for proponents and legislators to negotiate before the legislature takes final action.[86]

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.

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86. If the initiative qualifies during the legislature's fall recess (initiatives rarely qualify in the fall), the legislature will not have to be called back into special session. It can consider the initiative within 27 days after it reconvenes.

The Commission believes that the initial cooling-off period between the administrative hearing and the opportunity for amending an initiative will be useful because proponents may be in a defensive posture at the administrative hearing, expecting to be attacked by opponents of the measure. Constructive ideas, complaints or suggestions may emerge from the analysis and testimony. But initiative proponents will require some time to evaluate the recommendations in a less intimidating atmosphere and to craft amendments that further the initiative's purposes. Under the Commission's model system, proponents usually will have two to three months between the administrative hearing and the legislative hearing.

The Commission recommends a second cooling-off period between the legislative hearing and final legislative action for several reasons. This cooling-off period will give everyone some time to calm down following the criticisms and recommendations of a legislative hearing. It will give proponents and the legislature more time to think about the pros and cons of an initiative proposal. It will give the public and press more time to understand the implications of an initiative. Finally, and most importantly, it will give proponents and the legislature more time to negotiate the terms of an initiative.

5. Mandatory Legislative Vote

The Commission recommends that, regardless of the outcome of negotiations between proponents and the legislature, the legislature be required to take a roll call floor vote on every initiative proposal in its finalized form before it is placed on the ballot. Individual legislators' votes will be recorded and will appear in the ballot pamphlet, along with their names, party affiliations and cities of residence.

A publicly recorded vote of the legislature 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 legislator voted, how legislators voted whose opinions they value and how the political parties divided on an issue. The media also would be encouraged by a floor vote to expand their news coverage of ballot propositions.

A mandatory floor vote would additionally require the legislature to take ballot initiatives seriously. Legislators 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 the legislature to negotiate seriously and in good faith with proponents during the cooling-off period.

6. Legislative Amendment After Enactment

As noted earlier in this chapter, California is the only state in the nation which flatly prevents its legislature from amending an initiative after enactment, unless the measure itself specifically permits the legislature to do so. The Commission believes that as circumstances change, it should be possible for the language of any statute to be amended if a serious need arises, including initiative statutes adopted by the people. At the same time, the legislature 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 legislature to amend initiatives, but such conditions should not be so prohibitive as to make legislative changes astoundingly difficult. The Commission therefore recommends that the legislature 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," is in final form for at least 12 days and is approved by a 60% vote of both houses. The text of an initiative, of course, could allow the legislature 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 legislature 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 violate the purposes of the law. The need for legislative flexibility is amply demonstrated by the experience of California's Political Reform Act—which has been amended by the legislature more than 150 times.

Opposition to the concept of permitting legislative amendments stems from those who fear the legislature will radically change or gut controversial initiatives, especially measures that restrict or curtail the legislative process. It is because of this fear that the Commission's recommendation imposes tough "purposes and intent" requirements on the legislature for amending initiative legislation and specifically allows the courts to determine if the amendments meet this standard. No other state in the nation imposes such strict criteria for legislative amendments. In order to ensure that the legislature complies with the "purposes and intent" standard, the Commission further recommends that any proposed amendment to initiative legislation be in print at least 12 days prior to final passage by the legislature, so that it may be subject to public inspection.

The requirement that any legislative amendments to initiatives be in print at least 12 days prior to passage is similar to the in-print requirement of the Political Reform Act which has been in effect for 17 years. It stops the legislature from passing last-minute amendments which no one has had a chance to examine. In rare cases, this rule may hinder useful amendments which are proposed in the last frantic days of the legislative session; but the advantages in slowing down the process to allow more careful consideration of amendments clearly outweigh the disadvantages of good amendments not being adopted.

7. Expedited Court Review

The Commission believes that the superior court of Sacramento 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 the attorney general or the legislature, may petition directly to the superior court of Sacramento County 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.[87]

E. Other 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 somewhat unique political circumstances. The following is a discussion of potential reforms, both tried and untried, that the Commission does *not* recommend for California or any state in a similar situation.

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87. The superior court of Sacramento County already has final jurisdiction to rule on controversies involving the language of ballot captions, analyses and summaries in the voters' pamphlet. This jurisdiction has been successfully involved on a number of occasions, apparently without difficulty or complaint.

1. Optional Drafting Assistance

Even though several states strongly encourage initiative proponents to seek state 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 legislative 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 state 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 legislation 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.*

California's current system of optional drafting assistance by the legislative counsel or secretary of state prior to titling could prove useful if coupled with the Commission's proposed mandatory review and drafting programs utilized later in the qualification stages. It is not the Commission's intention to end a petitioner's privilege to seek free assistance from the state in writing the original initiative. Rather, the Commission's objective is to require that at some point in the process all initiative proposals be scrutinized in a public forum and proponents be given an opportunity to make amendments in light of that review.

2. Compulsory Recommendations and Administrative Veto

It has been argued both in California and in Utah that the role of the attorney general in the initiative process should be more than ministerial. The courts in California have rejected this argument, but Utah has empowered its attorney general with the authority to refuse to certify an initiative petition for circulation if it is deemed unconstitutional. Oregon similarly empowers its secretary of state to refuse certification of any initiative proposal believed to be in violation of the single-subject rule.

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 state 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 attorney general may highlight legal or constitutional problems with an initiative proposal to allocate school revenues, but it may overlook such policy ramifications as its impact on the quality of education, the school administration or the profession of teaching. A comprehensive review that included a public hearing would require not only a legal analysis by an attorney general but scrutiny by the superintendent of schools, education administrators, teachers, parents and students.

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.

The Colorado system is not in the Commission's judgment practicable in California. Two to three times as many proposals are submitted for titling in California than in Colorado for each election cycle. Many of these are frivolous with no chance or expectation of actually qualifying for the ballot. In every election period, the secretary of state's office is inundated with initiatives ranging in substance from a proposed six-week vacation for all private workers, to the invalidation of all laws enacted by the legislature since 1926, to a requirement that the legislature urge Congress to fund breakfast for every human being on Earth for a day. The expense of conducting a comprehensive analysis and public hearing for every such initiative proposal prior to titling would be overly burdensome.

Not only would it be costly for California to emulate Colorado's review system for all submitted initiative proposals, but it also might be counterproductive. Public hearings, should they have to deal with a large number of frivolous initiative proposals, would come to lack a sense of gravity. The quality of the analyses would suffer, little public dialogue would result, the press in most instances would all but ignore the hearings and initiative proponents would gain little in terms of constructive criticism and public information.

5. Interrupted Petition Circulation

A two-step petition circulation process is employed in Ohio. Proponents may amend an original initiative following the collection of signatures amounting to 3%

of the last gubernatorial vote and a subsequent legislative hearing. After the hearing, they must then circulate a new petition for signatures comprising an additional 3% of the gubernatorial vote. The Commission considered recommending a system in which initiative proponents could make wholesale changes to their original proposal following the administrative hearing, print new petitions to reflect those changes and then resume circulation for the remaining 75% of signatures required for ballot qualification. A two-step circulation process that allows wholesale changes in the text of an initiative could be justified on the grounds that substantial popular support for the amended version of an initiative is amply demonstrated by collection of the remainder of the required signatures.[88]

Several objections were voiced to this proposal. Many grassroots organizations and initiative proponents expressed concern over the difficulty of stopping and restarting a petition drive at the 25% mark. Organizations that rely heavily on volunteer circulators worried that the loss of momentum caused by halting the petition drive for two weeks to a month for an administrative hearing and reprinting petitions might be fatal to their effort.

The cost of a two-step petition process was also a concern. Initiative proponents would have to shoulder the expense of printing two sets of petitions. Proponents who use direct mail petition circulation services would have to undertake at least two mass mailing operations—one for the petition prior to the 25% mark, and another for the amended petition afterwards. More importantly, grassroots organizations as well as professional petition circulation companies would have to maintain the cost of staff salaries and organizational facilities during the interim period. For these reasons, the Commission decided against a two-step circulation process.

6. Two-Track Indirect Initiative Process

Some thoughtful students of the initiative process have on several occasions proposed that California return to a two-track system of initiatives in which proponents would have the option of pursuing either direct or indirect initiative procedures. Arguably, a new two-track system could avoid the pitfalls of California's earlier indirect initiative option by making the indirect route more timely (ballot qualification took over two-and-a-half years in California's earlier indirect system) and by offering other incentives for proponents to pursue indirect initiatives, such as a lower signature threshold. This idea was initially favored by some Commission members.

The intent behind a two-track system is to give proponents the choice of integrating the legislature into the initiative process without alarming those defenders of direct democracy who ardently distrust the legislature. Proponents wishing to follow the existing procedures for direct initiatives would retain the ability to do so. Proponents wishing to benefit from reduced signature requirements or other incentives could choose the indirect initiative method.

Under indirect initiative procedures, the legislature would be required to hold hearings on initiatives that qualified for the ballot and to vote on each measure. The system of public review through legislative hearings would highlight any potential problems and afford initiative proponents an opportunity to negotiate amendments to the initiative before it becomes law. Proponents of indirect initiatives would enjoy a

88. Signature gathering may be the only test of popular support currently used in every state to determine ballot access, but it is not the only test available. Other options exist that were not available at the time the Progressives designed America's system of direct democracy. One such test, which is much more indicative of popular support for an initiative but probably far too new an idea to be seriously entertained, is the use of public opinion polls. *See* Chapter 4, "Circulation and Qualification."

lower signature threshold for qualification. Conversely, initiative proponents who did not want the legislature involved in any way would still be able to follow California's existing initiative qualification procedures and place their measure directly on the ballot. By making indirect initiatives an *alternative option* rather than a replacement of the existing system, a two-track initiative process could ease the qualification burden for indirect initiative drives, while preserving the existing system for those who are wary of legislative involvement.

Although this proposal may sound like the best of both worlds, it probably will not work. Experience in other states (discussed earlier in this chapter in Section C) shows that where initiative proponents are given a choice, they overwhelmingly choose the direct initiative system—even though they must collect more signatures, have less time to do so or may need to seek voter approval of the measure in two consecutive elections. Defenders of a two-track system underestimate the hostility initiative proponents in every state harbor toward their legislatures.

An "impossible to refuse incentive" would have to be offered to encourage substantial numbers of initiative proponents to choose the indirect initiative route over the direct route. If Ohio is indicative, even a signature qualification threshold for indirect initiatives *half* the size of the threshold for direct initiatives may not be adequate to make the indirect system a meaningful component of the initiative process. The Commission is not prepared to recommend lowering the signature threshold this far, and it believes that a legislative hearing should be held on *all* qualified initiatives.

7. Compulsory Judicial Review for Single-Subject Violations

Compulsory early review by the state supreme court for single-subject violations of all initiatives, triggered perhaps by 10% of the requisite signatures needed for ballot qualification, is an intriguing concept. (See discussion of the "Single-Subject Rule" in Chapter 9, "Judicial Review.") Florida has successfully adopted this procedure because only a relatively small number of initiatives are circulated in that state. Early judicial review has saved the state and initiative proponents alike from costly ballot campaigns for initiatives that might later be voided by the courts.

Florida's system of review, however, would not be practicable in California or any high-use initiative state. Early judicial review in California would have necessitated full supreme court review of at least the 18 initiative proposals in 1990 alone that qualified for the ballot, together with a number of additional proposals that collected at least 10% but failed to raise all the necessary signatures. This would subject the judicial system to a burden which cannot be justified.

F. Conclusion

The drafting of initiative legislation is perhaps the most critical step in the process of formulating public policy via the initiative. Yet few states, most notably California, 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 administrative hearing early in the circulation stage, followed by an opportunity to revise the original proposal in negotiations with the legislature.

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, are proven in practice and readily available.

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 the citizenry to shape the state's political agenda by 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: signature collection through the circulation of petitions.

Collecting enough signatures in support of an initiative proposal was intended to demonstrate sufficient popular concern about the issue to justify submitting the measure to a vote of the people. California's experience, especially in recent years, suggests that successful signature collection may often be more an indication of organizational and financial resources than of the initiative's popular support. This chapter examines how well the practice of gathering signatures has lived up to its original purpose and offers recommendations for improving the process.

A. Ballot Qualification in California Requires at Least a Half Million Signatures or More

In California, as in all states except Missouri, proponents must submit the text of a measure to the state attorney general's office before circulating the petition for signatures. Proponents in California pay a $200 filing fee before they begin circulating petitions for signatures. This $200 fee was originally set in 1943 to cover

1. Carla Lazzareschi Duscha, *Interview with Ed Koupal*, California Journal, Mar. 1975.

the administrative costs of analyzing and verifying petitions for ultimately unsuccessful proposals and to discourage frivolous proposals. The filing fee is refunded to proponents if the measure qualifies for the ballot. A 1984 study estimated the actual administrative costs of verifying signatures for a single initiative drive to be about $1,500.[2]

As discussed in greater detail in Chapter 3, "Initiative Drafting and Amendability," the attorney general in California prepares a title and brief summary of the initiative proposal in less than 100 words. If the proposal has any fiscal impact, the department of finance and joint legislative budget committee prepare a fiscal assessment that is added to the official summary. The title and summary must be printed on each petition. Proponents have to gather all the requisite number of signatures within 150 days after the secretary of state receives the official title and summary from the attorney general. The text of the proposal can not be changed after the official summary date.

1. Signature Thresholds

Every state 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 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.

2. Signature Collection in California

California has two signature thresholds: 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.[3] (See Chapter 5, "Voting Requirements," for a discussion of the unique role in governance played by initiative constitutional amendments.) 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.

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2. League of Women Voters, Initiative and Referendum in California: A Legacy Lost? 64 (1984).
3. Cal. Const. art. 2, §8(b).

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 in California for initiative proponents to lose up to 40% of gross signatures they have collected in the verification check. For this reason, signature gatherers must collect well over a half million gross signatures for initiative statutes and more than a million gross signatures for initiative constitutional amendments in order to be reasonably assured of qualification.

3. Signature Verification Procedures

Petitions to place an initiative on the state ballot are circulated on a county-by-county basis. Only registered voters of any given county may sign petitions that are to be validated in that county, although petition circulators can reside anywhere in the state.[4] Signatories must affix their names, residence addresses as listed on the voter registration rolls and the date of signing.[5] Each signature must be witnessed by the petition circulator, who later signs an affidavit at the bottom of the petition to that effect.

Completed petitions are filed with the county clerk or registrar of voters in the appropriate county. Within five days, the clerk or registrar must notify the secretary of state of the total number of raw signatures. If the total number from all counties is less than 100% of the required signatures, the petition will be deemed insufficient. If the number equals or exceeds 100% of the threshold, then the counties will be directed to conduct a random sampling of at least 3% of the signatures.[6] The county officers have 30 days in which to verify the signatures and send a certificate to the secretary of state indicating the results of the examination. An initiative will fail to qualify for the ballot if the random sampling indicates that the number of valid signatures falls short of 95% of the qualification threshold. An initiative achieving a sampling verification rate in excess of 110% of the threshold will qualify for the ballot without further verification. If the statistical sampling shows that the number of valid signatures falls within 95% and 110% of the required number of signatures for

4. Cal. Elec. Code §3517 (West Supp. 1990). Prior to 1976, petition circulators had to be from the same county as the signatories on the petition.

5. Cal. Elec. Code §§45, 3516 (West Supp. 1990). If the address listed on the petition differs from the registered address, the county clerk must strike the signature from the petition. Schaaf v. Beattie, 265 Cal. App. 2d 904 (1968). In a related case, members of the state Assembly filed suit against the California Republican Party in an attempt to prevent an initiative referendum on reapportionment from being placed on the ballot. Assembly Democrats argued that the petition process used by the Republican Party violated Section 3516 of the Elections Code requiring that signatories affix their residence address to a petition rather than their registered address. The cover letter of the direct mail petition sent to registered Republican voters bore the following instructions: "ATTENTION! . . . WHEN SIGNING YOUR PETITION, PLEASE USE THE NAME AND ADDRESS INFORMATION EXACTLY AS IT IS LISTED HERE (EVEN IF INCORRECT) TO INSURE YOUR PETITIONS QUALIFY . . . ." The California Supreme Court ruled that this instruction was indeed a violation of state law, but the violation had previously been common practice and therefore was not substantial enough to render the petitions invalid. However, any future infractions of this sort will be sufficient grounds to render initiative petitions invalid. Assembly of State of California v. Deukmejian, 30 Cal. 3d 638 (1982). Because of this tactic, this petition had the highest validity rate (85%) of all petitions circulated between 1982 and 1990.

6. The size of the random sample for counties to verify petition signatures was reduced from 5% of raw signatures submitted to 3% in 1991.

ballot qualification, the county clerks must verify each and every signature.[7] Any initiative measure that succeeds in qualifying for the ballot will be submitted to the voters at the next statewide election following a 131-day period.[8]

B. Initiative Qualification Procedures Have Become More Difficult at the Local Level

While the state constitution sets the number of signatures needed to qualify a state constitutional amendment or statutory measure, the California legislature has established the number of signatures required to qualify a local measure.[9] In addition, local measures—other than charter amendments—are subject to an indirect initiative process in which the local governing body must consider the initiative prior to the time the measure appears on the ballot. If the local governing body approves the measure, it automatically becomes law without a vote of the people. (For a discussion of problems with the indirect initiative process at the state level, see Chapter 3, "Initiative Drafting and Amendability.")

1. Charter Amendments

Proponents of a charter amendment in a charter county[10] must gather signatures totaling 10% of the votes in the county for all candidates for Governor at the last election to place the measure on the local ballot. In Los Angeles County, for example, a charter amendment proposal must presently be backed by 205,825 signatures. Sacramento County requires 30,433 valid signatures.

Recently the legislature substantially increased the number of signatures needed to qualify a city charter amendment, apparently without realizing it. The law now requires signatures of 15% of *all registered voters* in any charter city, except for the City and County of San Francisco where signatures of 10% of registered voters are required.[11] The law previously was based on the number of votes cast for Governor in the previous election. Since voter turnout in many cities has been less than 60%, the legislative amendment nearly doubled the number of signatures needed to qualify a measure. It appears from a bill analysis, however, that the legislature was unaware that it was enacting such a drastic change. The analysis by the Assembly Elections, Reapportionment and Constitutional Amendments

7. In 1982, the legislature passed an urgency measure lowering the ceiling of the random sample verification test from 110% to 105% for petitions submitted on or before January 28 of that year. This legislative action was a temporary amendment designed exclusively to allow ballot qualification for the "Victims' Bill of Rights" initiative proposal, which had garnered 108.76% of the necessary valid signatures; the ceiling has been 110% for all other initiatives.

8. Cal. Const. art. 2, §8. The Governor may call a special election so that the measure can be submitted to the voters before the date of the next regularly-scheduled statewide election. Special elections are rarely called for this purpose; the last one was held in 1979 at an estimated cost of $15 million.

9. The authority of the legislature to set the number of signatures required for local initiatives was confirmed in District Election of Supervisors Committee for 5% v. O'Conner, 78 Cal. App. 3d 261 (1978).

10. Only 12 counties (of 58) in California have their own charters. The charter counties are: Alameda, Butte, Fresno, Los Angeles, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. Orange County, the third largest in terms of population, is not a charter county.

11. Cal. Elec. Code §4080 (West Supp. 1990).

Committee indicates that the bill was merely a technical restructuring of code sections, transferring them from the Government Code to the Elections Code.[12]

2. Ordinances by Initiative

Initiative measures amending or enacting local ordinances are all subject to an indirect initiative procedure, in which citizen-initiated proposals are first presented to the local legislative body for action. At the county level, if the petition contains signatures equivalent to at least 20% of the votes in the county for Governor at the last election, the board of supervisors has three choices: either adopt the ordinance without change, call a special election where the unamended measure is submitted to a vote of the people or order a study on the policy implications of the initiative to be completed within 30 days and then either adopt the measure or place it on the ballot.[13] At no point can the board of supervisors negotiate modifications in the initiative, nor can initiative proponents withdraw the proposal from consideration after qualification; the measure must either be adopted or placed on the ballot without alterations.

If the proponents of a measure submit signatures amounting to 10% or more of the votes in the county for all candidates for Governor at the last election, the board of supervisors has three options: approve the measure without change, place the measure on a special election ballot or place it on the next statewide election ballot scheduled at least 88 days after the measure has been analyzed by the board.[14]

Few countywide initiatives qualify for the ballot. The last one to qualify in Los Angeles County was scheduled to appear on the 1950 ballot. The California Supreme Court, however, removed the measure from the ballot on the ground that it was administrative rather than legislative in nature. Of possible significance in the court's decision was the fact that the initiative attempted to prevent the construction of two court buildings.[15]

City initiative ordinances are also subject to indirect initiative procedures, but the percentage of signatures needed to qualify a measure depends on the size of the city. In a city of over 1,000 persons, at least 15% of the city's electorate must sign the petition. In cities of 1,000 or fewer persons, 25% of the electorate or 100 voters, whichever is less, must sign the petition. After a successful petition drive, the city council has two choices: either adopt the ordinance without change, or call a special election where the unamended measure is submitted to a vote of the people.[16]

While the legislature has required more signatures to qualify city and county measures, it gives proponents more days to circulate. In the case of a city charter, proponents have 200 days to garner signatures. In the case of all other local measures, proponents have only 180 days.[17]

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12. Although the legislature may not have been aware of the drastic change it made in the signature threshold when that body first approved its amendment to the Elections Code, the legislature later declined to correct the error. State Senator Quentin Kopp (I-San Francisco) introduced a bill (SB 27) in the 1991-1992 legislative session which would have returned the signature threshold to 10% of the voters in the last gubernatorial election. Perhaps due to the legislature's hostility against initiatives, the bill has been killed in the Assembly.

13. Cal. Elec. Code §3709 (West Supp. 1990).

14. Cal. Elec. Code §3711 (West Supp. 1990).

15. *See* Simpson v. Hite, 36 Cal. 2d 125 (1950).

16. Cal. Elec. Code §4010 (West Supp. 1990).

17. Cal. Elec. Code §§3705, 4006 and 4090 (West Supp. 1990). The Los Angeles City Charter has specific provisions concerning the amount of time petitioners have for circulation which differ from

C. Circulation Procedures Vary in Other States

States vary widely in the time allotted by law to circulate petitions. As shown in Table 4.1, 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 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 4.1

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

state guidelines. Rather than 200 days in which to circulate a charter amendment or 180 days for an ordinance, Los Angeles gives proponents only 120 days to circulate a measure.

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.[18]

1. Circulation Period and Qualification

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.[19]

a. Time Considerations

Depending on the method of petition circulation chosen and the resources available to run a qualification drive, the amount of time necessary to gather enough signatures for ballot qualification can vary widely. A volunteer effort is the most time-consuming means of petition circulation. The lack of rigid businesslike discipline over petition circulators makes a volunteer effort generally less organized and more apt to disruptions from work obligations and other scheduling conflicts among circulators. Using an army of *paid* circulators is a much more effective—and some people believe a more cost efficient—means to gather signatures.

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18. Until 1943, California also permitted an unlimited time period for circulation of initiative petitions, when Artie Samish allegedly convinced the legislature to shorten the circulation period to protect the liquor industry from a flurry of prohibition initiatives. *See* fn. 37, Chapter 1, "History of Initiatives."

19. 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.

In California, a well-financed paid circulation effort will usually take slightly more than 100 days to acquire the requisite signatures for ballot qualification. Kelly Kimball of the petition circulation firm Kimball Petition Management estimates that it takes no longer than 120 days to qualify an initiative statute but up to the maximum of 150 days to qualify an initiative constitutional amendment.[20] Petition circulation through direct mail can be a less certain means of gathering signatures than the utilization of paid circulators; if several mailings are required to reach the target audience, direct mail signature gathering will be slower and much more expensive than paid circulators. But if the mailing list is sufficiently refined and tailored for the particular initiative proposal, direct mail can be the fastest method of ballot qualification. On California's November 1988 ballot, for example, an insurance industry initiative proposal to establish a no-fault system of automobile insurance was first ruled unconstitutional in the middle of the circulation period. Proponents rewrote the measure in acceptable form, enlisted an expensive direct mail firm to circulate petitions and qualified the measure (Proposition 104) for the ballot in about 48 days. Roughly 390,000 of the signatures submitted for the no-fault proposal were raised in 33 days.[21] Frequently, direct mail is used in tandem with a paid circulation drive. A measure limiting attorneys fees (Proposition 106) on the same ballot made extensive use of both methods of signature gathering and successfully qualified for the ballot in a brief 57 days.

b. Complex Initiatives Take Longer

Signature gathering does not always flow as easily as the above discussion suggests. Initiative proposals that are confusing, poorly organized or unpopular among certain segments of society can be difficult to qualify. Proponents of an ambiguous automobile insurance reform measure (Proposition 101), for example, took 133 days to gather enough signatures to qualify it (despite spending well over $1 million in a combined direct mail and paid circulation effort).

Of the initiatives on California's November 1988 ballot, those that spent the least on paid circulators narrowly met the qualification deadline. The William Dannemeyer-sponsored AIDS initiative (Proposition 102) needed the full circulation time period to qualify for the ballot after spending less than $200,000 on paid circulators and relying heavily on volunteer labor. A catch-all consumer disclosure measure (Proposition 105) spent $275,030 on paid circulators and qualified for the ballot after 147 days of petition circulation.

2. Geographical Distribution of Signatures

Eleven states plus the District of Columbia require some form of geographic distribution of signatures for initiative petitions.[22] Such states impose a variety of requirements. Most frequently, proponents are required to collect the same proportion of signatures in a minimum number of counties as are needed statewide for ballot qualification. In Nevada, for example, proponents must gather signatures amounting to at least 10% of the votes cast in the last gubernatorial election and signatures of the same percentage must come from at least two-thirds of the state's counties. Ohio and Utah impose a similar distributional requirement, except that proponents must submit signatures from a majority of the state's counties in

20. Interview with Kelly Kimball, President of Kimball Petition Management, in Los Angeles, California (May 3, 1989).

21. Interview with Mike Arno, American Petition Consultants, in Sacramento, California (May 8, 1989).

22. Jurisdictions requiring a geographic distribution of petition signatures for initiative statutes and constitutional amendments (if permitted) are: Alaska, Arkansas, District of Columbia, Florida, Massachusetts, Missouri, Montana, Nebraska, Nevada, Ohio, Utah and Wyoming.

amounts greater than or equivalent to a percentage of each county's last gubernatorial vote. The Massachusetts constitution stipulates that no more than 25% of the signatures needed for ballot qualification can be derived from any one county, a requirement that prevents residents of Boston from putting measures on the ballot by themselves.

Montana is considerably less restrictive. Signatures amounting to at least 5% of the last gubernatorial vote statewide are required for ballot qualification and an equivalent proportion must come from no fewer than one-third of the state's legislative districts. Unlike counties, state legislative districts are equivalent in size of population. Hence, Montana's distribution requirement affects each voter equally.

California imposes no geographical distribution requirement on the collection of signatures for initiative petition drives. Among the 13 initiatives appearing on the state's November 1990 ballot, rarely were qualification signatures collected from more than half of the counties in the same proportion as the last gubernatorial vote required for statewide ballot qualification. None of the initiative drives collected signatures in proportion to their last gubernatorial vote from at least two-thirds of the counties.[23]

This does not mean, however, that a few populous counties provided more than their fair share of petition signatures. A Commission survey of the November 1990 election revealed that each initiative drive collected at least some signatures from almost every county. Furthermore, most of the counties in California have very small populations. The combined population of half the state's counties (29) amounts to less than 5% of the entire state population. Registered voters number less than 50,000 persons in each of 26 counties.[24] As shown in Table 4.2, the number of signatures collected is generally proportionate to the number of registered voters in each county.

It is often suggested that Los Angeles, being a concentrated urban center, contributes far more than its share of signatures for petition drives. Although Los Angeles clearly provides more signatures than any other county, its influence is not disproportionate to the county's population. In the November 1990 petition drives, Los Angeles County provided a median of 27% of signatures for all successful statewide petition drives, but Los Angeles County contains 26% of the state's registered voters.

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23. The number of counties in California in which there was a proportionate distribution of signatures for ballot qualification of Propositions 128 through 140 on the November 1990 ballot, where signatures amounted to at least 5% of the gubernatorial vote for statutes and 8% for constitutional amendments, are as follows:

Proposition	Number of Counties	Percentage of State's Counties
Proposition 128	18	31%
Proposition 129	18	31%
Proposition 130	15	25%
Proposition 131	24	41%
Proposition 132	16	27%
Proposition 133	18	31%
Proposition 134	17	29%
Proposition 135	31	53%
Proposition 136	30	51%
Proposition 137	26	44%
Proposition 138	34	58%
Proposition 139	22	37%
Proposition 140	23	39%

24. California Secretary of State, Report on Voter Registration (March 1991).

Among the state's largest counties, the share of signatures for all initiative petitions on the November 1990 ballot remained roughly equivalent to the counties' share of registered voters in the state. This is as true for the populous counties of Los Angeles and Orange as it is for the smaller counties of Ventura and San Mateo. The only notable exception to this trend is San Diego, a county that routinely produces signatures amounting to almost twice its share of registered voters.

Table 4.2

GEOGRAPHICAL DISTRIBUTION OF PETITION SIGNATURES AMONG SELECTED COUNTIES FOR NOVEMBER 1990 INITIATIVES

County	Median Number of Actual Signatures Collected per Initiative*	Percentage of Total Valid Signatures for All Initiatives	Percentage of State's Registered Voters
Alameda			
Statute	8,960	5%	4%
Const. Amend	27,672	4%	
Contra Costa			
Statute	10,900	3%	3%
Const. Amend	21,462	3%	
Los Angeles			
Statute	128,080	28%	26%
Const. Amend	192,546	27%	
Orange			
Statute	39,460	8%	8%
Const. Amend	69,860	10%	
Riverside			
Statute	22,820	4%	3%
Const. Amend	24,700	3%	
Sacramento			
Statute	29,080	6%	4%
Const. Amend	32,500	5%	
San Bernardino			
Statute	24,460	4%	4%
Const. Amend	29,105	4%	
San Diego			
Statute	77,180	17%	8%
Const. Amend	107,683	15%	
San Mateo			
Statute	5,108	3%	2%
Const. Amend	15,920	2%	
Ventura			
Statute	9,660	2%	2%
Const. Amend	18,180	2%	

*There is considerable variation from the median in the number of signatures submitted for each initiative. For example, while the median number of petition signatures submitted for constitutional amendments in Los Angles County is 192,546, proponents of the alcohol tax (Proposition 134) collected 270,486 signatures and proponents of the Clean Government initiative (Proposition 131) collected only 130,246 signatures.

Source: California Commission on Campaign Financing Data Analysis

The initiatives with the greatest distribution of qualification signatures were either agribusiness or timber industry measures or measures whose qualification petitions were circulated by mail. The environmental protection initiatives—"Big Green" (Proposition 128), "Forests Forever" (Proposition 130) and "Gill Nets" (Proposition 132)—received the greatest share of their qualification signatures in a

few populous urban areas. Conversely, the agribusiness and timber industry counter initiatives—Propositions 135 ("Pesticide Regulation") and 138 ("Forestry Programs")—enlisted support in many more small rural counties.[25] Petition circulation through the mail, as in the case of Propositions 136 and 137, is particularly conducive to the collection of signatures across many counties, since it takes no additional effort or resources for an expansive distribution of petitions.

A second form of a geographical distribution requirement establishes a maximum ceiling on signatures on an initiative petition that can come from any one county. The intention of a ceiling formula is to contain the ability of major urban centers from dominating the initiative agenda. Massachusetts imposes such a restriction on the city of Boston by prohibiting more than 25% of total qualification signatures for an initiative coming from any one county. The impact of the Massachusetts law today is minimal, given that Boston and its Suffolk County contain only 9% of the state's registered voters.

California has recently considered a strong signature ceiling formula. A bill introduced into the 1991 legislative session proposed that statewide initiatives be signed by electors in at least 10 counties, with no more than 10% of the total number of required signatures coming from any single county.[26] Judging from the November 1990 figures, only two counties in California have consistently supplied more than 10% of an initiative's qualification signatures. Los Angeles provided a median 27% of qualification signatures for all 13 initiatives on the ballot, and San Diego provided a median 15% of the signatures. Los Angeles County contains 26% and San Diego 9% of the state's registered voters. While the role of both counties in setting the state's political agenda would be significantly reduced by the signature ceiling proposal, the influence of Los Angeles County in qualifying initiative proposals would be set far below its actual electoral strength.

3. 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. Oftentimes 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

25. It is the responsibility of county clerks to verify the signatures on every initiative petition through a random sampling technique. County officials in November 1990 were required to verify a random sampling of 500 signatures or 5% of all signatures submitted, whichever was greater. The greatest bulk of California's 58 counties had so few signatures submitted to county officials that no more than 500 had to be verified. For instance, officials in 42 counties had to verify only 500 signatures or less for the "Big Green" (Proposition 128) petition drive. Usually, these are sparsely populated, rural counties.

26. Senate Constitutional Amendment 36 (Leroy Greene).

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 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 G, 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, a cursory examination of 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.

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 a state's population, 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.

D. 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.[27] 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.[28] 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 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

27. Thomas Cronin, Direct Democracy: The Politics of Initiative, Referendum, and Recall, at 62 (1989).

28. Initiative News Report, Feb. 8, 1982, at 7.

mall is an ideal location.[29] 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.[30]

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.

"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

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29. 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.

30. David Schmidt, Citizen Lawmakers: The Ballot Initiative Revolution, at 295 (1989).

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."[31]

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.[32] (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.[33]

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.[34] Earnings for the circulator increase accordingly. Kelly Kimball believes that the days of a single clipboard by a professional circulator are over.[35] 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, 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

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31. *Quoted in Interview with Ed Koupal, supra* note 1, at 83.

32. Initiative News Report, *supra* note 28, at 6.

33. Charles Price, *Seizing the Initiative: California's New Politics*, 3 Citizen Participation 19-20 (Sept./Oct. 1981).

34. Interview with Arno, *supra* note 21.

35. Interview with Kimball, *supra* note 20.

(including California) require circulators to sign an oath that they witnessed all signatures placed on a petition.[36]

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.[37] 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.[38]

The newspaper insert is not a cost-effective petition circulation technique. Newspaper advertisements are expensive, and many states require that petitions be printed on 11"x14" paper. 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 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.[39] The newspaper insert method can sometimes be useful as a complementary technique to other, more serious signature-gathering efforts in states with minimal restrictions on petition format.

5. Petition Circulation Through the Mail

Although the direct mail method of raising signatures was most visibly used in Howard Jarvis' 1980 income tax initiative, it was first employed in the 1978 general election death penalty measure. The Butcher-Forde firm had been conducting direct

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36. 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.

37. Initiative News Report, *supra* note 28, at 8.

38. 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.

39. Initiative News Report, *supra* note 28, at 8.

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).[40]

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.[41]

The direct mail method was used with much bigger fanfare to qualify Jarvis' income tax cutting initiative (Proposition 9) for the 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.[42]

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.[43] In order to be cost-effective, a direct mail signature drive needs about a 5% response rate.[44]

Today, direct mail signature gathering is common in California. Since direct mail is a very expensive means of circulating petitions, it is normally used along with paid circulators to reduce the cost. Occasionally however, as noted above, direct

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40. 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).

41. Robert Fairbanks and Martin Smith, *There's Gold in Them Thar Campaigns*, California Journal, Dec. 1984.

42. Maureen Fitzgerald, *Computer Democracy: An Analysis of California's New Love Affair With the Initiative Process,* California Journal, June 1980.

43. 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 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.

44. Mike Males, Be It Enacted by the People: A Citizens' Guide to Initiatives (1982).

mail is utilized as the exclusive means of garnering signatures. This is not the case outside of California. Direct mail has not been employed to collect more than half the signatures on any initiative petition outside California.

E. Exclusive Volunteer Petition Circulation Is a Thing of the Past

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 to a vote of the general electorate. Although the initiative process has never fully realized this ideal, the concept of paying for petition circulation did not come into existence until several decades after the initiative was established in California.

The first firm to pay persons to gather signatures was established by Joe Robinson of San Francisco in the late 1930s. Robinson's firm remained alone for 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.

It was not until the late 1970s that 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.[45] 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). Robinson's petition circulation effort was failing. Fred Kimball, a real estate agent and active participant in the campaign, reorganized the signature-gathering drive and placed the measure on the ballot.[46]

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. 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.[47] The United States Supreme Court overturned these laws in the 1988 decision, *Meyer v. Grant*.[48] Relying on the reasoning behind the landmark 1976 *Buckley* decision,[49] the Court

45. 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.

46. Charles Price, *Experts Explain the Business of Buying Signatures*, California Journal, July 1985. The property tax relief measure was rejected by the voters.

47. Colo. Rev. Stat., art. 40, §1-40-110 (1988); Idaho Code, Ch. 18, §34-1821 (1988); Neb. Rev. Stat., art. 7, §32-705 (1988).

48. Meyer v. Grant, 486 U.S. 414 (1988).

49. Buckley v. Valeo, 424 U.S. 1 (1980).

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.[50] 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."[51]

2. *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 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.[52] 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.[53]

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50. 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.

51. Meyer v. Grant, 486 U.S. at 1892.

52. N.D. Cent. Code §6.1-01-12 (1988).

53. 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

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.[54]

3. Volunteer Activities

The era of the volunteer-run initiative has not entirely ended, 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.[55]

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 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.

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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."

54. Telephone interview with Ken Masterton, Masterton & Wright (Mar. 26, 1990).

55. Initiative News Report, Nov. 30, 1984, at 1-2.

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. Changing the Threshold

Volunteer petition drives are becoming increasingly difficult to mount, especially in populous states. California has not seen a truly volunteer petition drive since 1982. The problem for volunteer drives stems from basing the signature threshold for ballot qualification on a *percentage* of those voting in a last statewide election, a standard practice in all initiative states, rather than setting the threshold at an *absolute* number of signatures. A percentage threshold means that initiative sponsors must gather an increasingly higher number of signatures as the state's population expands. Sometimes the number of required signatures can be so massive that vast financial resources are needed to complete a successful petition drive. But to lower the signature threshold percentage, or to lower the absolute number of signatures required, could encourage a flood of special interest measures taking advantage of the relative ease of qualification.[56]

It is reasonable to assume that lowering the signature threshold in California would increase the opportunity for *moderately-financed* special interest groups and well-disciplined organizations to qualify their proposals for the ballot. Given the highly developed initiative industry in this state, *well-financed* special interest groups already have little problem gaining access to the state ballot, even with today's high signature threshold. In fact, for-profit signature-gathering firms are now willing to guarantee ballot qualification of *any* initiative—at a price.[57] But the price is high and thus interest groups that lack vast resources as well as organizations made up of volunteers currently have a much harder time financing access to the ballot. Lowering the signature threshold would probably have no effect on ballot qualification for well-financed groups, but it could open the door for lesser-financed organizations.

Whether or not this would lead to a large increase in ballot measures is not clear. Qualifying for the ballot is only the first step in shaping public policy; the far more difficult step is securing voter approval of the measure. The campaign stage of the initiative process is also expensive and voters more often than not reject ballot initiatives, especially measures of limited concern. These factors could well deter

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56. Prior to November 1978, North Dakota followed the Swiss model on signature threshold. Instead of setting the petition signature requirement as a percentage of persons voting in previous elections, ballot qualification required specifically 10,000 signatures—the same number required since 1918. (From 1914 to 1918, North Dakota's initiative procedures set the signature threshold at 10% of registered voters collected within a majority of the state's counties.) North Dakota voters approved a constitutional amendment in 1978 that changed the signature threshold to 2% of the state's resident population. In comparative terms, the number of signatures set by the 2% resident population formula has roughly equaled the number of signatures that would have been set by the traditional formula of 5% of votes cast in the last gubernatorial race. In absolute numbers, this percentile qualification threshold amounts to approximately 13,000 signatures today. That means the original 10,000-signature absolute threshold had historically been higher than the number of qualification signatures that would have been required under a 5% gubernatorial vote formula. This explains why North Dakota did not face a flood of special interest initiatives even under the absolute signature threshold.

57. *See,* for example, Exhibit 4-A, "Advertisement," later in this chapter.

moderately-financed organizations from undertaking an expensive and exhausting initiative drive regardless of any efforts to make qualification procedures easier or more affordable.

b. Decline in Volunteer Activity

Volunteer activities have continued to decline among California's initiative drives. The last truly volunteer qualification efforts 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 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.[58]

4. Pay Wars

Competition for paid petition circulators has sometimes reached cutthroat proportions. Only a handful of professional petition circulation firms serve the California market. Given the need to employ professional circulation services to meet the state's high signature threshold, a new strategy has evolved to influence

58. 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.

the state's political agenda. The strategy is simple: pay petition circulators *not* to collect signatures for an initiative proposal.

This strategy was used unsuccessfully by the tobacco industry in its effort to prevent a tobacco tax initiative from qualifying for the 1988 general election ballot (Proposition 99). Opponents of the tobacco tax enlisted the professional services of Clint Reilly Associates (a campaign management firm) and American Petition Consultants (a signature-gathering firm) prior to the measure even qualifying for the ballot. At a cost of $112,139, plus an additional $38,250 in various professional expenses, American Petition Consultants hired an army of solicitors to collect signatures of those opposed to a possible tobacco tax measure. The petitions had no legal standing; they did not offer an initiative proposal and they were not designed to qualify an issue to the ballot. The signatures clearly were not used for fundraising purposes either; there was only one contribution to the opposition campaign given by an individual (the campaign was almost entirely funded by tobacco interests).

What was accomplished by collecting signatures in opposition to the proposed tobacco tax was a depletion of signature gatherers available to help qualify the tax to the ballot. All signature-gathering firms tend to draw solicitors from the same limited supply of labor. Kimball Petition Management was already employing petition solicitors on behalf of five initiative proposals, and American Petition Consultants was attempting to qualify an additional five proposals for the state ballot.[59] Employed by the tobacco industry to collect signatures against the proposed tobacco tax, American Petition Consultants was no longer available for hire by supporters of the tax.

Supporters of the tobacco tax turned to the new firm of Masterton & Wright for assistance in collecting signatures. That firm had considerable difficulty in finding enough petition circulators for the tobacco tax initiative, partly because of the firm's inexperience and partly because of the strained market. Competition for petition circulators among the many initiative proposals made their services more expensive.[60] Both Kimball Petition Management and American Petition Consultants paid their workers a higher rate than Masterton could afford, drawing solicitors away from the tobacco measure.[61] To complicate matters further, many petition circulators were under the distinct impression that they would be blacklisted from work with American Petition Consultants if they solicited signatures for Proposition

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59. In the November 1988 election cycle, Kimball Petition Management was hired to qualify Propositions 84, 95, 97, 98 and 100 to the ballot. American Petition Consultants was contracted to qualify Propositions 96, 102, 104, 105 and 106 to the ballot.

60. Several factors contribute to establishing the pay rate for petition circulation. One factor, of course, is the supply of circulators. The tighter the market of solicitors, the higher the price. A second factor is the number of initiative proposals being circulated. If many initiative proposals are competing for signature-gathering services, the price goes up. An initiative's popularity is also considered when determining how much to pay circulators. A proposal with a great deal of appeal is easier to qualify than one with limited attractiveness. The available time for petition circulation is another important factor. If there is very little time to gather the requisite signatures, the pay rate increases substantially to entice greater activity by the circulators. The time element factor has been used by circulators to their own advantage. It is not uncommon for solicitors to gather signatures and refrain from submitting the petitions until the qualification deadline approaches and the price per signature increases.

61. American Petition Consultants was having a difficult time gathering signatures to qualify Proposition 106 for the November ballot so they increased the pay rate to 80 cents per signature. Kelly Kimball of Kimball Petition Management expressed dismay at the exorbitant payment: "Accountants were gathering signatures! They could make $50 per hour." Interview with Kimball, *supra* note 20.

99.[62] Nevertheless, Masterton & Wright was able to muster an adequate petition drive that took the entire 150-day circulation period to qualify the measure to the state ballot.

Attempting to "buy up" the signature-gathering labor pool in order to prevent a measure from reaching the ballot has been a strategy used in local elections as well. The city of Los Angeles witnessed an initiative battle between a coalition of environmentalists and Occidental Petroleum Corporation over oil drilling on 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 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.[63]

5. "Selling" the Petition

Petition circulation is no longer an art; it is a business. Both paid and volunteer circulators recognize the salesmanship nature of collecting signatures. Signature gathering is tedious, cumbersome work. In a populous state such as California, the high number of signatures needed, and the limited time period in which to collect these signatures, place efficiency at a premium in petition circulation. Circulators cannot afford the luxury of discussing meaningful aspects of the initiative proposal to potential signatories. There simply is not enough time. As Joyce Koupal, volunteer petition organizer, once said: "the signature table is not a library."[64]

The following example illustrates this dictum. A coalition of real estate interests sought to qualify an initiative for the June 1980 ballot that would end all existing rent control ordinances and exempt any future rental units built after the election from rent control. The measure, however, would have allowed communities to reestablish some form of limited rent control on the older units, subject to various restrictions, by a majority vote of the people. In essence, the measure was an anti-rent control proposal, but since it allowed for some form of limited rent control, circulators approached pedestrians with the following brief appeals:

"Support rent control!
"Are you registered to vote in this county?
"Sign here."

It cannot be said that the circulators lied, but they were not telling the whole truth. It certainly cannot be said that the signatories understood what they were signing. Although this is one of the more extreme examples of deception, it does accurately portray the petition circulation process. Circulators do not try to teach the

62. Interview with Masterton, *supra* note 54.

63. 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.

64. Telephone interview with Joyce Koupal, community activist (Apr. 20, 1989).

public what the initiative proposal is all about, or to try to persuade voters on a certain issue; they try to get signatures.[65]

6. Signature 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. A study conducted by the Ohio secretary of state's office found that an initiative that qualified for the ballot through paid circulators had a validity rate of 68.7%. Two initiatives that qualified through volunteer efforts had validity rates of 83.4% and 83.6%—considerably higher than that of paid circulators.[66]

Differential validity rates between distinct methods of signature collection has been confirmed in the work of professional signature-gathering firms. 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%).[67]

a. Motive of the Circulator

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.

In any given season, up to 10,000 paid solicitors may be circulating petitions. Most of these circulators earn less than $100 in total. A single statewide initiative drive will usually employ 700 to 800 circulators, although it is the labor of about 200 dedicated circulators that collects most of the qualifying signatures.

If they circulate several petitions at the same time, circulators can earn $25 to $30 per hour at best, getting paid an average of 25 cents per signature. Most circulators earn considerably less. It is more common for dedicated circulators to earn about $12 to $15 per hour. Actual earnings will fluctuate dramatically depending on a wide array of factors. The popularity of the measure, the time frame for submission of signatures, the number of petitions being circulated and competition with other signature collection drives will all impact how much circulators get paid. When an initiative proposal is unpopular or is facing a rapidly closing deadline, signature-gathering firms will pay their circulators more per

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65. The coalition of landlords succeeded in qualifying this measure to the June 1980 ballot as Proposition 10. Although there is considerable evidence that voter confusion remained high throughout the campaign period, the measure was defeated at the polls.

66. Letter to Sue Thomas, National Center for Initiative Review, from Margaret Rosenfield, Director of Elections Programs, Ohio Secretary of State's office, June 20, 1984.

67. Interview with Kimball, *supra* note 20.

signature. For example, American Petition Consultants paid 80 cents per signature for Proposition 106, but this was a rare exception to the standard fee.[68]

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 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 county clerks, a successful initiative drive must collect a number of signatures well in excess of the actual qualification threshold.[69] 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."[70]

b. Fraudulent Signatures

The problem of fraudulent signatures on a petition does not appear to be the exclusive domain of any one method of signature gathering. Money clearly can serve as a motive for a professional circulator to make up signatures. Several cases of fraud by paid circulators have been revealed. The most recent in California involved a solicitor for Proposition 68 in 1988 who was convicted after suspiciously submitting 12,000 phony signatures at the very last minute. Four professional circulators were criminally charged in Nebraska for fabricating signatures on a 1986 state lottery petition.[71] Volunteers may sometimes forge signatures, but for a different reason—they do it for the cause. In Colorado, the secretary of state in 1982 voided 25,000 fraudulent signatures for a measure to legalize gambling; at that time paid petition circulation was prohibited in Colorado.

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68. The all-time record income for a paid circulator was achieved by Dan Shapiro. In one year, Shapiro received an income of $90,000 from circulating petitions. He "burned out" after working day and night, quit the profession, and moved to New Jersey.

69. 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.

70. Interview with Kimball, *supra* note 20.

71. The Nebraska lottery petition in which four circulators were charged with fraud was the first time in recent years that proponents paid people to gather signatures. Daniel Lowenstein and Robert Stern, *supra* note 53 at 189.

The extent of the fraud problem in signature gathering is not really known, but it is not so pervasive as to undercut the credibility of the initiative process. Signature verification procedures administered by professional petition circulation firms and the secretary of state's office appear adequate to curtail abuses in this area.

F. Direct Mail Petition Circulation Is a Profitable (and Expensive) Business

Direct mail petition circulation has transformed the nature of signature collection in California. It deserves special attention because of its significant impact on money in the initiative process. The introduction of direct mail signature gathering in 1978, and its further development in 1980 and beyond, has dramatically increased the flow of campaign dollars into qualification drives and consequently enhanced the market for an initiative industry. (See Table 4.3.)

Petition circulation through the mail is expensive. Professional mailing firms can be hired to qualify an initiative at a cost ranging anywhere between $500,000 to $1 million or more, depending on how extensively the mail system is used.[72] The large number of signatures needed to qualify a constitutional amendment by mail can place that figure closer to $2 million.[73]

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.[74] 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.

Whether or not initiative proponents receive substantial contributions with their mailed petitions, a direct mail drive requires a massive initial investment.[75] The limited time period in which to collect signatures allows only a couple of mailings in which to distribute petitions. Each mailing must be a large undertaking. It is not possible in California to send out an inexpensive limited mailing at first, wait for a return of contributions and then expand the mailing based on those contributions.[76] Consequently the direct mail method of signature collection is available only to those groups that are very well financed.

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72. *See* Fitzgerald, *supra* note 42, at 234.

73. Interview with Arno, *supra* note 21.

74. Initiative News Report, *supra* note 28, at 7.

75. In one instance, Proposition 99 (the tobacco tax increase) on the November 1988 ballot, initiative proponents were provided direct mail petition circulation services free of charge by the Butcher-Forde firm. The signature-gathering firm agreed to provide the service in exchange for the mailing list of health care workers, medical professionals, and members of health care organizations available to proponents of the tobacco tax initiative. The direct mail drive was unable to produce sufficient numbers of signatures and so Butcher-Forde was dismissed and replaced by paid circulators of the Masterton & Wright firm.

76. In a state with a long petition circulation period, it would be possible to launch a direct mail signature drive with limited financial resources. If initiative proponents have plenty of time, they could fund a small first mailing and expand the effort as more and more contributions are returned by petition signers. This slow process could easily take up to a year before enough signatures would be gathered.

Table 4.3

SIGNATURE-GATHERING EXPENDITURES FOR PAID CIRCULATORS AND DIRECT MAIL, 1978 to 1990 GENERAL ELECTIONS (IN ACTUAL DOLLARS)

Proposition			Paid Circulator	Direct Mail	Total Qualification
1978	5	Smoking	$674	$0	$56,947
	6	Homosexual	$0	$0	$243,812
	7	Death Penalty	$4,974	$435,754	$585,941
1980	10	Smoking	$0	$109,260	$224,799
1982	11	Bottle Bill	$101,692	$0	$277,504
	12	Nuclear Weapons	$37,955	$0	$845,295
	13	Water Resources	$15,402	$0	$380,180
	14	Reapportionment	$142,296	$388,387	$591,891
	15	Gun Control	$134,279	$0	$686,356
1984	35	Balanced Budget	$215,663	$235,489	$521,782
	36	Taxation	$70,346	$2,089,828	$2,504,597
	37	Lottery	$328,197	$0	$1,115,876
	38	English Only	$143,566	$0	$205,031
	39	Reapportionment	$363,114	$494,085	$1,266,689
	40	Campaign Finance	$272,500	$0	$288,447
	41	Welfare	$0	$1,108,119	$1,133,155
1986	61	Legislature	$293,709	$393,022	$951,940
	62	Taxation	$31,471	$1,799,968	$1,823,125
	63	English Language	$334,996	$7,470	$661,083
	64	AIDS	$135,947	$0	$230,373
	65	Toxics	$258,001	$0	$368,844
1988	95	Homeless	$307,185	$0	$655,065
	96	Disease	$305,000	$0	$384,861
	97	OSHA	$236,742	$0	$770,332
	98	Schools	$206,534	$371,416	$1,347,080
	99	Tobacco Tax	$469,779	$0	$826,842
	100	Insurance	$413,576	$0	$2,252,368
	101	Insurance	$325,177	$979,805	$1,812,892
	102	AIDS	$164,529	$0	$504,866
	103	Insurance	$228,987	$196,823	$1,416,543
	104	Insurance	$1,217,300	$2,288,654	$16,194,676
	105	Disclosure	$240,343	$0	$337,518
	106	Attorney Fees	$233,652	$814,423	$2,091,455
1990	128	Big Green	$24,651	$151,107	$717,811
	129	Drug Prevention	$638,224	$0	$1,045,014
	130	Forests	$828,730	$36,487	$1,038,732
	131	Ethics	$562,949	$0	$964,702
	132	Gill Nets	$21,710	$0	$620,774
	133	Prison Terms	$436,547	$0	$527,187
	134	Alcohol Tax	$909,772	$0	$1,278,333
	135	Pesticides	$43,361	$161,775	$1,293,715
	136	Taxation	$58,249	$2,253,077	$2,646,009
	137	Initiative	$58,249	$2,253,077	$2,646,009
	138	Forestry	$889,283	$0	$1,229,279
	139	Prison Labor	$488,763	$345,248	$1,024,835
	140	Term Limits	$561,163	$220,828	$831,713

Note: Expenditure for direct mail include those funds spent on professional services, postage and other expenses directly related to the distribution of petitions through the mail.

Source: California Commission on Campaign Financing Data Analysis

Although it may be deemed unconstitutional to prohibit direct mail petition circulation, seven states have inadvertently done exactly that. In order to minimize fraudulent signature gathering, these states require that all petitions be notarized by the circulator, attesting that the signatures are valid. One consequence of requiring notarization is that petition circulation through the mail becomes impractical; few households will have convenient access to a notary public. It is conceivable that such inadvertent obstructions to direct mail petition circulation, if challenged, could be held unconstitutional.[77]

1. Objectives of the Signature Threshold

Direct mail petition circulation tends to sidestep the test of significant popular support that is theoretically established by qualification procedures. Direct mail solicitation provides no element of polling a somewhat random sample of the public to see if there is a breadth of popular support for an initiative as is the case with randomly collecting signatures on the street. In fact, a well-orchestrated direct mail campaign prides itself on the fact that it petitions a very limited and refined group of people—a demographically-defined group that is deliberately unrepresentative of the public as a whole. Unlike person-to-person signature gathering in which circulators immerse themselves in large public gatherings, the direct mail firm sends its petitions directly to a small group of like-minded people predetermined to be supporters of the proposal. Theoretically, a "perfect" mailing list could qualify a proposal to the ballot even if no more than the required qualification threshold of persons favored the measure. Some mailing firms are so well developed in their computer technology and mailing lists that they are confident of their ability to qualify any initiative for the ballot at a price, regardless of the popularity of the issue. By minimizing the factor of polling a somewhat random sample of the public, direct mail petition circulation can evade the test of significant popular support intended in the concept of a signature threshold.

The concept of a signature threshold also encompasses a second test of significance—that of the *intensity* of popular support. Having enough people that are willing to dedicate their time and labor to collecting the requisite signatures is an indication that an initiative proposal has serious support among the community.

Even more so than paid circulators, direct mail petition circulation tends to thwart the intensity of support test established by the signature threshold. Petitions can be circulated through the mail with virtually no more intensity of support than an individual or single corporation footing the $1 million to $2 million price tag.

Recent advertisements by direct mail specialists underscore the notion that this form of petition circulation does not constitute a measure of either the quantity or the intensity of public support for a proposal. As shown in Exhibit 4-A, the Butcher-Forde direct mail firm *guarantees* ballot qualification for any initiative proposal. The price for their direct mail services will vary, of course, depending on how limited an appeal the proposal carries and the subsequent difficulty of finding supporters. But the point is made clear: virtually any idea can receive "instant initiative qualification" through a targeted direct mail program—guaranteed at a hefty price.

77. The seven states that require initiative petitions to be notarized by the circulator, thereby rendering direct mail circulation impractical, are: Arizona, Idaho, Illinois, Missouri, Nebraska, Nevada and Utah.

2. Popularity of Direct Mail

The direct mail method of petition circulation thus far has not developed into the primary means of signature gathering. Some observers of the initiative process had expected direct mail to become such a refined and efficient means of collecting signatures as to dominate the circulation process.

Table 4.3 shows the extent to which direct mail is utilized for gathering signatures as opposed to professional circulators. The 1978 general election was the first time in California that direct mail was used to qualify an initiative for the ballot. Petition circulation through the mail has grown in popularity and has since become an established manner of signature gathering.

Some of these fears have indeed come true. Direct mail vendors appear to be capable of placing virtually any issue on the ballot. But the price tag is so exorbitant that direct mail is often not an efficient means of signature gathering. Mailing lists require constant updating from election to election and issue to issue, so that direct mail firms have not been able to reduce the costs of their service. It is usually more reasonable to hire professional petition circulators.

Exhibit 4-A

ADVERTISEMENT

Instant Initiative Qualification

Using what are, by far, the State's largest lists of voters who have returned petitions, Advanced Voter Communications will gather as many initiative signatures as you need, by direct mail, in a very short time.

For instance, we will fully qualify a Constitutional Amendment, even to 110%, in 45 days. And we *guarantee* specific numbers of *valid* signatures on a money-back basis.

Advanced Voter Communication's Direct Mail Program can offer many advantages in addition to speed. Our Direct Mail Program:

- Creates a large, statewide name and address list of supporters.
- Establishes a large base of small donors.
- Generates future direct mail fundraising and organizational opportunities.
- Circulates positive information about your initiative which is mailed to about 10 times as many voters as signatures contracted for, at no additional price.
- Eliminates competition for petition circulators.
- Assures that forgeries and other embarrassments will not occur.

Call for information or a proposal on how our Direct Mail Program can quickly supplement your volunteer and paid-petition gathering effort, or for a complete Direct Mail Qualification Program.

714-476-9064

Bill Butcher, ext 202 Arnold Forde, ext 204

Tom Glass, ext 410

Advanced Voter Communications

1001 Dove Street, Suite 205 • Newport Beach, CA 92660

Source: California Journal, Mar. 1990.

There are some exceptions, of course. The 1988 general election ballot contained several insurance reform measures written by the sponsoring insurance industry or trial lawyers. The campaign for Proposition 104, a no-fault insurance plan, is most revealing. The proposal would have reduced costs to the industry by minimizing payments to injured persons and eliminating court challenges, all the while prohibiting consumer regulation of insurance prices. An initial version of the measure also contained a provision that would have exempted the insurance industry from certain campaign finance restrictions. After spending nearly $1

million on professional circulators, the initial version was voided by the courts for violation of the single-subject rule. The offending campaign finance provision was removed from the proposal and an intense direct mail drive collected 167% of the required signatures for qualification of the amended measure in 48 days. In the end, the insurance industry spent approximately $2.3 million on direct mail and easily gathered more than enough signatures for ballot qualification. But when the special interest measure was finally submitted to the voters for approval, it fared miserably at the polls, with 74.6% voting against the proposal.

Proposition 104 was not the only special interest measure that "purchased" ballot access through direct mail, only to be soundly rebuked by the voters. Another insurance reform proposal written by one insurance company, Proposition 101, secured a place on the ballot after spending $979,805 on a direct mail qualification effort. This measure also raised far more than the required number of signatures (121%) but was able to muster the support of only 13.3% of those voting at the polls.

Table 4.3 shows the extent to which direct mail is utilized for gathering signatures as opposed to professional circulators. The 1978 general election was the first time in California that direct mail was used to qualify an initiative for the ballot. Petition circulation through the mail has grown in popularity and has since become an established manner of signature gathering.

G. Initiatives Have Begun to Dominate California's Political Landscape

Prior to the 1970s, an average of less than 10 initiative petitions were circulated during any two-year period. The total number of titled initiatives in each decade before the 1970s never exceeded 66, with an all-time low of 17 initiative proposals attempting to qualify to the ballot in the 1950s. Beginning in the 1970s, the number of initiative petitions circulated for signatures routinely reached double digits for each two-year period. By the 1980s, it was no longer uncommon to have 60 or more titled initiatives in circulation in any two-year period. Suddenly, the total number of proposals attempting to qualify to the ballot for an entire decade soared—to 181 in the 1970s and 266 in the 1980s. The first two elections of 1990 have already witnessed 69 initiative petitions attempting to qualify for the ballot. While only 10 initiative proposals were circulated for the June 1992 ballot (all failed to qualify), the low number perhaps reflecting widespread voter discontent with the large number of measures on the previous state ballot, "initiative fever" is returning for the November 1992 election with about 40 proposals currently in circulation.

This trend has had some interesting consequences for the initiative process. While the growth in the absolute number of signatures needed for ballot qualification triggered an initial drop in the qualification rate, a simultaneous sharp increase in titled initiatives has ensured that the percentage of successful qualification will not climb to that of previous decades. As shown in Table 4.4, a sharp rise in the absolute number of signatures required for ballot qualification between the 1950s and the 1960s resulted in a dramatic fall in the percentage of successful petition efforts.[78] While 59% of all petition drives in the 1950s qualified for the ballot—a qualification rate typical of all previous decades—only 20% of such

78. Mike Arno of American Petition Consultants reiterated the significance of the absolute number rather than percentage of signatures required for ballot qualification. Arno estimated that there exists a saturation point of roughly 600,000 to 700,000 signatures that few petition drives could exceed. It becomes exponentially difficult to obtain signatures after the initial few hundred thousand. The reason behind this is that petition circulation is naturally limited to particular areas where people are concentrated. Circulators tend to work in the same general areas—the same college campuses, the same supermarkets, the same malls. Interview with Arno, *supra* note 21.

drives were successful in the 1960s. The factor causing this change in qualification rate would appear to have been the signature threshold. In the 1950s, an average of 291,380 signatures placed a statutory measure on the ballot; in the 1960s, the average number of requisite signatures jumped to 420,523. Immediately thereafter, a much smaller share of initiative proposals made it to the ballot.

In 1966, the signature threshold for initiative statutes was reduced from 8% of the number of votes cast in the last gubernatorial election to 5%. The absolute number of required signatures followed suit, dropping down to slightly over 300,000. Nevertheless, the qualification rate continued to decline. Instead of being a reflection of the difficulty in obtaining 300,000 signatures—a goal readily attainable in the 1950s—the low qualification rate at this point was quite possibly the result of the explosion in the number of titled initiative petitions being circulated.

Table 4.4

SIGNATURE THRESHOLD AND INITIATIVE ACTIVITY IN CALIFORNIA BY ELECTION YEAR, 1950 to 1990

Year	*Signature Threshold*	*Titled Initiatives*	*Qualified Initiatives*	*Percent Qualified*
1950	204,672	4	3	75%
1952	303,687	5	2	40%
1954	303,687	2	1	50%
1956	322,429	2	1	50%
1958	322,429	4	3	75%
1950-1959	***291,380***	***17***	***10***	***59%***
1960	420,462	7	1	14%
1962	420,462	7	2	29%
1964	468,259	10	4	40%
1966	468,259	10	1	10%
1968	325,173†	10	1	10%
1960-1969	***420,523***	***44***	***9***	***20%***
1970	325,173	7	1	14%
1972*	325,504	22	11	50%
1974	325,504	40	2	5%
1976	312,404	35	3	9%
1978*	312,404	77	5	6%
1970-1979	***320,198***	***181***	***22***	***12%***
1980	346,119	59	4	7%
1982	346,119	65	9	14%
1984	393,835	45	9	20%
1986	393,835	34	6	18%
1988	372,178	63	18	29%
1980-1989	***370,417***	***266***	***46****	***17%***
1990	384,974	69	18	26%

* Includes special election balloted initiatives of the following year.
** Includes two measures removed from the ballot by the courts.
† Following 1966, the signature threshold for statutory initiatives was lowered to 5% of the gubernatorial vote in the previous election. The threshold for constitutional initiatives remained at 8%.

Source: California Commission on Campaign Financing Data Analysis

Many new petition drives are not serious efforts. The secretary of state's office has no record of signature-gathering activity on most titled initiatives that failed to qualify for the ballot. Proponents in these cases have simply not bothered to submit petitions for a signature count. Other unballoted initiatives record anywhere from a few thousand signatures to a few hundred. Because of these lackadaisical efforts, the overall initiative qualification rate inevitably will remain low.

In the latter part of the 1980s, the number of valid signatures required for qualification of initiative statutes again climbed to nearly 400,000. The resources necessary to collect 400,000 valid signatures are enormous. This factor may be a powerful reason why 1982 was the last year to witness successful volunteer initiative drives.[79] Future years may see an even higher threshold in absolute numbers.

1. Spiraling Costs

As the number of signatures required to qualify an initiative to the California ballot has increased, so has the cost. Nevertheless the spiraling costs of initiative qualification cannot be solely attributed to the signature threshold. Costs have increased suddenly and dramatically, and at a rate that has far exceeded the growth in the absolute signature threshold. A qualitative shift as well as quantitative growth in the nature of funds spent during the petition circulation cycle appears to have occurred. This qualitative change has also contributed significantly to the costs of initiatives.

Ballot qualification for an initiative today requires more money and more professional services than was imagined just a decade ago. As documented in Table 4.5, the median cost of qualifying an initiative for the ballot rose dramatically following the well-publicized Jarvis tax initiative—Proposition 13—in the 1978 primary election. Beginning with a median qualification cost of $44,861 in actual dollars for the 1976 election cycle, the cost of qualifying rose to $243,812 in 1978. Due to expensive direct mail qualification efforts in the 1980 primary, the median cost of qualifying an initiative for the ballot in that year leaped to $1,153,911, only to settle down to $568,815 in the following election cycle. Thereafter, qualification costs again escalated, reaching a median $1,029,181 in the last election year under study.

2. Nature of Expenditures

The nature of qualification expenditures has also changed radically since 1976. Petition circulation has become increasingly professionalized as funds are targeted for campaign management and consulting, computer services, direct mail solicitations and the employment of outside professional signature-gathering firms. Less and less money is being allocated by initiative proponents for grassroots activities such as supporting a staff and organization, printing and distributing literature. Initiative proponents today almost exclusively hire specialized businesses to conduct all aspects of ballot qualification.

A study on the professionalization of the signature-gathering process concluded that the increasing difficulty of qualifying an initiative for the statewide ballot in California and the rise of an expensive "initiative industry" has pushed initiative proponents into allocating more and more of their budgets for

79. In all likelihood, numerous factors have contributed to the decline of volunteer activity in the initiative process. Some of these factors include: the rise of professionalism makes hired circulators more convenient than attempting to manage a volunteer drive; the population is getting older and less inclined to "hit the streets"; today's working environment pushes both spouses into the workforce, limiting free time available for volunteer services; and a new age of materialism has tempered ideological commitment.

Table 4.5

QUALIFICATION EXPENDITURES AND MEDIAN COST, BY INITIATIVE AND ELECTION YEAR CYCLE, 1976 to 1990 (IN ACTUAL DOLLARS)*

Election	Ballot No.	Qualification Expenditure
1976 P	15	$44,861
1976 G	13	$118,660
1976 G	14	$44,675
1978 G	5	$56,947
1978 G	6	$243,812
1978 G	7	$585,941
1980 P	9	$2,089,309
1980 P	10	$2,083,023
1980 P	11	$213,640
1980 G	10	$224,799
1982 P	6	$456,406
1982 P	7	$545,738
1982 P	8	$846,725
1982 G	11	$277,504
1982 G	12	$845,295
1982 G	13	$380,180
1982 G	14	$591,891
1982 G	15	$686,356
1984 P	24	$775,299
1984 G	35	$521,782
1984 G	36	$2,504,597
1984 G	37	$1,115,876
1984 G	38	$205,031
1984 G	39	$1,266,689
1984 G	40	$288,447
1984 G	41	$1,133,155
1986 P	51	$1,155,703
1986 G	61	$951,940
1986 G	62	$1,823,125
1986 G	63	$661,083
1986 G	64	$230,373
1986 G	65	$368,844
1988 P	68	$397,267
1988 P	69	$154,848
1988 P	70	$436,112
1988 P	71	$1,147,350
1988 P	72	$1,890,381
1988 P	73	$290,071
1988 G	95	$655,065
1988 G	96	$384,861
1988 G	97	$770,332
1988 G	98	$1,347,080
1988 G	99	$826,842
1988 G	100	$2,252,368
1988 G	101	$1,812,892
1988 G	102	$504,866
1988 G	103	$1,416,543
1988 G	104	$16,194,676
1988 G	105	$337,518
1988 G	106	$2,091,455
1990 P	115	$1,448,155
1990 P	116	$542,845
1990 P	117	$538,149
1990 P	118	$793,663
1990 P	119	$1,425,214
1990 G	128	$717,811
1990 G	129	$1,045,014
1990 G	130	$1,038,732
1990 G	131	$964,702
1990 G	132	$620,774
1990 G	133	$527,187
1990 G	134	$1,278,333
1990 G	135	$1,293,715
1990 G	136	$2,646,009
1990 G	137	$2,646,009
1990 G	138	$1,229,279
1990 G	139	$1,024,835
1990 G	140	$831,713

Year	Median Qualification Expenditure
1976	$44,861
1978	$243,812
1980	$1,153,911
1982	$568,815
1984	$945,587
1986	$806,512
1988	$798,587
1990	$1,029,181

* Data filed for Proposition 13 (1978 Primary), Proposition 4 (1979 Special) and Proposition 5 (1982 Primary) are missing or incomplete.

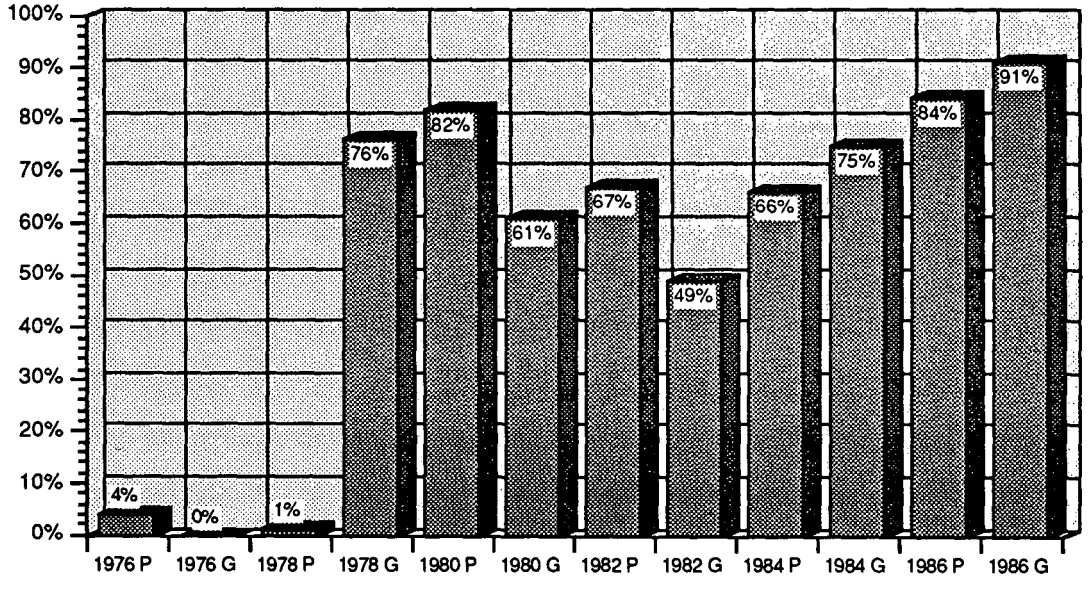
Source: California Commission on Campaign Financing Data Analysis

outside professional services.[80] Table 4.6 indicates that only between 0% and 4% of qualification expenditures for titled initiatives that successfully qualified for the ballot in 1976 and the primary election of 1978 were allocated to the professional "initiative industry." This figure jumped to 76% in the 1978 general election. The proportion of expenditures allocated to outside professional businesses by qualified initiative drives reached 84% and 91%, respectively, for the 1986 primary and general elections.

This trend by initiative proponents toward paid circulation even occurred among unballoted initiative proposals. In 1975-1976, about 15% of expenditures for unsuccessful qualification drives were spent on outside professional services. By the 1985-1986 period, the last election year cycle under study, as much as 81% of expenditures went to outside petition circulation firms and professional services.

Table 4.6

PERCENTAGE OF QUALIFICATION EXPENDITURES DEVOTED TO PROFESSIONAL SERVICES FOR QUALIFIED INITIATIVES



Source: Larry Berg and C.B. Holman, *The Initiative Process and Its Declining Agenda-Setting Value,* 11 Law and Policy 451-469 (Oct. 1989).

3. Money: The Key to Qualifying an Initiative

In recent years, the most important factor determining whether an initiative will qualify for the ballot is the amount of money spent on petition circulation. The gap has been widening between the amount of money spent on successful and unsuccessful attempts to qualify an initiative. It is no surprise that less funds are spent on behalf of failed titled initiatives, but the growing difference between balloted and unballoted initiatives is surprising. Prior to the steep upsurge in ballot qualification costs beginning in the 1978 general election, expenditures on petition

80. Larry Berg and C.B. Holman, *The Initiative Process and Its Declining Agenda-Setting Value,* 11 Law and Policy, 451-469 (Oct. 1989).

circulation for both successful and unsuccessful efforts were reasonably close. While expenditures on unballoted initiatives have barely risen, the amount of money spent on successful qualification efforts has increased exponentially.

Ballot qualification can reasonably be assured at a cost of $500,000 and guaranteed at a price tag of $1 million or more. Throughout the entire history of California's initiative process, only two initiative proposals that spent as much as $500,000 on qualification efforts failed to make it to the ballot.[81] Some initiatives have managed to qualify spending less. Proponents of 10 of the 50 balloted initiatives from 1984 through 1990 spent under $500,000 for qualification.[82] Proponents of 24 balloted initiatives spent more than $1 million.[83]

The fact that ballot access can be so reliably measured in terms of dollars rather than degree of public concern clearly runs counter to the original intention of the initiative process. Even initiatives that were originally popular, such as the Proposition 103 insurance reform measure on the 1988 general election ballot, spent $1,416,394 during the qualification cycle, of which $425,810 was spent directly on paid signature gathering and petition circulation through the mail. Ballot qualification in California today is an enormous task requiring the application of expensive campaign technology, a large infusion of funds, and the employment of one or more professional companies from an ever-expanding initiative industry. It would be fair to say that money rather than breadth or intensity of popular support has become the primary threshold determining ballot qualification.

4. Lower Popularity, Higher Costs

Voter perceptions of an initiative proposal are closely intertwined with the cost of qualifying that proposal to the ballot. It has already been shown that virtually any proposal can be placed on the ballot at the right price. But that price can be high indeed if the proposal does not enjoy substantial popular support.

A computerized statistical analysis of the relationship between qualification expenses and voter attitudes and behavior reveal a number of interesting correlations. The Commission analyzed trends for two different sets of data bases on qualification costs and election results: the 18 most expensive initiative campaigns in California history, and all qualified initiatives from 1976 through 1990.

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81. Citizens for Better Public Safety spent $513,263 on an unsuccessful effort to qualify a "Criminal Court Procedures" initiative to the June 1984 ballot. Proponents of a "Victims Rights" measure concerning compensation for injuries caused by health care providers spent $559,862 in a qualification drive that gathered 1,013,323 raw signatures, almost half of which were found invalid and thereby failed to qualify to the November 1986 ballot.

82. The successful ballot qualification drives that spent less than $500,000 in qualifying for the ballot are as follows: in 1984: English Only (Proposition 38); Campaign Finance (Proposition 40). In 1986: AIDS (Proposition 64); Toxics (Proposition 65). In 1988: Campaign Finance (Proposition 68); AIDS (Proposition 69); Wildlife (Proposition 70); Campaign Finance (Proposition 73); Communicable Disease (Proposition 96); Disclosure (Proposition 105).

83. The successful ballot qualification drives that spent in excess of $1 million in qualifying for the ballot are as follows. In 1984: Taxation (Proposition 36); Lottery (Proposition 37); Reapportionment (Proposition 39); Welfare Reform (Proposition 41). In 1986: Tort Damages (Proposition 51); Taxation (Proposition 62). In 1988: Appropriations Limit (Proposition 71); Transportation Tax (Proposition 72); Tobacco Tax (Proposition 99); Insurance Reform (Proposition 100); Insurance Reform (Proposition 101); Insurance Reform (Proposition 103); Insurance Reform (Proposition 104); Attorney Fees (Proposition 106). In 1990: Victims' Rights (Proposition 115); Reapportionment (Proposition 119); Drug Enforcement (Proposition 129); Forests Forever (Proposition 130); Alcohol Surtax (Proposition 134); Pesticide Regulation (Proposition 135); Taxation (Proposition 136); Initiative Process (Proposition 137); Forestry Programs (Proposition 138); Prison Labor (Proposition 139).

The Commission found that less popular public policy proposals cost a great deal more to qualify for the ballot. Initiative ideas that fared relatively poorly in early public opinion polls required far greater expenditures than the average in broadcasting, signature gathering, professional services and overall costs. A significant inverse relationship exists between popularity and qualification costs among the 18 most expensive initiative campaigns in California history.

Furthermore, among these 18 initiative campaigns, the higher the overall qualification expenditures, the fewer votes the initiative would tend to receive in the final election. A significant inverse relationship exists between qualification expenditures and election day support.

The inverse relationship between qualification dollars and voter approval emerges even more clearly when factoring out the impact of campaign expenditures on election results. By looking at only those initiatives from 1976 through 1990 in which opposition expenditures throughout the campaign period were less than or equal to proponent expenditures, a very strong negative correlation develops between qualification expenditures, percentage of votes received, and actual voter approval. In other words, all else being equal, an expensive qualification drive is likely to result in voter rejection of the initiative.[84]

The conclusions that can be drawn appear rather straightforward: the less popular an initiative idea, the more money it takes to qualify to the ballot; the more money it takes to qualify, the fewer votes the measure will receive on election day and the more likely the measure will go down in defeat. This observation is a general tendency, of course, that may at any time be affected by other factors such as exorbitant campaign expenditures.

5. Burden on Lesser-Funded Groups

An analysis by the Commission of spending patterns by initiative proponents in the November 1990 election discussed in Chapter 8 ("The Influence of Money") reveals the impact of qualification costs on initiative campaigns. With a median qualification expenditure in excess of $1 million in 1990, approximately 30% of all proponent expenditures made throughout the campaign went to ballot qualification; $15 million went to qualification drives out of a total $48 million expended by all initiative proponents in combined qualification and campaign periods. Paid circulation consumed 38% of these qualification expenditures. Professional consulting services accounted for an additional 28% of qualification costs.

Today's qualification costs are especially burdensome on lesser-funded initiative campaigns. For example, circulation costs accounted for 94% of all funds available to promote Van de Kamp's anti-crime measure (Proposition 129). Almost 80% of total proponent expenditures for the ethics in government initiative (Proposition 131) went for ballot qualification. The prison worker initiative (Proposition 139) spent 77% of its total expenditures for ballot access. And 67% of total expenditures for the alcohol tax initiative (Proposition 134) were devoted to qualification efforts.

Many of these lesser-funded initiative campaigns rely heavily on a limited contribution base of individuals. Unlike a contributor base of wealthy businesses, individuals quickly "tap out" of funds available for politics. Proposition 131 proponents, for example, raised enough through loans and contributions to spend nearly $1 million on petition circulation. But they were not able to raise a comparable amount for the campaign—their contribution sources in effect dried up.

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84. The Pearson Correlations demonstrating these statistical relationships between qualification costs, votes received and election approval are given in Appendix G.

H. 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.

Ballot qualification through the collection of signatures in California, however, has tended to become a function of resources; *money*, not popular support, is frequently the primary determinant of a petition drive's success. Any viable proposal for reestablishing the principle of popular support as the primary factor behind successful ballot qualification must either (i) restrict the role of money in the petition circulation process, or (ii) devise a new method of ballot qualification that does not require extensive monetary resources.

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,[85] and a ban on paying petition circulators in Colorado was voided by the U.S. Supreme Court in 1988.[86] In light of California's recent experience, the Commission questions whether these decisions are soundly based today.

Any alternative to petition circulation for ballot qualification would constitute a radical departure from existing norms and practices. While this chapter later explores one such possibility—a polling threshold rather than a signature threshold—it is not offered as a recommendation. It would so fundamentally restructure the circulation process that it requires further evaluation.

Procedures for qualifying an initiative for the ballot are plagued with many formidable problems. The Commission studied these problems and attempted to find acceptable solutions to them. It regrettably concludes that most reforms of the circulation process possess even more problems than the ones they might resolve. The Commission does recommend several moderate steps (which it believes to be practicable and useful) to help protect the fundamental purpose of the circulation process. These are: a modestly extended circulation period to accommodate recommendations for improvement in the drafting of initiatives (see Chapter 3, "Initiative Drafting and Amendability"), improved disclosure during circulation, and streamlined signature verification procedures.

1. Lengthening the Petition Circulation Time Period

California currently has one of the shortest circulation periods of all 23 states that employ the initiative process, yet it also requires proponent to collect the largest number of signatures of any state. Only two states have a shorter circulation period, and all states require fewer signatures.

In order to create procedures which will allow for extensive public comment on initiatives during the qualification phase—as proposed by the Commission in Chapter 3—the Commission recommends a modest lengthening of the circulation period. A somewhat longer circulation period will offset any procedural burdens caused by other Commission recommendations (such as the 25% administrative hearing) and will ease the time pressures on lesser-funded or volunteer-based

85. Hardie v. Eu, 18 Cal. 3d 371 (1976).

86. Meyer v. Grant, 486 U.S. 414 (1988).

qualification drives. Thirty days should be added to California's circulation period, extending it from 150 days to 180 days.

According to statistical correlations performed by the Commission on data from other states, longer circulation periods do not generally cause larger numbers of initiatives to qualify for the ballot, so long as the circulation periods are reasonable. Indeed, in past years California has had both an unlimited circulation period (from 1911 to 1943) and a two-year circulation period (between 1943 and 1973), yet these longer circulation periods do not seem to have correlated noticeably with greater numbers of initiatives. The Commission therefore believes that a modest lengthening of the circulation period will not significantly increase the number of measures qualifying for the California ballot.

Nevertheless, some methods of petition circulation are faster than others, with volunteer and lesser-funded drives requiring more time than all-paid or direct mail petition drives. Some initiative qualification drives of lesser-funded organizations are handicapped by the present 150-day circulation period in California, and some are forced to pay professional circulators because they do not have the time to organize volunteer efforts. A longer circulation period might enable lesser-funded organizations to rely more on volunteer signature gatherers and less on outside professional firms. A greater reliance on volunteer circulators may also make citizen-based groups less susceptible to the ability of large contributors to negotiate changes in the content of initiatives in return for financial support. An extra 30 days in the circulation period would also ease the burden on initiative proponents posed by a public hearing during the qualification drive. Proponents should feel they can take the time for meaningful participation in the hearing.

2. 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 attorney general's title and summary. In addition, proponents of initiatives should be required to file financial statements with the secretary of state within 30 days after the attorney general titles the proposal, such 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.[87] Most practitioners in 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.[88]

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

87. Cal. Elec. Code §§41.5, 29720 (West Supp. 1990).

88. Interview with Kimball, *supra* note 20.

(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 the attorney general's captioning. By the time petition circulation begins, many initiative proponents have already spent considerable sums of money to conduct public opinions polls, hire lawyers and other experts and employ signature-gathering and public relations firms. 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 the secretary of state 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 legislature's 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.

3. Streamlining Verification Procedures

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 county would verify *all signatures submitted* up to 500. Counties that received more than 500 raw signatures would verify a random sample of the total.[89] Regardless of the total number of signatures submitted, however, no county would be required to verify more than 1,500 signatures.

State law mandates that counties use probability sample procedures in verifying petition signatures.[90] The present practice of signature verification,

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89. 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.

90. "The random sample of signatures to be verified shall be drawn in such a manner that every signature filed with the county clerk shall be given an equal opportunity to be included in the sample." Cal. Elec. Code §3520(d) (West 1990).

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 in each county.

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.[91]

Streamlining the signature verification process in such a manner would substantially ease the burden imposed on large counties and minimally impact smaller counties. California's county governments are mandated by the state to absorb all costs associated with signature verification of statewide initiatives. This can be expensive for populous communities. 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 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 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* county is obligated to verify 500 to 1,500 signatures. Arkansas, for

91. 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%

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.[92]

I. 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. What has replaced this vision of ballot access in California is a highly profitable signature-gathering business available to any cause and anyone willing to pay the price.

However, it is easier to criticize the petition circulation process than to offer constructive reforms. Very few alternatives to petition circulation exist as a test of substantial popular support. The following is a list of potential reforms that the Commission does not believe are appropriate 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 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 (perhaps 50,000) to demonstrate that their proposal is not frivolous. Proponents successful at this stage would submit their proposals to a state-administered hearing. The hearing would produce a report on the initiatives, including a brief description of each proposal. The secretary of state's office would compile the descriptions of all preliminary initiative proposals onto a single questionnaire and conduct a random

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92. 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.

sample in-house survey of voter attitudes toward each proposal. Proposals of the same subject matter 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 the primary threshold. And it would provide grassroots access to the state 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 state 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 1984, for example, a gambling equipment and lottery ticket manufacturer paid $1.1 million (or 99.6% of the total qualification expenses) to qualify lottery initiative Proposition 37 for the ballot. (In 1990, that company made over $2 million in sales on the manufacturing of lottery tickets in California.) In 1990, one individual contributed almost $1 million to qualify forest preservation measure Proposition 130 for the ballot. In both cases, the entire complicated electoral machinery necessary to obtain a statewide ballot initiative vote was triggered by a single company or individual making one large contribution.

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. In the 1988 general election, for example, a group of insurance companies seeking to place a no-fault insurance measure on the state ballot in record time spent a total of $16.2 million in the qualification period. Despite the enormous sums of money spent to qualify and later campaign for this measure, it only received 25% of the vote. This example dramatically illustrates the proposition that even significantly unpopular measures can be qualified with large sums of money.

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. Even though successful petitions require that many voters sign, studies have shown that, with enough money, petitions can be placed in front of enough people who will sign them, even though those who signed may ultimately oppose and vote against the measure. Fourth, it appears unseemly for just one or a few individuals or organizations to pay close to $1 million and be able to place any measure on the ballot.

The Commission has carefully considered the possibility of a high limit—for example, $10,000 to $50,000—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. A $50,000 limit would require at least 20 contributors to raise the necessary $1 million; a $10,000 limit would require at least 100 contributors. Such a limit would require significantly broader support to qualify measures than is often found today. 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. The Commission believes the problems of high qualification spending are significant, and that the possibility of framing a new test case to encourage the Court to reverse its previous ruling deserves further study.

3. Increasing the Filing Fee

Proponents of an initiative proposal must pay a filing fee of $200 which is refunded if the initiative qualifies for the ballot. The fee is intended to help defray some of the administrative costs associated with processing initiatives and to discourage frivolous proposals. Some argue the fee should be raised to absorb increased administrative costs and deter frivolous proposals.

The Commission does not recommend raising the filing fee. Titling initiatives is not a major burden on state resources. Raising the filing fee would have a negligible impact on the state budget.

Furthermore, moderately increasing the filing fee would probably have little impact on discouraging frivolous initiatives. The fee would have to be raised very substantially before many initiative proponents might feel priced out of the process. Using high pricing mechanisms to regulate initiative activity seems out of step with the fundamental precepts of direct democracy.

4. Paying the State for Initiative Qualification: The "Cynic's Choice"

The Commission also does not recommend a second reform option—allowing proponents to pay the state 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 the

state for ballot access. Instead of letting the initiative industry be the beneficiary of wealthy proponents, proponents could pay the state directly, thereby avoiding a useless exercise and enriching the state treasury at the same time.

Candidates are currently given a similar option for ballot access. For all statewide offices, formal candidacy may be initiated either by paying a filing fee to the state or by collecting a certain number of signatures. Candidates most often choose to pay the state.

Whatever the financial rewards may be for the state 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.

5. Requiring Geographical Distribution of Signatures

The idea that petitioners should be required to collect signatures from all across the state appears attractive at first glance. Its appeal rests on the premise that voters in a few counties should not dictate the policy agenda for the entire state. Large urban centers, such as Los Angeles, conceivably could provide enough signatures to place an initiative on the ballot even if the issue is of little concern to voters elsewhere in California. If an initiative proposal is truly popular, it is argued, initiative proponents will be able to collect signatures from most counties throughout the state.

The Commission believes that a geographical distribution requirement ultimately would serve very little purpose in California or any other state. Qualification drives for any statewide measure tend to collect signatures throughout the state. The Commission's analysis of the November 1990 ballot revealed that every initiative drive collected some signatures from nearly all counties and that populous counties did not generally provide a disproportionate number of petition signatures relative to their base of registered voters (see discussion earlier in this chapter). Proposals to cap the number of valid signatures from any one county below that county's share of registered voters are unfair and would risk violation of the constitutional norm of "one person, one vote." It is also pertinent to note that over half of the state's counties have an aggregate population less than 5% of the population of the entire state.

6. 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.[93] Requiring payment in the form of hourly wages or salaries rather than on a per signature basis, however, has never ben 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 signatures altogether. North Dakota currently requires that payment be on a wage or salary basis rather than per signature.[94]

93. Meyer v. Grant, 486 U.S. 414 (1988).

94. N.D. Cent. Code §16.1-01-12(11) (1988).

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.

7. Changing the Signature Threshold

Foremost in the debate over reform is the idea of changing the signature threshold. A dual dilemma has emerged in the maturation of California's initiative process. On the one hand, the well-developed initiative industry has made ballot qualification *too easy* for wealthy individuals and special interest groups. On the other hand, the sheer number of absolute signatures now required has made ballot qualification *too hard* for less-wealthy organizations and volunteer groups.

a. Raising or Lowering the Signature Threshold

Some have suggested raising the signature threshold in order to make it more difficult for special interest measures to qualify for the ballot. Raising the signature threshold would make it somewhat more expensive for well-financed special interest groups to qualify ballot measures but would be unlikely to diminish the number of such measures making it to the ballot. It would place a far more serious burden on lesser-financed groups wishing to qualify issues of popular concern.

Other reformers have suggested lowering the signature threshold, perhaps to some absolute number of signatures that would be reachable by a disciplined volunteer organization. This proposal would open up direct democracy to more citizen-oriented groups. But special interest groups able to pay for ballot access would not be restrained in any way; in fact, more special interest groups would be guaranteed ballot access as the cost for qualification is reduced. Hence, this proposal could well result in a large and undesirable increase in the number of measures on each ballot.

b. Assigning Greater Value to Volunteer Signatures

UCLA law professor Daniel Lowenstein and Robert Stern have proposed a reform plan that involves providing a differential qualification threshold for volunteer versus paid signature gatherers.[95] Using their suggested figures, the signature threshold would be increased by 150% to make it harder for special interest measures to qualify to the ballot. Every signature collected by a volunteer, however, would count as five signatures collected by paid circulators. Hence, "purchasing" access to the ballot would become much more difficult while a volunteer effort would become considerably easier. Special interest groups without a popular cause would no longer be guaranteed access to the ballot unless they spent large sums of money to qualify. Citizen action organizations would be given a greater opportunity to place their proposals before the voters, provided such proposals possessed broad popular appeal.

Several objections exist to this proposal. First, it provides no middle ground. Moderately-financed organizations with a limited volunteer base might be denied ballot access. If such organizations were unable to rally an army of dedicated volunteers, they would be effectively locked out of the initiative process. Second, it would be difficult to enforce in practice. Circulation drives might have to be monitored to determine which signatures were collected by volunteers and which by

95. *See* Lowenstein and Stern, *supra* note 53.

paid circulators—and even then it would not be easy to detect violations. Third, the proposal might possibly be held to be an unconstitutional infringement of the equal protection clause. Valuing the signature of one voter over that of another voter simply because the first voter signed up with a volunteer might not withstand court scrutiny. Finally, the proposal could allow more initiatives to qualify for an ever-longer ballot. Wealthy special interest groups would not be deterred from qualifying their measures, while the ballot would become more accessible to a whole new category of potential initiative sponsors.

8. Prohibiting Direct Mail Petition Circulation

Another potential reform option not recommended by the Commission is to discourage direct mail petition circulation by requiring notarization of petitions. Notarization might effectively eliminate expensive direct mail petition drives. There are advantages in deterring this method of signature collection. Because direct mail solicitations search for signatures among a deliberately narrow and unrepresentative sample of the population, it has little to do with the idea that signature gathering can measure the quantity and/or intensity of popular support for a proposal. And although direct mail has not overwhelmed the petition circulation process, it is a major source of funds which has enhanced the marketplace for the initiative industry and contributed to the professionalization of California's direct democracy.

The Commission objects to this plan on two grounds. First, the real purpose of requiring petition notarization is in fact to eliminate the direct mail method of signature gathering. It is therefore *ipso facto* a prohibition on direct mail and might be interpreted as an unconstitutional infringement on free speech. Second, direct mail is the most deliberative form of signature gathering. People are not pressured into signing something in which they do not believe. They are free to consider the merits of the proposal in their own home. And because direct mail petitions have a very high signature validity rate, some believe they are one of the best methods of ensuring that signatures are willingly given in support of an initiative.[96]

J. 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, usually set as a percentage of votes cast in the last gubernatorial election, 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.

Yet ballot qualification procedures have evolved into a process somewhat removed from original intentions. This is especially true in California, where the massive task of raising around 400,000 valid signatures (more for initiative constitutional amendments) has tended to exclude volunteer organizations from ballot access and to nurture a profitable and growing market for professional signature-gathering firms. Petition circulation businesses in California can now virtually guarantee qualification—for a sufficiently large price.

Petitioning for signatures has lost much of its meaning as money has become the major factor in determining qualification. This transformation of the significance of signature gathering is occurring in other states as well. As the task of collecting signatures becomes an increasing burden in populous states, the expansion of the initiative industry follows. Hindered by court rulings against

96. Philip Dubois and Floyd Feeney, "Improving the Initiative Process: Options for Change," unpublished paper presented to the California Policy Seminar, Feb. 5, 1991.

limitations on money in the initiative process, states will need to devise innovative and practical ways to manage ballot qualification. The ultimate solutions are not yet in sight.

CHAPTER 5

Voting Requirements and Electoral Restrictions

"But can these challenges [to California's future] be successfully addressed in the face of an initiative process designed to freeze into the constitution or law some special program or benefit without regard to its impact on the greater society?"

— Prof. Eugene Lee, 1990[1]

A critical issue in any system of direct democracy is the ease with which citizen-initiated ballot measures can be enacted by the voters. All states which have adopted the initiative process allow the electorate to adopt statutory amendments by a simple majority vote. Most of these states also allow the voters to amend their state constitutions through the initiative process, although a number of these, including California, impose additional requirements—such as higher signature or vote requirements—to make the process of constitutional amendment more difficult.

In many states, and particularly in California, use of the initiative process to amend state constitutions instead of state statutes has reached record levels. This trend has several troubling consequences. Because state constitutions are more difficult to amend than statutes, the resulting constitutional amendments are more permanent—thereby, in some instances, enshrining ill-considered policies into state law. Constitutional amendments also prevail over conflicting statutory amendments, and thus the proponents of controversial policies have increasingly sought to immunize their ballot propositions against future statutory amendments by resorting to constitutional initiatives. And constitutional initiatives are able to simultaneously block or "trump" competing initiatives on the same ballot. The

1. Eugene Lee, *Hiram Johnson's Great Reform Is an Idea Whose Time Has Passed,* 31 Public Affairs Report 1, at 3, University of California at Berkeley (July 1990).

growth of "counter initiatives" in recent elections has also tended to increase the number of constitutional amendments submitted at each election.

This chapter considers the extent to which the state constitution should be made more difficult to amend. Its principal recommendation is that constitutional initiatives should be allowed to *add* new material to the state constitution only upon a 60% super-majority vote or approval by a simple majority of the voters in two successive elections. The chapter also addresses the new tendency of initiative proponents to seek to impose special voting requirements beyond a simple majority vote for approval of future initiatives. And it considers a number of current reform proposals such as limiting the number of measures on the ballot or confining initiatives to the general but not the primary election ballot.

A. Initiatives Are Attempting to Amend the Constitution More Frequently, Even Though a Higher Signature Requirement Makes Them Somewhat More Difficult to Qualify

State constitutions, among other things, establish the structure of state government, allocate and distribute governmental powers among the various branches of government and establish or affirm basic civil rights. These fundamental precepts of governance are generally distinct in scope and purpose from the specific laws promulgated by government itself. In theory, constitutions address the distributions of governmental authority; laws are written to implement the public policies developed by governments under the constitutional framework.

For these reasons, constitutions are generally higher in authority than statutory legislation. Governments can change laws, but constitutions frequently are only subject to change by the people.[2] States that integrate the initiative process into their system of governance almost always attempt to respect the higher integrity of constitutional law by imposing somewhat greater burdens on citizen-initiated constitutional amendments than initiative statutes.

1. Methods of State Constitutional Change

All states permit their constitutions to be amended in one or more of four ways. First, *all* states allow their legislatures to place proposed constitutional amendments on the ballot for approval by the voters. Second, 41 states allow their legislatures to establish "constitutional conventions" to draft proposed amendments and place them directly on the ballot without further legislative review. Third, several states, including California, allow the legislature to establish "constitutional revision commissions" which can propose constitutional amendments to the legislature and which the legislature can then place on the ballot.[3] Florida is unique in mandating that such a commission be automatically activated every 20 years and that its recommendations be placed directly on the ballot.[4] Fourth, 17 states, also

2. This does not mean that the people should not have the authority to change laws as well as the constitution. The rules of the initiative process in California permit both citizens and the legislature to change state laws. California's constitution, however, can only be changed by a vote of the people.

3. States like Georgia, Utah and New Hampshire specifically provide for the creation of constitutional commissions, but the commissions lack authority on their own to submit constitutional revisions for ratification by the people. These commissions are in fact study commissions that serve as research agencies for the legislature or constitutional convention.

4. Florida's constitutional revision commission is composed of 37 members: the attorney general, 15 members selected by the Governor, nine members each selected by the speaker of the house and the president of the senate, and three members selected by the chief justice of the supreme court. It will meet in 1998 and then every 20 years thereafter. Following public hearings and analyses, the

including California, allow their citizens directly to amend the constitution through the initiative process. In all states except Delaware, any constitutional change must be ratified by a vote of the people. Delaware permits its legislature to make constitutional changes by a two-thirds vote in two successive sessions but without ratification by a popular vote.[5]

Regardless of the method employed for amending or revising the constitution, nearly every state makes it more difficult to amend its constitution than to change its statutory laws.[6] Besides mandatory voter ratification of changes to the constitution, additional barriers—such as a super-majority vote of the legislature or, in the case of initiatives, a higher signature qualification threshold—impede even the placing of proposed constitutional alterations on the ballot.

The method most commonly employed to amend or revise state constitutions is the *legislative proposal*. During the 1980s, about 92% of all proposals for constitutional change nationwide originated in the state legislatures.[7] Most states require a super-majority vote before their legislatures can initiate a constitutional amendment. In all, 32 states require the legislature to vote by a three-fifths to two-thirds majority to place a constitutional amendment on the ballot.[8] Although 18 states allow their legislatures to propose constitutional amendments by a simple majority vote, other obstacles to constitutional change are frequently imposed, such as requiring the legislatures to vote on the proposed amendments in two separate sessions. In all these states, with the exception of Delaware, the measure is submitted to a vote of the people after legislative approval.

Conversely, only a few states impose special voting requirements on *initiative* constitutional amendments, such as a super-majority vote for approval or popular ratification at two successive elections. Constitutional changes proposed by petition are submitted to the voters without a legislative vote of approval, except in Massachusetts.[9] In all but four states that permit constitutional change through the

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commission submits its proposals for revision of the constitution, if any, to the voters at the next general election without legislative review. Florida Const. art. XI, §2.

5. *See generally,* Albert Sturm and Janice May, *State Constitutions: 1982-1983,* The Book of the States, 1984-1985, at 211-213 (1984).

6. Although Colorado makes it harder for the legislature to amend the constitution than to pass a statute—requiring a two-thirds vote of the legislature to place a constitutional amendment on the ballot—the state's initiative process applies the same procedures for citizen-initiated statutory and constitutional amendments. For both types of initiative petitions, the collection of signatures amounting to 5% of those who voted for secretary of state in the last general election places the measure on the ballot. Simple majority approval puts the measure into effect. Colorado is the only state in which it is just as easy for citizens to amend the constitution as it is to amend statutory law. Nevada and Massachusetts apply the same qualification signature threshold to initiative constitutional amendments and initiatives statutes, but both states require a special popular vote for approval.

7. Janice May, *Constitutional Revision in 1988,* Emerging Issues in State Constitutional Law, at 61-62 (1989).

8. Five non-initiative states require some form of special vote for ratification of constitutional amendments by the people: Hawaii (majority must be at least 50% of votes cast in a general election, or at least 30% of all registered voters in a special election); Minnesota (majority must be at least 50% of total 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 at least two-thirds of those voting in each county); and Tennessee (majority of all citizens voting for Governor).

9. Initiative constitutional amendments in Massachusetts must be submitted to the legislature in two consecutive sessions. The measure must receive a vote of support of at least 25% of members in

initiative process, approval by a simple majority vote of the people puts the measure into effect. Nebraska and Massachusetts require ratification of constitutional amendments by a majority vote, so long as that majority amounts to at least 30% or 35% of total votes cast in their statewide elections, respectively. A constitutional amendment in Illinois can only become effective when approved by a three-fifths majority of those voting on the issue or by a majority of all those voting in the statewide election. Nevada requires majority voter approval in two consecutive statewide elections.[10]

The primary impediment most states place in the path of constitutional initiatives is a higher qualification signature threshold. Every state, except Colorado and Nevada, makes it more difficult to qualify an initiative constitutional amendment for the ballot than an initiative statute. Typically, proponents must gather 25%, 50% or 100% more signatures to qualify a constitutional amendment than to qualify a statutory amendment.

As discussed in Chapter 4 ("Circulation and Qualification"), California's experience suggests that higher signature thresholds for constitutional amendments are not significant barriers for well-financed interest groups willing to pay a professional signature-gathering firm for the additional signatures. In high-use initiative states—especially those with a well-developed professional initiative industry—a higher signature threshold for constitutional amendments is not an effective incentive to encourage greater use of statutory initiatives.

2. Frequency of State Constitutional Amendments

The decade of the 1980s has seen an overall decline in efforts to amend state constitutions. Nationwide, the total number of proposed and adopted constitutional amendments and revisions was substantially less in 1988-1989 than at the beginning of the decade, and the total number of proposed changes in the 1980s was less than the preceding two decades.[11] Between 1982-1983 and 1988-1989, the number of constitutional amendments on the nation's ballots dropped 23% from 345 to 267, while the number enacted dropped 23% from 258 to 199.

In contrast, although small when compared to the number of *legislature-referred* constitutional amendments, the number of *initiative* constitutional amendments on state ballots throughout the country has reached record highs.[12] A total of 72 initiative constitutional amendments were proposed and 28 adopted among the states in the 1980s. Not only has the decade witnessed record-breaking

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a joint session in order to be placed on the ballot. At any time in joint session, the initiative may be amended by a 75% vote with or without the proponent's consent.

10. In addition to the four initiative states that impose some form of special vote requirement for approval of constitutional amendments, two states require a super-majority vote for passage of some or all statutory initiatives. Washington requires a simple majority approval for all measures except those concerning gambling, which require a 60% affirmative vote for passage. Wyoming has perhaps the most unusual voting requirement. Initiative statutes must receive voter approval equivalent to at least 50% of those voting for secretary of state in the last general election.

11. Janice May, *State Constitutions and Constitutional Revision: 1988-1989 and the 1980s*, The Book of the States, 1990-1991 (1990).

12. Despite the rise in initiative activity for amending state constitutions, initiatives make up a very small part of total proposals and adoptions. Initiatives amounted to only 5% of proposed constitutional amendments and 3% of adopted amendments across the nation throughout the decade. Additionally, voters appear to be far more inclined to approve legislative constitutional amendments than initiatives. The approval rate for legislatively-referred measures for the 1980s is nearly twice as high as for initiatives—76% for legislative constitutional amendments compared to 39% for initiatives. One reason may be that initiative constitutional amendments touch upon more controversial issues than their legislative counterparts.

numbers of proposed and adopted initiative constitutional amendments, but their use has generally increased for each two-year period in the decade.[13] By 1988-1989, voters across the nation deliberated on 21 initiative constitutional amendments and approved over half of them. California, Colorado and Oregon top the list of initiative states in the number of proposed and adopted initiative amendments, while Massachusetts, with its cumbersome procedures for amending the constitution, had no citizen-initiated activity.[14]

In California, the political landscape has also become increasingly dotted with citizen-initiated constitutional amendments. California has seen more constitutional initiatives proposed and adopted than any other state in the past decade. And as shown in Table 5.1, the number of initiative constitutional amendments on California's ballot has grown gradually until the 1990 election cycle, when voters faced 11 such amendments. For the first time in recent history, initiative constitutional amendments actually outnumbered initiative statutes on the state ballot.

Several reasons account for this swelling of initiative constitutional amendments in California. Although constitutional initiatives require signatures equal to 8% of the vote in the last gubernatorial election (as opposed to 5% for statutory initiatives), qualification of constitutional amendments is not significantly more difficult than for initiative statutes. For proponents willing to pay the extra cost to professional signature gatherers, constitutional initiatives can be qualified nearly as easily as statutory initiatives. Furthermore, constitutional initiatives have become increasingly integrated into a counter initiative campaign strategy in California's last few elections. And constitutional initiatives afford better protection against future challenges, since they are immune to statutory initiatives and can only be changed by additional constitutional amendments. As a result, California's constitution now addresses a wide array of subjects more appropriately placed in statutes—such as gill net fishing restrictions.

3. Constitutional "Revision" versus "Amendment"

A complete restructuring of a constitution is known as a "constitutional revision" as opposed to a "constitutional amendment."[15] Although useful criteria to define and distinguish a revision from an amendment have never been well articulated, the distinction is important because states that allow initiative constitutional *amendments* generally prohibit their use for constitutional *revisions*. Constitutional revisions usually require the deliberations of an official constitutional convention.[16] (For a discussion as to the problems and legal entanglements caused by this distinction, see Chapter 9, "Judicial Review.")

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13. *See* May, *supra* note 7, at 61-62.

14. The number of initiative constitutional amendments proposed and adopted for each state in the 1980s are as follows: Arizona (4-1); Arkansas (9-3); California (13-5); Colorado (10-4); Florida (4-2); Illinois (1-1); Massachusetts (0-0); Michigan (5-0); Missouri (4-3); Montana (2-1); Nebraska (2-2); Nevada (7-3); North Dakota (4-1); Ohio (7-0); Oklahoma (3-2); Oregon (10-3); and South Dakota (5-2). May, *supra* note 11, at 22.

15. The distinction between a constitutional revision and a constitutional amendment is largely a matter of degree, which makes the line of demarcation between the two difficult to draw. No clear-cut guidelines exist for lawmakers or courts to follow in drawing this line.

16. Many initiative states, but not California, specifically declare that constitutional revisions can only be made through a constitutional convention. Other states restrict the subject matters that initiatives may address or impose a single-subject rule on initiatives, all of which effectively preclude the use of initiatives to propose entirely new constitutions.

The constitutional convention is the oldest and best known method of rewriting an entire constitution. In fact, most state constitutions were adopted by a constitutional convention which submitted a document to the electorate for ratification. Procedures in most states for initiating a constitutional convention require, first, a vote by the legislature to place a "convention call" on the ballot; and second, voter approval authorizing the convention.[17] Delegates to the convention are frequently chosen in nonpartisan elections. Although a constitutional convention may be established with a particular set of revisions in mind, the convention is free to recommend any changes it deems appropriate unless the authorizing document limits the scope of the convention to a particular subject.[18] The recommendations must ultimately be submitted to the voters for ratification.

Some states provide for extensive voter participation in the call for a constitutional convention. An increasing number of state constitutions require that a convention call be periodically submitted to the voters regardless of need. In 1939, only eight states periodically placed convention calls on the ballot; in 1990, 14 states have such a provision.[19]

Only four states permit citizen-initiated calls for a constitutional convention. South Dakota and Montana allow citizens to petition for a constitutional convention in the same manner as citizens petition for a constitutional amendment. Proponents of a constitutional convention submit a petition proposal to the secretary of state for titling and approval of form. Upon gathering signatures amounting to at least 10% of the vote in the last gubernatorial election, a call for a constitutional convention goes on the next general election ballot. If a majority of voters agree, the state schedules a convention for the purpose of revising the constitution. The convention's recommendations are submitted to the voters for ratification by a simple majority. North Dakota's constitution also allows citizens to petition for a constitutional convention. However, neither the constitution nor the elections code spell out any procedures for petitioning for a convention call. Evidently, the initiative process has never been used for this purpose in North Dakota.

In Florida, the right to initiate a call for a constitutional convention rests exclusively with citizen petition. Interested persons circulate official petitions in an effort to collect signatures amounting to 15% of votes cast in the last presidential election. A majority vote on the call authorizes a constitutional convention. The package of recommendations adopted by the convention is then submitted to the voters for ratification. The fact that Florida also automatically activates a constitutional commission every 20 years renders the citizens' right to petition for constitutional change somewhat redundant.

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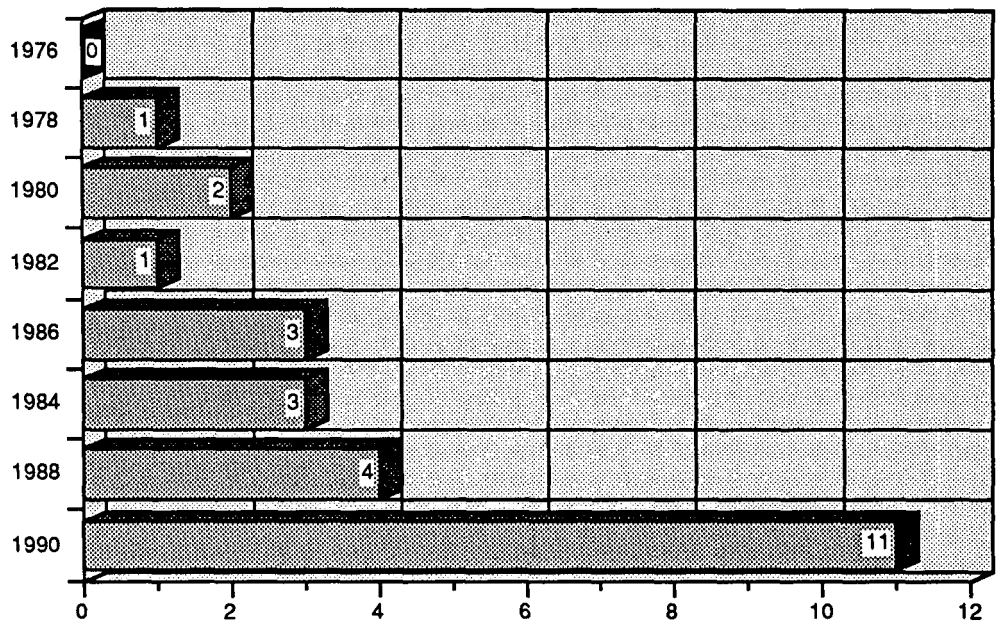
17. In some states the legislature may call a constitutional convention without submitting the question to the people. Alaska, Georgia, Louisiana, Maine, South Carolina, South Dakota and Virginia allow their legislatures to initiate a constitutional convention with a specified super-majority vote of both houses.

18. Throughout American history, states have used constitutional conventions which have been limited in scope to pre-defined subjects. *See* Wilbur Edel, *Amending the Constitution: Myths and Realities,* 55 State Government 51-53 (1982).

19. Connecticut, Illinois, Maryland, Missouri, Montana, New York, Ohio, and Oklahoma require submission to the voters of a call for a constitutional convention every 20 years. Alaska, Iowa, New Hampshire and Rhode Island mandate submission of a convention call every 10 years. Voters in Michigan and Hawaii must cast ballots on the call every 16 years and nine years, respectively. While Florida does not require periodic submission to the voters of a convention call, it does automatically activate a constitutional commission every 20 years, and that commission may place amendments directly on the ballot. *See* note 3 *supra; see generally,* Sturm and May, *supra* note 5, at 212 (1984).

Table 5.1

NUMBER OF INITIATIVE CONSTITUTIONAL AMENDMENTS REACHING THE CALIFORNIA BALLOT, 1976 to 1990



Source: California Commission on Campaign Financing Data Analysis

4. Constitutional Change in California

California provides four methods for changing the constitution. Constitutional *amendments* may be submitted to the voters by either (i) a two-thirds vote of the legislature or (ii) by citizen petitions in which initiative proponents must gather signatures amounting at least to 8% of the last gubernatorial vote. Constitutional *revisions* may be submitted to the voters for ratification after being proposed either (iii) directly by a constitutional convention or (iv) by a two-thirds vote of the legislature. (In the latter case, the legislature usually establishes a constitutional revision commission to prepare its package of constitutional revisions.)

a. Constitutional Convention

In California, a constitutional convention may only be called by a two-thirds vote of the membership of both houses of the legislature. The call for a convention is then placed on the "next general election" ballot for approval by a simple majority of those voting on the issue. If approved, delegates to the convention are elected from districts with populations of equivalent size. The new constitution agreed upon at the convention is then submitted to the voters for ratification by a simple majority.[20] California has no procedure for allowing citizens to initiate a call for a constitutional convention. As a result, constitutional revisions can only be initiated by the legislature—which either places them directly on the ballot or places a call for a constitutional convention on the ballot.

20. Cal. Const. art. 18, §2

Until 1962 in California, a revision could be proposed solely by a constitutional convention. Only two conventions had been called in the state's history. The first constitutional convention occurred prior to statehood in 1849. A constitution was developed for the new state of California based primarily on the form and substance of constitutions in other states. Over the next three decades, California's constitution was amended only three times. Legislative proposals to call conventions for drafting a second constitution were steadfastly rejected by voters until 1877, a time of economic crisis and lack of confidence in state government.[21]

The state's second convention, composed of 152 delegates, deliberated for seven months before finally offering a controversial package of recommendations. Convention delegates attempted to address the many economic and legislative problems confronting the state. Consequently, the proposed document was lengthy and littered with rules that should have been statutory in nature. Despite the length of the document, voters ratified the new constitution in May 1879. Partly because of its comprehensiveness, California's second constitution was constantly updated to meet changing conditions. By 1960, it had been amended 323 times and contained more than 80,000 words—making it the second longest constitution in the nation (Louisiana had the longest at that time).[22] In 1962, the voters approved a constitutional amendment giving the legislature the power by a two-thirds vote to place constitutional revisions on the ballot.[23]

b. Constitutional Revision Commission

Although California's constitution has never specified procedures for the legislature to follow in placing a constitutional revision on the ballot, it has become routine practice for the legislature to establish a constitutional revision commission to study potential revisions and make recommendations back to the legislature for placement on the ballot. The first constitutional revision commission, set up in 1963, eventually submitted a proposed redrafted constitution to the legislature in 1966. Following legislative approval, the package known as Proposition 1-A was ratified by the voters in November of that year. This third revision of the constitution transferred much of its material back to the statute books and reduced the constitution to an estimated 33,350 words, roughly average in size among all states.[24] California's constitutional revision commission remained active through 1976, submitting 17 proposals to the legislature for placement on the ballot. Most of these proposals were noncontroversial; only three were defeated by the voters.[25]

B. Constitutional Amendments Are Increasingly Being Used in Questionable Election Strategies

As discussed in Chapter 8 ("The Influence of Money"), an election strategy known as "counter initiatives" has recently been used with increasing frequency in California. Thus far it has been used mainly by business interests in an effort to defeat consumer and environmental protection initiatives. The strategy is part of a two-prong effort to defeat an initiative proposal. It involves first placing an initiative

21. *See* Joint Legislative Budget Committee, "The California Budget Process: Problems and Options for Change," Nov. 28, 1990, a report issued to the California legislature.

22. Prior to the Great Depression, the legislature placed four convention calls on the ballot, all of them rejected by the voters. In 1933, stirred by economic crisis, voters narrowly approved a fifth proposal for a constitutional convention. However, interest in revising the constitution quickly waned, and the legislature never approved enabling legislation for the convention to take place. *Id.*

23. Cal. Const. art. 18, §1.

24. Council of State Governments, The Book of the States, 1990-1991, at 40 (1991).

25. Joint Legislative Budget Committee, *supra* note 21, at 20.

proposal on the ballot to cancel an opposing reform measure if approved, and second waging an opposition campaign against the reform measure as well.[26]

1. Exploiting the Constitution in a Counter Initiative Strategy

The art of deception through counter initiatives reached new heights in California's 1990 general election. Because the alcohol industry had successfully lobbied the legislature to block any proposed increase in the state's alcohol tax for decades, 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—this time 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 cancelled 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 counter measure designed to negate the first tax and also discreetly supported a third measure that would have eliminated *both* liquor tax proposals.

The alcohol industry's strategy did not stop here. 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.

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26. Counter initiatives pursue several objectives. First, they foster voter confusion in the hope that voters will reject all reform measures on the ballot. Counter initiatives add length and complexity to the ballot and often attempt to masquerade as the measure offering true or easier reform. A confused voter may tend to vote "no" on all initiatives.

Second, sponsors of the counter initiative hope that if both measures are approved by the voters, their measure will receive more votes than the competing reform measure. The counter measure is written to negate the original measure if the counter measure receives more votes. (For further discussion, see Chapter 9, "Judicial Review.") The counter initiative is often written in such a way as to offer a less dramatic reform and is sold to the voting public through advertising as a more reasonable and moderate step.

Third, some counter initiatives have been specifically crafted to enhance voter confusion. Local Propositions "O" and "P" on the 1988 Los Angeles ballot are a case in point. One measure (Proposition O) filed by environmental groups sought to prevent planned coastal oil drilling; a second measure (Proposition P) drafted by Occidental Petroleum Corporation sought to preserve a plan for coastal drilling. Both initiatives were labeled "Oil Drilling" and both were touted as *the* pro-environmental initiative. In fact, the industry initiative called for the city of Los Angeles to oppose oil drilling in state and federal waters—areas in which the city had 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." Proposition O, the environmental protection initiative, survived the onslaught by Occidental Petroleum and was approved by voters despite being vastly outspent by the oil industry.

The voters rejected all three alcohol-related initiatives and thus the alcohol industry's tactics could be viewed as successful.[27] 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.

2. Imposition of Future Super-Majority Vote Requirements

Proposition 136 also incorporated another new development in California's initiative process. The tax regulation measure would have imposed a strict super-majority vote requirement on any future initiative—statutory or constitutional—calling for an increase in special taxes. Henceforth, any special tax proposed by initiative would have required two-thirds voter approval. Since 1976, no initiative that established revenues for programs has ever received two-thirds voter approval. Even measures that have not affected taxes rarely received two-thirds of the vote. The effect of Proposition 136 would thus have been to stifle the citizens' power to adopt special taxes through the initiative process.

The real issue posed by this measure, however, was not the feasibility of attaining a super-majority vote of approval; it was 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 65% of the voters in subsequent years.

It is a widely-accepted custom that constitutional law should be harder to amend than statutory law. The fundamental precepts that create government and organize the distribution of power should not be as easily altered as the policies produced by that government. Moreover, because constitutional law is dominant in any conflicts with statutory law, a justification would seem to exist for some form of special vote requirement to alter the constitution, so long as the requirement is practical and non-obtrusive. (See further discussion in Section E, below.)

C. Excessively Long Ballots Cause Irritation and Confusion Among Voters

Voters want a say in important public policies, but the sheer number of propositions on California's 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 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.

27. 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.

Public opinion polls indicate that voters are irritated by the length and complexity of recent ballots.[28] 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. Another constitutional measure on the same ballot adjusted deadlines for the Governor's review of legislation. In November 1990, voters were asked among other things to change the constitution so that local hospitals could invest in private corporations.[29]

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. The November 1990 ballot is a case in point. "Big Green" (Proposition 128), "Forests Forever" (Proposition 130) and the "Nickel-a-Drink" alcohol tax initiative (Proposition 134) generated such massive campaign expenditures on one or both sides that they literally "preempted" media attention for most other propositions on the ballot. Yet some of these other propositions raised critical public policy questions. Two months before the election, for example, only 9% of the voting public had heard of a highly significant measure that sought to limit the power of the people to adopt special taxes through the initiative process (Proposition 136). 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, local governments must often pay for and distribute their own 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

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*.[33] 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.[34] 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.

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28. 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."

29. Voters said "yes" to all of them.

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).

32. Cal. Elec. Code §10000 (West 1987).

33. Arkansas, Colorado, Illinois, Kansas and Kentucky limit the number of constitutional amendments that may be placed on a single ballot.

34. Ill. Rev. chap. 46, art. 28, §1.

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.[35] 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.[36]

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.

In Chapter 3, the Commission recommended that California modify its initiative procedures so that the legislature can make amendments to initiative legislation under certain conditions without voter approval. This could help reduce the length of California's ballot somewhat by removing the need to seek voter approval of every amendment, regardless how perfunctory, to initiative statutes.

2. Restrictions on Successive Submissions of Similar Ballot Propositions

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.[37] 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.[38] Wyoming does not allow a defeated initiative proposition to be reintroduced on the ballot for five years.[39] By contrast, California does not restrict the frequency with which an issue may be resubmitted to the voters.[40]

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35. Ill. Const. art. XIV, §3 .

36. 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 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.

37. Neb. Const. art. III, §2; Mass. Const. amend. art. 74, §1.

38. Okla. Const. art. 5, §6.

39. Wyo. Const. art. II, §52(d).

40. 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

3. 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 judgeships.

Voter fatigue and drop-off are relevant to the order in which ballot measures appear on the ballot. Most states list propositions last on the ballot, following candidate races.[41] 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 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's analysis of voting behavior since 1978 indicates, however, that voter fatigue and voter drop-off 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 5.2, 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.

4. Anticipated Impact on Ballot Length

In Chapter 3, "Initiative Drafting and Amendability," the Commission recommended that all statutory initiative legislation enacted by the people be subsequently amendable by a super-majority vote of the legislature as long as such amendments are consistent with the purposes and intent of the original initiative. California's present restriction against legislative amendments to laws created by initiative has added to the length of the state ballot by requiring that any changes in the law, however minute, frequently must be submitted to the voters for ratification. Elimination of this rigidity in lawmaking by permitting limited legislative amendments to initiative legislation should help somewhat to reduce the length of

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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%.

41. Alaska places candidates and issues on different ballot punch cards. Oregon and Washington list propositions first on the ballot.

the ballot while safeguarding the initiative process from undue or excessive legislative tampering.

Table 5.2

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

D. Should Initiatives Be Limited to General Election Ballots?

Many states do not allow initiatives to be placed on the primary or special election ballots.[42] Their rationale is straightforward. Fewer people vote in primary and special elections. These states have therefore concluded that initiatives should not be adopted in elections with smaller voter turnouts.

Candidate contests in primary elections determine the parties' nominees, not the ultimate winners, and therefore many electors choose not to participate. Additionally, independents often do not vote in primaries, since primary candidate races usually are open only to voters with registered party affiliations. Special elections that are not consolidated with primary or general elections consistently have the *lowest* turnout of all. Usually a special election is called to fill a single vacancy or decide the outcome of a single ballot question.[43] Rarely do special elections attract a wide spectrum of voters.

1. The Strange Case of Primary Election Ballot Initiatives in California

Initiatives first appeared on a California primary election ballot in 1970. The practice may have been the result of a simple administrative error. No provision in the state constitution or Elections Code specifically permits initiatives to appear on primary election ballots. In fact, the constitution clearly specifies that an initiative is

42. States that restrict initiatives to general election ballots only are: Arizona, Arkansas, Colorado, Florida, Idaho, Illinois, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, Ohio, Oregon, South Dakota, Utah, Washington and Wyoming.

States that permit initiatives on any general, primary or special election ballots are: Alaska, California, Maine, North Dakota, Oklahoma, and the District of Columbia.

43. In California, vacancies in statewide public office are filled by gubernatorial appointment.

to appear "at the next *general election* held at least 131 days after it qualifies or at any special statewide election held prior to that general election."[44]

In 1970, legislatively-sponsored propositions could not be placed on primary election ballots *unless* the legislature declared the primary election a "consolidated special election."[45] The legislature did precisely that for the 1970 primary election in order to submit several legislative bond measures to the voters for approval. Since the constitution permitted *initiatives* to be placed on special election ballots (but not primary election ballots), the secretary of state's office decided to place one initiative measure (Proposition 8) on the 1970 consolidated special-primary election ballot along with the legislative bond measures. In the words of the secretary of state's office, the initiative "piggybacked" onto the primary ballot.[46]

In 1971, the legislature modified the law again to allow voter approval of legislative bond measures on primary election ballots without the need for a declaration of a consolidated special election, but this courtesy was not extended to initiatives.[47] Nevertheless, the 1970 precedent of placing initiatives on primary election ballots, whether or not the election was declared a consolidated special election, was followed routinely in subsequent years, apparently without anyone realizing that such a practice was not sanctioned by law or the constitution.

A decade later, Eugene Lee, a professor of political science at the University of California at Berkeley, inquired about the practice at the secretary of state's office. The secretary of state thereupon issued a memorandum stating three "legal rationales" for the office's policy of placing initiative measures on primary election ballots:

> "1. A 'special election' having been called for June by the legislature to vote on a bond or other measure (Propositions 1 and 2 on the June 1980 Primary Election ballot, for example);
>
> "2. A 'special election' having been called in June by the Governor by proclamation;
>
> "3. Construing 'general election' to include the direct primary in June. (See, for example, *County of Alameda v. Sweeney*, 151 Cal. App. 2d 505 (1975).)"[48]

Yet these rationales appear more like *rationalizations* of an act already done than a uniform policy guiding earlier decisions to place initiatives in primary elections. It

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44. Cal. Const. art. 2, §8(c) (emphasis added).

45. Before 1968, existing law required the legislature to specify on which ballot each legislatively-sponsored measure was to appear. In that year, the legislature amended state law to provide that legislative ballot propositions would automatically appear on the "first *general* election" ballot after legislative adoption. Cal. Elec. Code §3527 (1970) (emphasis added). Although this law was intended to simplify the placement of legislative bond measures on statewide ballots, it perhaps inadvertently precluded bond measures from easy placement on primary election ballots. In order for the legislature to place bond measures on a primary ballot, it had to call a "special election" for the bond measures, which possessed all the necessary characteristics of a general election, and then consolidate the special election with the primary election. This problem was corrected in 1971 when the same law was amended to allow legislative propositions on any *statewide*, rather than any *general*, election ballot.

46. Memorandum from Anthony L. Miller, Chief Counsel, California Secretary of State's office, to Eugene Lee, Professor, Political Science Department, University of California, Berkeley (Mar. 21, 1980).

47. Cal. Elec. Code §3525 (West Supp. 1990).

48. *Id.*

is inconsistent to proclaim that primary elections can be defined as "special" elections or, failing that, to define primary elections as "general" elections.

To be sure, instances do exist in which the courts have defined references in the state constitution to "general elections" as meaning any regularly scheduled election, including primary elections.[49] Such interpretations, however, apply to specific constitutional articles which implicitly refer to regularly scheduled elections versus special elections. Elsewhere, California's Elections Code clearly defines general, primary and special elections as distinct political events. A general election is "the election held throughout the state on the first Tuesday after the first Monday of November in each even-numbered year."[50] A primary election "includes all primary nominating elections provided for by this code."[51] A special election "is an election, the specific time for the holding of which is not prescribed by law."[52] It is difficult not to conclude that the practice of placing initiatives on primary election ballots is erroneous.[53]

Whether or not voting on initiatives in primary elections appeared through loose interpretations of the law or by administrative error, the practice has become so institutionalized that it may be beyond challenge.[54] As shown in Table 5.3, initiatives are appearing on primary election ballots in California with increasing frequency—with the curious exception of June 1992. Relatively few initiatives appeared on primary election ballots through the decade of the 1970s. Beginning in 1980, however, many more initiative proponents have submitted their issues to primary election voters—reaching a high of six initiatives on the June 1988 ballot.

This trend of placing initiatives on primary election ballots took a nose dive in June 1992 when not a single initiative qualified for the ballot—the first time this has happened since 1968. "It is as if Toyota stopped making little trucks, or Congress swore off press releases, or the Super Bowl banned beer commercials," exclaimed one analyst.[55] In all likelihood, June 1992 will be a short-lived exception. California voters expressed an unusual degree of disgruntlement with the long November 1990 ballot when they rejected 22 of 28 measures, including noncontroversial bond measures that otherwise would have been routinely approved. The brief respite is not expected to last into November 1992, let alone primary elections in future years.[56]

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49. *See* County of Alameda v. Sweeney, 151 Cal. App. 2d 505 (1975).

50. Cal. Elec. Code §20 (West 1987).

51. Cal. Elec. Code §21 (West 1987).

52. Cal. Elec. Code §27 (West 1987).

53. If so, the further question is posed whether initiatives adopted in primary elections that were not consolidated with special elections are valid. Proposition 13, for example, was adopted during a non-consolidated June 1978 election. Although this question has not been presented to the courts, it appears doubtful that they would invalidate established state law years after its enactment.

54. California's legislators have recently addressed the question whether the state's presidential primary should be moved to an earlier date in order to maximize California's influence in the selection of presidential candidates. One bill calling for a March presidential primary by Assemblymember Jim Costa received serious attention in 1990—until it was discovered that initiatives might be allowed on this ballot as well. The bill died in the senate.

55. Jay Mathews *quoted in* William Endicott, *What!? No Initiatives?* Los Angeles Daily Journal, January 14, 1992.

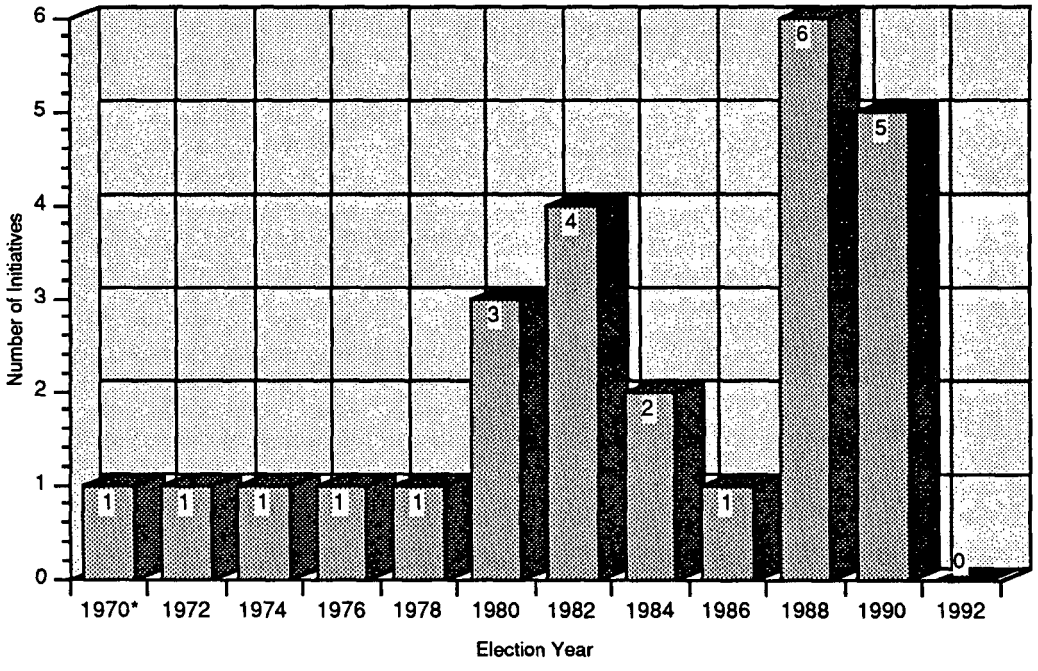
56. Melissa Warren, Media Director, California Secretary of State's office, predicts a November 1992 ballot full of initiatives possibly ranging from more term limits, a rollback on the "snack-food" tax, welfare reform, right to die and health care. *Id.*

2. *Ideological Differences between General Election and Primary Election Voters*

Due to the relatively lower voter turnouts in primary and special elections, some have argued that the vote in general elections is more representative of the will of the people. Not only do more voters turn out, they argue, but a more balanced cross-section of the population casts its ballot in general elections than in primary and special elections. Those who vote in primaries and special elections tend to be better educated, more involved in politics and members of a higher socioeconomic stratum.[57] Some scholars have therefore speculated that conservative ballot measures would fare better than liberal issues in primary and special elections.[58]

Table 5.3

NUMBER OF INITIATIVES ON CALIFORNIA'S PRIMARY ELECTION BALLOT, 1970 to 1992



*The June 1970 election witnessed the first primary ballot initiative in state history. (See discussion above.)

Source: California Commission on Campaign Financing Data Analysis

A statistical analysis by the Commission indicates that there is indeed a difference in voting patterns between primary and general election voters. This difference suggests not so much that primary election voters are more conservative but that they are more inclined than general election voters to approve ballot measures of any ideological persuasion—conservative or liberal.

57. David Magleby, Direct Legislation, at 87-89 (1984).

58. Interview with Professor Daniel Lowenstein, UCLA Law School, in Los Angeles, California (July 16, 1990).

Classifying all initiatives from 1976 through November 1990 as either "liberal," "conservative," or "neutral" according to the ideology of those who supported or opposed each measure, a comparison of primary and general elections reveals that while conservative initiatives do fare somewhat better than liberal propositions on primary ballots, both conservative and liberal measures are much more likely to be approved in primary elections than in general elections. As shown in Table 5.4, conservative initiatives enjoyed a 10% advantage in approval rates over liberal measures in primary elections. But liberal measures themselves received a much higher approval rate in primary elections than in general elections, with 50% of all liberal initiatives being approved by primary election voters as opposed to 33% approved by general election voters.

Table 5.4

IDEOLOGICAL BIAS OF VOTE ON INITIATIVES BETWEEN PRIMARY AND GENERAL ELECTIONS 1976 to 1990

	Ideological Orientation of Initiatives		
	Conservative	*Liberal*	*All Initiatives*
Primary Elections			
Percentage Approved	9 (60%)	5 (50%)	14 (56%)
Percentage Rejected	6 (40%)	5 (50%)	11 (44%)
General Elections			
Percentage Approved	10 (38%)	7 (33%)	20 (35%)
Percentage Rejected	16 (62%)	14 (67%)	37 (65%)

Note: Ideological orientation of initiative measures was determined by the political leanings of the organizations supporting or opposing each measure. For example, the Democratic Party or its officials and other groups generally allied with the Democrats, such as environmental organizations, are classified as "liberal." Republican officials and business interests aligned with the Republican party are classified "conservative." Business interests with no particular political perspective, such as lottery proponents, are classified as "neutral."

Source: California Commission on Campaign Financing Data Analysis

This pattern of a higher approval rate for initiatives in primary elections is even more apparent when looking at *all* initiatives, not just ideologically conservative or liberal issues. From 1970 through 1990, voters in California approved 14 of 25 initiatives on primary election ballots, for an approval rate of 56%. Over the same time period, voters approved only 20 of 57 initiatives on general election ballots, for an approval rate of 35%.

It would be incorrect, however, to conclude that primary election voters are somehow different than general election voters by being more inclined to vote "yes." The difference between primary and general election results appears to be directly related to campaign financing patterns. Initiatives on California's primary election ballots generally have drawn less financial opposition—presumably because they are less controversial—than initiatives on general election ballots. Median opposition spending has been much greater against initiatives in general elections than in primary elections. From 1976 through 1990, the median expenditure in support of initiatives on primary election ballots has amounted to $1,578,292 while the median opposition expenditure has been $1,046,374. In other words, median opposition spending has amounted to 66% of support expenditures in primary

elections. Over the same time period, median expenditures for initiatives on general election ballots has been $1,231,914 while opposition campaigns have spent a median $1,817,932 to defeat these measures. That translates into opposition spending against initiatives amounting to 148% of median expenditures in support. As discussed in Chapter 8 ("The Influence of Money"), opposition campaign advertising is very effective in persuading voters to vote "no" on initiative proposals. The difference in approval rates for primary elections versus general elections reflects the effectiveness of opposition spending.

E. In the Commission's Judgment, the State Constitution Should Be Made Harder to Amend

California's experience with direct democracy indicates a need for limited improvements in the electoral criteria for managing the initiative process. Shortcomings in the current electoral criteria allow the initiative process to be exploited in inappropriate ways, causing unnecessary voter confusion and undercutting the integrity of the state's constitutional law.

Constitutional law has a special status over statutory law. In California, the special status of constitutional law is honored in the initiative process by a higher qualification signature threshold for constitutional amendments. The signature threshold, however, is no longer a significant impediment to well-financed special interest groups which can spend more money to gather additional signatures.

As a result, the California constitution is increasingly cluttered with amendments that cannot be changed without further constitutional amendments. Instead, these amendments should be placed in the state statutes where, under the Commission's recommendations, they would be subject to limited amendments by a super-majority vote of the legislature. (See Chapter 3, "Initiative Drafting and Amendability.") Furthermore, well-endowed groups have incorporated constitutional amendments into an effective counter initiative strategy to undercut other initiative drives. This trend should also be reversed.

1. Imposing a Special Vote Requirement to Add Language to the Constitution

The Commission recommends that a reasonable special vote requirement be imposed for popular ratification of any additions to the constitution. To *add* new language to the constitution, any constitutional initiative or legislative constitutional amendment should be required to receive the approval of 60% of those voting on the issue at any one election, or alternatively to be approved by a simple majority vote in two successive elections. Thus, if a constitutional 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 initiative's power.

Precisely how high to set the super-majority ratification threshold was a matter of considerable debate within the Commission. The super-majority threshold most commonly imposed upon legislatures 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 constitutional change 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 the constitution via the initiative. It is important, however, to maintain an inconvenient barrier to constitutional change in order to

minimize the likelihood that laws statutory in nature will be casually codified into the constitution and maximize the likelihood that such laws will be placed in the statute books. By allowing simple majority ratification *in two successive elections,* the right of the majority to amend the constitution 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 constitutional law.

Current events have made it necessary to include legislative constitutional amendments in this category of propositions subject to a special vote requirement for approval. Legislatively-referred constitutional amendments currently are subject to a two-thirds vote requirement of both houses of the legislature before they can be placed on the ballot. Under normal circumstances, this super-majority *legislative* vote would seem sufficient to guard against abuses in constitutional law. Voters in California, however, have recently seen the legislature use its authority to place constitutional amendments on the ballot as part of a special-interest induced counter initiative strategy. As discussed above, the legislature, responding to special interest pressure, put a constitutional alcohol tax measure (Proposition 126) on the November 1990 ballot in an effort to undermine a citizen-sponsored alcohol tax initiative (Proposition 134). It is reasonable to expect future legislative attempts to undercut initiatives by the use of competing ballot measures. Given this likelihood, it would be detrimental to the initiative process to make citizen-initiated constitutional amendments harder to ratify than legislative constitutional amendments. Both types of constitutional change should be subject to the same special vote requirement at the polls.

2. Permitting a Simple Majority Vote to Delete Language From the Constitution

The Commission believes that *deletions* from the constitution should require only a simple majority vote of the people. Much of the language currently in California's constitution—such as the regulation of gill net fishing—should instead be placed in the statute books. Decades of relatively "easy" constitutional change through initiatives have enlarged the state constitution by inclusion of statutory and regulatory subjects better suited for the statute books. Yet if the Commission's recommended new special vote for constitutional initiatives were adopted, it would "cast in stone" all these prior constitutional amendments that were originally ratified by only a simple majority.

Accordingly, a system of simple majority approval for both constitutional deletions and the creation of new statutory law might encourage the transfer of law from the constitution to statutes. For example, if an environmental group wanted to amend the gill nets provision now in the constitution, a simple majority vote could adopt an initiative to *delete* all gill net language from the constitution and simultaneously *add* the amended gill net language to the statute books. A constitutional amendment which *added* new gill net language to the constitution would require 60% ratification or two successive simple majority elections.

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 statutory 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 75% super-majority of the voters, then that initiative itself must be approved by 75% of the voters to be effective. This principle should be placed in the state constitution.

It is inappropriate for initiative proponents to "lock in" their policy proposals by requiring a special vote for future statutory 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 also 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 or three-fourths 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 constitutional 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 constitution, that imposes a super-majority requirement for future amendments itself be ratified by a super-majority vote.

4. Reevaluating Present Methods of Calling for Constitutional Conventions

As noted above, the California constitution distinguishes between a constitutional *amendment,* which modifies a part of the constitution, and a constitutional *revision,* which makes more sweeping or comprehensive changes in constitutional law. In California, only the legislature can initiate the constitutional revision process—by placing a revision on the ballot by a two-thirds vote, by establishing a constitutional revision commission by a simple majority and then placing its recommendations on the ballot by a two-thirds vote, or by establishing a constitutional convention by a two-thirds vote after which the convention itself can place a revision directly on the ballot by a simple majority vote. In all instances the proposed revisions must be ratified by the voters to become effective.

The people of California are currently not empowered to call for a revision of the constitution through any means. According to the state constitution, initiatives are restricted to constitutional amendments, not to constitutional revisions—a provision that the courts have recently been willing to enforce. And voters can neither call for a constitutional convention nor create a constitutional revision commission through the initiative process. This anomaly may mean that in certain instances the public may never be able to initiate certain reforms—for example, to change the state's form of governance to a unicameral legislative system—if the courts conclude that such reforms constitute constitutional revisions.

As California has entrusted its citizens with the authority to amend the constitution through the initiative process, it might seem reasonable also to enable them at least to initiate the process of revising the constitution—allowing them to place on the ballot a call for a constitutional convention. Voters have apparently not abused this process in states that permit citizen-initiated convention calls.

A possible procedure for California might be similar to that recommended by the Commission for constitutional amendments. If petitions for a convention call gather valid signatures amounting to at least 8% of the last gubernatorial vote, the convention call would be placed on the next statewide ballot. Since the call for a convention is not a revision or amendment of the constitution itself, a simple majority voter approval of the measure would establish a constitutional revision convention. If the convention proposed a constitutional revision, it would be placed on the ballot and would then have to be ratified by either 60% of those voting on the issue in one election or by a majority voting in two consecutive elections.

Some students of constitutional law are reluctant to grant citizens the right to initiate a constitutional convention. They argue that such a right may be unnecessary—particularly since it has not been used in those states that permit citizen-initiated convention calls. They suggest that the California legislature historically has been willing and able to issue convention calls when the need arises. They also argue that it would be undesirable to submit convention calls to the same type of political campaigning that is currently conducted over initiative constitutional amendments. They worry that a constitutional convention, once convened, might reach out to address other issues not contemplated to fall within the scope of such a convention (although the constitutional amendment permitting citizen-initiated convention calls could also require that such convention calls be limited to a single or specified subject). And they argue that citizen-initiated convention calls might be used by well-financed special interest groups to further their own particular agendas.

These fears, however, have not materialized in other states which allow citizen-initiated convention calls. These citizens have demonstrated prudence toward constitutional conventions. Furthermore, numerous safeguards could be put in place to protect the integrity of California's constitution from conventions promoted by single-interest groups, such as a super-majority vote for ratification.

Although the Commission is not persuaded that all the above objections to citizen-initiated revisions are well-founded, it is not prepared at this moment to recommend that citizen groups be allowed to place constitutional convention calls on the ballot through initiative petitions. The Commission recommends that more study be given to this difficult question before specific reforms are presented.

F. 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 primary 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 statewide candidate races, while *legislatively-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 other states—such as Illinois, where very little initiative activity exists—but it would seriously impair California's 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, legislative propositions could easily dominate the ballot, since the legislature can easily and quickly place measures on the ballot. They, too, would have to be limited; yet restrictions on the number of legislative measures would mean that areas of public policy might go unattended. The legislature might have to decide, for instance, whether to delay funding for schools in order to place a bond measure for earthquake damage onto the ballot. Third, and perhaps most importantly, qualification procedures for initiatives have been mastered by well-financed special interest groups. While it might take a grassroots organization the maximum 150 days to qualify an initiative for the ballot, others able to pay for professional petition circulators could qualify measures much more quickly. As noted previously, at the cost of millions of dollars one 1988 insurance industry initiative qualified for the ballot in only 48 days. A numerical limit on initiatives might make the ballot the exclusive domain of those who could pay for the fastest signature gathering.

One reason why so many measures appear on California's ballot is that they are placed there by the legislature, sometimes in response to special interest pleading and sometimes out of necessity. Yet in some instances the California legislature is forced by constitutional constraints to place bond measures and other items on the state ballot. Perhaps the legislature should consolidate some bond measures or seek alternative sources of financing. As recommended in Chapter 3, the legislature should be able to amend statutory initiative legislation under appropriate circumstances, thus avoiding the need to place all such amendments on the ballot. Existing statutory initiative legislation, such as the Chiropractic Act,[59] should be submitted to the voters only one more time, with a clause permitting the legislature to make any future amendments.

2. Prohibiting Initiatives on Primary Election Ballots

The Commission takes no strong position on the matter of placing initiatives on primary ballots. California's constitution probably never intended that initiatives be placed on primary election ballots, but the Commission's analysis shows that no significant harm has resulted from this practice. Although a slight conservative bias is apparent among primary election voters, initiatives of all ideological persuasions fare better in primary contests. The ideological bias of primary election voters does not appear to be to the detriment of liberal issues. It is not accurate to believe that initiatives of any particular ideological persuasion are disadvantaged by being placed on primary ballots. And by allowing initiatives to appear on both primary and general election ballots, the general election ballot may be made shorter and less daunting to voters.

Many Californians favor establishing an early presidential primary *in addition to* the present primary election for state candidates. Any effort to create an

59. For a full discussion of the capriciousness of amending the Chiropractic Act, *see* Chapter 3, "Initiative Drafting and Amendability."

additional presidential primary should take into consideration the likelihood of initiatives being placed on the same ballot. A presidential primary would have a high voter turnout and thus be better suited for initiatives than a non-presidential primary election. However, three ballots in a single election year (two primaries and one general election), each loaded with initiatives, may be seen by some as too disruptive of the state's policymaking process. If this is deemed undesirable, any legislation calling for an additional early presidential primary should add a caveat to the constitution specifying which ballots can and cannot contain propositions.

G. 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 are safeguards to preserve the integrity of the state constitution. The higher signature threshold for citizen-initiated changes to the constitution no longer serves as an adequate deterrent to constitutional amendments. A reasonable special vote requirement for additions to the constitution would replace the increasingly inadequate signature threshold.

At the same time, the integrity of constitutional 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 of the game 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 among the most 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 state-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 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 party affiliation, 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, such as party affiliation, associated with candidates. Hence, the processes by which voters make decisions on candidates as opposed to initiatives tend to differ.

The greatest single factor differentiating initiative from candidate elections is the lack of partisan cues. Political parties serve as a critical reference point for most voters in partisan candidate elections. But initiatives are usually not tied to a particular political party (although slate mailers sometimes imply party endorsements for ballot measures). Thus the voter is left without an important source of information in deciding how to vote on initiatives. Other factors that influence voters are also missing from initiative elections. Personal traits, such as a candidate's character, race or gender, are not elements of decisionmaking on ballot propositions. 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 parties and 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. In states that do not provide voters with ballot pamphlets, news and paid advertisements take on even greater importance in affecting voter choices.

This presents a dilemma for the initiative process. 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 party cues, 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

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).

besides the ballot pamphlet, especially for initiatives that do not arouse independent news attention. The accuracy of voter information on 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 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]

Voters tend to have fewer filtering mechanisms for information in initiative campaigns than in candidate campaigns. Party endorsements and candidate personalities provide useful cues for voters in sifting through the information dispersed by paid media in candidate campaigns. The absence of such informational cues eliminates one check on deception in initiative advertising.

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

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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 of George Bush's 1980 presidential campaign. "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).

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.

Examples of such deception unfortunately are frequent. In 1988, tobacco industry ads against an initiative to raise cigarette taxes (Proposition 99) pictured a black leather jacket-toting criminal claiming the cigarette tax will "make crime pay" by encouraging the contraband sale of cigarettes. The illicit profits would then be used to buy guns for criminals. Another man claiming to be a law enforcement officer (though later revealed to be an actor who once worked as a part-time private security officer) said that police would be distracted from performing their normal duties by chasing cigarette smugglers.

In November 1990, the timber industry waged an advertising campaign against an environmental initiative (Proposition 130, labeled "Forests Forever") that would have severely restricted lumbering of old-growth forests. The industry's television commercial was set against a backdrop of a devastating forest fire, with a fire marshall suggesting that the measure's curtailment of logging would take funds away from fire protection, thereby risking the loss of huge tracts of timber. The implausible implication was that more forests would be lost than saved by Proposition 130.

And in June 1988, a group of California legislators opposed a campaign finance reform initiative (Proposition 68) by claiming tax dollars would be used to support terrorists. One television advertisement depicted Nazi storm troopers with Swastika arm bands laughing at the idea that they might receive public financing under the measure. This claim was made despite the lack of any Nazi party in California and the numerous safeguards built into the measure to prevent extremists from gaining public funds.

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 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 1982, for example, environmental groups placed a beverage container recycling initiative (Proposition 11) onto California's statewide ballot. Environmental proponents spent a total of $1,564,116—nearly half of which was spent simply to qualify the measure for the ballot. An opposition group, spearheaded by various beverage and bottling companies, accumulated a campaign warchest of $6,417,325. "Californians for Sensible Laws," as the opposition group called itself, ran television advertisements claiming that the initiative would cripple California's voluntary

recycling program, even though mandatory recycling activities in other states were at least triple the recycling level of California. The ad pictured a uniformed Boy Scout asking his father why "the grown-ups" were trying to close down "Mr. Erickson's recycling center and putting us scouts out of business."[6] Environmentalists could not afford to wage an effective campaign response. Although the bottle bill initiative led 2-to-1 in early public opinion polls, it went down to defeat 44%-to-56% at the hands of California's otherwise environmentally-conscious voters.[7]

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. Throughout the history of California's initiative process, voters have ultimately shown a reluctance to approve ballot issues; nearly 70% of all initiatives have been rejected.

One study charted voters' pre-election attitudes on 48 ballot propositions in California between 1960 and 1986 from surveys conducted by the California Poll.[8] 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

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6. Thomas Cronin, Direct Democracy, at 218 (1989).

7. UCLA law professor Daniel Lowenstein cites numerous examples of how imbalanced campaign spending, whether or not ultimately successful at the polls, has invited deceptive political advertising. Proposition 15 on California's 1972 general election ballot sponsored by the California State Employees Association (CSEA) was intended to raise state employee salaries to make them competitive with the private sector. Supporters of Proposition 15 spent $1.3 million advocating their cause, 37 times more than opponents. The chief campaign slogan used by CSEA was a grossly deceptive innuendo that Proposition 15 would reduce state salaries. It read: "Keep state pay in line—yes on 15." This strategy failed miserably at the polls as voters rejected Proposition 15 by a 33%-67% margin.

Other times, deceptive advertising encouraged by imbalanced spending has proven highly effective. Proposition 5 on the 1978 general election ballot, for example, would have required separate smoking and non-smoking sections in public places. Although the proposal enjoyed 58%-38% lead in early public opinion polls, the tobacco industry outspent proponents $6.4 million to $700,000. The anti-Proposition 5 campaign included a host of false allegations that eventually turned public opinion against the measure. Opponents claimed the measure would cost taxpayers $20 million for posting "no smoking" signs when the real cost would have amounted to about $20,000. Mailgrams were sent to liberal Democrats supposedly from Senator Edward Kennedy urging a "no" vote on Proposition 5 when, in fact, Senator Kennedy had nothing to do with the mailer and took no such stand. The measure was rejected by a 46%-54% margin. Daniel Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment,* 29 UCLA L. Rev. 505 (1982).

8. David Magleby, *Opinion Formation and Opinion Change in Ballot Proposition Campaigns,* Manipulating Public Opinion 105 (Michael Margolis and Gary Mauser, eds., 1989).

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 against other local stations that accept political ads during news coverage.[9] 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

9. Steve Weinstein, *Three Stations Lift Bans on Political Ads in Newscasts,* Los Angeles Times, Oct. 4, 1990.

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."[10]

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. Alaska's *Anchorage Daily News* took the concept a step further. Instead of allowing candidates to define the campaign agenda, the newspaper surveyed voters to determine which issues they felt were most important and then pressed the candidates on these specific issues.

Evaluations of political advertising for accuracy have not yet put an end to dishonest or misleading claims but there are growing signs of improvement. Several candidates have used media analyses of an opponent's misleading commercials as part of a rebuttal campaign strategy. In at least one instance, a candidate—Clayton Williams, Jr., a Republican gubernatorial candidate in Texas—removed his commercial from the airwaves after reporters identified the statistics cited in the ad as misleading.

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 in exposing false or misleading advertising.[11] 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

10. *Quoted in* Thomas Rosenstiel, *Policing Political Ads*, Los Angeles Times, Oct. 4, 1990.

11. *Id.*

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.[12]

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 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.

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12. 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).

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 Democratic campaign management firm, for example, may be handling the campaigns of an assembly candidate and a ballot proposition. The firm's primary objective is to get that Democratic assembly 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, such as the Democratic candidates for Governor and U.S. Senate, 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. Frequently, slate mailers ostensibly labeled as a guide for voters of one party will even sell an endorsement to a candidate of the opposing party.

Two Democratic consulting firms distributed separate slate mailers throughout Los Angeles County in California's 1982 primary election. Michael Berman and Carl D'Agostino of BAD Campaigns, Inc., and Willard Murray of the United Democratic Campaign Committee, mailed their endorsements to registered county Democrats. The two firms agreed not to tread on each other's turf, with the Murray mailing targeting the black community.

Berman/D'Agostino charged endorsees for inclusion on their slate mailer the following amounts: John Van de Kamp (attorney general), $50,000; Alexander Pope (county assessor), $25,000; Sherman Block (county sheriff), $25,000; Wilson Riles (state superintendent of instruction), $20,000; William McVittie and Ernest Hiroshige (superior court judges), $22,500 each; David Ziskrout and Robert LaFont (superior court judges), $12,500; David Workman (Republican candidate for superior court judge), $5,000; Roy Carstairs (Republican candidate for municipal court judge), $15,000. Murray's prices for a smaller mailing were: Van de Kamp, $10,000; Block, $5,000; Ziskrout, $3,000; Steven Weeks (Republican candidate for county assessor), $1,000.[13]

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

13. Prices for inclusion in the 1982 primary slate mailers were derived from a discussion of asking prices and actual negotiated prices in Fair Political Practices Commission, Staff Report and Recommendations on Slate Mailings (18-20) (1982 Primary Election) (Aug. 1982).

the highest bidder for contests in which the operator has little vested interest. The 1982 Berman/D'Agostino mailer discussed above 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]

This 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 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

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.*

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 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.

Two sections of California's Elections Code address the issue of payment in return for an endorsement by a political party, organization or club. These provisions prohibit payments to, or bribes of, party officials or delegates in order to obtain an official endorsement or other favorable treatment *by* the party. The prohibition on bribes for an endorsement is more encompassing, applicable to "any club, society, or association," or to "any political convention, committee, or political gathering of any kind."[20] It would appear that an outright bribe to a slate operator would be illegal, but the negotiation of payment for an endorsement is not. The line between the two acts is unclear.

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.[21]

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.[22]

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 state-sponsored publications are important alternative sources of voter information which can even eclipse the "managed messages" of paid advertising.

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20. Cal. Elec. Code §29421 (West Supp. 1990). *See also* Cal. Elec. Code §29420 (West Supp. 1990), affecting payment of a party organization for endorsement.

21. Cal. Elec. Code §84305.5 (West Supp. 1990).

22. 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 state's 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."*[23]

This news emphasis on candidates rather than ballot measures may be changing somewhat in California. Some ballot propositions—almost always initiatives—have aroused such controversy and interest that only candidates for the highest offices of Governor and U.S. Senate have received more media attention in recent years. Many initiatives, in fact, are perceived as having a greater impact on the life of the state than such officeholders as the secretary of state. In recent elections, California voters have voted more often for initiatives than for all but the highest statewide candidates.

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. As Thomas Cronin has concluded:

> *"The quality of information varies from state to state and depends very much on the availability of a state-prepared voter pamphlet and on coverage of the issues by newspapers and television within the state. My own experience with ballot issue campaigns suggests that media coverage, even in good state newspapers, is typically thin and late. Clearly, the number and kinds of issues on the ballot affect the amount and quality of information generally available. The size of the state is yet another factor."*[24]

2. Creating News as a Campaign Strategy

Campaign strategists for candidates and initiatives often will attempt to create a newsworthy situation on behalf of their candidate or issue. This involves staging an event with interesting visuals and/or an attention-grabbing setting. One of the more dramatic examples of a staged news event was conducted by proponents of Proposition 103, a successful insurance reform measure on California's 1988 general election ballot that was challenged by a competing insurance industry-backed no-fault proposal. According to Julie Hansen, financial manager of Voter Revolt, members of the Proposition 103 campaign committee were talking at a

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23. 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).

24. Cronin, *supra* note 6, at 83.

strategy meeting when someone lamented, "I wish we could dump on the insurance companies what they've been giving us." Another member chimed in, "We can." And a staged news event was born.

On March 28, 1988, proponents of Proposition 103 arrived at the Farmers Insurance Group headquarters in Los Angeles hauling a ton of horse and steer manure in a truck labeled, "No-Fault insurance is bullshit!" The contents were dumped on the front lawn of the headquarters in view of a full press corps that had been alerted hours earlier. "You would not believe all the press that showed up," said Hansen. "It was a perfect David and Goliath situation. They loved it. Television and radio stations rebroadcast the event over and over all day long."[25]

Despite a shoestring budget, Proposition 103 received extensive media coverage through similar staged news events as well as through newsworthy endorsements by popular figures such as Ralph Nader. By election day, voters were generally familiar with the competing insurance initiatives and their major implications. They rejected all the industry-sponsored measures and approved Proposition 103—even though it had been outspent by more than 20-to-1.[26]

In California and elsewhere a few underfunded initiative campaigns have defeated far wealthier opposing forces, especially in recent elections.[27] 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.

3. Impact of News on Election Outcomes

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.[28] Individuals tend to pay more attention to the news messages with which they agree and less to those that conflict with their ideological predispositions.

Another school of thought, not necessarily at odds with the minimal effects theory, is that the news media serve an agenda-setting function.[29] That is, the news

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25. Telephone interview with Julie Hansen, Financial Manager, Voter Revolt (Sept. 10, 1990).

26. The proponents of Proposition 103 spent almost one-half of all their campaign money on qualifying the measure for the ballot. They spent approximately $1.4 million for ballot qualification out of a total campaign expenditure of $3 million.

27. Most notably, the $1.8 million campaign for the cigarette tax initiative on the November 1988 California ballot was successful despite the massive $21.3 million tobacco industry spending against it.

28. Political Attitudes and Public Opinion, at 173 (Dan Nimmo and Charles Bonjean, eds., 1972).

29. 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

media may not determine what we think, but they affect what we think *about.*[30] 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.[31] 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.

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

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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.

30. James Lemert, Does Mass Communication Change Public Opinion After All?, at 40-42 (1981).

31. 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.

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.[32] Another established the value of marked ballots provided by newspapers for voters to take to the polls.[33]

Perhaps the most comprehensive research supporting the positive impact of newspaper editorial endorsements on ballot measures examined California voting behavior from 1948 through 1968.[34] A later study of California statewide initiative elections from 1970 through 1980 reached the same conclusions.[35] 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 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%).[36]

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32. Reo Christiansen, *The Power of the Press: The Case of the "Toledo Blade,"* 3 Midwest Journal of Political Science, 229-240 (Aug. 1959).

33. Herbert Baus and William Ross, Politics Battle Plan, at 251 (1968).

34. James Gregg, California Newspaper Editorial Endorsements: Influence on Ballot Measures (1970).

35. 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.

36. Charlton Research Company, California Issues Study (Nov. 1990).

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. Prime examples include Ralph Nader's endorsement of Proposition 103 and the American lung, heart, and cancer societies' endorsements of Proposition 99, both successful 1988 initiatives that defied highly-financed opposition campaigns.

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.

Conversely, endorsements or sponsorship by an unpopular individual or organization can be as detrimental as a popular endorsement can be helpful. Once again, such an endorsement helps define the issue for voters. The electoral success of the 1988 California tobacco tax initiative, for example, was probably aided as much by the fact that the unpopular tobacco industry *opposed* the measure as by the fact that the American lung, heart, and cancer societies *favored* it. Assemblyman Tom Hayden's support of Proposition 128 ("Big Green") on the November 1990 ballot was also viewed by many to be a negative factor.

A survey of some of California's controversial initiatives demonstrates the value of endorsements in influencing public opinion. Table 6.1 shows the positive and negative influence of elite endorsements and sponsorships. One group of voters was first asked their opinions on five insurance reform measures after being given a brief explanation of each proposal. A second group of voters was given the same brief explanation of the measures *and* a list of the major sponsors behind each measure. The difference in voter attitudes between those who were only given a summary of the measures and those who were given both a summary and a list of endorsers is substantial. Voters overwhelmingly were disinclined to vote for an insurance reform measure backed by the insurance industry or the trial lawyers. An endorsement by the California Insurance Companies (CIC) or the California Trial

Lawyers Association (CTLA) cost an initiative dearly in terms of votes.[37] Endorsements by Governor George Deukmejian, the legislature and Attorney General John Van de Kamp appear to have had only a moderately positive impact. Voters expressed a high inclination to support an insurance reform measure endorsed by Ralph Nader or a respected consumer organization.

The importance of endorsements on initiatives is also indicated by voter responses to a survey question on a hypothetical AIDS quarantine measure. The survey question asked respondents how they would feel about two identical measures calling for the quarantine of AIDS victims, the only difference being that one measure was backed by Lyndon LaRouche while the other was backed by the California legislature and Governor. Although both measures were opposed by a majority of respondents, endorsement by the legislature and Governor alone was worth nearly 10 percentage points in support. (Two LaRouche-sponsored AIDS measures, Proposition 64 in 1986 and Proposition 69 in 1988 were soundly rejected by the voters.)

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.[38]

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.[39] 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 radio (and later television) licensees operate in the "public interest" and in accordance with the management of a scarce and valuable resource.[40]

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37. The negative electoral impact of an endorsement by the California Trial Lawyers Association apparently extends beyond insurance reform measures. Pete Wilson, the 1990 Republican gubernatorial candidate, actively attacked his Democratic opponent, Dianne Feinstein, as being weak on crime as indicated by her endorsement by the CTLA.

38. California voters in 1988 approved a disclosure initiative (Proposition 105) by a substantial majority (54.5% to 45.5%), despite the fact that the measure addressed everything from the disclosure of initiative sponsors, warnings on household products, disclosure of corporate investors, to disclosure of whether a company conducts business in South Africa.

The impetus for Proposition 105 came from two failed attempts by the state legislature to impose less encompassing disclosure requirements. The "Truth in Initiative Advertising Act" (SB 1904)—a bill requiring disclosure of the actual corporation, industry, or union financing an initiative advertisement, rather than the use of ambiguous, good-government committee names—passed the state Senate unanimously in 1986 but did not pass in the Assembly.

Proposition 105 eventually was declared unconstitutional by an appellate court because it violated the single subject rule of the California constitution. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991). A similar campaign disclosure measure sponsored by state Senator Quentin Kopp (SB 116) is currently being debated in the legislature.

39. Tracy Westen and Beth Givens, The California Channel: A New Public Affairs Channel for the State, at 31 (1989).

40. *See, e.g.,* Federal Communications Act of 1934, 47 U.S.C. §309(a) (1990).

Table 6.1

EFFECT OF ELITE ENDORSEMENTS ON VOTER ATTITUDES TOWARD SELECTED CALIFORNIA INITIATIVES

Elite Endorsements

Would you support an insurance reform measure sponsored by:

	Yes	No	Undecided
Consumer Groups	80%	12%	9%
Ralph Nader	68%	21%	11%
California Legislature	53%	30%	17%
Gov. George Deukmejian	49%	38%	13%
Atty. Gen. John Van de Kamp	45%	30%	25%
Insurance Companies	12%	80%	7%
California Trial Lawyers Ass'n	10%	82%	8%

Insurance Reform Initiatives

		Summary Only	Summary and Sponsor
Proposition 100 (California Trial Lawyers Ass'n)	Yes	86%	78%
	No	6%	13%
	Undecided	8%	10%
Proposition 101 (Private Insurance Cos.)	Yes	58%	49%
	No	27%	29%
	Undecided	15%	22%
*Proposition 103** (Ralph Nader)	Yes	55%	70%
	No	28%	17%
	Undecided	17%	13%
Proposition 104 (California Insurance Cos.)	Yes	33%	29%
	No	46%	48%
	Undecided	21%	22%
Proposition 106 (California Insurance Cos.)	Yes	80%	68%
	No	10%	20%
	Undecided	10%	13%

*In actual vote results, only Proposition 103 was approved by the voters.

Source: The California Poll, published by the Field Institute, May and July, 1988.

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."[41] 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

41. 1949 Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949).

public importance at the station's own expense if no spokesperson appeared able to pay for one side or the other.[42]

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.[43] 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.[44]

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.[45] 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.[46] 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.[47] However, the FCC subsequently indicated that it had not yet decided whether to repeal the fairness doctrine *for ballot initiatives*.[48] Many California broadcast stations continued to observe the fairness doctrine by providing 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.[49] A number of organizations are currently planning to appeal 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

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42. 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."

43. *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).

44. Fairness Doctrine and Public Interest Standards: Fairness Report Regarding Handling of Public Issues, 48 F.C.C.2d 1 (1974).

45. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

46. 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.

47. 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).

48. Letter from Hon. Dennis Patrick, Chairman, Federal Communications Commission, to Hon. John Dingell, Chairman, House Committee on Energy and Commerce (Sept. 22, 1987).

49. Arkansas AFL-CIO, ___ F.C.C.2d ___ (FCC 91-434) (Jan. 6, 1992).

licensee to ignore them completely."[50] 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.[51] 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.[52] 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. In California, this application of the fairness doctrine to initiative campaigns has had a significant effect. During the 1988 cigarette tax campaign (Proposition 99), for example, the cigarette industry spent over $10 million on paid radio and television commercials opposing the proposed tax increase on cigarettes. The proponents of the measure had virtually no money to spend on advertising. Relying on the fairness doctrine, however, they produced their own commercials supporting the initiative, sent them to broadcast stations all over the state and asked these stations to air them free of charge at a ratio of one pro-tax commercial to every three anti-tax commercials. Many stations complied, giving the proponents millions of dollars of free advertising time. Without this FCC requirement that the public be exposed to both sides of the issue, the election might have turned out differently.

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

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50. *Fairness Doctrine and Public Interest Standards,* 48 F.C.C.2d at 1276.

51. 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).

52. Cronin, *supra* note 6, at 121.

proponents, frequently at a ratio of 10-to-1 or more. Only a few radio stations complied with the fairness doctrine and many of these offered free time at periods of the day when the potential audience was smaller.[53]

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.[54]

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.[55] 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.[56]

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.

By 1990, broadcast stations began to encounter considerable industry pressure *not* to provide any free air time for initiative campaigns. In California's November 1990 election, the alcohol beverage industry sent a letter to many broadcasters indicating that it might withdraw its considerable paid political advertising from any station that gave opponents free time under the fairness doctrine.[57] The

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53. 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).

54. Syracuse Peace Council, *supra* note 47.

55. Letter from Hon. Dennis Patrick, *supra* note 48.

56. Nat'l Ass'n of Broadcasters, Legislative Issue Papers, paper presented to the 1988 State Leadership Conference (Feb. 1988), at 13.

57. Virginia Ellis, *Pressure Increases to Deny Proponents Free Air Time*, Los Angeles Times, Aug. 1990. A letter from Greenstripe Media, a consulting firm hired by the alcohol beverage industry, warned station managers that if they provided free air time to proponents of the alcohol tax measure (Proposition 134), such action "could force us into cancelling our schedule on your facility and utilizing other stations or media that do not provide free air time." The letter was attached to the industry's current contracts with the respective stations for campaign advertising purchases. In a

pro-alcohol tax campaign reported a number of instances in which stations were initially reluctant to provide free fairness doctrine airtime as a result of this letter.[58]

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.[59] 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.

G. Initiative Disclosure Laws Vary From State to State

By far the most prevalent government regulation of political campaigns is public disclosure of campaign contributions, expenditures and identities of campaign advertisement sponsors. 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 ballot measures.

Generally, initiative campaign committees must disclose the names of donors who have contributed more than a given threshold amount. The triggering threshold ranges from a low of any contribution in Florida, Ohio and Wyoming, to a high of $500 in Nevada. Idaho, Michigan, Oregon and Washington further require that political committees identify out-of-state contributors.

1. Special Reporting Requirements

Some of the more unusual reporting requirements concern specific expenditures. For example, Arizona mandates that free broadcast time awarded under the FCC's fairness doctrine be reported by the benefited campaign organization as a contribution. A dozen jurisdictions require individuals who make independent expenditures for or against ballot propositions to file their own reports.[60] 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.[61] The benefit of this early disclosure in Oregon is not at all clear, however, since no notice whether circulators are being paid is printed on the petition.

Most states further require identification of the sponsor and/or payor of paid political advertisements in the ad itself. The identification requirement usually applies to all printed matter and promotional materials as well as broadcast time.

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separate letter to broadcasters, the influential American Association of Advertising Agencies argued that free air time raises the prices for advertising for everyone else as stations tried to recoup their losses and advertising time became more limited.

58. Telephone interview with Leo McElroy, Media Consultant to the campaign for Proposition 134 (Jan. 27, 1992).

59. Arkansas AFL-CIO, *supra* note 49.

60. States requiring individuals to report independent expenditures are: Alaska, Arkansas, California, District of Columbia, Florida, Idaho, Maine, Michigan, Missouri, Nebraska, Oregon and Washington.

61. Or. Rev. Stat. §250.045(4) (1988).

Michigan specifically exempts promotional bingo chips, earrings, frisbees, golf tees, nail clippers and yo-yos, among other items, from having to bear the name of the payor because they are too small to contain the wording.[62] Oklahoma adds to its itemized list of exemptions any type of advertising in which it would be "impractical" to identify the sponsor, such as "skywriting."[63]

Only four states have no identification requirement in paid political advertisements. Idaho, Illinois, Nevada and North Dakota do not mandate that the sponsoring committee be identified in each ad. Nevertheless, all states are subject to broadcast policies established by the Federal Communications Commission. A series of FCC rules stipulate that paid political advertisements on radio and television must identify their sponsors at the time of broadcast.[64]

2. Constitutional Challenge to Disclosure Laws

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.[65] Neither state imposed any burden greater than the disclosure laws elsewhere. 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.[66] The Court argued that such disclosure 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."[67] 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.[68]

3. 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.

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62. Michigan Department of State, The Independent, Political and Ballot Question Committee Manual, at 21 (1981).

63. Ok. Stat. Ann., tit. 74, §4220 (West 1988).

64. 47 C.F.R. §73.1212 (1989); *see* 69 F.C.C.2d 1129 (1978).

65. People v. White, 116 Ill. 2d 171 (1985); State v. North Dakota Education Ass'n, 262 N.W.2d 731 (1978).

66. Talley v. California, 362 U.S. 60 (1960).

67. *Id.* at 65.

68. 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.

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.[69] 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. As discussed further in Chapter 9, "Judicial Review," Proposition 105 was invalidated in its entirety by the courts for violation of the single-subject rule.[70]

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.
- *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.[71]

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69. Mont. Code Ann. §13-27-210 (1989).

70. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).

71. 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

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,[72] which required the disclosure of funding sources behind political advertisements, be reinstated minus the provision that exempts multiple-issue advertisements. 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 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.

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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.

72. *See* discussion in Section G-3 of this chapter.

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 the 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 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. 134" (1990 alcohol tax 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 liquor and beverage distribution industries."

3. Enhancing Disclosure of Last-Minute Contributions

The Commission recommends that 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 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 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 California voters 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. In November 1990, for example, the alcohol industry spent $18.2 million on radio and television advertising opposing Proposition 134, the alcohol tax initiative, while the proponents were able to spend only $38,000—*a disparity of 479-to-1.* The alcohol tax proponents, however, were able to receive approximately $2.1 million in free broadcast rebuttal time under the fairness

doctrine, which was then still in effect. This reduced the spending disparity to 9-to-1. (For further discussion, see Chapter 8, "The Influence of Money.")

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. Extending Tax Credits for Broadcast Information

One potential reform proposal to help balance campaign messages between opposing sides would be to establish a program of tax credits for broadcasters who provide free air time for under-funded campaigns. California, as noted above, has no jurisdiction over federal communications law and cannot reinstate the "fairness doctrine." But any state so choosing could encourage broadcasters to offer free air time to candidates and committees by offering them state tax credits for doing so. In effect, tax dollars would partially subsidize advertising time for badly outspent candidate and/or ballot measure committees.

The extent to which a tax credit system would partially redress the balance in voter information between highly-funded and under-funded initiative campaigns is a function of how much burden taxpayers are willing to accept. Given the multi-million dollar imbalances in California between many of today's initiative campaigns, this could be a significant addition to the state's budgetary problems which would have to be financed by general taxation. Taxpayers are unlikely to accept such a tax burden. (See also the discussion of a "Voter Information Fund" in Chapter 8, "The Influence of Money.")

3. Creating Truth-in-Advertising Regulations for Campaigns

Some states 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. For example, the California Grocers Association and agricultural industry placed a measure on the November 1990 ballot (Proposition 135) designed as an alternative to a pesticide control measure (Proposition 128) on the same ballot. The unofficial title to the agricultural industry proposal was "The Consumer Pesticide Enforcement Act for Food, Water and Worker Safety," sponsored by "Californians for Responsible Food Laws." In fact, the measure would have permitted the continued use of pesticides known to cause cancer or reproductive harm in accordance with federal laws, limited

state authority to exceed federal laws, and weakened existing safety standards for water quality.

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 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, the state 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 legislators who ideally spend their working lives analyzing and debating political questions. However, much the same criticism can be leveled against legislators. With the number of issues before them, even legislators often do not have the time or interest to understand many of the complicated bills which pass the legislature. This neglect is especially common as a legislative session nears its deadline. One legislative reporter concurs: "Meeting late

1. *Quoted in* The Referendum Device, at 63 (Austin Ranney, ed. 1981).

into the night, the senate and assembly pass bills by the bushel, most of which are never read by the members."[2]

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 the thousands of bills that are introduced into the California legislature yearly. 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. Legislative bills, by contrast, rarely command the public interest and media attention of an important initiative. Thus, the electorate is able to judge between good or bad initiatives, just as it is able to judge between good or bad legislators. 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 state-sponsored information, general news media coverage and paid political advertising. This chapter focuses on California's ballot pamphlet—its structure, design and official wording—along with other sources of state-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 Initiative Petitions Are Important Early Sources of Voter Information

Every state 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] Most initiative states require that proposals receive an official caption and brief summary from the attorney general or secretary of state which are placed at the top of the initiative petition prior to circulation.[4] The purpose of the official caption and summary is to offer voters a brief and impartial description of the measure and thus to minimize deceit and confusion. States that do not provide an official caption prior to petition circulation often have no preliminary filing requirements. But all initiative states require an official caption once ballot qualification is secured.

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

2. Daniel Weintraub, *Legislators Throw Out the Textbook in Last-Minute Frenzy,* Los Angeles Times, Sept. 15, 1989.

3. In many states, including California, the official caption and brief summary of an initiative prepared by the attorney general is 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. Ten states do not mandate an official title or summary on the initiative petition prior to circulation. In Arizona, Florida, Massachusetts, Michigan, Missouri, Nebraska, Nevada, Oklahoma, South Dakota and Utah, initiative proponents write their own title and/or summary. When and if sufficient signatures are collected to qualify the measure for the ballot, the state then formulates an official ballot caption and summary for the proposal.

captions and summaries and petitions are viewed as "political advertisements,"[5] 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.

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

5. Rule 1C-7.009(6), Florida Dept. of State.

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.[6] (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 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,[7] 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.

1. Drafting Official Descriptions 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."[8] 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.[9] 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.[10]

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6. 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.)

7. 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).

8. Cal. Elec. Code §3502 (West Supp. 1990).

9. Cal. Elec. Code §3504 (West 1977).

10. 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.

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

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

impartial statement of the purpose of the measure. . . ."[11] 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.

2. Drafting Official Descriptions in Other States

Many states designate a single state official as having responsibility for preparing the official caption and summary. Yet no state, including California, has published detailed guidelines for its attorney general, other officials or 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.[12]

Colorado's procedures are part of an extensive review process designed to assist initiative proponents in drafting their measure (see Chapter 3, "Initiative Drafting and Amendability"). Proponents submit their proposal to the legislative council for review and comment. After a series of public hearings, the agency must draft an initiative caption, ballot caption, summary and analysis of fiscal impact (if necessary) for the circulation petitions, voters' pamphlets and ballots. If proponents believe the caption or summary is unfair or inadequate, they have 48 hours after the agency's determination to file a petition with the secretary of state for a rehearing. A rehearing must then be conducted within two days. If after the second hearing the initiative proponents are still unsatisfied with the caption or summary, they can appeal directly to the Colorado Supreme Court, where the case must be placed at the head of the court's calendar.

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.[13] Several states have attempted to deal with

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11. Cal. Elec. Code §3531 (West 1977).

12. 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.

13. 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

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.

3. Contesting Circulation and Ballot Captions

Unclear petition captions and summaries have occasionally caused problems in California. In one instance, 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.[14]

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 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.[15]

In general, no expedited review procedures are available in California at the early stages of circulation, although expedited review is permitted for contesting official ballot captions. As a result, court challenges to official captions and descriptions are typically brought against the official labels that appear on the ballot and in the ballot pamphlet. 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."

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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).

14. For a fuller discussion of the Rent Control measure, see Chapter 3 "Initiative Drafting and Amendability."

15. 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."

Prior to 1937, the cover sheet for an initiative petition in California contained the official attorney general's caption and summary, the text of the measure and lines for signatures. Subsequent "blank" pages contained a 20-word "short title" which could be written by proponents, followed by additional signature lines. But even under these rules, the courts were willing to invalidate misleading titles. In *Clark v. Jordan*, for example, the California Supreme Court refused to allow an initiative proposal on the November 1936 ballot whose "short title" gave a distorted description of the measure.[16] Problems with deceptive or misleading short titles prompted a revision of the Political Code in 1937, requiring that each petition contain the official description and text of the measure and prohibiting the use of attached blank pages with only signature lines.[17]

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.[18] Substantial compliance is defined as follows: "if reasonable minds may differ as to the sufficiency of the title, the title should be held sufficient."[19] 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 reasoned, that the electorate was adequately informed as to its contents and therefore not misled by the title.[20]

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

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16. Clark v. Jordan, 7 Cal. 2d 248 (1936). The initiative was labeled by its proponents as: "Certain Sales Taxes Forbidden—Certain Tax Limitations Rescinded—Certain Homestead Improvements and Progressively, Improvement and Tangible Personal Property Taxes Abolished." While all these tax provisions were indeed prohibited or rescinded by the measure, it also stipulated that the tax cuts on personal property and improvements be replaced by a land value tax. Rather than being a tax reduction proposal, it was a tax substitution proposal.

When the concept of a proponent-drafted short title was abolished by statutory revisions of the Political Code in 1937, there were fewer court allegations of deceptive titles. Three court challenges to official titles prepared by the attorney general were dismissed by the courts, which generally gave deference to the attorney general's interpretations. Epperson v. Jordan, 12 Cal. 2d 61 (1938). *See also* Brown v. Jordan, 12 Cal. 2d 75 (1938); and Vandeleur v. Jordan, 12 Cal. 2d 7 (1938).

17. Cal. Pol. Code §1197b (now repealed).

18. Cal. Elec. Code §3502 (West Supp. 1990).

19. Epperson v. Jordan, 12 Cal. 2d 61 (1938).

20. 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).

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 ballot caption or summary is false or misleading.[21] Nine states fail to provide for an expeditious hearing.[22] Procedures for expeditious review of the official ballot caption and summary are very similar from state to state. A designated court handles the review process—usually the state supreme court but sometimes a trial court. 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 initiative states distribute a description and analysis of ballot measures. Fourteen states, including California, distribute a ballot pamphlet to voters.[23] Fourteen states purchase pages in major newspapers to print official descriptions of initiatives.[24] Five states use both methods.[25] In California, the ballot pamphlet is the most important official source of voter information on initiatives.

Typically, a ballot pamphlet includes the official ballot caption, 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 require a fiscal impact analysis of each measure to be printed in the ballot pamphlet as part of the official explanation. All states—except Ohio—print the entire text of all proposals in their ballot pamphlet.[26] Five states print the texts at the end of their pamphlets, much like appendices to a booklet. The remainder print the texts together with the analyses and pro and con arguments.[27]

States that distribute ballot pamphlets through the mail reach far more voters than states that rely on newspapers. Newspaper distribution reaches only as far as the newspapers' paid circulation. The Los Angeles regional area, for example, has

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21. 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.

22. 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.

23. States that distribute voters' pamphlets are: Alaska, Arizona, California, Idaho, Illinois, Maine, Massachusetts, Montana, Nevada, Ohio, Oregon, Utah, Washington and Wyoming.

24. States that disperse information on ballot measures through publication in major newspapers are: Arkansas, Colorado, District of Columbia, Florida, Idaho, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Utah and Wyoming.

25. States that distribute ballot pamphlets and publish election information in newspapers are: Idaho, Montana, Ohio, Utah and Wyoming.

26. The Ohio pamphlet makes no mention of how or where interested voters can obtain texts of the proposals.

27. California, Massachusetts, Montana, Nevada and Washington print the full texts of ballot measures at the back of the voters' pamphlets. Alaska, Arizona, Idaho, Maine, Oregon and Utah print the texts with the ballot arguments. The most popular order is to list the official ballot title first, followed by an impartial analysis, the full text and pro and con arguments including rebuttals. The Utah pamphlet places the full texts after the pro and con arguments.

a total population in excess of 8 million, yet the *Los Angeles Times* reaches a maximum of 2.4 million persons (assuming two readers per paper). Even the impact of this circulation figure is overstated. Many subscribers do not read the paper on any given day; others overlook information on ballot measures; still others do not clip out the election information for later reference. By contrast, a pamphlet mailed to every voter's home not only reaches far more people than a newspaper advertisement, it is also less often discarded and thus available for study the day before the election. Appendix J provides a sampling of different ballot pamphlets across the nation.

1. Writing California's Ballot Pamphlet

In California, the secretary of state prepares the voters' ballot pamphlet and distributes it to all registered voters.[28] 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.[29]

State laws clearly delineate the structure of California's ballot pamphlet.[30] 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 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 J 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.[31] 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.[32]

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28. 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).

29. 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).

30. Cal. Gov't Code §§88002 (West 1987).

31. Cal. Elec. Code §3573 (West 1977).

32. 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.

2. Writing 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.[33] 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.[34]

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*

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).

33. Or. Rev. Stat. §251.205 (1988).

34. 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 Bevens, Manager of the Elections Division, Oregon Secretary of State's office (May 1, 1990). *See* Or. Rev. Stat. §251.295 (1988).

which no vote was taken by the senate before May 7, 1986?" [35] 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.[36]

3. Attempts to Achieve Plain, Simple and Accurate Language in California's Ballot Pamphlet

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.[37] 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.[38]

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.[39] 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."[40] 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

35. Massachusetts Secretary of State, Massachusetts Information for Voters: The Ballot Questions in 1986, at 12 (emphasis in original).

36. Mass. Const. art. 48, General Provisions, pt. 4.

37. 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.

38. 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).

39. Common Cause v. Eu, Civil No. 322060 (Sacramento County Super. Ct., 1984).

40. Cal. Gov't Code §88003 (West 1987).

into law by the legislature in 1985.[41] 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."[42] The legislative analyst, however, retained final authority to determine the language of ballot analyses.

a. The Readability Committee

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.[43]

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.[44] One observer informally estimates that the legislative analyst's summary, even after incorporating advice from the readability committee, requires a 12th grade reading level for adequate comprehension.[45]

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.[46] The attorney general's official summary is usually the primary target of public complaints.

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41. SB 92 (Lockyer), introduced December 20, 1984; chaptered as Cal. Elec. Code §3572 (West Supp. 1990).

42. Cal. Elec. Code §3572 (West Supp. 1990).

43. "Analysis Review Committee: Membership and Functions," policy statement by the Legislative Analyst (Oct. 1985).

44. 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).

45. Telephone interview with John Vickerman, Chief Deputy Analyst, California Legislative Analyst's office (May 16, 1990).

46. *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."

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 J, 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[47] 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 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

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47. 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).

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.[48]

b. The Commission's Assessment of the Ballot Pamphlet's Readability

To test the ballot pamphlet's current readability, the Commission applied the Flesch-Kincaid test to two propositions on California's June 1990 ballot. The tests show some improvement over the past decade, although some portions of the pamphlet, especially the attorney general's summary, remain very difficult for most people to read. When applied to Proposition 111 (gasoline tax) and Proposition 119 (reapportionment), the test shows that a reading ability equivalent to three to four years of college is necessary to understand fully the attorney general's summary. This is a grade or two lower than Magleby's study conducted from 1974 through 1980, but it still far exceeds the reading capacity of most California voters.[49] The arguments section varied in reading complexity between a 10th grade and 12th grade reading level—some high school education is thus thus needed to understand the pro and con arguments.

Reading the legislative analyst's analysis requires a 13th grade education, equivalent to one year in college. This compares favorably against the 15th grade level reading capacity required to understand the analysis before 1980. If this reading level is typical of that required for all propositions, then the state readability committee has managed to simplify the analysis section of the ballot pamphlet by roughly two grade levels since the early 1980s.

In order to determine what reading level is realistically attainable, the Commission compared the readability scores of the state voters' pamphlet with those of the pamphlets prepared by the *California Journal* and the League of Women Voters. The *Journal* avoids all the legalese of the official caption and summary, making it considerably easier to comprehend than the official voters' booklet. But the *Journal's* summary sections for Propositions 111 and 119 were actually more difficult to read than the state's analyses. For the *Journal's* ballot pamphlet, a reader must have a reading ability of roughly the 15th grade to 17th grade.

Perhaps the simplest ballot pamphlet is prepared by the League of Women Voters. The League does not utilize the official summary that confuses so many voters, and it makes every effort to describe each ballot measure in easily understood language. The League's pamphlet describes the current situation, explains the proposal and notes what supporters and opponents say in very brief paragraphs. Nevertheless, the Flesch-Kincaid test rates the League's analyses of both propositions at the 12th grade level—the reading ability of a high school senior.

State ballot measures are frequently difficult to describe and understand. They concern complicated issues with important policy ramifications. The Commission believes it would be neither possible nor useful to simplify the state booklet to the 8th grade reading level. It is, however, clearly possible to simplify ballot descriptions at least to the 12th grade level. A 12th grade reading level should serve as the target goal of the readability committee for all portions of the state ballot pamphlet, including the attorney general's summary.

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48. Telephone interview with Vickerman, *supra* note 45.

49. Magleby, *supra* note 47, at 137-139, 166.

c. Availability of Expedited Judicial Review

Although California has no expedited review process to challenge the accuracy of the official caption and summary during circulation, it does provide for quick judicial review of the voters' pamphlet. The secretary of state makes a draft of the pamphlet available for public inspection at least 20 days before the pamphlet goes to the printer. Any voter may seek a writ of mandate in Sacramento County ordering 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 will not interfere with the printing and distribution of the pamphlet.[50]

Despite the strict time constraints on voters to challenge materials in the pamphlet, court challenges are common. Ten petitioners, for example, sought writs against the June 1990 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 pamphlet.[51]

4. 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 attorney general or legislative analysts' summaries may avoid. For practical reasons, however, and to screen out frivolous arguments, states 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.[52]

a. Procedures for Selecting Ballot Arguments in California

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.[53] 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.[54]

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50. Cal. Gov't Code §88006 (West 1987); Cal. Elec. Code §3576 (West Supp. 1990).

51. Telephone interview with Pitman, *supra* note 29.

52. 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).

53. Graham, *id.* at 453.

54. Cal. Elec. Code §3565 (West 1977).

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.[55] 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.[56] 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.[57] 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

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.[58] 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.[59] 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.[60] 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.[61]

In San Francisco, the primary proponent and opponent file an official argument and rebuttal that is published at no charge immediately after the ballot analysis. An unlimited number of additional arguments may be printed at the back

55. Cal. Elec. Code §3526 (West 1977).

56. Cal. Elec. Code §3527 (West Supp. 1990).

57. Graham, *supra* note 52, at 453.

58. *See* Graham, *supra* note 52.

59. Or. Rev. Stats. §251.255 (1988).

60. Lubin v. Panish, 415 U.S. 709 (1974).

61. Gebert v. Patterson, 186 Cal. App. 3d 868 (1986). The case involved the City and County of San Francisco.

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.[62]

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).[63]

5. 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 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.[64]

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.[65] Campaign managers in California have estimated that 50% of voters use the booklet.[66] 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.

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.

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62. San Francisco's November 1988 ballot pamphlet contained 55 state and local ballot propositions. The city's June 1990 ballot was almost as long.

63. 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.

64. Donald Balmer, State Election Services in Oregon, at 42 (1972).

65. Hugh Bone, The Initiative in Washington, 1914-1974, Washington Public Policy Notes 2 (Oct. 1974), at 5.

66. Robert Benedict, Some Aspects of the Direct Legislation Process in Washington State: Theory and Practice 126 (1975) (unpublished Ph.D. dissertation, University of Washington).

Among those who received the pamphlet, no less than 82% read all or part of it in every election year surveyed. No fewer than 87% who read the pamphlet felt the information was somewhat or very helpful. (See Table 7.4)[67]

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 publicized ballot measures, 33% of California voters indicated the voters' pamphlet was their primary source of information.[68]

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).

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%).[69]

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,

67. 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.

68. Magleby, *supra* note 47, at 136.

69. League of Women Voters, Initiative and Referendum in California: A Legacy Lost?, at 54-55 (1984).

television news, televised debates and television advertising were rated below the ballot pamphlet as less useful sources of voter information.

In cases of lesser-known ballot measures, the pamphlet will be the only conveniently available source of information. Professor Betty Zisk observes, "I have 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."[70]

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

70. Betty Zisk, Money, Media and the Grass Roots: State Ballot Issues and the Electoral Process, at 254 (1987).

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.[71]

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.

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.

Perhaps the most comprehensive survey on the demographic background of those who read the ballot pamphlet was conducted for California's November 1990

71. Magleby, *supra* note 47, at 135.

election by Dubois, Feeney and Costantini.[72] 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 State 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 issues before the election. These independent sources tend to be less reluctant than the state to discuss controversial matters in their pamphlets. The background information they provide, especially in the Town Hall pamphlet, is considerably more extensive than the state's analysis, 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.[73] 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.

The official California voters' pamphlet may shy away from such extensive discussions for two reasons. First, some of the available factual data about tobacco 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. State

72. Philip Dubois, *et al.*, The California Ballot Pamphlet: A Survey of Voters, a preliminary report prepared for the California secretary of state (Mar. 1991).

73. 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.

officials are acutely sensitive to charges of bias—even to the point of failing to give voters useful information. Second, the state pamphlet publishes 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 because they already appear in the state pamphlet.

1. Readability

The privately-published pamphlets studied appear more readable than the state version. Town Hall of California's pamphlet benefits from its format.[74] 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."[75]

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 state pamphlet descriptions must appear in the same order as the measures appear on the ballot.[76] 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.[77]

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

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74. Town Hall of California did not prepare a ballot pamphlet for the 1990 elections.

75. 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).

76. Ballot order of statewide initiatives is statutorily determined as the order in which they qualify for the ballot. Cal. Elec. Code §10218 (West 1977).

77. Two 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.

directly comparing and contrasting their provisions. Town Hall's pamphlet alerts the reader to conflicting provisions in a final paragraph of its analysis.[78] 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.

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

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

78. 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."

only a limited impact on voting behavior,[79] these studies examined the impact of elite 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.[80] When issues are difficult, voters want to know who backs the measure and who opposes it. They often cast their ballots accordingly.

D. In the Commission's Judgment, Substantial Improvements Should Be Made in the Ballot Pamphlet and Other Sources of State-Sponsored Information

By far the most important form of state-sponsored election information is the ballot pamphlet. California's pamphlet is impressive but a number of improvements in organization and design would enhance its usefulness to voters. The state also plays a role in informing voters by preparing official descriptions of initiative proposals that are printed on each petition and on the ballot itself. Procedures should be established to optimize the readability and fairness of these descriptions. Additionally, the dissemination of election information can be enhanced through alternative mediums, such as videocassettes and toll-free telephone messages.

1. Mailing or Publishing a New Summary Ballot Pamphlet Shortly Before the Election

The Commission believes there is a pressing need for a new type of short ballot pamphlet—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 three weeks before the election.

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 secretary of state's office at the same time as the official voters' 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 and to update the information in the voters' pamphlet (since, if the summary were mailed or printed shortly before the election, it would contain the most recent financial disclosures).

Some 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 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 (prepared by the attorney general and

79. *See, e.g.*, Zisk, *supra* note 70; Magleby, *supra* note 47, at 152-58.

80. Leo Wolinsky, *For Prop. 103, Biggest Selling Point May Be the Salesman*, Los Angeles Times, Nov. 2, 1988.

legislative analyst), 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 total legislative vote for and against each measure (along with the vote subtotals for Democrats, Republicans and Independents). A mock-up of such a summary appears in Appendix K to the Commission's report.

The summary ballot pamphlet would be mailed to all registered voters three weeks before the election. According to estimates obtained from the state printer and the U.S. Postal Service, the summary could be printed and mailed to all registered households for under $2 million, or *less than 15 cents per registered voter.*[81] The secretary of state could also distribute copies of these summary pamphlets at city halls, public libraries, universities and polling booths. A statewide mailing would ensure that all voters received a copy. It would contain the most recent financial disclosures and would catch the voters' attention by the fact of its separate mailing.[82]

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 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 state 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

81. This figure is based on a summary ballot pamphlet produced and mailed to 9.5 million registered households (reaching the state's more than 13 million registered voters) three weeks before the election. State Printer Don Male estimates printing costs would not exceed $270,000 for a summary which allowed space for up to 16 propositions. Affixing mailing address labels to each summary would add another $200,000 to $300,000 to the costs. Telephone interview with Donald Male, California State Printer (Jan. 7, 1982).

82. California might also print the Summary Ballot Pamphlet in major daily circulation newspapers around the state, as is done in Arkansas, Colorado and Utah, for example. In addition, the Summary Ballot Pamphlet could be inserted as a pull-out chart at the front of California's existing official ballot pamphlet. Although these methods might be useful to supplement the recommended separate mailing three weeks before the election, they would be substantially less effective if utilized alone.

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 State

Several structural changes to the ballot pamphlet can also be made to highlight its informational value. Some of these changes—such as redesigning the official summary prepared by the attorney general to include bullets and moving the texts of each measure to the back of the pamphlet—have already been adopted by the secretary of state.[83] 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.[84] 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 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."

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83. 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.

84. 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).

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 the secretary of state and attorney general some discretion in this field. The secretary of state 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 attorney general 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 general makes such a determination, he 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 attorney general should make this determination at an early enough date to allow for expedited court review of his decision and the 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 general, rather than the legislature, 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 statutory and constitutional measures are both approved, the constitutional amendment will control regardless of relative vote share.

b. Keeping Texts at the Back of the Pamphlet

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.[85] In 1990, the secretary of state adopted this reform and the legislature subsequently passed legislation mandating that the text be placed at the back of the pamphlet. It should be continued. Additionally, it would be less confusing to highlight changes in existing laws with red ink rather than strikeout and italics.

85. Until 1974, proposition texts were printed as a separate appendix at the back of the voters' pamphlet.

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 secretary of state 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, legislators 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 legislators whose judgments they respect—authors of bills, committee chairs or individual legislators 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 secretary of state 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 the attorney general issues 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 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. 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 three weeks 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 Legislators' Votes

Elsewhere in this report (see Chapter 3, "Initiative Drafting and Amendability") the Commission recommends that the legislature be required to vote on every qualified initiative that reaches the ballot. In conjunction with this recommendation, the Commission also recommends that California follow the example of Massachusetts and record the floor vote of legislators in the voters' pamphlet. A one-page chart should be placed at the back of the ballot pamphlet listing legislator's name, party, electoral district, residence and vote cast on all initiatives. This legislative vote and partisan breakdown will also give voters useful information on the positions of their legislators who presumably have given the question serious thought. A public recording of the vote will also enhance the accountability of legislators 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.[86] 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."

86. 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).

- *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 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 of the secretary of state against charts and graphs in the pamphlet,* especially in the legislative analyst's description. The secretary of state has the authority to permit the use of charts, diagrams, photographs and other graphic designs in the pamphlet. As a matter of practice, the secretary of state does not accept 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 attorney general's caption and summary should be simplified and made more descriptive. The language used in the official caption and summary should target the 12th grade reading level.

The summary and caption is the most intimidating portion of the initiative petition and the ballot pamphlet. Official ballot measure descriptions, apparently in an overzealous drive for neutrality, are written in "legalese" and a manner that often says very little. In the November 1988 election, for example, the caption for Proposition 90 read: "Assessed Valuation. Replacement Dwellings." Even to the well-educated reader, this caption provided very little information on what the measure was about. A caption should describe a proposition's principal objective and do so in plain language. A more appropriate caption might have been: "Allows Senior Citizens to Keep Low Tax Base When Selling Home."[87]

87. Proposition 90 on California's November 1988 ballot proposed to extend an exemption from new tax appraisals on replacement homes in different counties for persons over 55 years of age when their new homes were of equal or lesser value than their current home. It allowed such persons to move to a new home of equal or lesser value and transfer their current tax base to the new property. Otherwise, under Proposition 13, the new property would be assessed at full value. Such a tax

a. Targeting 12th Grade Reading Level

Although it may not be possible to simplify the language of the official description to the 8th grade level, it should be written in a less legalistic manner. If initiative proponents and opponents can state their case in relatively clear language, the state should be able to do the same in its caption and summary. At the very least, the 12th grade readability goal that applies to the legislative analyst's summary should be extended to the attorney general's official description.

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 has now been adopted in California.

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 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.

5. Making Use of Modern Communications Media

The secretary of state has done a reasonably good job in keeping pace with modern communications technologies and should continue present efforts to disperse voter information more effectively. The secretary of state's office, for example, has issued the ballot pamphlet to public libraries throughout the state on audiocassettes to assist the blind.[88] This concept should be further explored to

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exemption already existed for replacement homes within a county. Proposition 90 was approved by the voters.

88. To explain the 17 propositions on the June 1990 ballot to blind voters, the secretary of state distributed audiotapes to public libraries. The total listening time of the pamphlet at "talking book" speaking speed was 5.5 hours.

In the November 1990 election, the secretary of state decided to distribute audiotapes of the ballot pamphlet to anyone who requested them, not just the blind. These tapes consisted of four one-

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)

hour cassettes which excluded the texts of the ballot measures. Within four days of the announcement that these audiocassettes were available, voters across the state requested over 1,000 tapes.

include video. The practice of using videos in candidate campaigns, for example, is increasing. About 20 campaign races in the 1990 primaries across the country—for Governor, congressional and state legislative seats—used videocassettes.[89] In these campaigns, the tapes were usually distributed through the mail. A campaign consulting firm in the District of Columbia produces VHS home video commercials for candidates at a price of less than $2 per tape.[90]

Placing the entire voters' pamphlet on a VHS tape would be far too lengthy and unexciting for most viewers. However, a brief version in which a simple explanation of the measure is offered by the secretary of state, followed by arguments for and against presented by the primary adversaries, could be quite informative. The tape could be made available as a public service in libraries and video stores.

Another affordable service would be a toll-free telephone number, allowing interested voters to call and hear a pre-recorded analysis of each ballot measure and arguments for each side. A voter might call an 800 number (for example, 1-800-CAL-VOTE) and access a computerized voice mail system which would explain a menu from which the caller may choose specific options. If a caller wants to learn more about Proposition 119, for example, the caller would be instructed to punch in the numbers "119." Then the caller would be instructed to punch in "1" for the official summary, "2" for the analysis by the legislative analyst, "3" for arguments in favor, "4" for arguments against, "5" for all of the above and "6" for the telephone numbers of each side's campaign headquarters for further information. Proponents and opponents could be permitted to make their own tapes of arguments for and against, (within specified time limits) and to update these recorded messages every few weeks or so.

E. The Commission Believes That Some Proposed Ballot Pamphlet Reforms for Improving Its Readability Are Impractical or Undesirable

California's ballot pamphlet has 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 used by the attorney general or legislative analyst 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

89. Doug Willis, *Old-Fashioned Ideas Spread via High-Technology,* Los Angeles Daily Recorder, Aug. 28, 1991; Randy Diamond, *Vanity Videos for Politicians,* San Francisco Examiner, May 13, 1990.

90. Political Video Duplicators, Washington D.C. The firm also includes full color self-mailer sleeves to enhance the presentation of the tape.

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 the California ballot.

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 state 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 would be counterproductive in the context of California's ballot pamphlet. California's November 1990 pamphlet, for example, was 222 pages long—even with only one argument for and against each measure. By contrast, it is not uncommon for San Francisco, which allows ballot access for purchase, to receive five, six or even seven arguments for or against a given ballot measure. The state of California could expect even more arguments if it allowed a similar system of open ballot pamphlet access.

Open access to the pamphlet would dramatically expand the length of an already-too-long state pamphlet. This would cause three negative consequences. First, the cost to the state for preparing, publishing and mailing the pamphlet would significantly increase. Second, additional delays would result in distributing a pamphlet that has already missed its mailing deadlines in the last two 1990 elections. Expanding the number of ballot arguments in the pamphlet would very likely expand the number of delaying lawsuits. Third, many voters have been "turned off" by the length of California's pamphlet. Adding countless more pages to the pamphlet with open access could alienate many more voters from this important source of impartial election information.

3. Eliminating Texts of Initiatives

One frequently suggested reform would be to eliminate the legal text of initiatives from the ballot pamphlet altogether. Very few people actually read initiative texts, and their legalese constitutes an intimidating part of the pamphlet. Furthermore, the pamphlet would be substantially reduced in size if the texts were not included—probably by as much as half—and the state would save money on printing and distribution. One estimate on cost savings is that elimination of the texts could save the state coffers nearly 20% of the cost of printing and distributing the ballot pamphlet.[91]

Although eliminating the texts of measures from the pamphlet enjoyed some initial support among members of this Commission, in the end the Commission decided not to recommend it. 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

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91. One study estimated that California's June 1988 ballot pamphlet, which cost $8.5 million to prepare and distribute, would have cost approximately $1.8 million less if the texts of ballot measures were not included. Philip Dubois and Floyd Feeney, *Improving the Initiative Process: Options for Change*, Report to the California Policy Seminar, University of California/Davis (June 30, 1990), at 31.

and analysis. It is less likely that state 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. The actual wording of most initiative proposals throughout California history would have been lost if not preserved in the ballot pamphlet. Finally, the fact that some people do read at least parts of the texts is reason enough to make the actual proposed legislation widely available.

An alternative in which the pamphlet could contain a postcard for registered voters to mail and obtain the full texts of ballot measures would be 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.

F. Conclusion

California's 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. 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 California's Initiative Process

"If we get a Proposition 103-type initiative for health care, it will make the [$80 million 1988] insurance fight look like a Mary Poppins tea."

— A representative of the health industry commenting on a possible forthcoming health care initiative[1]

In 1911, frustrated by the spectacle of wealthy special interests using money to bribe legislators and influence legislation, the citizens of California enacted a system of direct democracy, allowing them to bypass the legislature and its moneyed interests altogether. The Progressive reformers who backed the initiative process 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 advocacy and 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,"[2] not the powerful interests of money.

Today, some 80 years later, money often dominates the initiative process even more than it does the legislative process. Money alone and in sufficient quantities can *qualify* virtually any measure for the ballot. And money in large amounts can

1. *Quoted in* Editorial, *Sacramento Senses All the Symptoms,* Los Angeles Times, May 4, 1990.
2. California Ballot Pamphlet Special Election Oct. 10, 1911, Arguments in Favor of SCA 22.

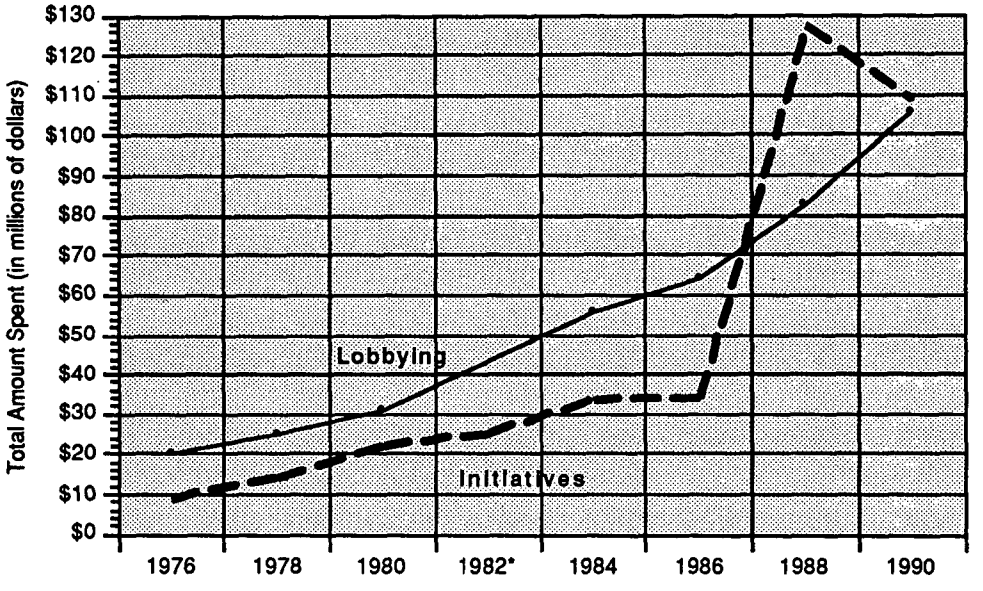
frequently *defeat* any measure so long as that measure is outspent by a wide enough margin.

As described later in this chapter, California's initiative process has become an expensive battleground in which the most sophisticated and successful media weaponry is available only to those with enormous sums of money. In 1976, for example, the total amount of money spent to influence legislation through the lobbying process was twice that spent trying to influence voters through the initiative process. In both 1988 and 1990, however, *more* dollars were spent to persuade voters in ballot measure contests than to lobby California state legislators. (See Table 8.1.)

Table 8.1

EXPENDITURES TO INFLUENCE PUBLIC POLICY

Money Spent Lobbying State Government vs. Money Spent Lobbying the Public on Initiatives



*The Fair Political Practices Commission did not compile lobbying expenditure information for 1982.

Source: Lobbying Expenditures—California Fair Political Practices Commission; Initiative Expenditures—California Commission on Campaign Financing Data Analysis Project

To assess the influence of money over the initiative process, the Commission conducted two distinct computerized data analysis projects. 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 initiative campaigns in California history*.[3] This analysis, which covered 34 years of initiatives from 1956 to 1990, also helped the Commission develop an historical perspective on the role of heavily one-sided spending in initiative contests. The

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.

second data analysis project evaluated the patterns of low- and high-spending campaigns in the *current* initiative process by analyzing *all 18 initiatives in the 1990 primary and general elections.* (See Table 8.2 for a listing of the initiatives studied in the Commission's two data samples.) Altogether, 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) and compared that data with information from the California Fair Political Practices Commission (FPPC). (See Appendix F for a complete summary of the Commission's data analysis project.)

A. The Qualification of Initiatives Now Depends Largely on Money

Professional signature-gathering firms now boast that they can qualify *any* measure for the ballot (one "guarantees" qualification) if paid enough money for cadres of individual signature gatherers, and their statement is probably true. 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. Qualifying an initiative for the statewide ballot is thus no longer so much a measure of general citizen interest as it is a test of fundraising ability. Instead of waging volunteer petition campaigns for broadbased grassroots support, initiative proponents now engage in intense searches for large contributors willing to fund increasingly expensive paid circulation drives. Finding five to ten major funding sources has proved to be more efficient and less time consuming than organizing thousands of volunteers to obtain hundreds of thousands of signatures. (For a comprehensive review of initiative qualification procedures, see Chapter 4, "Circulation and Qualification.")

1. Sources of Qualification Funding

In recent elections, *one* business organization or individual has single-handedly qualified an initiative for the ballot. In 1984, for example, Scientific Games of Atlanta, a manufacturer of lottery tickets, contributed 99.6% ($1.1 million) of the total qualification funding raised ($1.11 million) to qualify Proposition 37 (the successful lottery initiative) for the ballot.[4] In 1988, San Francisco Bay Area attorney Jim Rogers, with approximately $300,000 (93% of the total $324,000 raised) qualified his advertising disclosure Proposition 105 for the ballot.[5] 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.

In earlier years, the petition circulation process appeared to serve not only as a measure of broadbased voter interest but as a "test of seriousness" for campaign contributors. Initiative proponents would typically raise small amounts of "seed" money to fund volunteer-based petition circulation drives. Once the measure qualified, more significant contributions would flow into the campaign. Proponents of 1976 anti-nuclear power Proposition 15, for example, raised just 1% ($33,000) of their total contributions ($1.1 million) during the qualification period, more than half of which was raised in amounts less than $100. Proposition 5 (anti-smoking—1978) proponents raised 3% of their total contributions during the circulation phase.

By contrast, recent initiative campaigns have "front loaded" their total fundraising efforts, raising larger contributions from fewer donors to fund costly

4. California Fair Political Practices Commission, Report of Receipts and Expenditures, 1984 General Election.

5. California Fair Political Practices Commission, Report of Receipts and Expenditures, 1988 General Election. Proposition 105 was passed but subsequently invalidated by the courts.

paid circulation efforts. Proponents of 1990 endangered wildlife protection Proposition 117, for example, raised 56% of their total contributions during the qualification period. In the same year, proponents of Proposition 131 (campaign finance) raised 58% of their total funding during the qualification period. Proposition 132 (anti-gill net) proponents raised 76% of their total contributions during the qualification effort. (As discussed below, many proponents also *spend* a majority of their total campaign dollars on petition circulation.)

Table 8.2

BALLOT MEASURES INCLUDED IN THE COMMISSION'S DATA ANALYSIS

The 18 Most Expensive 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

1990 Primary and General Election 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.

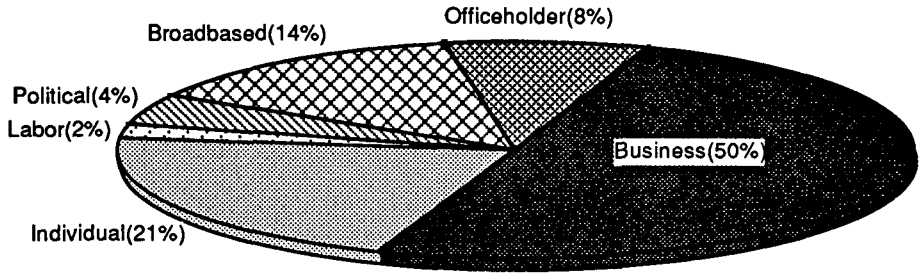
Source: California Commission on Campaign Financing Data Analysis Project

Business historically has been the largest contributor to qualification drives, contributing 50% of the total funds for initiative circulation in 1990. Individuals contributed 21% of the total, whereas broadbased organizations gave 14% and officeholders contributed 8%. Contributions from political parties and labor organizations each accounted for less than 5% of the total circulation dollars. (See Table 8.3.)

Table 8.3

QUALIFICATION SOURCES OF CONTRIBUTIONS

1990 Initiative Campaigns



Source: California Commission on Campaign Financing Data Analysis Project

The high costs of qualification have had the effect of "tapping out" major contributors. Leo McElroy, media consultant for the "Yes on 134" (alcohol tax) campaign, reported that after raising $1 million to qualify the initiative (64% of their total contributions), the campaign was hard-pressed to raise additional funds to "pay our bills and meet our payroll."[6] One of the major sources of contributions—emergency room doctors—had apparently been exhausted.

2. Escalating Qualification Expenditures

As discussed in greater detail in Chapter 4 ("Circulation and Qualification"), the dollars devoted to paid circulation have increased considerably. In 1976, the median proponent petition circulation expenditure was below $45,000; by 1990 this figure had risen 2,200% to over $1 million. (See Table 8.4.) Total proponent qualification expenditures in 1990 topped $20 million; the median cost per signature was $1.21.[7]

The use of paid circulators and signature-gathering firms by most serious initiative proponents has greatly increased qualification costs. Because the greater number of initiatives paying for qualification has increased, the competition for signature gatherers has driven up their price. Ken Masterton of the petition circulation firm Masterton & Wright paid petition circulators approximately 33

6. *Quoted in* Virginia Ellis, *Pressure Increases to Deny Proponents Free Air Time,* Los Angeles Times, Aug. 29, 1990.

7. The "cost per signature" figure is derived from the total costs associated with initiative qualification: legal assistance in initiative drafting, petition printers, signature-gathering costs, payments to petition circulation firms, direct mail costs and other organizational expenses. Costs per signature are to be distinguished from the payments to signature-gathering firms—amounts which are only part of the total costs of signature gathering.

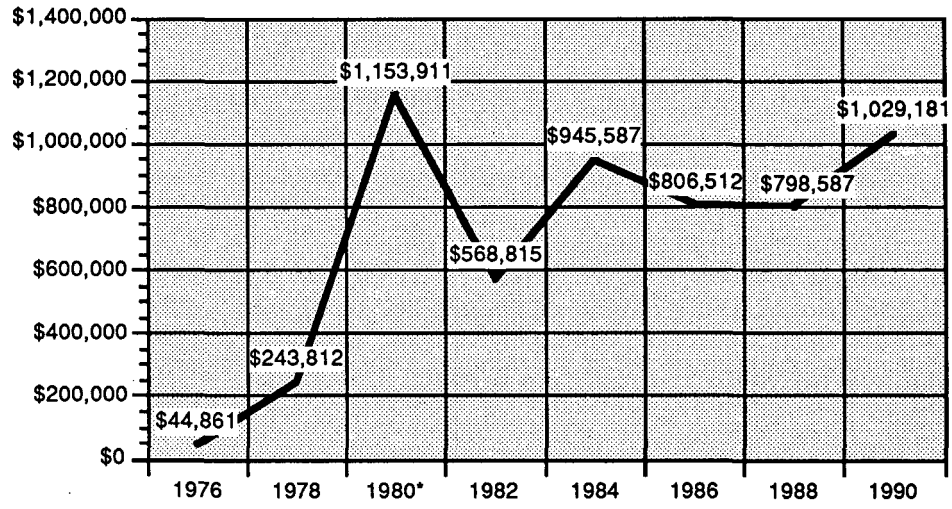
cents per signature in 1988; by 1990, he was paying up to 50 cents per signature.[8] Masterton says, "Paid circulators go where the money is. A modestly funded effort with paid signature gatherers can lose half of them in one day if a better funded measure hikes the price."[9]

Table 8.4

RISING INITIATIVE QUALIFICATION COSTS

Median Petition Circulation Expenditures for California Initiatives

By Election Year, 1976 to 1990



*1980 showed unusually high petition circulation costs because only four initiatives qualified for the ballot, and two of them (income tax Prop. 9 and anti-rent control Prop. 10) spent very large amounts on direct mail qualification. 1990, in contrast, witnessed a high median qualification cost despite a large number of initiatives; more than $1 million each was spent on qualifying 10 of 18 initiatives on the ballot.

Source: California Commission on Campaign Financing Data Analysis Project

The recent industry use of "counter initiatives" has driven qualification costs even higher. Industry groups wait to see what issues qualify for the ballot and then quickly draft counter measures to negate specific provisions in those unfavorable initiatives. Because such tactics often leave little time for petition circulation, industry groups—sometimes sponsoring more than one rival measure—pay top dollar for massive, rapid and last-minute petition circulation drives sometimes lasting less than 50 days. The pool of circulators is thus diminished and the remaining signature gatherers demand higher rates.

During the qualification period for the June 1990 ballot, for example, proponents of Pete Wilson's criminal justice reform measure (Proposition 115) spent $798,000 to qualify their measure. When John Van de Kamp circulated a nearly identical initiative for the November 1990 ballot (Proposition 129), he spent over $1 million. This 25% increase was partly attributable to the presence of other measures being circulated. The crowded field drove up the costs per signature. Kelly Kimball of the petition circulation firm Kimball Petition Management reported, "We had to

8. Telephone interview with Ken Masterton, Masterton & Wright (Sept. 5, 1990).

9. *Quoted in* Harold Meyerson, *The Year of the Initiative,* L.A. Weekly, May 11-17, 1990.

bounce the price on the street to 40 cents. It seems to have topped out at 50 cents—but in the first two weeks of May it could go to 70 to 75 cents." According to Kimball, the average paid circulator "is now making in excess of $50 an hour."[10]

As a result of these pressures, spending to qualify 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 qualification expenditures has been most acute among traditionally low-cost ballot measure drives. Initiative proponents who once rested their qualification efforts on volunteers 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.

The rising costs of current qualification drives 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 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.[11] Proposition 131 was soundly rejected by the voters.

B. Large Contributions Now Dominate Initiative Campaigns

Fierce competition between rival interests and the resulting escalation in initiative campaign costs have created heavy pressures to raise money. Proponents

10. *Quoted in* Meyerson, *id.*

11. 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.

now seek larger and larger contributions from fewer contributors. Grassroots fundraising is modest, and small contributors play little part. Consequently, fundraising patterns for the 18 ballot measure campaigns in 1990 in large part mirrored those of the 18 most expensive initiative campaigns in California history.

1. The Principal Sources of Contributions

General initiative contribution patterns reveal an overwhelming business presence. Among the 18 highest spending initiatives surveyed since 1956, businesses gave 83% of the total dollars raised. Other sources paled by comparison. Individuals gave 8%, broadbased organizations 3%, officeholders 2% and political parties 1%. Labor, usually a major funding source for state and national candidate campaigns, contributed just 3% of the total dollars raised.

Similarly, of the contributions made to all initiatives in 1990, businesses outpaced all other sources—generating 66% of all moneys raised. Large contributions from non-business sources, however, boosted the rates of contributions from individuals (12%), officeholders (9%) and broadbased organizations (5%). Funding from political parties, important in two reapportionment campaigns (Propositions 118 and 119), accounted for 7% of the total 1990 dollars raised. Labor contributions remained proportionally small (1% of the total). (See Table 8.5.)

a. Massive Business Contributions: Part of the "Cost of Doing Business" in California

As more and more regulatory and taxation measures have reached the statewide ballot, major funding of initiative campaigns—like campaign contributions to officeholders or expenditures to lobby state government—has become part of the corporate "cost of doing business" in California. The percentage of total business contributions to 1990 initiatives (66%), in fact, exceeded the level of business contributions to state legislative candidates (59% in 1988, the latest figures compiled) and rivaled the percentage of business expenditures on state lobbying (71% in 1990).

Substantial corporate funding in California initiative campaigns has generally occurred in opposition to measures affecting specific industry interests. Since 1978, for example, the tobacco industry has 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.[12]

Industry groups and businesses maintain that such immense contributions to initiative campaigns are essential to defend their livelihoods. "When the survival of your industry is at stake, there is no greater priority," a spokesman for the anti-Proposition 130 (forest protection) campaign said.[13] The passage of tobacco tax Proposition 99, for example, 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.[14] The $22 million "investment" the tobacco companies made in opposing

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12. 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.

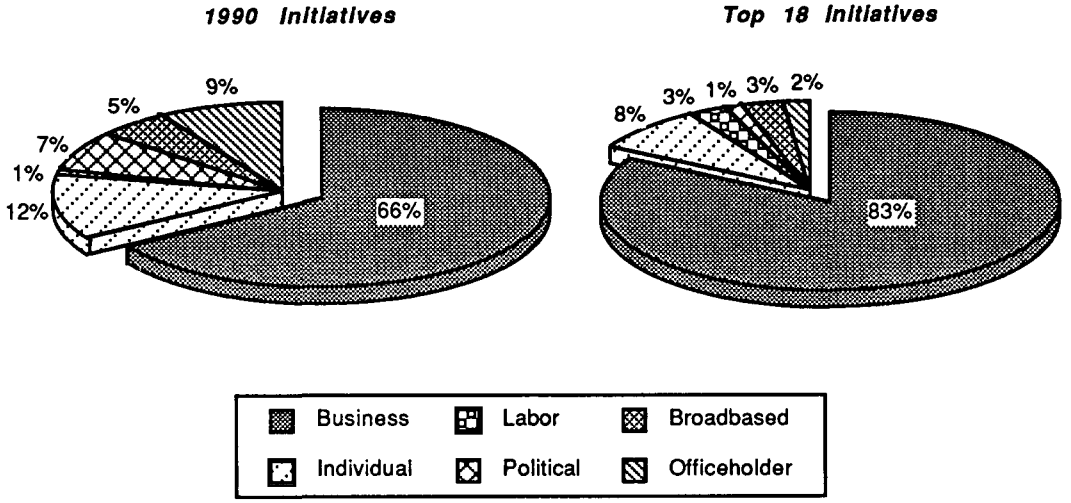
13. Anti-Proposition 130 campaign spokesman David Fogarty, *quoted in* Paul Jacobs and Daniel M. Weintraub, *Corporations Pump Money Into Ballot Campaigns,* Los Angeles Times, Oct. 27, 1990.

14. 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

Proposition 99, according to the tobacco industry, was small in comparison to these massive losses.

Table 8.5

SOURCES OF CONTRIBUTIONS



Source: California Commission on Campaign Financing Data Analysis Project

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,[15] the use of counter measures was instrumental in the sound defeats of three initiatives on the November 1990 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).[16] In contrast to the

State Politics, Institute for Health Policy Studies, University of California, San Francisco (March 1991).

15. 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 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.

16. 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

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.[17] Anti-134 campaign manager Rick Manter proclaimed, "We will spend millions."[18] A liquor trade newsletter also reported, "[I]ndustry executives will [contribute] whatever is necessary [to defeat the tax]."[19]

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.[20] 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.[21]

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 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.[22] 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,

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primarily by the alcohol industry. Expenditures by the "No on 134" direct opposition campaign were also included.

17. *Quoted in* Meyerson, *supra* note 9.

18. *Quoted in* Kathy Zimmerman McKenna, *Ballot Bowl: Industries Seek to Undermine Consumer, Environmentalist Initiatives,* California Journal, Aug. 1990.

19. *Quoted in* Bradley Inman, *Spirits Industry Launches $20 Million Drive Against Tax Hikes,* Los Angeles Times, June 10, 1990.

20. 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.

21. *Quoted in* Virginia Ellis, *Anti-Tax Plan Called a Shill for Liquor Industry,* Los Angeles Times, Sept. 25, 1990.

22. 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.

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."[23] 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.[24]

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."[25]

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.[26] Forest industry-backed Proposition 138, while primarily aimed at "Forests 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

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23. *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.

24. 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.

25. *Quoted in* Meyerson, *supra* note 9.

26. 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 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.

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.[27] 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."[28]

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.[29] 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. Larger Donations From Individuals and Broadbased Organizations

Initiative campaigns in 1990 witnessed heavy 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."[30] 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."[31]

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

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27. *Quoted in* Tom Furlong, *Expensive Victory for Business,* Los Angeles Times, Nov. 8, 1990.

28. *Quoted in* Furlong, *id.*

29. 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).

30. *Quoted in* Mark A. Stein, *A Venture Into the Political Forest,* Los Angeles Times, Aug. 16, 1990.

31. *Quoted in* Richard Paddock and Maura Dolan, *Environment an Issue for Industry, Celebrities,* Los Angeles Times, Oct. 25, 1990.

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.[32] 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.[33] 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 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."[34] 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.

Broadbased organizations have also become essential contributors to many initiative campaigns. Some groups now engage in year-round fundraising campaigns to help sponsor initiative efforts. In 1984, the Howard Jarvis Taxpayers' Association contributed 56% of the total contributions received by its "Jarvis II" Proposition 36. In 1988, the proponents of Proposition 68 received the largest percentage of their funding from the broadbased organization Common Cause. In November 1988, supporters of Proposition 99 (the tobacco excise tax) received more than half of their total funding from broadbased health and anti-smoking organizations, such as the American cancer, lung and heart associations.

In 1990, several initiatives also 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).

c. Officeholders and Political Parties

Officeholder participation in the initiative process has grown in recent years, with officeholders playing the roles of both sponsors and major contributors. (See Table 8.6.) Statewide, legislative and local officials have used ballot initiative sponsorship as an alternative platform to enhance their statewide visibility and improve their electoral chances. In 1990, officeholders sponsored 11 of the 18 initiatives reaching the ballot and two of these were major candidates for

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

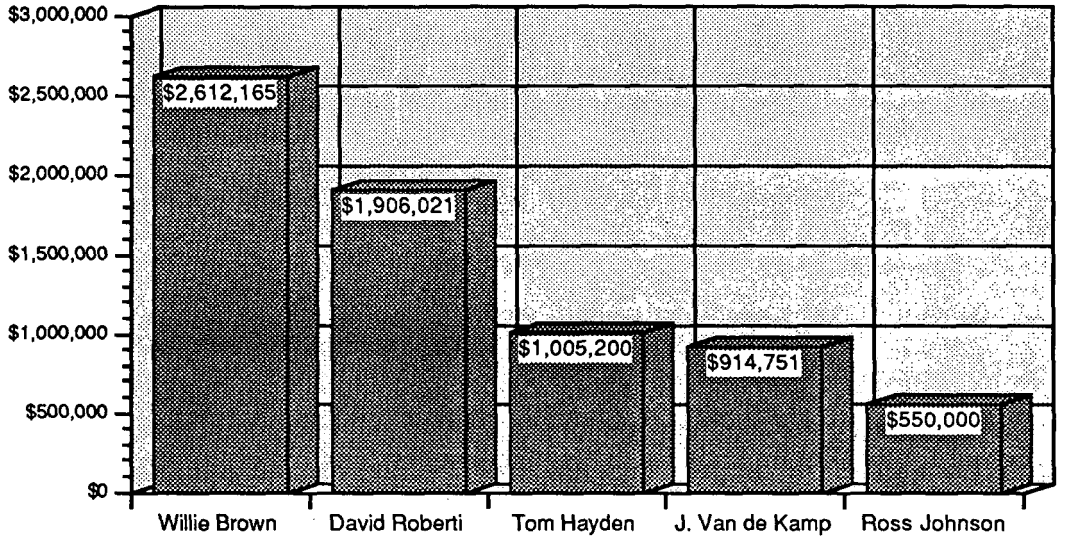
33. Telephone interview with Brian Huse, League of Conservation Voters (Dec. 17, 1991).

34. *Quoted in* Ellis, *supra* note 32.

Governor.[35] "Initiatives are becoming the candidate's issue papers," says one ballot measure media consultant.[36]

Table 8.6

TOP FIVE OFFICEHOLDER CONTRIBUTIONS TO 1990 CALIFORNIA INITIATIVE CAMPAIGNS



Source: California Commission on Campaign Financing Data Analysis Project

Previously, officeholder involvement in 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. In 1990, because contribution limitations under Proposition 73 capped the dollar amounts state elected officials

35. 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."

36. Los Angeles media consultant Sidney Galanty *quoted in* Bill Bradley, *Initiatives Become a New Political Tool—and a Big Business*, California Business, Feb. 1990.

could raise for their own campaigns, many officeholders formed "initiative committees" which were exempt from the candidate funding restrictions.[37] 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."[38]

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 statewide initiative campaigns. Their participation is generally limited to 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."[39] 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."[40]

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37. 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).

38. California Common Cause, A Fist Full of Dollars: 1989-90 Top Ten Contributors to Legislative Campaigns (July 1991).

39. *Quoted in* James W. Sweeney, *Democrats' Voter Drive Falters,* Daily News, Oct. 29, 1990.

40. *Quoted in* Sweeney, *id.*

d. Low Labor Involvement

The historically small number of initiatives affecting labor has meant low labor participation in the initiative process overall. Nevertheless, substantial labor involvement has 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 to opposition 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).

e. Out-of-State Contributors

A growing number of California initiatives have proved to be of national as well as statewide interest and many of these attract contributions from out-of-state sources. In 1984, for example, 99% of all contributions to lottery Proposition 37 came from out-of-state lottery interests. Approximately 88% ($2.3 million) of the total ($2.5 million) came from Atlanta-based lottery equipment manufacturer Scientific Games alone. In 1988, opponents of Proposition 99 also received nearly 100% of their funding from out-of-state tobacco companies.[41]

Measures affecting California's tax levels and general economic climate seem to attract the highest levels of out-of-state contributions. "There is a concern across the nation about our situation here," said a spokesman for the anti-Proposition 128 (Big Green) campaign. "Everybody seems to contend that a cancer that begins in California can spread across the nation."[42] Proposition 128's opposition campaign received more than half (55%) of its contributions from out-of-state.

Opponents of alcohol tax Proposition 134 also received significant percentages of contributions from out-of-state liquor and beverage companies. A spokesman for the Washington D.C.-based Beer Institute said, "Things that happen in California have a way of creeping eastward. It is very important that we look at California as a model state. That's why we have high visibility on this issue."[43] (The Beer Institute

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41. The definition of "out-of-state contributions" is an imprecise one at best. In some instances, it is clear that a contributor comes from a business interest with no ties to California—such as Scientific Games of Atlanta, which could not do business in this state prior to 1986. In other instances, business contributions come from out of state, yet the business contributor has offices and does business in California.

42. California Farm Bureau Federation and anti-Proposition 128 spokesman Clark Biggs, *quoted in* Jacobs and Weintraub, *supra* note 13.

43. *Quoted in* Virginia Ellis, *Liquor Industry Pours in Millions to Fight Tax Hike,* Los Angeles Times, July 7, 1990.

contributed more than $1.8 million to the anti-134 campaign.) John DeLuca, president of the California Wine Institute said, "In truth, this is the home of the California wine industry and the consequences to us of [Proposition 134] are devastating because it will have repercussions around the country. We are deeply concerned about this virus spreading to other states."[44]

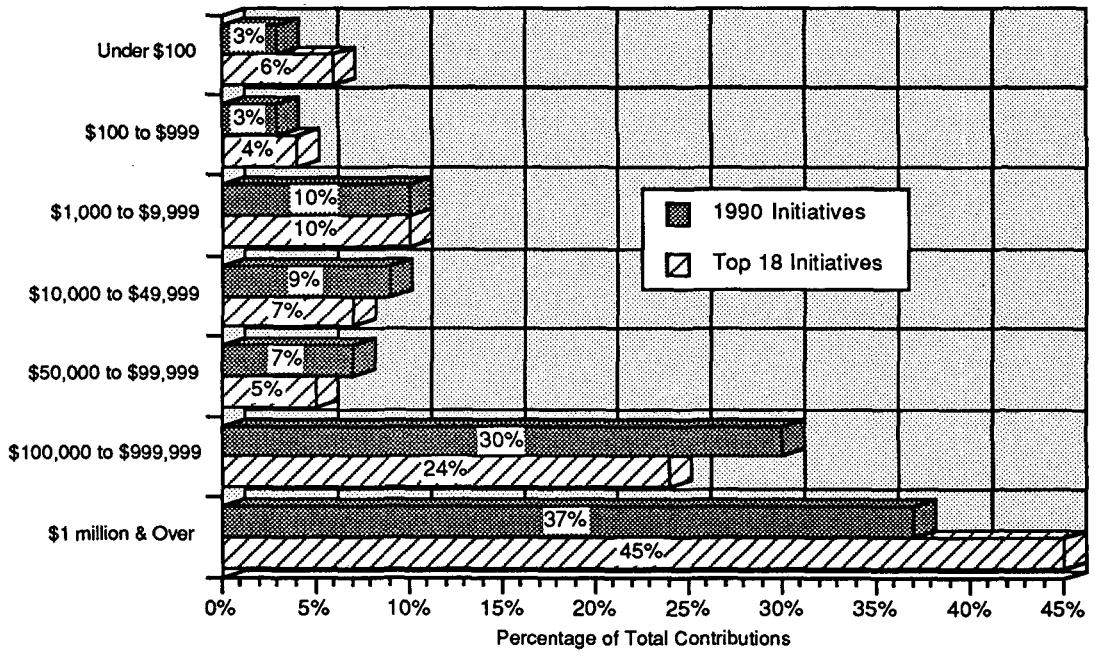
2. The Growing Reliance on Larger Contributions

With large contributions coming from all sides, ballot measure campaigns have become battles between fewer and fewer major interests. A majority of the funding for some 1990 initiative contests came from fewer than 10 contributors. In the campaign over forest protection Proposition 130, for example, *the proponents were funded almost entirely by two contributors*—Harold Arbit and Frank Wells—who gave contributions of $1 million or more. The opposition campaign was almost entirely supported *by 16 lumber companies* giving in amounts $100,000 or more.

Large contributions to the various initiative campaigns in 1990 flowed at a similar rate as they did to the 18 highest spending initiative campaigns since 1956. In 1990, two-thirds (67%) of the total dollars raised by all campaigns were received in amounts of $100,000 or more, as compared to 69% in the top 18 highest spending campaigns. Over one-third (37%) of all 1990 contributions came in amounts of $1 million or more, compared to 45% in the top 18 ballot measure campaigns. (See Table 8.7.)

Table 8.7

PERCENTAGE OF TOTAL CONTRIBUTIONS TO CALIFORNIA INITIATIVES ACCORDING TO CONTRIBUTION SIZE



Source: California Commission on Campaign Financing Data Analysis Project

44. *Quoted in* Ellis, *id.*

Contributions from small donors were least significant. Though contributors of less than $1,000 accounted for 78% of the total *number* of contributions to 1990 campaigns, they totaled just 6% of the total dollars contributed.[45] These patterns closely resemble those of the high-spending ballot measure campaigns surveyed since 1956, where under-$1,000 contributors also accounted for 78% of the total number but just 10% of the dollars contributed.

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.
- *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.

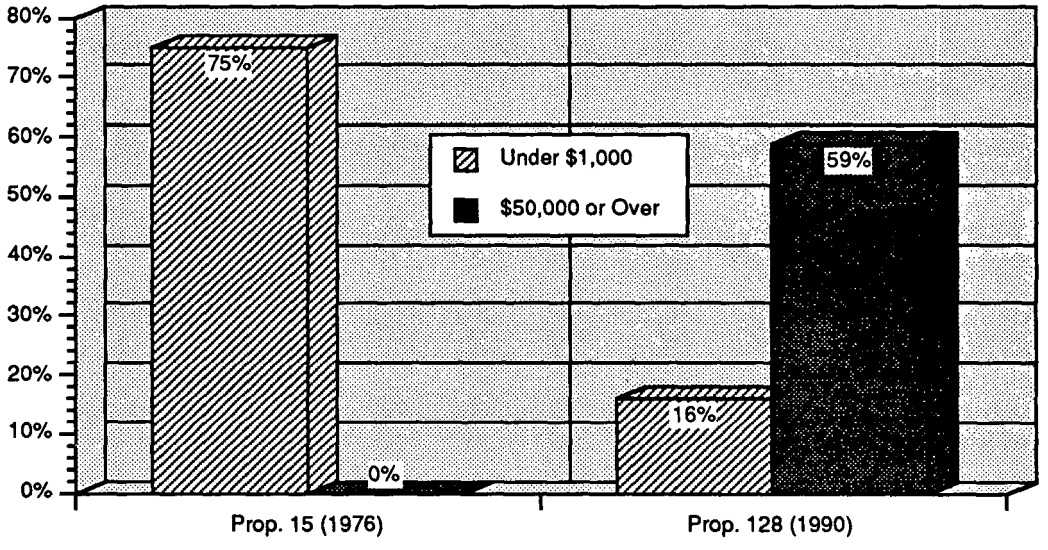
45. The number of contributors giving in amounts "less than $1,000" does not reflect contributions under $100, since these are not itemized on the reports.

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.

Table 8.8

PROPOSITIONS 15 (1976) AND 128 (1990) CONTRIBUTION AMOUNTS

Percentage of Total Dollars Raised Under $1,000 and $50,000 or Over



Source: California Commission on Campaign Financing Data Analysis Project

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.

3. "Logrolling" for Contributions

The incentives to raise large contributions have encouraged some initiative proponents to trade provisions in their proposed initiatives for major financial support (so-called "logrolling"). For the June 1988 ballot, Planning and Conservation League Executive Director Gerald Meral constructed park bond Proposition 70 in this manner. Ken Masterton of the petition circulation firm Masterton & Wright worked with Meral on the initiative. "It was Jerry's genius," Masterton said. "He auctioned off half of the initiative. We'd go to a meeting in L.A. and he'd say, 'You want to save the Santa Monica mountains? OK—how many signatures will you produce?' He'd balance this against the areas we'd include even if there weren't going to be circulators, like Baldwin Hills."[46]

For the November 1988 ballot, tobacco tax Proposition 99 which promised to raise and distribute $600 million in revenues was also partially developed with large campaign donors in mind. After the initiative passed, the major contributors to the

46. *Quoted in* Meyerson, *supra* note 9.

initiative—including the California Medical Association (CMA) and the American Cancer Society—engaged in intense competition for contracts to handle various aspects of the state's anti-smoking program. One representative of the CMA said that the groups were "fighting for this money like jackals over a carcass."[47]

For the June 1990 ballot, specific provisions of a $2 billion rail bond measure directly benefiting Southern Pacific Railroad were included after the railroad company promised financial support.[48] Southern Pacific subsequently provided the largest contribution to the initiative campaign ($382,000). In writing the November 1990 alcohol tax Proposition 134, proponents told key supporters, "Those wishing to include specific program allocations [written into the measure] will be expected to make appropriate contributions to the campaign effort."[49]

C. The Growth in Initiative Spending Is Driven by Increasingly Expensive Campaign Methods

With the plethora of issues and interests converging in the initiative process, total spending has steadily increased since the mid-1970s. In 1976, total spending by the four initiatives on the ballot was approximately $9 million. By 1988, total campaign costs for the 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. (See Table 8.9.) 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 gill net Proposition 132; all the rest spent more).

The highest amount spent on an initiative campaign in 1976 was approximately $4 million; in 1990, 11 of 18 ballot measure contests cost $4 million or more. High-spending initiative campaigns have been present in each election since 1976:

- **1976:** *$4 million* was spent in the battle over anti-nuclear power initiative Proposition 15. The nuclear power industry contributed more than $2.3 million in its successful effort to defeat the measure.
- **1978:** *$7 million* was spent by proponents and opponents of smoking regulation initiative Proposition 5. Expenditures of more than $6.4 million were made by the tobacco company-backed opposition.
- **1980:** *$7 million* was spent in the fight over anti-rent control Proposition 10. Business interests and landlords primarily funded the unsuccessful $6.6 million campaign.
- **1982:** *$8 million* was spent in the campaign waged over gun control initiative Proposition 15. The National Rifle Association and gun manufacturing companies directed more than $5.3 million to the successful opposition campaign.
- **1984:** *$10 million* was spent in the campaign over reapportionment initiative Proposition 39. During the same election, Proposition 36 generated over $10 million in spending. The Jarvis-sponsored Proposition 36 committee spent close to $9 million on its unsuccessful campaign.

47. *Quoted in* Dan Walters, *Cafeteria-Style Initiatives,* Sacramento Bee, Aug. 4, 1989.

48. *Id.*

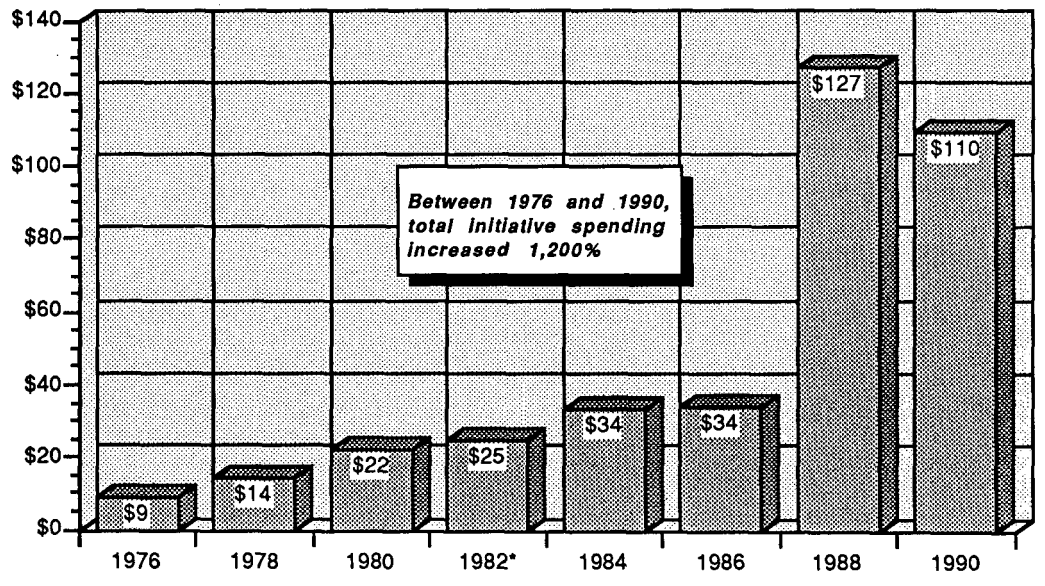
49. From a 1989 memo written by Planning and Conservation League Executive Director Gerald Meral to group supporting the proposed alcohol tax. *Quoted in* Walters, *supra* note 47.

- **1986:** *$11 million* was spent in the conflict over tort reform Proposition 51. The successful proponents outspent opponents by $1 million ($6.1 million to $5.1 million). In addition, $8 million was spent in the fight over the state salary limitation initiative Proposition 61.
- **1988:** *$80 million* was spent by proponents and opponents of five insurance initiatives. The insurance industry devoted more than $37 million just to support Proposition 104 (no-fault). Proponents of Proposition 100 (largely funded by California trial lawyers) spent nearly $16 million on their initiative alone. Successful Proposition 103 proponents spent less than $4 million.
- **1990:** *$41 million* was spent by proponents and opponents of alcohol tax Proposition 134. Opponents funded primarily by the alcohol and beverage industry spent $38 million on two counter-measures (Propositions 126 and 136) and a direct anti-134 opposition campaign. Proponents spent just under $2 million.

Table 8.9

RISING INITIATIVE CAMPAIGN EXPENDITURES

By Election Year, 1976 to 1990



Source: California Commission on Campaign Financing Data Analysis Project

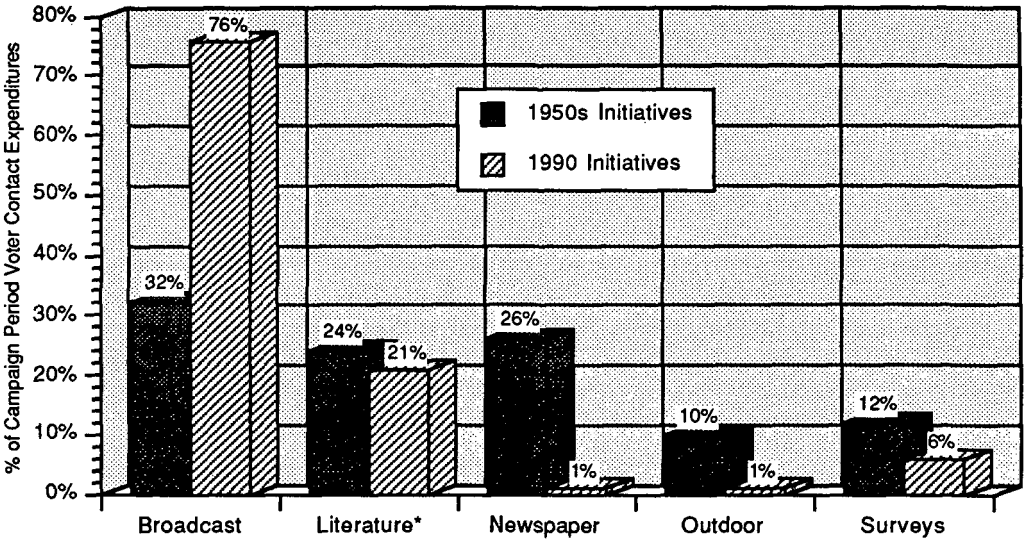
1. The Shift to More Expensive Campaign Methods

Accompanying the growth in initiative spending has been a shift of campaign resources toward expensive and sophisticated media-based campaigns. In initiative contests surveyed from the 1950s, campaign period voter contact strategies were based on a relatively even mix of newspaper advertising (32%), broadcast advertising

(26%) and campaign pamphlets (24%).[50] By 1990, voter outreach strategies rested almost entirely on expensive electronic media; more than three-quarters (76%) of all campaign period initiative campaign dollars spent on voter contact expenses went to broadcast advertising. (See Table 8.10.)

Table 8.10

THE SHIFT TO MORE EXPENSIVE VOTER CONTACT METHODS



*Includes direct mail, campaign pamphlet and slate mail expenditures.

Source: California Commission on Campaign Financing Data Analysis Project

The move away from lower-cost methods to more expensive media and direct mail campaigns has been led primarily by business-backed initiative campaign efforts. Lacking initial broadbased grassroots support for their positions, industry groups have employed highly sophisticated targeting techniques to measure and influence voter attitudes. As a result, the initiative process has become gorged with professional consultants, media buyers, direct mail houses and polling firms. "Essentially, we're doing market research," says Richard Ryan, a social psychologist and vice president of political polling firm Tarrance and Associates, which has worked on several industry-backed initiative campaigns. "We're trying out various arguments and studying the public's response. We need to know the public's reaction to the stimuli we throw at them."[51]

In 1988, the insurance industry spent millions on paid consultants to help shape its message for the voters. Campaign consultant Clint Reilly reportedly was paid between $7 million and $11 million to manage the insurance industry's counter

50. Voter contact expenditures include television and radio broadcast advertising, direct mail and campaign pamphlets, newspaper advertising, outdoor billboard advertising and signature gathering/survey expenditures.

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

initiatives and opposition campaigns.[52] An assistant to Reilly later said, "It was the most money in the history of the world. We had never seen this much money. No one had ever seen this much money."[53] In 1990, initiative campaigns paid approximately $23 million to professional consultants, paid staff and organizational costs (24% of the total 1990 spending).

a. The Use of Broadcast Advertising

"Television is our most effective weapon," says Jack McDowell of political advertising firm Woodward & McDowell, which has been employed by several industry-sponsored initiative campaigns.[54] At the outset of the 1978 campaign over anti-smoking Proposition 5, statewide polling figures indicated *strong* public support of the measure (58% of those polled in August 1978). After the tobacco company-backed opposition started a massive media campaign, public support began to evaporate. By September 1978, statewide polling showed voter approval of Proposition 5 dropping to 48%. A few weeks before the election, voter approval ratings dipped to 43%.[55] On election day, the measure gained only 45% of the vote. The opponents outspent supporters by 17-to-1 in broadcast expenditures.

Similar patterns were found in the 1980 campaign for oil surtax Proposition 11. Five months prior to election day, statewide polls indicated voter approval of 66%. Three months before the election, voter support declined to a still strong 58%. Three weeks before election day, after a barrage of opposition media spending outpaced proponent broadcast spending by 100-to-1, support dropped to 49%.[56] By election day, the measure received just 44% of the vote.

In past years, low-cost initiative campaigns have been aided by the Federal Communication Commission's "fairness doctrine." In 1990, however, a growing number of stations spurred by declining advertising revenues and uncertainty about the FCC's requirements refused to provide "fairness" time.[57] In 1992, the FCC repealed the fairness regulations entirely as they applied to ballot measures. (For a full discussion of the "fairness doctrine" and the FCC decision, see Chapter 6, "News Coverage and Paid Advertising.")

"In many ways [free air time] is the only hope that we have of getting our message to the voters," said 1990 Proposition 134 (alcohol tax initiative) advisor Jim Schultz. "If they can keep the [Proposition] 134 message from radio and television, then it doesn't leave us a lot [of] other avenues."[58] Proponents of Proposition 134 recorded less than $40,000 in broadcast advertising expenditures; opponents, on the

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52. Clint Reilly's standard contract includes a base fee plus a 15% commission on all broadcast media buys. Meyerson, *supra* note 9.

53. *Quoted in* Meyerson, *supra* note 9.

54. *Quoted in* Kirsch, *supra* note 51.

55. The Field Institute, *The California Poll: During Past 3 Months Public Has Reversed Itself on Prop. 5 Smoking Limitation Measure. Now Majority Opposes It* (Nov. 3, 1978).

56. The Field Institute, *The California Poll: Support for Prop 11 Dropping Sharply Three Weeks Before the Election* (May 22, 1980).

57. Attempting to encourage this trend, opponents of alcohol tax Proposition 134 threatened to withhold their substantial advertising dollars from broadcasters who gave opponents free air time. The American Association of Advertising Agencies backed their move, advocating that all broadcasters refuse to provide any no-cost broadcast time to underfunded initiative campaigns. "What the alcohol industry is really doing is blazing the trail for any industry organization that wants to influence public opinion by attempting to ensure that there will not be an evenhanded look at the issues in the broadcast arena," charged Proposition 134 media consultant Leo McElroy. *Quoted in* Ellis, *supra* note 6.

58. *Quoted in* Ellis, *supra* note 6.

other hand, spent more than $18 million on television and radio advertising (a spending advantage of over 450-to-1).[59] Voters soundly rejected the measure.

Having successfully obtained larger contributions, some traditionally lower-spending initiative proponents in 1990 bought substantial amounts of broadcast advertising time. Funded by large contributions, for example, Proposition 128 ("Big Green") proponents spent over $3 million on television and radio advertising. Broadcast spending by the proponents absorbed a large percentage (61%) of the total campaign period dollars spent. Proponents, however, were far out-matched: opponent broadcast advertising expenditures exceeded $10.3 million (a spending advantage of over 3-to-1).[60]

b. Direct Mail and Slates

In low-cost initiative efforts, small scale (sometimes one-time) direct mail campaigns are used to motivate known groups of supporters. Proponents of government reform Proposition 131, for example, spent $92,000 on direct mail pieces to the memberships of California Common Cause and Voter Revolt in addition to past contributors of a previous campaign finance reform initiative (Proposition 68 in 1988). Approximately $64,000 of the total was spent during the qualification phase of the campaign, ostensibly to raise signatures and financial support.

By contrast, high-spending initiative campaigns enlist sophisticated direct mail and slate strategies to reinforce their largely media-based efforts. Though both proponents and opponents of Proposition 130 spent similar amounts on broadcast advertising (around $5 million each), for example, the well-funded opposition was able to buttress their media strategies with a $2 million campaign period direct mail effort. Proponents spent far less on direct mail in the campaign period ($558,000).

While devoting $17 million to broadcast advertising, opponents of alcohol tax Proposition 134 spent $5.5 million on perhaps one of the most elaborate and sophisticated initiative direct mail campaigns to date. Included in the strategies were video tapes of campaign commercials, interactive mail pieces and voter registration cards (to be circulated by the targeted voter). In one multicolored mail piece, opponents printed the entire text of the proposed Proposition 134 with the slogan "Read the Fine Print." In another, targeted voters were provided with "draft letters" to be sent to charitable groups, alcohol venders and distributors to describe "the potential negative effects [the tax] could have on California business, taxpayers and state government should it pass."[61] In response, proponents devoted just over $310,000 to a direct mail campaign primarily targeting health professionals and anti-drunk driving activists.

The slate mail component of ballot campaigns has become costly. Far removed from the ideologically-based endeavors of the past, slate mail cards are big business in California. As of 1990, more than 60 slate mail organizations had registered with the state.[62] Placement on some slates frequently goes to the highest bidder. "The slate people lick their chops during the initiative wars," says Ken Masterton of

59. The anti-Proposition 134 broadcast expenditure figure includes the television and radio advertising budgets of Proposition 126, 136 and the "No on 134" campaign.

60. The anti-Proposition 128 broadcast expenditure figure includes the television and radio advertising budgets of Proposition 135 and the "No on 128" campaign.

61. Taken from an August 24, 1990 direct mail piece sent by the anti-134 campaign committee ("Taxpayers for Common Sense").

62. Dean Murphy and Paul Feldman, *Cries of Foul Fill Political Air as Slate Mailers Arrive,* Los Angeles Times, Nov. 3, 1990.

petition circulation and campaign consulting firm Masterton & Wright.[63] Opponents of 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.[64] With costs that high, "it is hard for citizens' groups to get a place on a slate card," says Masterton.[65] (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. Enough dollars will "guarantee" a place on California's ballot, and many might think that money is the critical factor during the campaign as well. 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.

The influence of paid advertising on voters is difficult to gauge, just as is the impact of newscasts on public opinion. Nevertheless, a reasonable indication of the effectiveness of paid advertising can be found when comparing overall campaign expenditures. The majority share of voter contact expenditures by any initiative campaign is typically allocated to paid advertising.[66] A comparison of well-financed campaigns with lesser-financed campaigns suggests that paid advertising is seen as effective in influencing election outcomes.

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.[67] 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.[68] 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

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63. Telephone interview with Masterton, *supra* note 8.

64. Murphy and Feldman, *supra* note 62.

65. Telephone interview with Masterton, *supra* note 8.

66. According to the Commission's data analysis, approximately 76% of all campaign period voter contact expenditures in 1990 initiative campaigns were allocated to broadcast advertising. A Pearson Correlation analysis of the relationship between total campaign spending and total broadcast spending is a strong .9054 (at the significance level of .000). For a description of the Commission's Pearson Correlation analysis, *see* Appendix G.

67. *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).

68. John Shockley, The Initiative Process in Colorado Politics: An Assessment (1980).

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."[69]

The Council on Economic Priorities has also found that heavy one-sided spending in initiative campaigns tends to succeed at the polls.[70] 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.[71] Professor Zisk charted the campaigns and election outcomes of 72 major ballot questions from 1976 to 1982 in four states: California, Massachusetts, Michigan and Oregon.[72] 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. Initiative Campaign Spending in California

In 1982, UCLA law professor Daniel Lowenstein conducted the most authoritative study on the impact of money on initiative campaigns in California.[73] Several scholars had earlier reviewed California initiative campaigns and concluded that heavy one-sided spending had little, if any, effect on election outcomes.[74] Compilation of initiative campaigns in the state in which one side

69. *Id.* at 32.

70. Steven Lyndenberg, Bankrolling Ballots: The Role of Business in Financing State Ballot Question Campaigns (1979).

71. Betty Zisk, Money, Media and the Grass Roots: State Ballot Issues and the Electoral Process (1987).

72. 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.

73. Daniel Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice and the First Amendment,* 29 UCLA L. Rev. 505 (1982).

74. *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

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 money side; big money lost in nine cases.[75] 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.[76] 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

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Money—A Defense of Proposition Campaigns, in The Challenge of California, at 103 (Eugene Lee and Larry Berg eds., 1976).

75. 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.

76. 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).

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 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 innuendos 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 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.[77] 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.

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77. 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 G. See Table G.4 for a complete detailed review of the results concerning one-sided negative spending.

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.

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 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 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,*[78] 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

78. 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.

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."[79] While the state supreme court overturned the 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.[80]

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.[81] 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,*[82] 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.[83]

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.[84] 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."[85] In a concurring opinion, Justice Rehnquist noted

79. Hardie v. Eu, 18 Cal. 3d 371 (1976).
80. Meyer v. Grant, 486 U.S. 414 (1988).
81. PG&E v. City of Berkeley, 60 Cal. App. 3d 123 (1976).
82. First Nat'l Bank v. Bellotti, 433 U.S. 765 (1978).
83. *Id.*
84. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1982).
85. *Id.* at 298, quoting *Bellotti,* 454 U.S. at 790.

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.[86] Justices Blackmun and O'Connor further commented on the inability of the city to show "'by record or legislative findings that corporate advocacy threatened imminently to undermine 'democratic processes' or 'the confidence of the citizenry in government.'"[87]

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 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).[88]

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 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*.[89] 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

86. *Citizens Against Rent Control*, 454 U.S. at 301.

87. *Id.* at 303, quoting *Bellotti*, 454 U.S. at 789-90.

88. 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).

89. Buckley v. Valeo, 424 U.S. 1 (1976).

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.[90] Only given a pressing state interest—such as the 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.[91] 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. Recent Supreme Court Cases

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*[92] (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

90. *See* California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, at 196 (1981).

91. Citizens for Jobs and Energy v. FPPC, 16 Cal. 3d 671 (1976).

92. Federal Election Comm'n v. Massachusetts Citizens for Life, 479 U.S. 238 (1986).

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 marketplace."[93] The Court added, "the government enjoys greater latitude in limiting contributions than in regulating independent expenditures,"[94] not to mention the legitimacy of Congressional interest in preventing unfair deployment of public wealth.[95]

In the recent case of *Austin v. Michigan State Chamber of Commerce,*[96] (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."[97] 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."[98]

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,[99] contributions to ballot measure committees could not be

93. *Id.* at 257.

94. *Id.* at 261.

95. *Id.* at 263.

96. Austin v. Michigan Chamber of Commerce, 110 S. Ct. 1391 (1990).

97. *Id.* at 1397.

98. *Id.* at 1398.

99. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 298 (1982).

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 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.[100]

2. Limiting Very Large Contributions

As shown in the Commission's study of fundraising patterns, large contributions greatly affect the initiative process. In the 18 highest spending initiative campaigns studied, 69% of all contributions came in amounts $100,000 or more. In 1990 initiative campaigns studied, 67% of all contributions came in over-$100,000 amounts (and from just 141 contributors). Perhaps most significantly, the study shows that the use of money from very large contributors in the final stages of an initiative contest to fund deceptive or "catch-phrase" media campaigns could quite possibly have an overwhelming impact on voter preferences. Considering these trends, a well crafted analysis might convince the Court to reconsider its past opinions striking down limitations on contributions in initiative campaigns.

The enactment of a high contribution limitation of perhaps $100,000 per donor to an initiative campaign committee could achieve certain desirable results. 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,[101] 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."*[102]

In *Austin v. Michigan State Chamber of Commerce,*[103] the Court expressed concern that large corporate treasuries, which have no direct correlation to the public's

100. 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).

101. 454 U.S. 290 (1982).

102. First Nat'l Bank v. Bellotti, 433 U.S. 765, 788-89 (1978).

103. 110 S. Ct. 1391 (1990).

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. Anheuser-Busch, for example, contributed $8.3 million to the successful anti-alcohol tax initiative campaign in 1990. Faced with a hypothetical $100,000 contribution limit, Anheuser-Busch 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. 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 abridgement 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."[104] 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. The Need to Consider 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

104. Buckley v. Valeo, 424 U.S. 1, 59 (1976).

one. A consequence of massively high spending could well be increased voter 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. *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—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. *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 secretary of state or other state agency.[105] The revenues would be used to purchase informational radio and television advertisements in any campaign in which one side has outspent the other by at least $1 million. 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 secretary of state 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 campaigns for initiatives which have already qualified for the ballot. lopsided public information. Between 1976 and 1990, spending imbalances of more than $500,000 occurred in 67% of all initiative campaigns and spending imbalances of more than

105. 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).

$1 million took place in 65% of the initiative races. 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 secretary of state'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.

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 candidate campaigns, its greatest selling point is that it may curtail the corrupting influence of private contributions from special interest groups—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 for the state. The method of reimbursement might also prove difficult, since proponents would have to act as agents in refunding campaign contributions to 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 (which amend the state's statutes) or constitutional initiatives (which amend the state's 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] Fourth, the courts will enforce certain restrictions on the subject matter of initiatives which are contained in the state constitution. California's constitution provides, for example, that statutory initiatives cannot appoint any individual to public office and cannot require a particular corporation to perform any function or have any power or duty.[10] Fifth, the courts will enforce the

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, §12.

constitutional provision that prevents initiatives from *revising* the constitution as opposed to amending it.[11] (This has created problems which are discussed later in this chapter.) And sixth, the courts will enforce the important provision in the California constitution which prohibits statutory and constitutional initiatives from containing more than a "single-subject."[12] (See discussion of the "single-subject rule" later in this chapter.)

Since 1964, California voters have approved 35 initiatives. Of these, the California courts have completely invalidated six and partially invalidated another eight. Thus, 60% of the initiatives approved by the electorate have either survived court challenges altogether or have not been challenged at all. (See Table 9.1 for a list of initiatives declared partially invalid.)

From 1964 to 1972 the courts invalidated in their entirety three of the six initiatives adopted by the public: Proposition 14 (fair housing),[13] Proposition 15 (pay television),[14] both enacted in 1964, and Proposition 21 (school busing),[15] passed in 1972. All these initiatives were declared unconstitutional for violating provisions of the federal constitution.

Since 1974, however, the courts completely invalidated only three of 29 initiatives: Proposition 6 (repealing the inheritance tax) in June 1982,[16] Proposition 68 (establishing a comprehensive campaign finance system) in June 1988,[17] and Proposition 105 (requiring disclosures in a number of unrelated areas) in November 1988.[18] In all these cases, the courts either ruled that the single-subject rule had been violated (Proposition 105) or that a competing initiative receiving more votes superseded the initiative declared invalid (Propositions 6 and 68).

Two recent cases in the last few years may signal an increased willingness by the courts to subject initiatives to stricter constitutional 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.[19] In the second, an appellate court invalidated an initiative for violating the single-subject rule.[20] 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.'"[21]

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

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11. Cal. Const. art. XVIII.
12. Cal. Const. art. II, §8.
13. Reitman v. Mulkey, 387 U.S. 369 (1967).
14. Weaver v. Jordan, 64 Cal. 2d 235 (1966).
15. Santa Barbara School District v. Superior Court, 13 Cal. 3d 315 (1975).
16. Estate of Gibson v. Bird, 139 Cal. App. 3d 733 (1983).
17. Taxpayers to Limit Campaign Spending v. FPPC, 51 Cal. 3d 744, 745 (1990).
18. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).
19. *Taxpayers,* 51 Cal. 3d at 744.
20. *Chemical Specialties,* 227 Cal. App. 3d at 663.
21. Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, 259 (1978).

enact laws which are arbitrary, ill-conceived, illegal, unconstitutional or otherwise harmful. The judiciary thus bears a special obligation to scrutinize them closely.[22]

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."[23] 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.[24] For this reason, careful judicial review must substitute for the checks and balances lacking in a system which permits voters to enact laws directly.[25]

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 whenever possible and invalidate them only under the narrowest of circumstances.[26]

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,

22. *See, e.g.*, Eule, *supra* note 1, at 1558-73.

23. *Id.* at 1525 (emphasis in original).

24. 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.

25. 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.

26. *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").

let those who urge less democracy instead use the tools of democracy to convince the people of the 'rightness' of their view."[27]

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.[28] Former California Supreme Court Justice Joseph Grodin has acknowledged that ballot initiatives are "political hot potatoes."[29] 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."[30]

B. The Commission Believes the California Supreme Court's New Test for Invalidating Conflicting Initiatives Should Be Reconsidered

Until recently, California voters were rarely confronted with more than one initiative on the same subject in the same election. In the last few elections, however, conflicting initiatives have occurred with greater frequency. In the 1988 primary election, voters enacted two contradictory initiatives to reform campaign finances: Proposition 68 (campaign contribution limits, expenditure ceilings and limited public matching funds in state legislative contests) and Proposition 73 (campaign contribution limits covering all elections in the state and a ban on public financing). In the 1988 general election, the California electorate had to vote on five competing insurance initiatives. Only one, Proposition 103 (regulation of insurance rates), was approved.

The 1990 primary and general elections asked voters to consider the most conflicting and contradictory measures in California history. In the June primary, the electorate was offered two reapportionment measures, Propositions 118 and 119, both supported by the Republican Party and opposed by the Democratic Party. The people rejected both of them by decisive margins. In the November election, the voters were presented with two proposed term limit initiatives (Propositions 131 and 140), two conflicting initiatives addressing pesticide usage (Propositions 128 and 135), two forest practices initiatives (Propositions 130 and 138) and two alcohol tax increase measures—one an initiative (Proposition 134) and the other a constitutional amendment sponsored by the alcohol industry and placed on the ballot by the legislature (Proposition 126). Another November ballot initiative (Proposition 136), nicknamed the "poison pill measure," would have required a two-thirds vote on any tax increase contained in any initiative. Since it was written to become effective the *day of* the election, it sought to invalidate other measures on the same ballot which raised taxes but which were written to go into effect the *day after* the election. Only one of these nine propositions, Proposition 140, which limited terms for state elected officials, was approved by the voters.

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27. Donald S. Greenberg, *The Scope of the Initiative and Referendum in California,* 54 Calif. L. Rev. 1717, 1747-48 (1966).

28. Joseph Grodin, In Pursuit of Justice, at 105 (1989).

29. *Id.*

30. *Quoted in* Paul Reidinger, *The Politics of Judging,* 52 A.B.A.J. 52, 58 (Apr. 1987).

The California constitution anticipates that more than one measure on the same subject might be approved by the electorate. It states, "If provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail."[31] A recent state supreme court decision, *Taxpayers to Limit Campaign Spending v. FPPC,* has reinterpreted the plain meaning of this provision.[32]

1. Current Court Rulings on Conflicting Initiatives

Of the three initiatives invalidated in their entirety by California courts since 1974, two were initiatives competing against other initiatives on the same ballot. The first involved two successful initiatives which both repealed the state's inheritance tax laws in 1982. One measure applied the repeal to laws enacted as of January 1, 1981; the other measure, which received more votes, declared that its provisions were operative on the date of passage, June 8, 1982. The appellate court ruled that because the second initiative received more votes, its effective date superseded the first measure's retroactivity section.[33] Apart from the different operative dates of the two measures, their provisions were essentially the same.

The second case dealt with conflicting campaign finance reform initiatives. The 1990 supreme court opinion examined Propositions 68 and 73, two campaign reform measures passed in the June 1988 primary election. The Proposition 68 and 73 dispute provided a clear case for the supreme court to examine the issues raised by competing and conflicting initiatives.

Proposition 68 established a comprehensive campaign financing system for legislative candidates and officeholders. It imposed expenditure ceilings and contribution limits, restricted off-year contributions and provided partial public matching funds for legislative candidates who accepted limits on expenditures. By contrast, Proposition 73 prohibited the use of public funds for campaigns, did not limit expenditures and placed limitations on contributions for all candidates running in any state or local election (but no limits on off-year contributions).

The litigants all agreed that Proposition 73's ban on public financing nullified the public financing provisions in Proposition 68 and that contribution limits were governed by Proposition 73. The parties also agreed that other provisions of Proposition 68, which called for detailed identification of intermediaries and committees, were not addressed in Proposition 73 and thus should become operative. Proposition 68's proponents argued, however, that three parts of Proposition 68 concerning limits on contributions should remain in effect: the ban on off-year contributions, the limit on how much a legislative candidate could receive from non-individuals and the overall limit on how much an individual or group could give to all legislative candidates. The proponents argued that because no part of Proposition 73 conflicted with these three provisions, they should go into effect.

The Fair Political Practices Commission, the legislative sponsors of Proposition 73 and *amici* representing both political parties and the California Teachers Association argued that Proposition 73 occupied the entire field of campaign contribution limitations and thus superseded all of the limits in Proposition 68. They maintained that no one, not even the proponents of Proposition 68, were in favor of a patchwork quilt combining the portions of Propositions 68 and 73 which remained. To do so would subject candidates to some of the restrictive provisions of Proposition 68 (namely, the ban on off-year fundraising, limits on non-individual contributions

31. Cal. Const. art. II, §10 (b).

32. 51 Cal. 3d 744 (1990).

33. Estate of Gibson v. Bird, 139 Cal. App. 3d 733 (1983).

and overall limits on how much a contributor could give to all legislative candidates) without the benefit of its partial public funding. The opponents claimed that the matching fund provisions were designed as an alternative source of funding to make up for money which would not have been allowed under the new restrictions, and that the proponents of Proposition 68 would never had proposed such severe restrictions without matching funds. The sponsors of Proposition 68 denied this allegation, noting that the measure even applied to legislative candidates who declined to accept the voluntary matching funds.

Both the proponents of Proposition 68 and the Fair Political Practices Commission agreed that the courts should follow past case law which tried to meld as much of two competing initiatives as possible. The California appellate courts had previously set forth three tests to determine whether language from competing measures should be adopted.[34] The first test was whether the language of the law that was invalid (*e.g.*, the basic contribution limits in Proposition 68) could be mechanically separated, by paragraph, sentence, clause, phrase or even single words, from the part that was valid. The court called this the "grammatical test" in one case.[35] The second test looked at whether the sections which were not in conflict with the other proposition could be applied independently of the other proposition. These sections had to be able to stand on their own and be capable of separate enforcement.[36] The third test asked whether the voters would have adopted the provisions not in conflict had they been given the opportunity to look at these provisions by themselves and had foreseen the partial invalidation of the statute. This test was the most subjective, requiring the court to read the public's mind; yet the courts had applied it in a number of cases.[37] Only the *amici*—the political parties and the California Teachers Association—claimed that the intent of the constitutional provision was to nullify entirely the measure which received fewer votes, including provisions not covered by Proposition 73.[38]

The supreme court's decision rejected the arguments of both the Proposition 68 proponents and the Fair Political Practices Commission and agreed with *amici* that only one initiative could become effective if two successful initiatives dealt with the same subject. The court held that "unless a contrary intent is apparent in the ballot measures, when two or or more measures are competing initiatives, either because they are expressly offered as 'all-or-nothing' alternatives or because each creates a comprehensive regulatory scheme related to the same subject, section 10(b) [in the state Constitution] mandates that only the provisions of the measure receiving the highest number of affirmative votes be enforced."[39]

The court also rejected the appellate court's reasoning that the voters wanted both measures to become effective to the greatest extent possible. The court stated, "That some voters would have been satisfied with the adoption of either proposition does not suggest that they wanted both, or *that the same voters cast a majority of the*

34. Santa Barbara School District v. Superior Court, 13 Cal. 3d 315 (1975); Peoples Advocate, Inc. v. Superior Court, 181 Cal. App. 3d 316 (1986).

35. Peoples Advocate, Inc. v. Superior Court, 181 Cal. App. 3d 316 (1986).

36. *Id.*

37. *See, e.g., In re* Bell, 19 Cal. 2d 488 (1942), Sonoma County Organization of Public Employees v. County of Sonoma, 23 Cal. 3d 296 (1979); Peoples Advocate, Inc. v. Superior Court, 181 Cal. App. 3d 316 (1986).

38. Brief for the California Teachers Ass'n et al., at 4 in Taxpayers to Limit Campaign Spending v. FPPC, 51 Cal. 3d 744 (1990).

39. *Taxpayers*, 51 Cal. 3d at 745.

affirmative votes for each initiative."[40] The court noted that the two propositions had been presented as alternative measures in the ballot pamphlet, and that the voters had been asked to choose between the two initiatives by the arguments from both camps. By giving Proposition 73 more votes, the electorate decided that none of the sections in Proposition 68 should go into effect. The court concluded that no one intended the parts of one initiative (Proposition 68) to be grafted onto the provisions of Proposition 73. The various sections of Proposition 68 were all interwoven together. Because Proposition 68 received fewer votes, it was void in its entirety.

The majority opinion refused to consider what would happen to Proposition 68 if parts of Proposition 73 were later declared unconstitutional. (A federal district court had already issued such a ruling, and this opinion was affirmed by the ninth circuit court of appeals[41]) Justice Mosk, however, tackled this question directly in his concurrence and dissent. He concluded that if Proposition 73 was ultimately ruled invalid, then Proposition 68 should be put back into effect because "a dead horse cannot win a race."[42]

In her dissenting opinion, Justice Kennard argued that the majority had misread the provisions of the California constitution. She agreed with the previous decisions of the California courts which required a court or agency trying to reconcile two conflicting statutes to compare each provision one by one to see if any provision could stand alone. In reconciling statutes which conflicted with each other, past court decisions had emphasized that the statutes must be harmonized so that both laws could be brought into effect to the maximum extent possible. Only if the two acts were so inconsistent that they could not have concurrent operation and were completely irreconcilable, would one not be operative.[43]

The court's new approach has two apparent advantages. First, it is simpler than the previous approach and will save the court time. The courts will not have to engage in detailed provision-by-provision analyses to ascertain voter intent. Second, the courts will not be placed in the position of having to stitch together provisions from two or more competing initiatives to create one new law. The *Taxpayers'* decision will help courts avoid the discomfort they inevitably face at the notion of creating new law out of the surviving remnants of two conflicting initiatives.

Yet despite the arguments advanced in the majority opinion in *Taxpayers,* the supreme court's decision appears seriously flawed. First, the court's ruling seems directly to ignore the plain wording of the state constitution which states: "If *provisions* of two or more measures . . . conflict, *those* of the measure receiving the highest affirmative vote shall prevail" (emphasis added). For years the appellate courts have interpreted this language as invalidating only those *provisions* in conflict with each other, not the entire measure containing the provisions in conflict. The supreme court in essence redrafted the state constitution to read, "If two or more measures approved at the same election conflict, the *entire measure* receiving the highest affirmative vote shall prevail" (emphasis added). The supreme court's interpretation thus creates a sharp break with prior interpretations and with the apparent plain wording of the constitution itself.

A second and perhaps more serious objection to the court's interpretation is that it creates a new incentive for the drafters of counter initiatives to seek to wipe

40. *Id.* at 797 (emphasis in original).

41. Service Employees Int'l Union v. FPPC, 747 F. Supp. 580 (1990), ____ F.2d ____, 92 Daily Journal D.A.R. 1887 (1992).

42. *Taxpayers,* 51 Cal. 3d at 813.

43. *See* Penziner v. West American Finance Co., 10 Cal. 2d 160 (1937); *In re* White, 1 Cal. 3d 207 (1969).

out competing initiatives. The drafter of a counter initiative simply has to add a provision that will conflict with a major part of the first initiative and then hold out the counter initiative as a comprehensive scheme related to the same subject. Under the court's ruling, the first initiative can receive a majority vote and still be invalidated—even though the voters may have wanted the provisions of both to go into effect, may not have been aware of the conflict in provisions and may not have understood that a conflict between provisions would invalidate one of the measures in its entirety.

A third deficiency in the court's opinion is that it will probably stimulate the creation of a greater number of competing initiatives, not a lesser number. Counter initiatives will become more prevalent as initiative opponents realize they do not have to defeat popular measures. Instead, they can simply draft a counter initiative, add to it a few provisions designed to attract more votes (such as a tax cut) and insert provisions into that measure that conflict with sections in the first measure. Counter initiatives may thus become Trojan horses, holding themselves out as gifts to the voters while concealing secret surprises. One commentator has even warned that initiative opponents may deliberately draft unconstitutional counter proposals designed to attract more votes. After these initiatives are successful, the courts will declare them invalid, leaving the voters with no reform at all.[44] Voter frustration over the initiative process will mount if these strategies are implemented.

A fourth deficiency is suggested in Justice Kennard's dissent. She indicates that the court was attempting to lighten the burden on itself, other courts and administrative agencies.[45] No longer would courts or agencies have to analyze each provision of two conflicting initiatives, determine whether the provisions in conflict could be mechanically separated from the initiative receiving fewer votes, decide whether the sections not in conflict could be enforced on their own and ascertain whether the voters would have adopted the remaining provisions if they had known they would have been severed from the provisions in conflict. Instead, when two or more successful initiatives have at least one provision in conflict, the courts would merely have to determine whether the competing initiatives were either offered as "all-or-nothing alternatives" to each other or designed as "comprehensive regulatory schemes." If so, then the initiative receiving fewer votes would be invalid in its entirety.

Yet the court's ruling in *Taxpayers* may generate more work for the courts, not less. Because the ruling will stimulate the use of counter initiatives, courts will increasingly be asked to resolve conflicts between two or more competing initiatives. In such cases, the courts will have to determine, among other things, whether each initiative held itself out to the voters as a comprehensive scheme—not an easily resolvable determination. At the same time, the courts will have to confront the political pressures that will arise when the public sees the judiciary striking down popularly enacted initiative measures.

2. Approaches in Other States

Fifteen other states have constitutional provisions which resolve conflicts if competing measures are both adopted at the same election. In eight states, only one measure can become law if two initiatives pass on the same subject: Arkansas,[46]

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44. Michael Baker, Confounding Reform With the Counter-Initiative, ____ U.S.C. L. Rev. ____ (1992) (in preparation).

45. *Taxpayers*, 51 Cal. 3d at 774.

46. Ark. Const. amend. 7.

Michigan,[47] Missouri,[48] Nebraska,[49] Nevada,[50] North Dakota,[51] Ohio,[52] and Utah.[53] In these states, however, the law is extremely clear: if two or more measures on the same subject are enacted, then "the one" or "the measure" or "that" entire initiative receiving the highest number of affirmative votes prevails.

Five states have laws similar to the California constitution: Arizona,[54] Colorado,[55] Idaho,[56] Massachusetts[57] and Nebraska.[58] The constitutional provisions in these states declare that if two or more initiatives are passed dealing with the same subject, then the *provisions* of the one receiving the fewer votes are void if they conflict with specific *provisions* in the measure receiving more votes. Language in these state constitutions typically provides that if two or more measures are adopted, then the one which receives the greatest number of votes shall be adopted "in all particulars as to which there is a conflict" or "as to all conflicting provisions."

Two states, Massachusetts and Washington, have enacted provisions which specify how conflicting measures should be presented to the voter. In Massachusetts, the legislature must group measures together on the ballot and instruct voters to vote only for one measure. In Washington, the legislature may put a competing measure on the ballot as an alternative to an initiative. The voters are told that only one measure can become law, even if more than one receives more affirmative than negative votes. The ballot offers two questions. First, voters are asked to indicate whether they wish to vote for either of the measures or neither of them. Second, voters must then select which of the measures they prefer. If a majority of the voters approves the first question, then the measure receiving the most votes on the second question is the one that becomes law. In 1988, the Washington State Legislature presented an alternative to a toxics initiative. It failed, however, to poll as many votes as the initiative.

One state, Arizona, whose law is nearly identical to California's, has experienced a similar controversy. In 1968, two propositions put on the ballot by the legislature were approved by the voters. One measure, approved by 266,035 votes, increased the term of all statewide officials, including the state auditor. The other measure, approved by fewer votes—206,432, abolished the office of state auditor. A deeply split court found that the measure receiving fewer votes could still go into effect. The court found that "where two provisions of the constitution are in conflict, it is the duty of the court to harmonize both so that the constitution is a consistent workable whole."[59] The court thus held that the office was abolished and that the terms for all the other statewide officers were increased. Had the reasoning by the California Supreme Court been adopted by the Arizona court, the public's desire to abolish the office of state auditor would have been thwarted.

47. Mich. Const. art. 2, §9.
48. Mo. Const. art. 3, §51.
49. Neb. Const. art. III, §2.
50. Nev. Const. art. 19, §2, para. 3.
51. N. D. Const. art. III, §8.
52. Ohio Const. art. II, §1(b).
53. Utah Code Ann. §20-11-20 (1987).
54. Ariz. Const. art. 4, Pt. 1, §12.
55. Colo. Rev. Stat. §1-40-116 (3) (Bradford Supp. 1991).
56. Idaho Code §34-1811 (1981).
57. Mass. Const. art. 48, Pt. 6, §VI.
58. Neb. Const. art. III, §2.
59. State *ex rel.* Nelson v. Jordan, 104 Ariz. 193 (1969).

3. Standards Applied in Local Jurisdictions

Prior to the California Supreme Court's *Taxpayers'* decision, the standards for judicial review of competing initiatives in local elections varied between jurisdictions. For city, county and district initiatives, the ordinance obtaining the highest number of votes prevailed in its entirety, and any other ordinance on the same subject did not become effective.[60] For charter amendments adopted by a city or a county, however, the state constitution applied the same rules as those in effect for state measures—which, prior to the California Supreme Court decision in *Taxpayers,* had meant that only the provisions directly in conflict would fail.[61] Now, according to the California Supreme Court, the rules are the same for every state and local proposition.

4. The Commission's Recommendations

The supreme court's decision in *Taxpayers* has dramatically altered the initiative landscape. Because opponents can now insert conflicting provisions into competing initiatives and thereby attempt to invalidate the principal initiative in its entirety, voters will undoubtedly be faced with more conflicting initiatives unless the court changes its ruling or the state constitution is amended.

a. Notifying Voters of Potential Conflicts

At the very least, the impact of the California Supreme Court decision in *Taxpayers* should be made clear to voters when they confront competing initiatives. The Commission recommends that voters be told in advance whenever only one of two or more competing measures can become law. The attorney general should first ascertain whether two or more initiatives conflict with each other according to the supreme court's decision in *Taxpayers.* If so, the initiatives should be placed next to each other in the ballot pamphlet and compared with each other in the summary and analyses of the attorney general and legislative analyst. (See Chapter 7, "The Ballot Pamphlet.") In addition, the conflicting measures should be placed next to each other on the ballot and the voters warned that only one of the measures may become effective if more than one is approved. This warning will advise the voters to choose one of the initiatives rather than vote for more than one. The attorney general's ruling should be exclusively reviewable by the Sacramento County superior court on an expedited basis, although the court's decision should not be binding on future courts if conflicts are litigated after the election.

b. Returning to Earlier Court Rulings Which Invalidate Only Conflicting Provisions

The court's reluctance to follow the literal wording of the California constitution in *Taxpayers* may be based on an understandable concern that the judiciary should not involve itself in piecing together laws based on the provisions of two or more conflicting initiatives. Quite naturally, the court might be uncomfortable at being placed in the position of having to create a law that is an amalgam of two or more successful initiatives.

The Commission disagrees, however, both with the court's conclusion for two essential reasons. First, the court's view is at odds with the undoubted intent of most voters who cast their ballots in favor of conflicting initiatives—which was not to focus on the details of the competing measures but to "vote for reform" by approving both measures which might accomplish those reforms. Voters seeing two campaign finance reform measures (Propositions 68 and 73) on the June 1988 ballot, for

60. Cal. Elec. Code §§3717, 4016, and 5160 (West 1977).

61. Cal. Const. art. XI, §3(d).

example, may be presumed to have voted for both in the hope that at least one would pass and on the assumption that if both passed the details would be resolved. Although the analogy is not exact, such voter decisions are not unlike those of legislators who vote for a measure knowing that it may later be significantly changed in conference committee or in the other legislative house.

Second, the Commission believes that the California Supreme Court's decision in the *Taxpayers* case will lead to unfortunate consequences. Among other things, the court's ruling will encourage rather than discourage the use of counter initiatives in the future and make the ballot even more confusing than it is today. It will also generate more work for the court as more counter initiatives are placed on the ballot. The Commission believes it would have been preferable for the court to follow the language of the constitution more strictly, giving effect to the constitutional provision which states that when two or more initiatives are enacted on the same subject, only the conflicting "provisions" of the measure with fewer votes should not go into effect.

The three-pronged test used in earlier court of appeals decisions to determine which provisions were in conflict should be reinstated. This test better reflects actual voter intentions than does throwing out an entire initiative when certain key provisions conflict with those of another initiative on the same ballot. The Commission also recommends that the language in the state constitution be modified to ensure that individual provisions of initiatives which do not conflict will still be valid. And finally, the Commission agrees with Justice Mosk's views expressed in the recent *Taxpayers* case that if one initiative is declared invalid, then another successful but conflicting initiative on the ballot receiving fewer votes should be resurrected.[62]

C. 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,[63] 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 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*.[64] (In California, the constitution may be "amended" but not "revised" by an initiative.[65]) But even before the court removed the measure from the

62. *Taxpayers*, 51 Cal. 3d at 774. Otherwise, the public might vote for two campaign finance reform measures and end up receiving neither.

63. Alaska, Florida, Missouri, Oregon, South Dakota and Wyoming.

64. McFadden v. Jordan, 32 Cal. 2d 330 (1948).

65. Cal. Const. art. XVIII.

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."[66] 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.[67] 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.[68]

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 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.

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66. Cal. Const. art. II, §8 (d).

67. "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.

68. 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).

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.[69]

The second rationale for the single-subject rule was to prevent "logrolling."[70] 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. Legislators will often "logroll" a bill so that their individual projects will be approved along with other legislators' 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."[71] The court noted that the single-subject rule does not require a showing that each provision of an initiative is "capable of gaining voter approval independently of the remaining provisions."[72] 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

69. Daniel Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. Rev. 936 (1983).

70. Brosnahan v. Brown, 32 Cal. 3d 236, 267-68 (1982) (Bird, C.J., dissenting).

71. 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.

72. *Id.* at 255.

constitute balancing acts to determine whether a proposal's benefits outweigh its shortcomings.[73]

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.[74] 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.[75]

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.[76] 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.[77] 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.[78]

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 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

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73. *Id.*

74. Perry v. Jordan, 34 Cal. 2d 87 (1949).

75. 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.

76. 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).

77. Brosnahan v. Eu, 31 Cal. 3d 1 (1982).

78. Lowenstein, *supra* note 69.

lobbyists, and these two subjects did not relate to conflicts of interest by state and local employees.[79]

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.[80] 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.[81]

Proposition 8, the Victims' Bill of Rights Act in 1982, was narrowly upheld on single-subject grounds by a four-to-three 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."[82]

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.[83] 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 association.[84] 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

79. FPPC v. Superior Court, 25 Cal. 3d 33, 57 (1979) (Manuel, J., dissenting).

80. 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.

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

82. Brosnahan v. Brown, 32 Cal. 3d 236 (1982).

83. 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.

84. *See* California Trial Lawyers Ass'n v. Eu, 200 Cal. App. 3d 351 (1988).

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.[85]

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.[86] 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.[87]

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."[88] This test is a slight modification of the standard set down in 1987 for measures put on the ballot by the legislature. That test 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.[89]

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

85. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).

86. 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.

87. Harbor v. Deukmejian, 43 Cal. 3d 1078 (1987).

88. Raven v. Deukmejian, 52 Cal. 3d 336 (1990).

89. Harbor v. Deukmejian, 43 Cal. 3d 1078 (1987)

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.[90] 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 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.[91]

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.[92] 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 are subject to no gubernatorial or legislative review, cannot be amended and must be voted up or down in its entirety.[93] Ray also recommends that the court encourage more pre-election challenges, making it possible for them to declare initiatives invalid before their enactment by the voters.

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90. Kennedy Wholesale v. State Board of Equalization, 53 Cal. 3d 245 (1991); Raven v. Deukmejian, 52 Cal. 3d 336 (1990).

91. *Raven,* 52 Cal. 3d at 356 (Mosk, J., dissenting).

92. Steven W. Ray, The California Initiative Process: The Demise of the Single-Subject Rule, 14 Pac. L.J. 1095 (1983).

93. 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 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).

In his view, prior judicial review will make it politically easier for the courts to declare initiatives unconstitutional.[94]

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).[95] If the Maddy constitutional amendment is approved by the legislature, it will appear on the 1992 ballot for voter consideration.

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.[96] 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 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.

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94. 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.

95. 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.

96. Lowenstein, *supra* note 69, at 971.

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.[97] 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 legislators 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.

D. The Commission Believes the Prohibition on Constitutional "Revisions" by Initiative Should Be Reexamined

The California constitution allows a constitutional initiative to *amend* the constitution but not to *revise* it. The constitution can only be *revised* in two ways: by the legislature placing a constitutional revision on the ballot, or by the legislature initiating a constitutional revision procedure.[98] The first technique allows the legislature by a two-thirds vote to put a measure revising the constitution on the ballot for voter approval. If the voters approve the proposed revision by a majority vote, it becomes effective. The second technique is more complicated. The legislature by a two-thirds vote must first place a measure on the ballot asking the voters to authorize the convening of a constitutional convention. If the people approve this measure by a majority vote, convention delegates are elected by district. If the convention agrees on a constitutional revision, it is put on a subsequent ballot and must be adopted by a majority vote.

Until 1990, only one court opinion had ever invalidated a ballot initiative on the ground that it was an impermissible constitutional revision.[99] The proposed initiative which the court struck off the ballot in 1948 added sections to the constitution on a number of subjects, including pensions, taxes, voting rights for Indians, gambling, oleomargarine, health, reapportionment of the state senate, fish and game, repeal of cross-filing for primary elections and surface mining. (The initiative undoubtedly would also have violated the single-subject rule had the

97. 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.

98. Cal. Const. art. XVIII.

99. McFadden v. Jordan, 32 Cal. 2d 330 (1948).

constitution contained such a restriction at the time.) The court ruled that such an extensive amendment was actually a revision to the constitution. Passage of the proposal, in the court's view, "would be to substantially alter the purpose and to attain objectives beyond the lines of the constitution as now cast."[100] The court concluded that the scope of the proposed amendments in the initiative measure was actually more extensive than the major restructuring of the California constitution in 1879.

In late December of 1990 (for the first time since 1948), the supreme court ruled that another constitutional initiative measure (Proposition 115) comprised an improper "revision" of the California constitution. This initiative, adopted by the voters in June 1990, had enacted a number of provisions protecting crime victims, but one section required the California courts to define the rights of criminals in a manner consistent with court cases under the United States Constitution. This section was designed to prevent the California courts from giving criminals more protections than those granted by the federal courts. The California Supreme Court unanimously found this provision to be a curtailment of the ability of California courts to interpret state laws and constitutional provisions. By upsetting the balance of power between the judicial and other branches of California government, the initiative provision improperly "revised" the constitution.

While the supreme court's 1948 decision was based on the extensiveness of changes to the constitution (the initiative increased the length of the constitution by one-third), its 1990 ruling focused instead on qualitative changes to the constitution. The court said that the provisions of Proposition 115 "would substantially alter the substance and integrity of the state constitution as a document of independent force and effect"[101] and "significantly change the preexisting constitutional scheme or framework . . . extensively and repeatedly used by the courts. . . ."[102]

In 1991, the California Supreme Court addressed the constitutional revision question for a third time. At issue was Proposition 140, which in 1990 had imposed limits on the terms of legislative and statewide office. The legislature attacked these limits, arguing that they comprised an improper constitutional revision and citing the supreme court's decision in the Proposition 115 case.

The court rejected the argument, noting that "Proposition 140 on its face does not affect either the structure or the foundational powers of the legislature, which remains free to enact whatever laws it deems appropriate."[103] The court also observed that the initiative process was the only practical way to impose term limits on the legislature, since the legislature would never impose term limits on itself. This recent decision may suggest that the court will use restraint in invoking the prohibition against constitutional revisions to invalidate initiatives.

As it now stands, however, the legislature can initiate a constitutional revision (placing it on the ballot by a two-thirds vote), but the people cannot. This situation seems unsatisfactory. If the people can vote on a constitutional revision placed on the ballot by the legislature, there seems to be no obvious reason why members of the public cannot, acting through the initiative process, at least place on the ballot a proposed revision of the constitution for consideration by the voters. Several of the Commission's recommendations (more extensively discussed in other chapters) would address the potential abuses of extensive constitutional "revisions."

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100. *Id.* at 350.

101. Raven v. Deukmejian, 52 Cal. 3d 336, 352 (1990).

102. *Id.* at 354.

103. Legislature of the State of California v. Eu, ____ Cal. 3d ____, 286 Cal. Rptr. 283, 292 (1991).

The Commission is recommending that no initiative be longer than 5,000 words (discussed in Chapter 3, "Initiative Drafting and Amendability"). This would prevent any initiative proponent from seeking to revise the constitution by adding thousands of words or dozens of unrelated or complex issues, as the proponents of the 1948 initiative attempted to do. The Commission is also recommending that any constitutional amendment (involving an *addition* to the constitution) be subject to a higher vote requirement for passage—that such an amendment either receive 60% of the vote in the election or be adopted by a majority vote in two successive elections (discussed in Chapter 5, "Voting Requirements"). With a 5,000-word limit and a higher vote requirement to enact certain constitutional amendments, the Commission believes that any potential dangers in allowing voters to place constitutional revisions on the ballot will be dissipated.

Although there is no constitutional history to indicate why the California constitution allows citizens to initiate constitutional amendments by initiative but not constitutional revisions, one possible justification may have been a perceived need to prevent wholesale constitutional revisions by a direct vote of the people without the tempering and intervening influence of the legislature with its checks and balances. Under the Commission's proposals, however, the constitution would in any event become more difficult to amend (creating an equivalent hurdle to that of legislative checks and balances), and initiatives with more than 5,000 words would be prohibited.[104]

E. 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 fewer than one-tenth of the measures titled by the attorney general qualify for the ballot in California and only one-third of the initiatives on the California ballot 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

104. Citizens might also be given the power to circulate ballot initiatives which would call for the convening of a constitutional convention. The initiative would have to designate a topic for consideration by the convention, and this topic designation itself would be subject to the single-subject rule. The initiative thus could not call for a constitutional convention to consider wholesale revisions to the constitution. If the initiative qualified for the ballot (assuming that the legislature itself did not negotiate a satisfactory resolution with the initiative proponents, as discussed in Chapter 3, "Initiative Drafting and Amendability"), it could be adopted by a simple majority. The constitutional convention would then have the power to draft a constitutional revision which would be placed on the next available ballot. This revision, since it would amend the constitution, could only be adopted if it received a 60% vote or was approved by a simple majority in two successive elections (see Chapter 5, "Voting Requirements"). It seems unlikely, however, that proponents would use this extremely lengthy process to accomplish their goals. This process could take four to six years to complete.

represent them in court. And it would place the courts under tremendous time pressure to make decisions within the deadlines imposed on them.

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 both houses of the legislature and signed by the Governor. 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."[105]

Only seven 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[106] or misleading titles.[107] 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."[108] 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.[109]

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.[110] 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.[111]

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.

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105. Brosnahan v. Eu, 31 Cal. 3d 1, 3 (1982).

106. Mersy v. Stringham, 195 Cal. 672 (1925).

107. Boyd v. Jordan, 1 Cal. 2d 468 (1934); Clark v. Jordan, 7 Cal. 2d 248 (1936).

108. McFadden v. Jordan, 32 Cal. 2d at 330 (1948).

109. 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).

110. 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.

111. California Trial Lawyers Ass'n v. Eu, 200 Cal. App. 3d 351 (1988).

Legislators who challenged Proposition 140's term limits and legislative budget reductions passed in 1990 asked the court to overturn the law because it was a constitutional revision. They were hoping that the court would reaffirm its decision in the *Raven* case and apply the same reasoning to dramatic changes in the structure of the legislature. The court refused to strike down the term limits on constitutional revision grounds, saying "No legislative power is diminished or delegated to other persons or agencies."[112] If the court had struck down the measure because it was a constitutional revision, it was obvious that term limits could never have been enacted for a very simply reason—the legislature (unlike the majority of voters) is strenuously opposed to the concept and thus would never have allowed the electorate to vote on it.

If the court should ever expand the scope of constitutional revision beyond its reasoning in the *Raven* case, it will deny the people the right to fundamentally change the state constitution.

Table 9.1

INITIATIVES DECLARED PARTIALLY INVALID

A. Proposition 9 (Political Reform Act of 1974)

1. Provisions Declared Invalid

- Expenditure ceilings for ballot measures and statewide candidates
- Expenditure ceilings on qualification of ballot measures
- Ban on lobbyist contributions
- Disclosure of clients of attorneys at a different threshold than customers of other businesses

2. Provisions Still in Effect

- Campaign disclosure
- Auditing of campaign statements
- Lobbyist disclosure
- Lobbyist gift limitation
- Disclosure of economic interest
- Disqualification for conflicts of interest
- Establishment of Fair Political Practices Commission
- Ballot pamphlet requirements

B. Proposition 7 (1978 Death Penalty)

1. Provisions Declared Invalid

- Provision requiring death penalty to be imposed "where the murder was especially heinous, atrocious or cruel, manifesting exceptional depravity"
- Provision requiring judge to inform jury that a life sentence without possibility of parole could be commuted or modified by the Governor

2. Provisions Still in Effect

- All other death penalty sections

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112. Legislature of the State of California v. Eu, ____Cal. 3d ____, 286 Cal. Rptr. 283, 292 (1991).

C. Proposition 24 (1984 Legislative Reform Act)

1. Provisions Declared Invalid

- Limitation on how much could be spent by the legislature
- Rules on legislative appointments by speaker and Senate Rules Committee

2. Provisions Still in Effect

- Reports to the public concerning expenditures of the legislature
- Requirement that the legislature meet and vote in public

D. Proposition 62 (1986 Limitation on Imposition of Local Taxes)

1. Provisions Declared Invalid

- Requirement of vote on each local general tax increase, such as utility tax and cable tax
- Requirement that a tax imposed without voter approval would result in automatically reducing local government's share of property tax
- Requirement that a tax imposed between 1985 and 1986 (before passage of measure) had to be submitted to the voters within two years

2. Provisions Still in Effect

- Voter approval for special taxes by a two-thirds vote
- Prohibition on ad valorum taxes, transaction taxes and sales taxes on real property

E. Proposition 73 (1988 Campaign Financing)

1. Provisions Declared Invalid

- Contribution limits
- Transfers from one committee controlled by a candidate to another committee controlled by the same candidate

2. Provisions Still in Effect

- Ban on public financing of campaigns
- Ban on publicly financed newsletters

F. Proposition 103 (1988 Automobile Insurance Reform)

1. Provisions Declared Invalid

- Automatic rebate
- Consumer Advocacy Corporation

2. Provisions Still in Effect

- Election of insurance commissioner
- Prohibition on rate setting based on geography
- Review of rates by insurance commissioner
- Limitation on insurer's power to refuse to renew policies

G. Proposition 115 (1990 Crime Victims' Justice Reform Act)

1. Provisions Declared Invalid

- Requirement that state court decisions on criminal law be based on federal court decisions

2. Provisions Still in Effect

- Increases sentences for certain crimes
- Provides for additional participation in process by victims
- Reclassifies certain crimes
- Expands definition of first degree murder
- Expands the list of special circumstances which can result in death penalty
- Allows 16- and 17- year olds to be sentenced to life without possibility of parole
- Creates the new crime of torture
- Prohibits preliminary hearing when a felony is prosecuted by grand jury indictment
- Creates a number of speedy trial provisions
- Changes the rules on exchanging information between prosecutors and defense attorneys
- Changes the hearsay evidence rule
- Changes the way jurors are examined
- Permits the joining of criminal cases

H. Proposition 140 (1990 Term Limits and Legislative Budget)

1. Provisions Declared Invalid

- Ban on state pensions for incumbent legislators

2. Provisions Still in Effect

- Term limits for state officials
- Cut in legislature's budget
- Ban on pensions for newly elected legislators

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 the initiative process recognize that it 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 California's population now make it far more difficult to circulate and qualify initiatives than in 1911 when the initiative process was created, and that the emergence of high-spending campaigns

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.

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 legislators 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 which the average voter finds impossible to understand. The initiative process should be curtailed, they argue, to make it more difficult to formulate state policy directly through citizen-enacted measures.

Voters, however, still believe strongly in the initiative process (almost 70%), 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. (All such bills, and their status when this report was printed, are described in Appendix E to this report.) After extensive deliberations, the Commission has concluded that California's initiative process must be retained, although it requires considerable improvement. The Commission is aware that implementation of any reforms to California's 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 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 California's governance well into the next century.

1. Comprehensive Solutions

The Commission has concluded that California's initiative process is beset by a number of problems: initiatives are too inflexible, the legislature plays an insignificant role in the initiative process, initiative qualification is too easy with paid circulators and too difficult with volunteers, too many initiatives amend the state constitution rather than the statutes, 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 legislature to amend its provisions after passage. This inflexibility ties the hands of the legislature with language often approved by the voters many years earlier. When and if circumstances change, the legislature cannot quickly respond where the initiative does not permit legislative amendments. 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 a legislative hearing by either the proponent or the legislature with the proponent's consent, or by the legislature after the measure has been adopted by the voters. The proponent will be able to modify the language of the initiative within seven days after the mandatory legislative 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 legislature has the right to amend the initiative by a 60% 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 in the closing moments of the legislative session.[3]

b. Participation by the Legislature

Although initiatives have become a key element in the process by which laws are enacted in the state, the legislature now plays a minor role during most initiative debates. Unlike cities and counties which are required by law to consider and vote upon all initiatives before they are placed on the ballot, the legislature is not required to hold a hearing on an initiative *before* it is placed on the ballot. Its one responsibility is to conduct an informational hearing *after* the measure is placed on the ballot.[4] Because it has no power to amend an initiative, however, the legislature's conclusions are largely irrelevant to the process.

The Commission makes several recommendations which will enhance participation by the legislature in the process. Once an initiative qualifies for the ballot, the legislature must hold a hearing on the measure. Expert witnesses and others can testify on the strengths and weaknesses of the initiative. The legislature will have the option of passing the measure as is or offering amendments which the proponent can accept or reject. If the legislature passes the measure without amendment, or if the proponents of the initiative accept the amendments of the legislature, the measure is withdrawn from the ballot. If the legislature decides not to accept the measure, or does not negotiate a compromise measure with the

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3. For a more extensive discussion of these proposals, *see* Chapter 3, "Initiative Drafting and Amendability."

4. Cal. Elec. Code §3523.1 (West Supp. 1991).

proponent, then the initiative is placed on the ballot. In all cases, the members of each house of the legislature must be recorded as either supporting or opposing the measure. After an initiative is enacted, the legislature may amend it as a matter of right, so long as the amendments are consistent with the initiative's "purposes and intent," in print for at least ten days and enacted by a 60% super-majority.

This procedure puts the legislature squarely back into the initiative process. It gives the legislature an opportunity to hear the issues before the measure is placed on the ballot. It creates an incentive for the legislature 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 legislature later to correct errors or omissions in the measure. And it encourages the parties to resolve the merits of the initiative through the legislative process without a direct vote by the people. Under the Commission's recommendations, legislators will be encouraged to apply their expertise to the state's most pressing problems instead of simply abdicating their power and responsibility to the voters.

c. Improved Qualification Procedures

California allows proponents only 150 days to circulate and qualify initiatives for the ballot—one of the shortest periods of any state. Proponents are typically forced to rely almost exclusively on paid signature gatherers to qualify their measures. The emergence of professional circulators who purport to "guarantee" ballot initiative qualification has commercialized the circulation process and allowed anyone with enough money to place a measure before the voters, regardless of its merit or the breadth of its popular support. Petition circulation by grassroots volunteers, the qualification method envisioned by the creators of the initiative process, has disappeared, although some proponents will call on volunteers to circulate a portion of the petitions.

Because the U.S. Supreme Court has ruled that efforts to ban the use of paid signature gatherers unconstitutionally abridges freedom of speech, the Commission has proposed other recommendations to reform the circulation process. It urges that the circulation period be extended a modest 30 days, thereby helping to equalize the ability of unpaid and paid circulators to qualify measures. It recommends that the identities of the largest contributors to initiatives be disclosed at the top of each signature petition. It suggests the use of streamlined and less expensive verification techniques for counties to identify valid signatures. And it urges further study of new circulation techniques which might tend to negate the distorting impact of money on the qualification process.[5]

d. Diminished Use of Constitutional Amendments

The Commission has concluded that too many initiatives are amending the state constitution. It is hard to understand why, for example, a restriction on the use of fishing gill nets should be part of the constitution.[6] Yet more and more proponents use the initiative process to amend the constitution rather than the statutes. By doing so, these proponents tie the hands of the legislature, prevent legislative amendments and lock in provisions which should be reviewed and perhaps changed in future years.

The Commission recommends that constitutional amendments which *add* language to the constitution, whether placed on the ballot by initiative petition or vote

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5. *See* Chapter 4, "Circulation and Qualification," for a more detailed discussion of these recommendations.

6. Proposition 132, which regulated the use of gill nets, was a constitutional amendment adopted in the November 1990 election.

of the legislature, require 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 constitutional amendments once. Initiative proponents will also be discouraged from seeking to "lock in" their proposals by requiring future super-majorities for amendment. These measures will ensure that proposals amending the state constitution are clearly desired by the public. They will also encourage proponents to draft statutory rather than constitutional measures and thus begin the process of reducing the size of the constitution. And they will generate laws which can be more easily amended when the need arises.[7]

e. 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 legislators, and they resent being confronted with so many complicated questions which could best be handled by a full-time professional legislative body. In the recent November 1990 election, voters signaled their frustration with the length and complexity of 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 ballot measures. This limit will require proponents to simplify and shorten their initiatives to make them less intimidating to the electorate.[8] 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.[9]

f. 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.

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.[10] It will also state the legislative 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.

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7. These recommendations are discussed in Chapter 5, "Voting Requirements."

8. *See* Chapter 3, "Initiative Drafting and Amendability," for a discussion of this recommendation.

9. *See* Chapter 3, "Initiative Drafting and Amendability," for an examination of the correlation between the number of words and the success of initiatives.

10. *See* Chapters 6, "News Coverage and Paid Advertising," and Chapter 7, "The Ballot Pamphlet," for a discussion of these recommendations, and Appendix K for a summary ballot pamphlet.

g. Improved Financial Disclosures

Money continues to play a dominant role in the initiative process. Anyone with between $500,000 and $1 million 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.

h. Tightened Standards of Judicial Review

The California Supreme Court has recently adopted a new test for determining which provisions of conflicting initiatives should go into effect. Using this test, the court has begun to strike down entire initiatives containing provisions which conflict with those of other initiatives passed by larger majorities. The court has also invalidated an initiative on the ground that it "revises" the state constitution. Current law prohibits constitutional "revisions" by citizen initiative.

The Commission believes the California courts generally have been appropriately cautious in invalidating successful ballot initiatives. The Commission recommends, however, that the California Supreme Court return to its earlier standard and invalidate only those *provisions* of measures which conflict with each other, instead of discarding entire initiatives altogether. This approach will implement more accurately the intent of the voters who, wishing to enact comprehensive reforms, approve several measures simultaneously. The Commission also suggests further consideration of methods by which citizens might initiate "revisions" to the constitution through initiative procedures.[11]

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 qualify initiatives somewhat more easily through a modestly longer circulation period, or 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 legislature 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,

11. *See* Chapter 9, "Judicial Review," for a further discussion of these recommendations.

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 responsible and effective part of California's governmental decisionmaking machinery.

Thus, for example, the Commission recommends that proponents may amend all initiatives shortly after qualification, but that the legislature 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 legislature'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* legislative processes.

Other Commission recommendations are also designed to balance each other. Proponents, for example, must submit their initiative for analysis at both an administrative hearing and a legislative hearing before their measure is placed on the ballot. But the legislature must also vote on the initiative and record the vote of individual legislators in the ballot pamphlet if the measure is not approved.

A mandatory administrative hearing after 25% of the signatures are gathered, and a legislative hearing after qualification of the measure will help proponents learn of potential problems with their proposal and to resolve them. At the same time, opponents to the initiative will be given a forum to present their objections to the measure while it is being circulated and before it is placed on the ballot. Currently the legislature is required to hold hearings on an initiative after it qualifies but before the election. Nothing said at the hearing, however, can be used to improve the initiative or encourage the legislature to work out a compromise with the proponents. Under the Commission's proposal, the hearings will become a critical and useful part of the process.

The vote of each legislator on every initiative which qualifies would be recorded and sent to every voter in the state ballot pamphlet. Voters will thus be informed by seeing whether their legislators voted yes or no on the critical ballot issues. Legislators will undoubtedly be lobbied by both sides of an initiative since their vote will provide an early indication of the measure's popularity. Individual legislators 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, legislators 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 also affect the proponents and opponents of the process equally. A slightly longer circulation period, on the one hand, will give volunteer groups who circulate measures more time to gather their signatures and may help them avoid paying exorbitant fees to professional circulation firms. On the other hand, the Commission's proposals will require proponents to submit their initiatives to review in an administrative and legislative hearing. Proponents must also disclose their top two contributors at the top of the petition. And 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 circulation 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 attorney general'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 Both Legislative and Constitutional Amendments

The rules for California's initiative process are contained in both the state constitution and in the statute books (primarily in the Elections Code).[12] Some of these rules are enshrined in the constitution and cannot be changed without a vote of the people. Others can be changed by the legislature. Indeed, 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.[13]

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 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 which may appear in any initiative (one), 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. Many of the Commission's recommendations, therefore, can be implemented by statutory amendment. A few will require constitutional amendments.

Implementation of the Commission's proposals can be triggered by the legislature 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. Any initiative which contained the Commission's recommendations could be presented to the voters as a combined constitutional and statutory amendment.

1. Constitutional Amendments

The Commission has proposed four reforms which will require constitutional amendments for enactment: the requirement that the legislature 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-

12. Cal. Elec. Code §§3500 *et seq.* (West Supp. 1991).

13. "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.

majority votes, the requirement that constitutional amendments need a 60% vote in one election or majority vote in two successive elections to pass and the provision allowing the legislature to amend any initiative after enactment if the amendment furthers the initiative's original "purposes and intent."

a. A Floor Vote of the Legislature on Each Initiative

The Commission believes that one of the most important changes in the initiative process concerns the recommendation that the legislature be required to take a floor vote on each initiative that qualifies for the ballot.[14] The constitution gives the legislature broad powers.[15] In order to compel the legislature to vote on a qualified ballot initiative, a constitutional amendment will be needed.

The Commission recommends that the legislature be given 45 days to consider any initiative measure. If the legislature approves the measure or amends it with the agreement of the proponent, then the initiative will be withdrawn from the ballot. If the legislature rejects the measure, then it will appear on the ballot at the next election. In any event, the legislature must take a floor vote in each house on the initiative so that the voters will know how their legislators—as well as the entire legislature—feel about the proposal.

This provision parallels 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.[16]

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.[17] 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 measure which requires a future super-majority vote must itself pass by at least the same super-majority.[18] Assemblymember Robert Campbell (D-Richmond) introduced a similar proposal in 1991 (Assembly Constitutional Amendment 20), but it failed to pass the assembly. Adoption of the Commission's recommendations would require a constitutional amendment.

c. Vote Requirement for Constitutional Amendments

As indicated above, the constitution states that a measure is enacted when it is approved by a majority of those voters who have voted either yes or no on the proposition.[19] One of the Commission's most important proposals would require that amendments which *add* language to the constitution must receive a 60% vote in the election, or in the alternative a 50% plus 1 vote in two consecutive elections, for

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14. *See* Chapter 3, "Initiative Drafting and Amendability," for further discussion of this proposal.
15. Cal. Const. art. II.
16. Cal. Elec. Code §4010 (West Supp. 1991).
17. Cal. Const. art. II, §10.
18. *See* Chapter 5, "Voting Requirements," for a discussion of this recommendation.
19. Cal. Const. art II, §10(a).

passage.[20] This proposal is designed to encourage initiative proponents to draft statutory rather than constitutional initiatives. This recommendation needs to be placed in the constitution.

Senator Rebecca Morgan (R-Los Altos Hills) has 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 has met with intense opposition from taxpayer groups and has stalled in the state senate.

Senator Barry Keene (D-Benicia) has 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 Amendment 4). Senator Leroy Greene (D-Sacramento) has 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. Legislative Amendments After Enactment of Initiatives

The Commission believes that the legislature should have the flexibility to amend initiatives so long as those amendments further the original "purposes and intent" of the measure. The constitution must be amended to accomplish this recommendation because it changes the constitutional provision which states that initiatives may only be amended by a vote of the people unless the initiative allows the legislature to amend it.[21] The Commission proposes that any bill amending an initiative must be in print at least 12 days and pass by a legislative super-majority of at least 60%. The text of an initiative may permit the legislature to amend it by a vote of less than 60%, but it may not mandate a super-majority above 60%.[22]

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.[23] The Commission's proposal would specifically authorize the courts to determine whether or not the legislative 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 legislature, since the constitution gives the legislature the power to establish many 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 statute rather than by constitutional amendment include the following.

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20. Amendments which *subtract* language from the constitution can be enacted by a simple 50% plus 1 majority vote in one election. This recommendation is discused more extensively in Chapter 5, "Voting Requirements."

21. Cal. Const. art. II, §10(c).

22. *See* Chapter 3, "Initiative Drafting and Amendability," for a discussion of this proposal.

23. Amwest Surety Insurance Co. v. Wilson, Case No. C 704 879 (Los Angeles County Super. Court, Mar. 21, 1991).

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."[24] 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.[25] The concept of limiting words in an initiative has never been proposed by any California legislator.

b. Administrative Hearing at 25% of the Required Number of Signatures

Since the legislature is given the power to determine the procedures for the initiative process, it can adopt by statute a requirement that an administrative hearing be held after an initiative has gathered a substantial number of signatures. This hearing is designed to assist the proponent in determining which provisions need to be rewritten to correct drafting errors.[26] It will also offer the proponents and opponents an opportunity to engage in their first debate over the merits and drawbacks of the measure.

c. Legislative Hearing After Initiative Qualifies for the Ballot

After the secretary of state certifies that an initiative has qualified for the ballot, the Commission recommends that the legislature be required to hold committee hearings on the measure.[27] The legislature either may hold a combined hearing of both houses or separate hearings in each house. This hearing will provide initiative proponents with an opportunity to convince the legislature to adopt the initiative, either with or without amendments. It will also give the legislature the chance to offer suggestions to the proponents. An optional indirect initiative has been proposed for years by the League of Women Voters and various legislators, but it has never been approved by the legislature.

d. Proponent Amendments After the Measure Qualifies for the Ballot

Under the Commission's proposal, proponents may amend their initiatives no later than seven days after the legislative hearing.[28] The amendments must further the purposes and intent of the measure and be subject to review by the attorney general and a court. This deadline also gives the legislature the opportunity to vote on the initiative in its final form.

e. 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.[29]

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24. Cal. Const. art. II, §10(e).

25. This recommendation is discussed extensively in Chapter 3, "Initiative Drafting and Amendability."

26. *See* Chapter 3, "Initiative Drafting and Amendability," for a discussion of this recommendation.

27. This proposal is discussed in Chapter 3, "Initiative Drafting and Amendability."

28. *See* Chapter 3, "Initiative Drafting and Amendability," for a discussion of this proposal.

29. This recommendation is discussed in Chapter 4, "Circulation and Qualification."

f. 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.[30] 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.

g. Longer Circulation Period—From 150 Days to 180 Days

The maximum number of days in which an initiative can be circulated (150) is specified in the Elections Code[31] and thus can be amended by a statutory change. The Commission believes that California's circulation period is too short for any petition which primarily relies on volunteers to gather signatures.[32] It recommends increasing the number of days to circulate a petition from the current 150 days to 180 days. Assemblymember Peter Chacon (D-San Diego) in 1991 introduced a proposal to increase the number of days a proponent could circulate an initiative to 175 days. He was forced to drop this provision in order to move other unrelated provisions of the bill through the legislature.

h. Improved Signature Verification Procedures

The Commission believes that too many signatures are being subjected to the verification process by the counties, and that an equally accurate count can be made by examining fewer signatures. AB 2125, which the legislature passed in 1991, reduced the random verification from 5% to 3% of the signatures submitted.[33] The Commission believes that no county should have to count more than 1,500 signatures for any petition when it conducts its random count.[34]

i. Additional Campaign Statements During Circulation Period

Initiative proponents currently do not have to disclose the source of their funds until well into the initiative petition drive.[35] The Commission, however, believes that the initiative proponent should disclose sources of funds within 30 days after the attorney general has titled the petition.[36]

j. 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 surprisingly 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. But the November 1990 ballot pamphlet totaled over 200 pages and intimidated many voters. The Commission

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30. 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."

31. Cal. Elec. Code §3513 (West 1977).

32. The Commission examines this proposal in Chapter 4, "Circulation and Qualification."

33. Cal. Elec. Code §3521 (West Supp. 1991).

34. *See* discussion of this proposal in Chapter 4, "Circulation and Qualification."

35. The Political Reform Act requires campaign statements to be filed every six months while the circulation drive is conducted. After the proponent submits the signatures, a campaign statement must be filed within 21 days. Cal. Gov't Code §§84200 and 84200.5(f) (West Supp. 1991).

36. This recommendation is discussed in Chapter 4, "Circulation and Qualification."

suggests that the secretary of state send to each voter an executive summary of the ballot pamphlet three weeks before the election.[37]

k. Disclosure Requirements

In 1988, California voters approved Proposition 105 which among other things required initiative sponsors to disclose the identities of their major funders in their media advertising. Because the measure was found to contain too many subjects, a California appellate court struck down the entire measure.[38]

The Commission believes that these disclosure provisions were an innovative and useful addition to other requirements for ballot measures. They should be reenacted so that the public is given the identity of the major campaign contributors to the ads being broadcast or printed.[39]

C. Conclusion

Most of those with whom the Commission consulted disagreed with both those who would discard the 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 initiative process and integrate it more effectively into California's system of state government.

37. *See* Chapter 7, "The Ballot Pamphlet," for a discussion of this recommendation.
38. Chemical Specialties Manufacturers Ass'n v. Deukmejian, 227 Cal. App. 3d 663 (1991).
39. This recommendation is discussed in Chapter 6, "News Coverage and Paid Advertising."

APPENDIX A

Summary Checklist: Commission Recommendations for Reform of California's Ballot Initiative Process

The following is a Summary Checklist of the Commission's recommendations for reform of California's ballot initiative process. 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
- Existing language repeated in a ballot measure for purposes of *repeal* is excluded from word limit

2. Administrative Hearing at 25% of the Required Number of Signatures

- FPPC must hold public hearing as soon as proponent gathers 25% of raw signatures needed to qualify an initiative
- FPPC can commission and will receive expert analyses and public testimony
- Legislative analyst shall provide a written fiscal analysis at the hearing
- Proponents, opponents and interested parties may submit written statements commenting on initiative
- FPPC must provide proponent with copies of written comments and tape recording of oral testimony

3. Mandatory Legislative Committee Hearing After Initiative Qualifies for Ballot

- Legislature (each house or joint committee) must notice, hold and complete public hearing on initiative within 10 days after it qualifies for ballot

4. Amendments by Proponents After Legislative Hearing

- Proponent may amend initiative within seven days after legislative hearing is completed; amendments must be consistent with initiative's "purposes and intent" and be submitted in writing to attorney general

- Attorney general must determine in writing within seven days after receipt whether amendments are consistent with initiative's "purposes and intent"; proponent may cure deficiencies indicated by attorney general within two days
- Sacramento County superior court has exclusive, final and expedited jurisdiction to review attorney general's determination of legitimacy of proponents' amendments

5. Proponent-Sanctioned Amendments by Legislature During 45-Day Cooling-Off Period

- Legislature has 45-day "cooling-off" period to analyze initiative after it qualifies for ballot
- During cooling-off period, proponent may negotiate changes with legislature and take the following possible actions:
  - Withdraw initiative from ballot if legislature enacts and Governor signs it as drafted
  - Withdraw initiative from ballot if legislature enacts and Governor signs 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, be consistent with the law's "purposes and intent" and be printed and circulated 12 days before final vote
  - Withdraw initiative from ballot if legislature places an acceptable alternative measure on the ballot
  - Place original or proponent-amended version of initiative on ballot if legislature doesn't enact initiative, enacts an unacceptable amended version or places an unacceptable alternative measure on ballot

6. Mandatory Legislative Floor Vote on Each Initiative

- Legislature must vote yes or no on all initiative proposals placed on ballot within 45-day cooling-off period
- Each legislator's name, party affiliation, city of residence and vote on all initiatives must appear in ballot pamphlet
- Legislators' votes shall also appear grouped by party affiliation

7. Legislative Amendments to Initiatives After Enactment

- Legislature can amend any statutory initiative (but not constitutional amendment) after passage by a 60% vote (or less if initiative so specifies)
- 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 legislative amendments further the "purposes and intent" of the initiative

CIRCULATION AND QUALIFICATION
(see Chapter 4)

8. Longer Circulation Period

- Circulation period is increased from 150 to 180 days

9. 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 title and summary are released

10. Additional Campaign Statements Filed During Circulation Period

- Proponents must file within 30 days after the attorney general's caption a statement with the secretary of state listing all contributions received up to seven days before the filing

11. Notification That Proponent May Amend the Initiative

- Ballot petitions must contain following notice in bold type: *"The proponent of this initiative may later amend this measure before it appears on the ballot if the amendments are consistent with this initiative's original '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, counties must verify (*i.e.*, examine) them all; (ii) if more than 500 signatures are submitted, counties 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 to reduce the increasing importance of money in the signature-gathering process
- Conduct further research into possible verification of signatures at statewide level (instead of county-by-county)

VOTING REQUIREMENTS
(see Chapter 5)

14. Vote Requirements for Passage of Constitutional Amendments and Revisions

- To *add* new language to the constitution, a constitutional 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* existing language from the constitution, a constitutional measure need only receive a majority vote

15. Special Vote Requirements for Future Measures

- Statutory or constitutional 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

16. Reevaluation of Current Methods for Initiating Constitutional Conventions

- Conduct further research into proposal to allow individuals and organizations to place constitutional convention calls for constitutional revisions on the ballot by petition

NEWS COVERAGE AND PAID ADVERTISING
(see Chapter 6)

17. 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

18. 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

19. Additional Disclosure on Late Contribution Reports

- Require late contribution reports to cumulate all previous contributions made by late contributors to the ballot measure

20. 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

21. 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)

22. New "Summary Ballot Pamphlet" Mailed to Voters Three Weeks Before the Election

- Print a new, one page, fold-out chart summarizing all initiatives and mail to all registered voters three weeks before election
- Chart should list summary of initiative with costs and impacts, pros and cons, supporters and opponents, legislative votes and five largest contributors on each side
- Chart should contain most recent financial contribution data

23. Improved Information in Ballot Pamphlet

- Group competing initiatives together in ballot pamphlet and on ballot; use comparison charts
- Require attorney general to place warning in ballot pamphlet and on ballot stating that if two conflicting initiatives are approved, only one may go into effect
- Continue to print full texts of initiatives 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 floor votes of each legislator on each initiative, and list total legislative votes by party affiliation

24. Improved Ballot Pamphlet Design

- Vary type sizes for reading interest
- Use color, charts and graphics (as in other states)
- Place pro and con arguments side-by-side in vertical columns
- Conduct overall graphic redesign of pamphlet

25. Simplified Petition and Ballot Descriptions

- Apply 12th grade readability standard to all state-written materials, including attorney general's caption and summary
- Continue use of bulleted outlining to enhance readability
- Permit immediate court review before circulation if proponents challenge caption and summary

26. New Voter Information Services

- Offer toll-free 800 number with recorded pro and con messages prepared by supporters and opponents of each initiative
- Consider the feasibility of offering ballot pamphlets on video and audio tape

THE INFLUENCE OF MONEY
(See Chapter 8)

27. 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

28. 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

29. 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)

30. Standards for Judicial Review

- Courts should return to earlier judicial standards and invalidate only individual *provisions* of measures which conflict with provisions in other initiatives receiving more votes at the same election
- Courts should retain the current definition of a "single subject" (involving provisions which are "reasonably germane" to each other)
- Further consideration should be given to allowing citizens to place constitutional revisions on the ballot by the initiative process (subject to Commission recommendations above)

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

Section 3005.5 shall be added to the Elections Code:

No initiative or measure put on the ballot by the Legislature may contain more than 5,000 words, excluding language which is repealed or which repeats existing law.

2. Administrative Hearing at 25% of the Required Number of Signatures

Section 83124 shall be added to the Government Code:

After an initiative proponent has gathered unverified signatures equaling 25% of the signatures required to qualify for the ballot, the proponent shall immediately provide the Fair Political Practices Commission with an affidavit so stating. The Commission shall then hold a hearing at which any person may present testimony on the initiative. The Commission shall record the session and provide the proponent and any other interested person with an audio tape recording of the proceedings as well as a copy of any written material submitted by any witness. The Commission may contract with outside experts to provide additional materials analyzing the initiative. The Legislative Analyst shall provide a written summary of the initiative, including a fiscal analysis of its potential impact, at the hearing.

3. Mandatory Legislative Committee Hearing After Initiative Qualifies for Ballot

Section 3525 shall be added to the Elections Code:

No later than 10 days after the Secretary of State certifies that an initiative has qualified for the ballot, each house of the Legislature shall hold and complete a committee hearing which shall receive testimony on the initiative. The hearing may be held jointly by the Senate and the Assembly. The proponent of the initiative and any other person interested in the hearing shall be given at least three days notice of the hearing. Each committee or the joint committee shall recommend to the full Legislature whether or not it should enact the initiative into law with or without amendments.

4. Amendments by Proponents Permitted After Legislative Hearing

Section 3526 shall be added to the Elections Code:

After an initiative qualifies for the ballot and within seven days of the last legislative committee hearing completed 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 Attorney General for review. The Attorney General shall determine, within seven days, whether such amendments further the purposes and intent of the initiative and notify proponent and the Legislature in writing. The proponent shall have two days to cure any deficiencies. Final jurisdiction to review the Attorney General's determination on an expedited basis shall be with the Sacramento County Superior Court.

5. Mandatory Legislative Floor Vote on Each Initiative

Article II, Section 8(c) of the State Constitution shall be amended as follows:

No later than 45 days after the Secretary of State certifies that an initiative has qualified for the ballot, each house of the Legislature shall take a recorded vote of its members on the provisions of the initiative. Each legislator's name, party affiliation, city of residence and vote on all initiatives, as well as the vote of each house by total membership and by party affiliation, shall appear in the ballot pamphlet.

6. Proponent-Sanctioned Amendments by Legislature Permitted During 45-Day Cooling-Off Period

Article II, Section 8(c) of the State Constitution shall be amended as follows:

If, within a 45-day period following certification by the Secretary of State that an initiative has qualified for the ballot, a majority of the members in each house approves the initiative, or approves an amended version of the initiative which is endorsed by the proponent, and the Governor concurs with either legislative action, the approved version shall become law and the initiative shall not appear on the ballot. If the Legislature approves an amended version of the initiative and the Governor 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.

If the proposed initiative is not approved by the Legislature and the Governor, the Secretary of State shall then submit the measure at the next general election held at least 111 ~~131~~ days following the date of the legislative vote or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

7. Legislative Amendments to Initiatives After Enactment

Article II, Section 10(c) shall be amended to read as follows:

The Legislature may amend or repeal referendum statutes. [Next sentence deleted with the following sentences added]. Any statutory initiative adopted by the electorate or bill adopted by the Legislature pursuant to Article II, Section 8 (c) may only be amended by the Legislature so long as the amendments further the purposes and intent of the initiative, are in print at least 12 days before the final vote by the last house voting on it, are enacted by a 60% vote of the membership of the Assembly and 60% vote of the membership of the Senate, and are approved by the Governor. Any initiative may reduce the number of legislators needed to enact future amendments to it down to and including a simple majority, or may reduce the number of days

future amendments must be in print. The courts shall have jurisdiction to review whether or not the legislation furthers the purposes and intent of the initiative.

CIRCULATION AND QUALIFICATION
(see Chapter 4)

8. Longer Circulation Period—from 150 Days to 180 Days

Section 3513 of the Elections Code is amended to read as follows:

[First paragraph of this section retained but omitted here for reasons of space]

Petitions with signatures on a proposed initiative measure shall be filed with the county clerk not later than ~~150~~ 180 days from the official summary date, and no county clerk shall accept petitions on the proposed initiative measure after that period.

9. Notification That Proponent May Amend the Initiative

Section 3513.5 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."**

10. Improved Signature Verification Procedure

Section 3520(d) of the Elections Code shall be amended to read:

[First three sentences and last sentence of current section (d) retained but omitted here for reasons of space]

The random sampling for each county shall include an examination of 3% of the signatures submitted, but in no event less than 500 or more than 1,500 signatures.

Section 3520(g) shall be amended to read:

If the certificates received from all county clerks by the Secretary of State total more than ~~110~~ 105 percent of the number of qualified voters needed to find the petition sufficient, the petition shall be deemed to qualify as of the date of receipt by the Secretary of State of certificates showing the petition to have reached the ~~110~~ 105 percent, and the Secretary of State shall immediately so notify the proponents and the county clerks.

11. Notice of Major Contributors to Circulation Drive

Section 3513.7 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 by the Attorney General, 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."**

12. Additional Campaign Statements Filed During the Circulation Period

Section 84200.9 shall be added to the Government Code:

(a) Proponents of a state ballot measure who control a committee formed or existing primarily to support the qualification of a state ballot measure shall file a campaign statement 30 days after the Attorney General titles the measure. 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.

VOTING REQUIREMENTS
(see Chapter 5)

13. Vote Requirement for Passage of Constitutional Amendments and Revisions

Article II, Section 10 (f) shall be added to the Constitution:

(f) Any measure which adds language to the Constitution shall either be approved by 60% or more of those voting on the measure or be approved by a majority of those voting on the measure at two consecutive state elections. Any measure which only deletes language from the Constitution shall be approved by a majority of those voting on the measure.

14. Special Vote Requirement for Future Measures

Article II, Section 10 (g) shall be added to the Constitution:

(g) 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.

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 84202(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 Two Weeks Before the Election

Section 3580 shall be added to the Elections Code:

No later than three weeks before the election, the Secretary of State shall send a supplemental ballot pamphlet in the form of a one-page table or chart to each household containing a registered voter. The pamphlet shall contain a short summary of each measure prepared by the Attorney General, a short statement of fiscal impact, if any, prepared by the Legislative Analyst, a list of the top five major

funding sources supporting and the top five opposing the measure prepared by the Fair Political Practices Commission, a list of major supporters and opponents prepared by the supporters and opponents respectively, the principal arguments for and against each initiative prepared by the supporters and opponents, respectively, and a listing of the legislative vote on each measure broken down by political party affiliation.

19. Grouping of Ballot Measures

Section 10218.5 shall be added to the Elections Code:

Notwithstanding Section 10218, the Attorney General shall determine which measures on the same ballot potentially conflict with each other and the Secretary of State shall group these measures together in the same part of the ballot. The ruling of the Attorney General as to whether measures conflict or not is reviewable in a final and expedited hearing in the Sacramento County Superior Court. Such measures shall be accompanied by a warning label stating that the Attorney General has concluded 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, the label shall state that if the constitutional amendment passes by a 60% or better vote or by a simple majority in two successive elections, its provisions will prevail over the statutory amendment.

20. Endorsements Listed in the Ballot Pamphlet

Section 88002.5 shall be added to the Government Code:

Immediately after the analysis prepared by the Legislative Analyst, the ballot pamphlet 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. Legislative Votes on Initiatives Placed in the Ballot Pamphlet

Section 88002.6 shall be added to the Government Code:

Each legislator's name, party affiliation, city of residence and vote on all initiatives, as well as the vote of each house by total membership and by party affiliation, shall appear in the ballot pamphlet.

22. Summary Written by the Attorney General in Simple Language

Section 88002 (g) shall be added to the Government Code:

The summary prepared by the Attorney General shall be written in clear and concise terms which shall be understood by the average voter and shall avoid the use of technical terms wherever possible.

APPENDIX C

Procedures and Timetables for Ballot Measures Under Commission's Proposed Recommendations

(For November 3, 1992 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. If every signature must be verified, more time is required (Column A). If a measure qualifies after a random signature count, proponents need less time to qualify (Column B).

	Each Signature Counted		*Random Signature Count*	
	Date	***Days Before Election***	***Date***	***Days Before Election***
Proponent submits text of initiative to attorney general (AG) for title and summary, if fiscal impact is required	June 28	*494 days*	Aug. 20	*441 days*
Proponent submits text of initiative to AG for title and summary, if no fiscal impact is required	July 23	*469 days*	Sept. 14	*416 days*
AG returns title and summary; proponent's 180-day circulation period begins	Aug. 7	*454 days*	Sept. 30	*400 days*
Proponent files campaign statement listing contributions and expenditures	Sept. 6	*424 days*	Oct. 30	*370 days*
Proponent provides affidavit to FPPC that 25% of required signatures have been collected	During the circulation period			
FPPC holds hearing on initiative	During the circulation period			

	Each Signature Counted		*Random Signature Count*	
	Date	***Days Before Election***	***Date***	***Days Before Election***
Semi-annual campaign statements due	Jan. 31	*297 days*	Same	*Same*
Proponent must turn in all petitions	Feb. 3	*274 days*	Mar. 27	*221 days*
Counties must count number of signatures on petitions and send total to Secretary of State	Feb. 13	*264 days*	Apr. 8	*209 days*
Secretary of State totals raw signatures from counties to determine if proponent has turned in at least 100% of required signatures	Feb. 20	*257 days*	Apr. 15	*202 days*
Final campaign statements for circulation period due	Feb. 24	*253 days*	Apr. 17	*200 days*
Counties must finish random count of signatures	Apr. 2	*215 days*	May 28	*159 days*
Secretary of State notifies counties to begin count of all signatures or announces that petition has succeeded or failed based on random count	Apr. 13	*204 days*	—	—
Counties must finish signature counts	May 26	*161 days*	—	—
Deadline for initiatives to qualify for the ballot	May 30	*156 days*	Same	*Same*

	Each Signature Counted		*Random Signature Count*	
	Date	***Days Before Election***	***Date***	***Days Before Election***
45-day cooling-off period begins for legislature to consider initiatives which have qualified	May 30	*156 days*	Same	*Same*
Legislature must hold and complete committee hearings on initiative	June 9	*146 days*	Same	*Same*
Deadline for proponent to amend initiative	June 16	*139 days*	Same	*Same*
Last day for legislature to vote on all initiatives	July 15	*111 days*	Same	*Same*
Ballot arguments must be submitted	July 21	*105 days*	Same	*Same*
Ballot arguments are selected by Secretary of State	July 22	*104 days*	Same	*Same*
All ballot pamphlet copy (rebuttals, analyses, ballot titles) must be submitted	July 29	*97 days*	Same	*Same*
Ballot pamphlet copy available for public inspection	July 31	*95 days*	Same	*Same*
Semi-annual campaign statements due	July 31	*95 days*	Same	*Same*
Last day to provide ballot pamphlet copy to state printer	Aug. 17	*78 days*	Same	*Same*

	Each Signature Counted		*Random Signature Count*	
	Date	***Days Before Election***	***Date***	***Days Before Election***
Secretary of State distributes ballot pamphlets to counties	Sept. 19	*45 days*	Same	*Same*
Mailing of ballot pamphlet to voters begins	Sept. 20	*44 days*	Same	*Same*
First pre-election campaign statements due	Oct. 5	*29 days*	Same	*Same*
Last day to mail ballot pamphlets to voters registering 60 days before election	Oct. 13	*21 days*	Same	*Same*
Summary Ballot Pamphlet mailed to voters	Oct. 13	*21 days*	Same	*Same*
Second pre-election campaign statements due	Oct. 22	*12 days*	Same	*Same*
Last day to mail ballot pamphlets to voters registering late	Oct. 24	*10 days*	Same	*Same*
Election Day — November 3, 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

Summary of Legislation to Amend the Initiative Process Introduced in the 1991 Session of the California Legislature

Concern over the ballot initiative process rose sharply in California after the November 1990 election, in which a record number of measures appeared on the ballot. Legislators introduced 39 bills in the 1991 legislative session to modify the initiative process. Only a few—marked by an asterisk (*)—passed both houses and were signed by the Governor.

The following lists the legislative measures considered in 1991:

SENATE BILLS

1. SB 27 (Kopp)

Reinstates the pre-1988 signature requirement for chartered cities and San Francisco, so that the requirement is based on the last gubernatorial vote rather than on the number of registered voters.

Status: Passed the senate but failed in the assembly.

2. SB 116 (Kopp)

Reinstates the Proposition 105 disclosure provisions relating to ballot measure campaigns. Requires the top two funding sources and the leading industry group backing the initiative to be listed on any advertisements.

Status: Failed to get a motion in first committee.

3. SB 117 (Kopp)* (As amended June 26, 1991)

Requires the legislative counsel to prepare ballot title, summary and estimate of the financial effect if the initiative is sponsored by the attorney general.

Modifies the order of who can be selected to write arguments for and against ballot measures so that legislators must automatically be selected if they write the arguments (the proponents of initiatives are still picked if they submit arguments). (This section was amended out of the bill.)

Status: Passed the legislature and signed by the Governor.

4. SB 321 (Kopp) (As amended September 10, 1991)

Requires the legislative analyst to include a summary statement in the ballot pamphlet explaining the effect of a "yes" or "no" vote on the measure.

Requires the secretary of state to produce an audiocassette of the state ballot pamphlet.

Status: Vetoed by the Governor because of the potential cost of the audio tape.

5. SB 424 (Kopp)* (As amended May 22, 1991)

Prohibits initiative proponents from including an appropriation in the initiative in exchange for a campaign contribution.

Status: Passed the legislature and signed by the Governor.

6. SB 607 (Hart) (As amended July 2, 1991)

Requires initiative petitions to include arguments for and against the initiative in 9-point type under the attorney general's summary.

If no argument if submitted against the measure, no argument for the measure need to be printed.

Status: Passed the legislature, but vetoed by the Governor who said the bill placed too great a burden on the proponents.

7. SB 608 (Hart) (As amended July 2, 1991)

Deletes from the statewide ballot pamphlet the printing of the text of a measure, but allows interested voters to order the text.

Allows persons submitting arguments to include a list of persons who have taken an official position on the measure.

Allows the legislative analyst to include charts, tables and other graphics which will make it easier to understand the analysis.

Lengthens the number of days needed to complete fiscal analysis and makes other technical changes.

Status: Passed senate but all of its provisions relating to ballot measures were deleted from the bill.

8. SB 609 (Hart)

Limits contributions to initiative campaigns to no more than $50,000 in support or opposition.

Status: Did not receive a motion in first committee.

9. SB 661 (Hill)

Requires the attorney general to indicate whether a proposed initiative would have a financial effect on any particular industry, trade or profession.

Requires proponents to provide a list to the attorney general of all persons who have contributed $5,000 or more to qualify the initiative and would require all such persons to be listed on the petition beneath the attorney general's summary.

Prohibits the payment of circulators based on the number of signatures obtained.

Status: Passed the legislature but vetoed by the Governor who said that such disclosure was more appropriately done by the participants in the campaign rather than by the attorney general.

10. SB 734 (Roberti) (As amended July 2, 1991)

Requires the ballot pamphlet to include the five largest contributors in support and the five largest in opposition to any initiative measure, provided that they have contributed $5,000 or more.

Allows arguments to contain a list of supporters or opponents of the measure. The list cannot exceed 250 words.

Status: Passed the senate but failed to get a motion in the first assembly committee.

11. SB 842 (Marks)* (As amended July 1, 1991)

Extends existing state law, which provides that funds received for initiatives and ballot measures must be held in trust and can only be used for election related expenses, to all local ballot measures.

Status: Passed the legislature and signed by the Governor.

12. SB 1194 (Roberti)*

Extends personal use of campaign money prohibitions to ballot measure committees.

Status: Passed the legislature and signed by the Governor.

SENATE CONSTITUTIONAL AMENDMENTS

13. SCA 3 (Maddy) (As amended April 18, 1991)

Amends the single-subject rule in the constitution to require that each provision of the initiative must be reasonably germane to the general objective or purpose of the measure and must be reasonably interdependent with the other provisions of the measure.

Status: Passed senate and on assembly floor where it failed to get enough votes. Reconsideration granted.

14. SCA 4 (Keene) (As amended Apr. 23, 1991)

Requires an initiative statute to receive a majority vote of all persons registered to vote in order to be enacted. (This section has been removed from the proposal.)

Enacts a number of other non-initiative related provisions, including establishing a reapportionment commission, increasing the number of terms a legislator may be elected and requiring the legislature to enact a system of public financing of elections.

Status: Awaiting action in first committee.

15. SCA 9 (Roberti) (As amended April 29, 1991)

Requires any initiative which mandates additional expenditures of public funds of $5 million or more to provide additional revenues to cover the additional expenditures.

Requires that no initiative can contain a severability clause, so that if any provision is declared invalid, the entire measure is void. (This section has been deleted from the proposal.

Status: Passed senate and on assembly floor.

16. SCA 10 (Killea)

Prohibits initiatives from containing bond acts and other debt acts.

Status: Passed the senate and awaiting action in first assembly committee.

17. SCA 11 (Morgan)

Raises vote requirements on certain initiative measures to two-thirds.

Status: Defeated in assembly committee.

18. SCA 16 (Hart)

Establishes an optional indirect initiative process. Reduces the number of signatures needed by 20% for those persons who choose the indirect option.

Allows the proponents to amend the initiative if the legislature disapproves it.

Status: Failed on the senate floor.

19. SCA 19 (Marks)

Provides that all measure approved by the voters take effect after the date of the official certification of the vote by the secretary of state or the date specified in the initiative, whichever is later.

Status: Passed senate but failed on assembly floor.

20. SCA 21 (Greene)

Prohibits any initiative from becoming law unless it receives more than 50% of the vote and at least 50% of the registered voters vote on the measure.

Status: Failed to get a motion in first committee.

21. SCA 22 (Greene)

Prohibits an initiative from receiving signatures totaling more than 10% from any county.

Status: Still in first committee.

ASSEMBLY BILLS

22. AB 34 (Wyman) (As amended June 19, 1991)

Requires the ballot pamphlet to contain a brief description of each measure, a summary of its cost or savings, and a discussion of any conflict with any other measure. If a measure conflicts with another on the ballot, the discussion of the conflict must appear at the beginning of the pamphlet. The descriptions of all the measures cannot exceed 2 pages.

Status: Bill passed the assembly but failed in first senate committee.

23. AB 262 (Statham)

Establishes a Task Force on the Initiative Process.

Status: Passed the assembly and passed first senate committee.

24. AB 441 (Moore) (As amended July 3, 1991)

Counts signatures gathered by paid circulators at 20% of the actual number of signatures gathered. Requires declaration signed by the circulator to indicate whether the circulator has been paid to collect signatures and by whom. (This section has been deleted from the bill.)

Requires petition circulators to include the phone number of the person paying the circulator on the bottom portion of the petition where the circulator attests to the validity of the signatures.

Status: Still in first committee.

25. AB 559 (Polanco)*

Requires committees opposing the qualification of initiatives to file disclosure statements 21 days after the deadline for filing petitions, rather than 21 days after the petitions are filed.

Status: Passed the legislature and signed by the Governor.

26. AB 681 (Moore)

Requires state initiative petitions to be 8.5 x 14 inches in size. Signatures must be affixed on one side of the petition.

Status: Passed the assembly and senate and awaiting concurrence in senate amendments in the assembly.

27. AB 1292 (Chacon)

Requires an initiative petition to be on public display with the secretary of state for 30 days before it can be submitted to the attorney general for title and summary.

Status: Provisions withdrawn by the author.

28. AB 1331 (Speier) (As amended June 26, 1991)

Requires the creation of a new Initiative Measure Legal Review Panel (consisting of the attorney general, legislative counsel, two members of the state bar appointed by the Governor and the legislature), which would review each initiative petition for form, clarity and potential legal problems within a 15-day time period. Proponents may amend their initiative after receiving comments from the review panel, but this would delay the titling by the attorney general.

Raises the filing fee for initiatives from $200 to $1,000 and makes the fee non-refundable. (Under current law, the fee is refunded if the initiative qualifies for the ballot.

Status: Bill passed the legislature but vetoed by the Governor.

29. AB 1450 (Sher) (As amended June 6, 1991)

Establishes an indirect initiative procedure. Reduces the number of signatures needed by 20% for those persons who choose the indirect option. The measure must be presented to the floor of each house. (At the request of the legislature, this section has been deleted from the latest version of the bill.)

If the proponents wish to amend their initiative after the legislature and the proponents have failed to agree on the initiative, the proponents may amend the initiative provided that the amendments are germane and further the intent of the original proposal. The attorney general makes this determination. If the attorney general determines that the amendments are not germane or do not further the intent of the original proposal, the initiative is not permitted to go on the ballot—in any form.

Status: Failed on the assembly floor.

30. AB 1471 (Lempert) (As amended August 30, 1991)

Requires the ballot pamphlet's table of contents as well as the ballot itself to indicate whether a measure was placed on the ballot by the legislature or by initiative.

Status: Passed the legislature but vetoed by the Governor who said: "It's not worth it."

31. AB 1590 (Hannigan) (As amended May 14, 1991)

Establishes an Initiative Measure Legal Review Panel consisting of the legislative counsel, attorney general, a member of the state bar appointed by the Governor and a member of the state bar or retired judge appointed by the judicial council.

The Initiative Measure Legal Review Panel must examine each initiative to determine whether a judicial interpretation of the measure is likely to be necessary because of conflict with existing statutory or constitutional law or lack of clarity in language.

The legal review and a summary of it not exceeding 100 words must be printed in the ballot pamphlet.

Status: Passed out of first committee but the bill was dropped when its substance was amended into another bill.

32. AB 2125 (Chacon)*

Provides 18 days of additional time for clerks to check signatures.

Reduces the number of signatures required to be randomly sampled from 5% to 3%.

Status: Passed the legislature and signed by the Governor.

ASSEMBLY CONSTITUTIONAL AMENDMENTS

33. ACA 8 (Harvey)

Requires a majority of registered voters to approve a statutory initiative before it can be considered enacted.

Status: Failed in first committee.

34. ACA 16 (Sher) (As amended April 30, 1991)

Establishes an indirect initiative process.

Status: Passed out of first committee.

35. ACA 17 (Farr)

Increases the number of signatures needed to qualify a constitutional amendment to 10% of the last vote for Governor, rather than 8% of the last vote for Governor.

Status: On assembly floor.

36. ACA 20 (Campbell)

Provides that a constitutional amendment which changes the vote requirements beyond a simple majority for future measures must obtain at least the amount which is specified in the proposal. This legislation responds to Proposition 136 which would have imposed a two-thirds vote on future special taxes. A simple majority of voters could have required a future two-thirds vote.

Status: Passed out of first committee.

37. ACA 24 (Costa)*

Prohibits any ballot measure from being voted upon in a presidential primary election which is not consolidated with the statewide primary election.

Status: Passed out of first committee; on inactive file on assembly floor.

38. ACA 29 (Bane)

Permits the legislature (without the Governor's signature) to submit proposed statutes to the electorate for voter approval.

Status: Has not been heard by first committee.

39. ACR 13 (Costa)* (As amended June 16, 1991)

Establishes a Commission on Ballot Initiatives consisting of 12 appointed members, the attorney general, the president of the county clerk's association and the secretary of state. The speaker, Governor and Senate Rules Committee must appoint one member each from the business sector, the academic community, public interest groups and the general public, except that the speaker must appoint someone from an initiative petition qualification firm in lieu of the business community. The Commission must use existing studies and reports on the initiative process to the fullest extent possible. Its report with recommendations must be submitted by March 1, 1992.

Status: Passed the legislature and is in effect. (Because this was a concurrent resolution of the legislature, it did not go to the Governor for his approval.)

*Enacted into law.

APPENDIX F

The Commission's Data Analysis Project: The Impact of Money on California's Initiative Process

To assess the influence of money on California initiative process, the Commission conducted *two* distinct computerized studies of initiative campaign finance information. The first examined the effects of large contributions and high spending on ballot measure campaigns by analyzing the 18 highest spending initiative campaigns in California history. The second evaluated recent patterns of low and high spending in current initiative campaigns by analyzing all 18 initiatives in the 1990 primary and general elections. (See Table F.1 for a complete list of initiatives included.)

In total, the Commission analyzed 33 initiative campaigns and one legislative measure (1990 alcohol tax legislative measure, Proposition 126). The Commission's study encompassed nearly 100,000 individual contribution and expenditure entries from campaign disclosure statements amounting to *over one-half billion dollars.*

The Commission utilized a sophisticated computer software program (Microsoft *Excel 3.0*) 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 $10,000 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 thousands of pages of campaign statements from the secretary of state's offices in Sacramento (the Political Reform Division and State Archives) and the Los Angeles County Registrar's office. 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 of 1990 initiative campaigns, 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 reapportionment Propositions 118 and 119 combined their efforts, forming a "No on 118/119" campaign effort. One initiative campaign committee supported forest practices Proposition 138 and opposed Proposition 130 ("Forests Forever").

Proponents of tax Proposition 136 and initiative regulation Proposition 137 combined their efforts through several joint campaign committees. Opponents of term limits/government reform Propositions 131 and 140 in large part combined their campaign operations. 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 F Tables

Table F.1

Ballot Measures Included in the Commission's Study

I. The 18 Most Expensive Initiative Campaigns in California History

(Ranked From Most to Least Expensive in 1988 Dollars. Actual Dollars Also Shown.)

Prop./Yr.	Subject	1988 Dollars	Actual Dollars	Vote (Y/N)
104 ('88 G)	No-Fault Insurance	$37,499,034	$37,499,034	Y-25%/N-75%
134 ('90 G)	Alcohol Tax	$24,208,045	$26,183,421	Y-31%/N-69%
99 ('88 G)	Tobacco Tax	$23,078,388	$23,078,388	Y-58%/N-42%
4 ('56 G)	Oil Conservation	$22,696,974	$4,998,433	Y-23%/N-77%
100 ('88 G)	Insurance Reform	$22,486,983	$22,486,983	Y-41%/N-59%
128 ('90 G)	Big Green	$17,738,234	$19,185,674	Y-36%/N-64%
18 ('58 G)	Right to Work	$13,921,161	$3,528,638	Y-40%/N-60%
5 ('78 G)	Smoking Regs.	$13,461,826	$7,222,996	Y-46%/N-54%
15 ('82 G)	Handgun Control	$12,398,095	$8,950,134	Y-37%/N-63%
51 ('86 P)	Tort Reform	$12,273,245	$11,259,858	Y-62%/N-38%
39 ('84 G)	Reapportionment	$12,037,862	$10,288,771	Y-45%/N-55%
36 ('84 G)	Income Taxes	$11,865,807	$10,141,715	Y-45%/N-55%
130 ('90 G)	Forests Forever	$11,743,785	$12,702,078	Y-48%/N-52%
15 ('76 P)	Nuclear Power	$11,599,622	$3,709,517	Y-35%/N-65%
17 ('64 G)	Railroad Labor	$11,248,668	$2,860,574	Y-61%/N-39%
10 ('80 P)	Rent Control	$9,949,529	$6,722,655	Y-35%/N-65%
11 ('80 P)	Oil Profits Tax	$9,006,281	$6,085,325	Y-44%/N-56%
61 ('86 G)	State Salaries	$8,468,189	$7,922,124	Y-34%/N-66%

II. 1990 Primary and General Initiative Campaigns

(Shown in Actual Dollars)

Prop./Yr.	Subject	Total Spent	Vote (Y/N)
115 ('90 P)	Criminal Justice	$2,313,192	Y-57%/N-43%
116 ('90 P)	Rail Transit	$1,276,411	Y-53%/N-47%
117 ('90 P)	Wildlife Protection	$1,140,515	Y-52%/N-48%
118 ('90 P)	Reapportionment	$4,546,761	Y-33%/N-67%
119 ('90 P)	Reapportionment	$6,298,718	Y-36%/N-64%
*126 ('90 G)	Alcohol Tax	$3,299,410	Y-41%/N-59%
128 ('90 G)	Big Green	$19,185,674	Y-36%/N-64%
129 ('90 G)	Criminal Justice	$1,127,232	Y-28%/N-72%
130 ('90 G)	Forests Forever	$12,702,078	Y-48%/N-52%
131 ('90 G)	Gov't Reform	$3,577,970	Y-38%/N-62%
132 ('90 G)	Gill Net Fishing	$746,804	Y-56%/N-44%
133 ('90 G)	Drug Prevention	$803,395	Y-32%/N-68%
134 ('90 G)	Alcohol Tax	$26,183,421	Y-31%/N-69%
135 ('90 G)	Pesticides	$5,683,692	Y-30%/N-70%
136/137 ('90 G)	Taxes/Init. Proc.	$11,120,698	136: Y-48%/N-52% 137: Y-45%/N-55%
138 ('90 G)	Forests	$5,612,160	Y-29%/N-71%
139 ('90 G)	Prison Labor	$1,608,852	Y-54%/N-46%
140 ('90 G)	Term Limits	$4,317,475	Y-52%/N-48%

*Prop. 126 ('90 G) was a *legislative* counter measure to Prop. 134.

CONTRIBUTION TABLES

THE 18 MOST EXPENSIVE INITIATIVES IN CALIFORNIA AND ALL 1990 INITIATIVE CAMPAIGNS

Table F.2
Sources of Contributions*: Overview

	Top 18 Initiatives	*1990 Initiatives*	*Total***
Business	$185,467,605 82.6%	$70,783,576 66.4%	$210,294,786 76.9%
Individual	$18,766,306 8.4%	$12,896,457 12.1%	$22,756,375 8.3%
Labor	$7,246,795 3.2%	$1,360,136 1.3%	$8,545,145 3.1%
Political	$1,677,698 0.7%	$7,047,313 6.6%	$8,695,574 3.2%
Broadbased	$7,310,956 3.3%	$5,029,226 4.7%	$10,631,725 3.9%
Officeholders	$4,064,988 1.8%	$9,540,876 8.9%	$12,447,640 4.6%
Total	***$224,534,349*** ***100%***	***$106,657,585*** ***100%***	***$273,371,245*** ***100%***

Table F.3
Sources of Contributions*: Qualification Period Only

	Top 18 Initiatives	*1990 Initiatives*	*Total***
Business	$20,224,338 80.0%	$7,712,469 49.9%	$27,306,320 71.8%
Individual	$2,426,487 9.6%	$3,290,252 21.3%	$4,418,965 11.6%
Labor	$2,576 0.0%	$341,909 2.2%	$341,909 0.9%
Political	$746,758 3.0%	$674,939 4.4%	$1,421,697 3.7%
Broadbased	$1,492,366 5.9%	$2,153,757 13.9%	$2,950,088 7.8%
Officeholders	$395,162 1.6%	$1,283,349 8.3%	$1,585,948 4.2%
Total	***$25,287,687*** ***100%***	***$15,456,674*** ***100%***	***$38,024,926*** ***100%***

*Contributions of $100 or More.

**The "Total" figures have been adjusted to avoid double counting data from the three 1990 initiative campaigns which also appear in the "Top 18" sample (Propositions 128, 130 and 134).

Table F.4
Sources of Contributions*: Support v. Opposition

	TOP 18 INITIATIVES		1990 INITIATIVES	
	Support	***Opposition***	***Support***	***Opposition***
Business	$88,360,196 78.9%	$97,107,409 86.3%	$25,526,761 51.5%	$45,256,816 79.3%
Individual	$13,995,013 12.5%	$4,771,293 4.2%	$12,367,571 24.9%	$528,885 0.9%
Labor	$44,876 0.0%	$7,201,919 6.4%	$478,646 1.0%	$881,491 1.5%
Political	$1,498,398 1.3%	$179,300 0.2%	$2,297,576 4.6%	$4,749,737 8.3%
Broadbased	$4,690,658 4.2%	$2,620,299 2.3%	$4,908,313 9.9%	$120,914 0.2%
Officeholders	$3,463,792 3.1%	$601,196 0.5%	$3,995,738 8.1%	$5,545,138 9.7%
Total	***$112,052,933*** ***100%***	***$112,481,416*** ***100%***	***$49,574,604*** ***100%***	***$57,082,981*** ***100%***

Table F.5
Sources of Contributions*: Winner v. Loser

	TOP 18 INITIATIVES		1990 INITIATIVES	
	Winners	***Losers***	***Winners***	***Losers***
Business	$80,415,048 84.7%	$105,052,557 81.1%	$48,319,915 78.4%	$22,463,661 49.9%
Individual	$3,917,394 4.1%	$14,848,912 11.5%	$2,002,049 3.2%	$10,894,408 24.2%
Labor	$6,184,364 6.5%	$1,062,431 0.8%	$1,030,904 1.7%	$329,232 0.7%
Political	$282,350 0.3%	$1,395,348 1.1%	$4,728,050 7.7%	$2,319,263 5.2%
Broadbased	$3,535,121 3.7%	$3,775,836 2.9%	$1,050,794 1.7%	$3,978,433 8.8%
Officeholders	$645,595 0.7%	$3,419,393 2.6%	$4,540,061 7.4%	$5,000,816 11.1%
Total	***$94,979,872*** ***100%***	***$129,554,477*** ***100%***	***$61,671,772*** ***100%***	***$44,985,813*** ***100%***

*Contributions of $100 or More.

Table F.6
Contribution Size: Overview

(Shown by Dollar Amount, Number of Contributions and Percent of Total Dollars)

	Top 18 Initiatives	*1990 Initiatives*	*Total**
Under $100	$14,908,464	$3,015,872	$16,628,276
	**	**	**
	6.2%	2.7%	5.7%
$100 to $999	$8,462,141	$3,804,024	$10,817,382
	38,446	17,825	49,845
	3.5%	3.5%	3.7%
$1,000 to $9,999	22,824,852	11,160,939	$29,673,248
	9,600	4,240	12,296
	9.5%	10.2%	10.2%
$10,000 to $49,999	17,751,964	10,359,858	$23,786,666
	977	578	1,333
	7.4%	9.4%	8.2%
$50,000 to $99,999	10,843,825	7,664,089	$15,603,287
	171	117	244
	4.5%	7.0%	5.4%
$100,000 to $999,999	57,536,481	33,103,336	$71,626,536
	186	122	246
	24.0%	30.2%	24.7%
$1 million & Over	107,115,086	40,565,339	$121,864,127
	40	19	49
	44.7%	37.0%	42.0%
Total	***$239,442,813***	***$109,673,456***	***$289,999,521***
	49,418	***22,901***	***64,012***
	100%	***100%***	***100%***

*The "Total" figures have been adjusted to avoid double counting data from the three 1990 initiative campaigns which also appear in the "Top 18" sample (Propositions 128, 130 and 134).

Table F.7
Contribution Size by Funding Source:
The 18 Most Expensive Initiative Campaigns in California History

(Shown by Dollar Amount, Number of Contributions and Percent of Total Dollars)

	Business	Individual	Labor	Political	Broadbased	Officeholder
$100 to $999	$3,001,484	$4,710,206	$570,562	$14,038	$146,920	$18,931
	11626	24416	1803	54	491	56
	1.6%	25.1%	7.9%	0.8%	2.0%	0.5%
$1,000 to $9,999	15,024,732	4,811,484	1,751,976	54,700	722,524	459,436
	5,677	2,788	719	22	258	136
	8.1%	25.6%	24.2%	3.3%	9.9%	11.3%
$10,000 to $49,999	13,113,349	1,985,782	1,237,291	269,037	660,585	485,921
	699	131	65	15	34	33
	7.1%	10.6%	17.1%	16.0%	9.0%	12.0%
$50,000 to $99,999	8,273,239	890,000	859,188	186,050	457,348	178,000
	130	17	12	3	6	3
	4.5%	4.7%	11.9%	11.1%	6.3%	4.4%
$100,000 to $999,999	48,853,807	445,000	2,827,778	1,153,873	3,913,523	342,500
	151	4	11	5	13	2
	26.3%	2.4%	39.0%	68.8%	53.5%	8.4%
$1 million & Over	97,200,995	5,923,834	0	0	1,410,057	2,580,200
	35	2	0	0	1	2
	52.4%	31.6%	0.0%	0.0%	19.3%	63.5%
Total	***$185,467,605***	***$18,766,306***	***$7,246,795***	***$1,677,698***	***$7,310,956***	***$4,064,988***
	18,317	***27,358***	***2,610***	***99***	***802***	***232***
	100%	***100%***	***100%***	***100%***	***100%***	***100%***

Table F.8
Contribution Size by Funding Source: All 1990 Initiative Campaigns

(Shown by Dollar Amount, Number of Contributions and Percent of Total Dollars)

	Business	Individual	Labor	Political	Broadbased	Officeholder
$100 to $999	$1,585,863	$2,070,494	$41,999	$2,899	$92,291	$10,477
	5,957	11,422	123	9	285	29
	2.2%	16.1%	3.1%	0.0%	1.8%	0.1%
$1,000 to $9,999	$7,466,878	$2,249,221	$377,670	$43,615	$650,706	$372,850
	2,618	1,153	128	7	221	113
	10.5%	17.4%	27.8%	0.6%	12.9%	3.9%
$10,000 to $49,999	$7,229,164	$1,562,538	$392,007	$85,387	$460,262	$630,500
	405	94	21	3	19	36
	10.2%	12.1%	28.8%	1.2%	9.2%	6.6%
$50,000 to $99,999	$5,200,364	$642,500	$230,918	$131,500	$761,650	$697,157
	80	11	4	2	10	10
	7.3%	5.0%	17.0%	1.9%	15.1%	7.3%
$100,000 to $999,999	$27,305,221	$447,870	$317,542	$562,349	$1,532,848	$2,937,506
	98	4	1	2	6	11
	38.6%	3.5%	23.3%	8.0%	30.5%	30.8%
$1 million & Over	$21,996,087	$5,923,834	$0	$6,221,563	$1,531,469	$4,892,386
	10	2	0	3	1	3
	31.1%	45.9%	0.0%	88.3%	30.5%	51.3%
Total	***$70,783,576***	***$12,896,457***	***$1,360,136***	***$7,047,313***	***$5,029,226***	***$9,540,876***
	9,168	***12,686***	***277***	***26***	***542***	***202***
	100%	***100%***	***100%***	***100%***	***100%***	***100%***

EXPENDITURE TABLES

THE 18 MOST EXPENSIVE INITIATIVES IN CALIFORNIA AND ALL 1990 INITIATIVE CAMPAIGNS

Table F.9
Expenditure Pattern Breakout*: Overview

	Top 18 Initiatives	*1990 Initiatives*	*Total***
Broadcast	$98,130,830 43.6%	$52,121,376 47.7%	$117,307,668 42.5%
Consultants	$23,060,461 10.3%	$13,836,889 12.7%	$32,713,318 11.8%
Fundraising	$3,397,732 1.5%	$1,773,384 1.6%	$4,315,383 1.6%
General	$25,318,023 11.3%	$12,061,408 11.0%	$29,277,550 10.6%
Literature†	$40,240,815 17.9%	$17,438,077 16.0%	$51,113,581 18.5%
Newspaper	$6,135,369 2.7%	$515,965 0.5%	$6,194,601 2.2%
Outdoor	$9,180,168 4.1%	$693,994 0.6%	$9,474,374 3.4%
Sig. Gathering/ Surveys††	$16,102,875 7.2%	$9,805,051 9.0%	$22,313,780 8.1%
Travel	$3,285,490 1.5%	$952,182 0.9%	$3,615,307 1.3%
Total	***$224,851,762*** ***100%***	***$109,198,326*** ***100%***	***$276,325,562*** ***100%***

*Expenditures of $100 or More.
**The "Total" figures have been adjusted to avoid double counting data from the three 1990 initiative campaigns which also appear in the "Top 18" sample (Propositions 128, 130 and 134).
†"Literature" includes all direct mail and campaign pamphlet expenses.
††"Sig. Gathering/Surveys" includes paid petition circulation and polling expenses.

Table F.10
Expenditure Pattern Breakout*: Support v. Opposition

	TOP 18 INITIATIVES		1990 INITIATIVES	
	Support	***Opposition***	***Support***	***Opposition***
Broadcast	$41,423,850 36.6%	$56,706,979 50.8%	$19,121,742 35.4%	$32,999,633 59.7%
Consultants	$13,773,478 12.2%	$9,286,983 8.3%	$8,077,542 15.0%	$5,759,347 10.4%
Fundraising	$3,017,320 2.7%	$380,413 0.3%	$1,338,176 2.5%	$435,208 0.8%
General	$12,505,731 11.0%	$12,812,292 11.5%	$5,945,374 11.0%	$6,116,034 11.1%
Literature†	$21,058,651 18.6%	$19,182,164 17.2%	$10,519,940 19.5%	$6,918,137 12.5%
Newspaper	$2,740,622 2.4%	$3,394,747 3.0%	$68,902 0.1%	$447,063 0.8%
Outdoor	$4,963,493 4.4%	$4,216,675 3.8%	$291,349 0.5%	$402,645 0.7%
Sig. Gathering/ Surveys††	$12,102,174 10.7%	$4,000,701 3.6%	$8,117,183 15.0%	$1,687,868 3.1%
Travel	$1,734,920 1.5%	$1,550,570 1.4%	$481,717 0.9%	$470,465 0.9%
Total	***$113,320,239*** ***100%***	***$111,531,523*** ***100%***	***$53,961,925*** ***100%***	***$55,236,401*** ***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 F.11
Expenditure Pattern Breakout*: Winner v. Loser

	TOP 18 INITIATIVES		1990 INITIATIVES	
	Winners	***Losers***	***Winners***	***Losers***
Broadcast	$46,621,079 48.3%	$51,509,750 40.1%	$32,795,767 54.2%	$19,325,609 39.7%
Consultants	$9,168,521 9.5%	$13,891,941 10.8%	$6,907,475 11.4%	$6,929,414 14.2%
Fundraising	$778,448 0.8%	$2,619,284 2.0%	$627,797 1.0%	$1,145,587 2.4%
General	$13,040,604 13.5%	$12,277,419 9.6%	$6,835,214 11.3%	$5,226,195 10.7%
Literature†	$16,037,413 16.6%	$24,203,402 18.9%	$7,866,580 13.0%	$9,571,497 19.6%
Newspaper	$2,463,642 2.6%	$3,671,727 2.9%	$486,935 0.8%	$29,030 0.1%
Outdoor	$2,739,097 2.8%	$6,441,071 5.0%	$430,340 0.7%	$263,654 0.5%
Sig. Gathering/ Surveys††	$4,104,483 4.3%	$11,998,392 9.3%	$4,035,232 6.7%	$5,769,819 11.8%
Travel	$1,538,929 1.6%	$1,746,561 1.4%	$492,906 0.8%	$459,276 0.9%
Total	***$96,492,216*** ***100%***	***$128,359,546*** ***100%***	***$60,478,245*** ***100%***	***$48,720,081*** ***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 F.12
Expenditure Pattern Breakout*: Qualification Period Only

	Top 18 Initiatives	*1990 Initiatives*	*Total***
Broadcast	$6,093,653 19.6%	$113,362 0.6%	$6,203,240 12.9%
Consultants	$4,886,162 15.7%	$4,464,861 22.2%	$9,251,152 19.2%
Fundraising	$911,125 2.9%	$272,827 1.4%	$1,142,247 2.4%
General	$3,802,004 12.2%	$2,533,958 12.6%	$5,503,372 11.4%
Literature†	$4,289,842 13.8%	$4,402,844 21.9%	$8,583,783 17.8%
Newspaper	$1,157,370 3.7%	$12,575 0.1%	$1,167,466 2.4%
Outdoor	$644,780 2.1%	$13,965 0.1%	$655,231 1.4%
Sig. Gathering/ Surveys††	$9,020,740 28.9%	$8,143,622 40.6%	$15,302,402 31.7%
Travel	$360,064 1.2%	$121,748 0.6%	$422,718 0.9%
Total	***$31,165,741*** ***100%***	***$20,079,762*** ***100%***	***$48,231,611*** ***100%***

*Expenditures of $100 or More.
**The "Total" figures have been adjusted to avoid double counting data from the three 1990 initiative campaigns which also appear in the "Top 18" sample (Propositions 128, 130 and 134).
†"Literature" includes all direct mail and campaign pamphlet expenses.
††"Sig. Gathering/Surveys" includes paid petition circulation and polling expenses.

Table F.13
Voter Contacts v. Overhead Expenditures*: Overview

	Top 18 Initiatives	*1990 Initiatives*	*Total***
Voter Contacts	$169,790,055 75.5%	$80,574,462 73.8%	$206,404,004 74.7%
Overhead	$55,061,707 24.5%	$28,623,864 26.2%	$69,921,558 25.3%
Total	***$224,851,762*** ***100%***	***$109,198,326*** ***100%***	***$276,325,562*** ***100%***

Table F.14
Voter Contacts Expenditures Breakout*

	Top 18 Initiatives	*1990 Initiatives*	*Total***
Broadcast	$98,130,830 57.8%	$52,121,376 64.7%	$117,307,668 56.8%
Newspaper	6,135,369 3.6%	515,965 0.6%	$6,194,601 3.0%
Literature†	40,240,815 23.7%	17,438,077 21.6%	$51,113,581 24.8%
Outdoor	9,180,168 5.4%	693,994 0.9%	$9,474,374 4.6%
Sig. Gathering/ Surveys††	16,102,875 9.5%	9,805,051 12.2%	$22,313,780 10.8%
Total	***$169,790,055*** ***100%***	***$80,574,462*** ***100%***	***$206,404,004*** ***100%***

*Expenditures of $100 or More.
**The "Total" figures have been adjusted to avoid double counting data from the three 1990 initiative campaigns which also appear in the "Top 18" sample (Propositions 128, 130 and 134).
†"Literature" includes all direct mail and campaign pamphlet expenses.
††"Sig. Gathering/Surveys" includes paid petition circulation and polling expenses.

DATA PROJECT OVERVIEW

The 18 Most Expensive Initiatives in California History*
and
All 1990 Initiative Campaigns

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

TOP 18 INITIATIVES			1990 INITIATIVES		
Business	$185,467,605	82.6%	Business	$70,783,576	66.4%
Individuals	18,766,306	8.4%	Individuals	12,896,457	12.1%
Labor Organizations	7,246,795	3.2%	Labor Organizations	1,360,136	1.3%
Political Parties/Clubs	1,677,698	0.7%	Political Parties/Clubs	7,047,313	6.6%
Broadbased Org's	7,310,956	3.3%	Broadbased Org's	5,029,226	4.7%
Officeholders	4,064,988	1.8%	Officeholders	9,540,876	8.9%
Total	**$224,534,349**	**100.0%**	**Total**	**$106,657,585**	**100.0%**

CONTRIBUTION SIZE

TOP 18 INITIATIVES			1990 INITIATIVES		
Under $100	$14,908,464	6.2%	Under $100	$3,015,872	2.7%
$100 to $999	8,462,141	3.5%	$100 to $999	3,804,024	3.5%
$1,000 to $9,999	22,824,852	9.5%	$1,000 to $9,999	11,160,939	10.2%
$10,000 to $49,999	17,751,964	7.4%	$10,000 to $49,999	10,359,858	9.4%
$50,000 to $99,999	10,843,825	4.5%	$50,000 to $99,999	7,664,089	7.0%
$100,000 to $999,999	57,536,481	24.0%	$100,000 to $999,999	33,103,336	30.2%
$1 million & Over	107,115,086	44.7%	$1 million & Over	40,565,339	37.0%
Total	**$239,442,813**	**100.0%**	**Total**	**$109,673,456**	**100.0%**

TOP FIVE CONTRIBUTORS
(Includes contributions to all initiative campaigns studied)

TOP 18 INITIATIVES		1990 INITIATIVES	
Philip Morris	$12,949,863	Anheuser-Busch	$8,308,852
R.J. Reynolds	$10,971,608	Harold Arbit	$4,923,834
Anheuser-Busch	$8,218,852	Miller Brewing Company	$3,372,780
State Farm Mutual Auto Insurance Co.	$7,323,491	IMPAC 2000 (Nat'l Democratic Org.)	$2,836,500
Harold Arbit	$4,923,834	Willie Brown Committees	$2,612,165

EXPENDITURE PATTERNS (Amounts $100 or More)

TOP 18 INITIATIVES			1990 INITIATIVES		
Broadcast Ads	$98,130,830	43.6%	Broadcast Ads	$52,121,376	47.7%
Consultants	23,060,461	10.3%	Consultants	13,836,889	12.7%
Fundraising	3,397,732	1.5%	Fundraising	1,773,384	1.6%
General	25,318,023	11.3%	General	12,061,408	11.0%
Campaign Literature	40,240,815	17.9%	Campaign Literature	17,438,077	16.0%
Newspaper Ads	6,135,369	2.7%	Newspaper Ads	515,965	0.5%
Outdoor Ads	9,180,168	4.1%	Outdoor Ads	693,994	0.6%
Paid Circulators/Surve	16,102,875	7.2%	Paid Circulators/Surveys	9,805,051	9.0%
Trav./Accomodations	3,285,490	1.5%	Trav./Accomodations	952,182	0.9%
Total	**$224,851,762**	**100.0%**	**Total**	**$109,198,326**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 1—$37,473,034*

Proposition 104 • No-Fault Insurance

1988 General Election Result: Yes-25%/No-75%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$55,487,011	100.0%	Business	$1,100	4.6%
Individuals	5,865	0.0%	Individuals	7,100	29.9%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	2,500	10.5%
Broadbased Org's	0	0.0%	Broadbased Org's	13,066	55.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$55,492,876**	**100.0%**	**Total**	**$23,766**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$289,792	0.5%	Under $100	$0	0.0%
$100 to $999	29,674	0.1%	$100 to $999	1,700	7.2%
$1,000 to $9,999	800,576	1.4%	$1,000 to $9,999	9,000	37.9%
$10,000 to $49,999	1,161,591	2.1%	$10,000 to $49,999	13,066	55.0%
$50,000 to $99,999	1,225,422	2.2%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	17,306,861	31.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	34,968,752	62.7%	$1 million & Over	0	0.0%
Total	**$55,782,668**	**100.0%**	**Total**	**$23,766**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or more)

SUPPORT		OPPOSITION	
State Farm Mutual Auto Insurance Co.	$7,323,491	California Common Cause	$13,066
Farmers Group Insurance Co.	$4,812,435		
Allstate Insurance Co.	$4,133,656	*(No other contributor gave $10,000 or more.)*	
Fireman's Fund	$2,435,012		
United Services Automobile Assn.	$1,781,200		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$11,132,568	29.7%	Broadcast Ads	$13,034	60.1%
Consultants	3,988,527	10.6%	Consultants	0	0.0%
Fundraising	607,835	1.6%	Fundraising	0	0.0%
General	4,137,096	11.0%	General	5,458	25.2%
Campaign Literature	7,090,593	18.9%	Campaign Literature	0	0.0%
Newspaper Ads	1,249,078	3.3%	Newspaper Ads	0	0.0%
Outdoor Ads	3,141,209	8.4%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	5,184,723	13.8%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	941,405	2.5%	Trav./Accomodations	3,206	14.8%
Total	**$37,473,034**	**100.0%**	**Total**	**$21,698**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 2—$24,208,045*

Proposition 134 • Alcohol Tax Initiative

1990 General Election Result: Yes-31%/No-69%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$757,007	49.9%	Business	$26,751,352	99.9%
Individuals	259,196	17.1%	Individuals	31,550	0.1%
Labor Organizations	29,400	1.9%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	100	0.0%
Broadbased Org's	419,602	27.7%	Broadbased Org's	0	0.0%
Officeholders	52,100	3.4%	Officeholders	0	0.0%
Total	**$1,517,305**	**100.0%**	**Total**	**$26,783,002**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$94,195	5.8%	Under $100	$28,433	0.1%
$100 to $999	210,517	13.1%	$100 to $999	135,114	0.5%
$1,000 to $9,999	309,607	19.2%	$1,000 to $9,999	876,377	3.3%
$10,000 to $49,999	278,567	17.3%	$10,000 to $49,999	1,238,826	4.6%
$50,000 to $99,999	192,500	11.9%	$50,000 to $99,999	920,777	3.4%
$100,000 to $999,999	526,114	32.6%	$100,000 to $999,999	6,833,468	25.5%
$1 million & Over	0	0.0%	$1 million & Over	16,778,440	62.6%
Total	**$1,611,500**	**100.0%**	**Total**	**$26,811,435**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Five PAC (Emergency Physicians)	$237,000	Anheuser-Busch	$8,218,852
Health Action Committee	$152,895	Miller Brewing Company	$3,287,780
Mental Health Assn. in L.A. County	$136,219	California Beer & Wine Wholesalers	$1,641,399
Counties Preservation Fund	$82,500	Coors Brewing Company	$1,415,722
California Hospital Professionals	$60,000	Seagram & Sons	$1,153,261

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$37,901	2.0%	Broadcast Ads	$15,223,966	62.7%
Consultants	70,425	3.7%	Consultants	1,301,339	5.4%
Fundraising	3,433	0.2%	Fundraising	203	0.0%
General	481,409	25.4%	General	4,533,003	18.7%
Campaign Literature	356,578	18.8%	Campaign Literature	1,999,162	8.2%
Newspaper Ads	721	0.0%	Newspaper Ads	263,105	1.1%
Outdoor Ads	2,163	0.1%	Outdoor Ads	139,643	0.6%
Paid Circulators/Surveys	912,772	48.1%	Paid Circulators/Surveys	640,584	2.6%
Trav./Accomodations	31,500	1.7%	Trav./Accomodations	183,004	0.8%
Total	**$1,896,901**	**100.0%**	**Total**	**$24,284,009**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 3—$23,078,368*

Proposition 99 • Tobacco Tax

1988 General Election Result: Yes-58%/No-42%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$744,120	41.7%	Business	$21,242,993	100.0%
Individuals	70,352	3.9%	Individuals	100	0.0%
Labor Organizations	2,000	0.1%	Labor Organizations	0	0.0%
Political Parties/Clubs	10,650	0.6%	Political Parties/Clubs	0	0.0%
Broadbased Org's	907,664	50.8%	Broadbased Org's	0	0.0%
Officeholders	51,239	2.9%	Officeholders	0	0.0%
Total	**$1,786,025**	**100.0%**	**Total**	**$21,243,093**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$6,954	0.4%	Under $100	$0	0.0%
$100 to $999	93,601	5.2%	$100 to $999	2,708	0.0%
$1,000 to $9,999	195,614	10.9%	$1,000 to $9,999	5,000	0.0%
$10,000 to $49,999	86,725	4.8%	$10,000 to $49,999	83,566	0.4%
$50,000 to $99,999	150,000	8.4%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	1,260,085	70.3%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	21,151,819	99.6%
Total	**$1,792,979**	**100.0%**	**Total**	**$21,243,093**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
American Cancer Society	$419,356	Philip Morris	$10,961,236
CA Hospital Issues Comm.	$365,110	R.J. Reynolds	$8,568,009
American Lung Assn.	$217,930	Lorillard Inc.	$1,622,574
California Medical Assn.	$154,505	Brown & Williamson Tobacco Inc.	$33,470
Campaign California	$103,184	Smokeless Tobacco Council	$20,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$506,042	28.0%	Broadcast Ads	$11,932,583	56.1%
Consultants	86,298	4.8%	Consultants	2,134,655	10.0%
Fundraising	64,424	3.6%	Fundraising	4,808	0.0%
General	287,629	15.9%	General	897,281	4.2%
Campaign Literature	347,231	19.2%	Campaign Literature	3,553,708	16.7%
Newspaper Ads	13,705	0.8%	Newspaper Ads	1,058,933	5.0%
Outdoor Ads	3,658	0.2%	Outdoor Ads	1,210,104	5.7%
Paid Circulators/Surveys	469,779	26.0%	Paid Circulators/Surveys	317,760	1.5%
Trav./Accomodations	30,417	1.7%	Trav./Accomodations	142,893	0.7%
Total	**$1,809,183**	**100.0%**	**Total**	**$21,252,725**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 4—$22,696,974*

Proposition 4 • Oil/Gas Conservation

1956 General Election Result: Yes-23%/No-77%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$3,538,883	100.0%	Business	$1,286,846	93.3%
Individuals	1,083	0.0%	Individuals	91,764	6.7%
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	**$3,539,966**	**100.0%**	**Total**	**$1,378,610**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$60	0.0%	Under $100	$12,267	0.9%
$100 to $999	4,401	0.1%	$100 to $999	54,820	3.9%
$1,000 to $9,999	58,247	1.6%	$1,000 to $9,999	212,722	15.3%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	326,000	23.4%
$50,000 to $99,999	83,245	2.4%	$50,000 to $99,999	75,000	5.4%
$100,000 to $999,999	2,258,674	63.8%	$100,000 to $999,999	710,068	51.1%
$1 million & Over	1,135,399	32.1%	$1 million & Over	0	0.0%
Total	**$3,540,026**	**100.0%**	**Total**	**$1,390,877**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Richfield Oil Corp.	$1,135,399	Union Oil Co.	$610,068
Standard Oil Co.	$905,140	Universal Consolidated Oil Co.	$100,000
Shell Oil Co.	$479,452	Signal Oil & Gas Co.	$75,000
General Petroleum Corp.	$395,750	Hancock Oil Co.	$45,000
Tidewater Oil Co.	$278,332	Kern County Land Co.	$40,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$527,428	14.8%	Broadcast Ads	$285,928	23.7%
Consultants	577,814	16.2%	Consultants	60,224	5.0%
Fundraising	12,706	0.4%	Fundraising	0	0.0%
General	783,242	21.9%	General	444,042	36.8%
Campaign Literature	683,578	19.2%	Campaign Literature	102,248	8.5%
Newspaper Ads	591,993	16.6%	Newspaper Ads	192,005	15.9%
Outdoor Ads	165,146	4.6%	Outdoor Ads	103,193	8.6%
Paid Circulators/Surveys	196,952	5.5%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	29,749	0.8%	Trav./Accomodations	17,371	1.4%
Total	**$3,568,608**	**100.0%**	**Total**	**$1,205,011**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 5—$22,486,983*

Proposition 100 • Insurance Regulation

1988 General Election Result: Yes-41%/No-59%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION**		
Business	$11,631,890	83.0%	Business	$7,482,651	99.8%
Individuals	2,206,207	15.7%	Individuals	11,888	0.2%
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	600	0.0%	Broadbased Org's	0	0.0%
Officeholders	179,030	1.3%	Officeholders	0	0.0%
Total	**$14,017,727**	**100.0%**	**Total**	**$7,494,539**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION**		
Under $100	$122,448	0.9%	Under $100	$13	0.0%
$100 to $999	786,883	5.6%	$100 to $999	12,746	0.2%
$1,000 to $9,999	3,970,596	28.1%	$1,000 to $9,999	6,250	0.1%
$10,000 to $49,999	1,783,725	12.6%	$10,000 to $49,999	5,000	0.1%
$50,000 to $99,999	954,250	6.7%	$50,000 to $99,999	35,474	0.5%
$100,000 to $999,999	2,399,447	17.0%	$100,000 to $999,999	718,830	9.6%
$1 million & Over	4,122,826	29.2%	$1 million & Over	6,716,241	89.6%
Total	**$14,140,175**	**100.0%**	**Total**	**$7,494,552**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION (To Props. 100 & 103)	
California Trial Lawyers Assn.	$4,122,826	Citizens for No Fault	$13,432,481
California Bankers Assn.	$772,814	American Council of Life Insurance	$600,000
California Chiropractic Assn.	$753,358	Health Insurance Assn. of America	$400,000
John Van de Kamp Committees	$170,000	California Casualty Management Co.	$300,000
Hurley, Grassini & Wrinkle	$103,000	S. Calif. Physicians Insurers Exchange	$137,659

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION**		
Broadcast Ads	$7,673,250	47.5%	Broadcast Ads	$1,845,404	29.1%
Consultants	2,484,935	15.4%	Consultants	203,793	3.2%
Fundraising	946,793	5.9%	Fundraising	173	0.0%
General	811,235	5.0%	General	14,194	0.2%
Campaign Literature	2,714,042	16.8%	Campaign Literature	4,266,275	67.4%
Newspaper Ads	15,165	0.1%	Newspaper Ads	0	0.0%
Outdoor Ads	496,739	3.1%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	805,902	5.0%	Paid Circulators/Surveys	1,161	0.0%
Trav./Accomodations	199,461	1.2%	Trav./Accomodations	398	0.0%
Total	**$16,147,522**	**100.0%**	**Total**	**$6,331,397**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*
***The campaign in opposition to Prop. 100 and insurance reform Prop. 103 was a united effort. For the purposes of analyzing the Prop. 100 campaign separately, the contribution and expenditure figures from the combined Prop. 100 and 103 opposition campaign were divided in half (except where indicated).*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 6—$17,738,234*

Proposition 128 • "Big Green"

1990 General Election Result: Yes-36%/No-64%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$483,958	9.7%	Business	$12,322,666	99.5%
Individuals	2,182,090	43.8%	Individuals	49,080	0.4%
Labor Organizations	8,476	0.2%	Labor Organizations	6,910	0.1%
Political Parties/Clubs	700	0.0%	Political Parties/Clubs	100	0.0%
Broadbased Org's	1,201,564	24.1%	Broadbased Org's	7,603	0.1%
Officeholders	1,105,124	22.2%	Officeholders	0	0.0%
Total	**$4,981,912**	**100.0%**	**Total**	**$12,386,359**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$127,272	2.5%	Under $100	$8,618	0.1%
$100 to $999	586,044	11.5%	$100 to $999	111,773	0.9%
$1,000 to $9,999	1,125,507	22.0%	$1,000 to $9,999	1,379,826	11.1%
$10,000 to $49,999	704,370	13.8%	$10,000 to $49,999	1,581,140	12.8%
$50,000 to $99,999	567,848	11.1%	$50,000 to $99,999	956,499	7.7%
$100,000 to $999,999	992,943	19.4%	$100,000 to $999,999	8,357,121	67.4%
$1 million & Over	1,005,200	19.7%	$1 million & Over	0	0.0%
Total	**$5,109,184**	**100.0%**	**Total**	**$12,394,977**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Tom Hayden Committees	$1,005,200	ARCO	$947,500
Campaign California	$353,443	Chevron Corp.	$811,800
Sierra Club	$294,500	Shell Good Government Fund	$600,000
Chevy Chase	$125,000	Dow Chemical	$595,788
Ted Turner	$120,000	Unocal Corporation	$460,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$3,087,710	53.8%	Broadcast Ads	$7,349,057	56.0%
Consultants	189,724	3.3%	Consultants	1,900,656	14.5%
Fundraising	375,070	6.5%	Fundraising	75,668	0.6%
General	1,256,099	21.9%	General	722,895	5.5%
Campaign Literature	567,120	9.9%	Campaign Literature	2,071,151	15.8%
Newspaper Ads	12,842	0.2%	Newspaper Ads	176,396	1.3%
Outdoor Ads	17,705	0.3%	Outdoor Ads	104,239	0.8%
Paid Circulators/Surveys	141,358	2.5%	Paid Circulators/Surveys	523,791	4.0%
Trav./Accomodations	90,241	1.6%	Trav./Accomodations	192,984	1.5%
Total	**$5,737,869**	**100.0%**	**Total**	**$13,116,837**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 7—$13,921,161*

Proposition 18 • Right to Work

1958 General Election Result: Yes-40%/No-60%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$403,757	54.4%	Business	$250	0.0%
Individuals	333,385	44.9%	Individuals	569	0.0%
Labor Organizations	0	0.0%	Labor Organizations	2,367,073	99.9%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	5,451	0.7%	Broadbased Org's	1,000	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$742,593**	**100.0%**	**Total**	**$2,368,892**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$211,673	22.2%	Under $100	$358,581	13.1%
$100 to $999	257,975	27.0%	$100 to $999	518,454	19.0%
$1,000 to $9,999	267,940	28.1%	$1,000 to $9,999	1,263,939	46.3%
$10,000 to $49,999	144,500	15.1%	$10,000 to $49,999	431,794	15.8%
$50,000 to $99,999	72,178	7.6%	$50,000 to $99,999	154,705	5.7%
$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	**$954,266**	**100.0%**	**Total**	**$2,727,473**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
General Electric Co.	$72,178	California Teamsters Legislative Council	$89,335
Raymond V. Haun	$25,000	Joint Teamsters Council #42	$65,370
Russell S. Bock	$20,000	National Council for Industrial Peace	$49,613
Adams, Duque & Hazeltine	$20,000	CA State Council of Culinary, Bartenders	$40,000
Gregory A. Harrison	$15,000	California Conference of Machinists	$31,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$166,444	18.9%	Broadcast Ads	$674,723	27.1%
Consultants	169,587	19.3%	Consultants	147,976	5.9%
Fundraising	3,266	0.4%	Fundraising	54,340	2.2%
General	149,475	17.0%	General	561,679	22.5%
Campaign Literature	29,782	3.4%	Campaign Literature	427,098	17.1%
Newspaper Ads	170,528	19.4%	Newspaper Ads	382,512	15.3%
Outdoor Ads	45,804	5.2%	Outdoor Ads	216,114	8.7%
Paid Circulators/Surveys	139,601	15.9%	Paid Circulators/Surveys	14,247	0.6%
Trav./Accomodations	4,588	0.5%	Trav./Accomodations	15,144	0.6%
Total	**$879,075**	**100.0%**	**Total**	**$2,493,833**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 8—$13,461,826*

Proposition 5 • Smoking Regulations

1978 General Election Result: Yes-46%/No-54%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$119,865	45.4%	Business	$6,286,078	100.0%
Individuals	96,369	36.5%	Individuals	1,600	0.0%
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	47,979	18.2%	Broadbased Org's	0	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$264,213**	**100.0%**	**Total**	**$6,287,678**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$383,080	59.2%	Under $100	$9,060	0.1%
$100 to $999	103,884	16.0%	$100 to $999	9,450	0.2%
$1,000 to $9,999	61,643	9.5%	$1,000 to $9,999	70,900	1.1%
$10,000 to $49,999	42,843	6.6%	$10,000 to $49,999	35,000	0.6%
$50,000 to $99,999	55,843	8.6%	$50,000 to $99,999	80,178	1.3%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	641,394	10.2%
$1 million & Over	0	0.0%	$1 million & Over	5,450,756	86.6%
Total	**$647,293**	**100.0%**	**Total**	**$6,296,738**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT		OPPOSITION	
Schick Institute	$55,843	R.J. Reynolds	$2,403,599
Frawley Corp.	$42,843	Philip Morris	$1,863,627
		Brown & Williamson Tobacco Inc.	$1,183,530
(No other contributor gave $10,000 or more.)		Lorillard Inc.	$641,394
		Tobacco Institute	$80,178

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$198,802	31.4%	Broadcast Ads	$2,585,556	40.3%
Consultants	56,771	9.0%	Consultants	501,571	7.8%
Fundraising	8,081	1.3%	Fundraising	32,378	0.5%
General	65,441	10.4%	General	428,965	6.7%
Campaign Literature	250,361	39.6%	Campaign Literature	1,158,766	18.1%
Newspaper Ads	40,326	6.4%	Newspaper Ads	367,334	5.7%
Outdoor Ads	5,065	0.8%	Outdoor Ads	574,956	9.0%
Paid Circulators/Surveys	500	0.1%	Paid Circulators/Surveys	372,252	5.8%
Trav./Accomodations	6,804	1.1%	Trav./Accomodations	390,957	6.1%
Total	**$632,151**	**100.0%**	**Total**	**$6,412,735**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 9—$12,398,095*

Proposition 15 • Handgun Control

1982 General Election Result: Yes-37%/No-63%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$417,517	26.5%	Business	$1,266,174	31.3%
Individuals	672,897	42.7%	Individuals	346,465	8.6%
Labor Organizations	0	0.0%	Labor Organizations	1,100	0.0%
Political Parties/Clubs	205	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	481,772	30.6%	Broadbased Org's	2,406,611	59.5%
Officeholders	1,850	0.1%	Officeholders	22,096	0.5%
Total	**$1,574,241**	**100.0%**	**Total**	**$4,042,446**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$422,969	21.2%	Under $100	$1,321,215	24.6%
$100 to $999	262,480	13.1%	$100 to $999	389,665	7.3%
$1,000 to $9,999	267,432	13.4%	$1,000 to $9,999	334,425	6.2%
$10,000 to $49,999	224,582	11.2%	$10,000 to $49,999	436,388	8.1%
$50,000 to $99,999	350,000	17.5%	$50,000 to $99,999	250,000	4.7%
$100,000 to $999,999	469,747	23.5%	$100,000 to $999,999	1,221,911	22.8%
$1 million & Over	0	0.0%	$1 million & Over	1,410,057	26.3%
Total	**$1,997,210**	**100.0%**	**Total**	**$5,363,661**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Handgun Control, Inc.	$469,747	National Rifle Assn.	$1,410,057
Carter Hawley Hale Stores	$50,000	Gun Owners of California	$601,911
David Murdock	$50,000	California Rifle & Pistol Assn.	$250,000
Guilford Glazer	$50,000	Sturm, Ruger & Company, Inc.	$220,000
Jerry Weintraub Management III	$50,000	Smith & Wesson	$150,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$968,616	41.2%	Broadcast Ads	$2,246,997	34.2%
Consultants	311,065	13.2%	Consultants	140,629	2.1%
Fundraising	95,684	4.1%	Fundraising	151,075	2.3%
General	369,324	15.7%	General	1,370,546	20.9%
Campaign Literature	203,476	8.6%	Campaign Literature	1,024,131	15.6%
Newspaper Ads	116,287	4.9%	Newspaper Ads	628,565	9.6%
Outdoor Ads	65,919	2.8%	Outdoor Ads	461,827	7.0%
Paid Circulators/Surveys	202,210	8.6%	Paid Circulators/Surveys	300,840	4.6%
Trav./Accomodations	20,212	0.9%	Trav./Accomodations	242,119	3.7%
Total	**$2,352,793**	**100.0%**	**Total**	**$6,566,729**	**100.0%**

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TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 10—$12,273,245*

Proposition 51 • Tort Damage Limitations

1986 Primary Election Result: Yes-62%/No-38%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$5,783,392	97.2%	Business	$3,921,448	79.8%
Individuals	61,600	1.0%	Individuals	983,721	20.0%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	92,400	1.6%	Political Parties/Clubs	0	0.0%
Broadbased Org's	12,158	0.2%	Broadbased Org's	0	0.0%
Officeholders	660	0.0%	Officeholders	7,500	0.2%
Total	**$5,950,210**	**100.0%**	**Total**	**$4,912,669**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$69,777	1.2%	Under $100	$25,584	0.5%
$100 to $999	199,714	3.3%	$100 to $999	310,122	6.3%
$1,000 to $9,999	807,584	13.4%	$1,000 to $9,999	1,294,390	26.2%
$10,000 to $49,999	1,081,189	18.0%	$10,000 to $49,999	1,650,475	33.4%
$50,000 to $99,999	634,652	10.5%	$50,000 to $99,999	905,000	18.3%
$100,000 to $999,999	950,563	15.8%	$100,000 to $999,999	752,682	15.2%
$1 million & Over	2,276,508	37.8%	$1 million & Over	0	0.0%
Total	**$6,019,987**	**100.0%**	**Total**	**$4,938,253**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
California Medical Assn.	$2,276,508	Greene, O'Reilly, Broillet, Paul, Simon,	$131,432
American Insurance Assn.	$245,063	Law Offices of Rose, Klein & Marias	$121,250
State Farm Mutual Auto Insurance Co.	$200,000	Boccardo Law Firm	$100,000
California Business PAC	$175,500	Cartwright, Sucherman & Slobodin, Inc	$100,000
NORCAL Mutual Insurance Co.	$130,000	Herbert Franke	$100,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$3,086,389	50.6%	Broadcast Ads	$3,486,369	67.6%
Consultants	1,429,641	23.4%	Consultants	458,986	8.9%
Fundraising	24,966	0.4%	Fundraising	20,075	0.4%
General	621,253	10.2%	General	225,615	4.4%
Campaign Literature	337,030	5.5%	Campaign Literature	949,658	18.4%
Newspaper Ads	35,594	0.6%	Newspaper Ads	0	0.0%
Outdoor Ads	91,969	1.5%	Outdoor Ads	964	0.0%
Paid Circulators/Surveys	409,502	6.7%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	65,005	1.1%	Trav./Accomodations	13,001	0.3%
Total	**$6,101,349**	**100.0%**	**Total**	**$5,154,668**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 11—$12,037,862*

Proposition 39 • Reapportionment

1984 General Election Result: Yes-45%/No-55%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$1,417,530	24.0%	Business	$801,301	35.7%
Individuals	601,680	10.2%	Individuals	310,415	13.8%
Labor Organizations	0	0.0%	Labor Organizations	402,701	18.0%
Political Parties/Clubs	1,361,156	23.0%	Political Parties/Clubs	175,200	7.8%
Broadbased Org's	457,367	7.7%	Broadbased Org's	51,500	2.3%
Officeholders	2,071,689	35.1%	Officeholders	502,050	22.4%
Total	**$5,909,422**	**100.0%**	**Total**	**$2,243,167**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$415,320	6.6%	Under $100	$2,175	0.1%
$100 to $999	168,107	2.7%	$100 to $999	105,396	4.7%
$1,000 to $9,999	1,140,102	18.0%	$1,000 to $9,999	713,831	31.8%
$10,000 to $49,999	1,402,340	22.2%	$10,000 to $49,999	823,940	36.7%
$50,000 to $99,999	625,000	9.9%	$50,000 to $99,999	272,500	12.1%
$100,000 to $999,999	998,873	15.8%	$100,000 to $999,999	327,500	14.6%
$1 million & Over	1,575,000	24.9%	$1 million & Over	0	0.0%
Total	**$6,324,742**	**100.0%**	**Total**	**$2,245,342**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
George Deukmejian Committees	$1,575,000	Grey Davis Campaign Comm.	$172,500
California Republican Party	$909,473	Democratic Congressional Camp. Comm.	$155,000
California Business PAC	$208,201	AFL-CIO	$92,500
Republican State Elections Comm.	$88,000	United Auto Workers	$80,000
Western Growers PAC	$86,190	Herschel Rosenthal Campaign Committees	$50,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$2,777,060	45.0%	Broadcast Ads	$3,149,898	76.8%
Consultants	704,960	11.4%	Consultants	24,754	0.6%
Fundraising	23,595	0.4%	Fundraising	12,919	0.3%
General	365,413	5.9%	General	210,705	5.1%
Campaign Literature	657,122	10.7%	Campaign Literature	664,710	16.2%
Newspaper Ads	6,428	0.1%	Newspaper Ads	595	0.0%
Outdoor Ads	603,977	9.8%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	999,656	16.2%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	28,512	0.5%	Trav./Accomodations	37,866	0.9%
Total	**$6,166,723**	**100.0%**	**Total**	**$4,101,447**	**100.0%**

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TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 12—$11,865,807*

Proposition 36 • Tax Reduction

1988 General Election Result: Yes-45%/No-55%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$133,736	12.8%	Business	$1,479,766	82.9%
Individuals	325,275	31.1%	Individuals	20,582	1.2%
Labor Organizations	0	0.0%	Labor Organizations	259,944	14.6%
Political Parties/Clubs	150	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	587,126	56.1%	Broadbased Org's	18,060	1.0%
Officeholders	0	0.0%	Officeholders	6,400	0.4%
Total	**$1,046,287**	**100.0%**	**Total**	**$1,784,752**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$7,187,887	87.3%	Under $100	$45,695	2.5%
$100 to $999	435,471	5.3%	$100 to $999	45,086	2.5%
$1,000 to $9,999	24,190	0.3%	$1,000 to $9,999	368,833	20.1%
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	844,064	46.1%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	164,214	9.0%
$100,000 to $999,999	586,626	7.1%	$100,000 to $999,999	362,555	19.8%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$8,234,174**	**100.0%**	**Total**	**$1,830,447**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT		OPPOSITION	
California Tax Reduction Movement	$586,626	Public Securities Assn.	$152,175
		Service Employees International Union	$110,380
(No other contributor gave $10,000 or more.)		Merrill Lynch	$100,000
		California Hospital Assn.	$63,000
		California Business PAC	$51,214

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$1,542,420	18.5%	Broadcast Ads	$763,775	42.4%
Consultants	1,349,276	16.2%	Consultants	552,233	30.7%
Fundraising	12,543	0.2%	Fundraising	14,247	0.8%
General	749,104	9.0%	General	183,942	10.2%
Campaign Literature	4,360,655	52.4%	Campaign Literature	208,474	11.6%
Newspaper Ads	20,397	0.2%	Newspaper Ads	28,625	1.6%
Outdoor Ads	625	0.0%	Outdoor Ads	2,601	0.1%
Paid Circulators/Surveys	280,089	3.4%	Paid Circulators/Surveys	16,500	0.9%
Trav./Accomodations	10,238	0.1%	Trav./Accomodations	28,920	1.6%
Total	**$8,325,347**	**100.0%**	**Total**	**$1,799,317**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 13—$11,743,785*

Proposition 130 • "Forests Forever"

1990 General Election Result: Yes-48%/No-52%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION**		
Business	$71,402	1.1%	Business	$5,570,011	96.9%
Individuals	6,230,888	97.3%	Individuals	153,584	2.7%
Labor Organizations	5,000	0.1%	Labor Organizations	12,000	0.2%
Political Parties/Clubs	28,537	0.4%	Political Parties/Clubs	0	0.0%
Broadbased Org's	67,030	1.0%	Broadbased Org's	12,659	0.2%
Officeholders	1,000	0.0%	Officeholders	0	0.0%
Total	**$6,403,857**	**100.0%**	**Total**	**$5,748,254**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION**		
Under $100	$973,633	13.2%	Under $100	$63,908	1.1%
$100 to $999	131,381	1.8%	$100 to $999	273,955	4.7%
$1,000 to $9,999	170,573	2.3%	$1,000 to $9,999	450,653	7.8%
$10,000 to $49,999	178,069	2.4%	$10,000 to $49,999	344,184	5.9%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	267,003	4.6%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	2,303,636	39.6%
$1 million & Over	5,923,834	80.3%	$1 million & Over	2,108,823	36.3%
Total	**$7,377,490**	**100.0%**	**Total**	**$5,812,162**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPP. (to 130) & SUPP. (for 138)	
Harold Arbit	$4,923,834	Georgia Pacific	$1,500,000
Frank Wells	$1,000,000	Sierra Pacific Industries	$1,375,113
Richard F. Nourafchan	$45,700	Louisiana Pacific Corporation	$1,342,533
Planning & Conservation League	$36,487	Simpson Timber Company	$980,758
California Democratic Party	$28,537	Pacific Lumber Company	$863,992

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION**		
Broadcast Ads	$4,687,569	66.2%	Broadcast Ads	$2,558,334	45.6%
Consultants	352,459	5.0%	Consultants	369,429	6.6%
Fundraising	64,398	0.9%	Fundraising	336,962	6.0%
General	444,137	6.3%	General	664,339	11.8%
Campaign Literature	565,861	8.0%	Campaign Literature	1,005,439	17.9%
Newspaper Ads	3,495	0.0%	Newspaper Ads	174	0.0%
Outdoor Ads	272	0.0%	Outdoor Ads	135,766	2.4%
Paid Circulators/Surveys	914,230	12.9%	Paid Circulators/Surveys	461,411	8.2%
Trav./Accomodations	47,539	0.7%	Trav./Accomodations	77,097	1.4%
Total	**$7,079,960**	**100.0%**	**Total**	**$5,608,951**	**100.0%**

**All Initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*
***The campaign in opposition to Prop. 130 and in support of Prop. 138 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 130 (Opp.) and 138 (Sup.) campaign were divided in half and allocated to each separate campaign (except where indicated).*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 14—$11,599,622*

Proposition 15 • Ban on Nuclear Power Plants

1976 Primary Election Result: Yes-35%/No-65%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$13,309	2.6%	Business	$2,302,633	97.8%
Individuals	489,413	96.2%	Individuals	32,738	1.4%
Labor Organizations	0	0.0%	Labor Organizations	20,000	0.8%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	6,116	1.2%	Broadbased Org's	200	0.0%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$508,838**	**100.0%**	**Total**	**$2,355,571**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$612,226	54.6%	Under $100	$61,651	2.6%
$100 to $999	217,152	19.4%	$100 to $999	114,684	4.7%
$1,000 to $9,999	178,199	15.9%	$1,000 to $9,999	1,046,538	43.3%
$10,000 to $49,999	113,487	10.1%	$10,000 to $49,999	837,613	34.7%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	356,736	14.8%
$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	**$1,121,064**	**100.0%**	**Total**	**$2,417,222**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Victoria Ward	$49,919	General Electric Co.	$88,064
Alan Davis	$13,500	National Assn. of Electric Cos.	$87,000
Mary Anne Meynet	$10,068	Pacific Gas & Electric	$81,672
Jean S. Weaver	$10,000	San Diego Gas & Electric	$50,000
Thomas Moutoux	$10,000	Western Fuel Oil Co.	$50,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$201,484	15.9%	Broadcast Ads	$1,177,178	49.5%
Consultants	91,136	7.2%	Consultants	55,687	2.3%
Fundraising	120,352	9.5%	Fundraising	1,187	0.0%
General	285,864	22.5%	General	590,231	24.8%
Campaign Literature	289,966	22.8%	Campaign Literature	350,250	14.7%
Newspaper Ads	163,348	12.9%	Newspaper Ads	55,982	2.4%
Outdoor Ads	31,915	2.5%	Outdoor Ads	23,106	1.0%
Paid Circulators/Surveys	10,965	0.9%	Paid Circulators/Surveys	76,247	3.2%
Trav./Accomodations	74,900	5.9%	Trav./Accomodations	47,271	2.0%
Total	**$1,269,930**	**100.0%**	**Total**	**$2,377,139**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 15—$11,248,668*

Proposition 17 • Railroad Worker Hiring Practices

1964 General Election Result: Yes-61%/No-39%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$1,945,368	100.0%	Business	$800	0.1%
Individuals	0	0.0%	Individuals	2,030	0.2%
Labor Organizations	0	0.0%	Labor Organizations	1,019,555	99.7%
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	**$1,945,368**	**100.0%**	**Total**	**$1,022,385**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$34	0.0%	Under $100	$547	0.1%
$100 to $999	735	0.0%	$100 to $999	2,215	0.2%
$1,000 to $9,999	21,557	1.1%	$1,000 to $9,999	18,430	1.8%
$10,000 to $49,999	13,230	0.7%	$10,000 to $49,999	11,000	1.1%
$50,000 to $99,999	98,180	5.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	605,732	31.1%	$100,000 to $999,999	990,740	96.9%
$1 million & Over	1,205,934	62.0%	$1 million & Over	0	0.0%
Total	**$1,945,402**	**100.0%**	**Total**	**$1,022,932**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT		OPPOSITION	
Southern Pacific/Northern Pacific Railroad	$1,205,934	Brotherhood of Railroad Trainmen	$410,336
Atchison, Topeka & Santa Fe Railroad	$441,404	Brotherhood of Loc. Firemen & Enginemen	$345,068
Western Pacific Railroad	$164,328	Brotherhood of Locomotive Engineers	$235,336
Union Pacific Railroad	$98,180	Order of Railway Conductors & Brakemen	$11,000
Great Northern Railway	$13,230	*(No other contributors gave $10,000 or more.)*	

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$381,645	19.7%	Broadcast Ads	$442,770	48.0%
Consultants	758,990	39.2%	Consultants	98,755	10.7%
Fundraising	0	0.0%	Fundraising	0	0.0%
General	318,403	16.4%	General	50,151	5.4%
Campaign Literature	29,839	1.5%	Campaign Literature	4,346	0.5%
Newspaper Ads	264,863	13.7%	Newspaper Ads	83,690	9.1%
Outdoor Ads	126,870	6.5%	Outdoor Ads	238,230	25.8%
Paid Circulators/Surveys	50,500	2.6%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	7,304	0.4%	Trav./Accomodations	4,070	0.4%
Total	**$1,938,414**	**100.0%**	**Total**	**$922,012**	**100.0%**

TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 16—$9,949,529*

Proposition 10 • Ban of Rent Control

1980 Primary Election Result: Yes-35%/No-65%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$5,238,514	88.6%	Business	$4,100	5.7%
Individuals	202,935	3.4%	Individuals	15,960	22.0%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	100	0.1%
Broadbased Org's	472,729	8.0%	Broadbased Org's	42,129	58.2%
Officeholders	0	0.0%	Officeholders	10,150	14.0%
Total	**$5,914,178**	**100.0%**	**Total**	**$72,439**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$431,896	6.8%	Under $100	$96,059	57.0%
$100 to $999	929,100	14.6%	$100 to $999	20,304	12.0%
$1,000 to $9,999	2,956,840	46.6%	$1,000 to $9,999	52,135	30.9%
$10,000 to $49,999	836,852	13.2%	$10,000 to $49,999	0	0.0%
$50,000 to $99,999	373,666	5.9%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	817,720	12.9%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$6,346,074**	**100.0%**	**Total**	**$168,498**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT	
Oakwood Garden Apartments	$231,220
Issues Mobilization PAC	$177,817
Bankamerica Corp.	$172,614
AIMPAC Apt. Issues Mobilization	$138,500
R&B Development Co.	$122,569

OPPOSITION

(No contributor gave $10,000 or more.)

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$1,881,584	28.7%	Broadcast Ads	$43,581	38.2%
Consultants	747,218	11.4%	Consultants	2,450	2.1%
Fundraising	90,175	1.4%	Fundraising	4,428	3.9%
General	823,690	12.6%	General	28,568	25.0%
Campaign Literature	1,839,308	28.0%	Campaign Literature	19,881	17.4%
Newspaper Ads	35,609	0.5%	Newspaper Ads	15,137	13.3%
Outdoor Ads	30,854	0.5%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	1,050,255	16.0%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	59,595	0.9%	Trav./Accomodations	178	0.2%
Total	**$6,558,288**	**100.0%**	**Total**	**$114,223**	**100.0%**

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TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 17—$9,006,281*

Proposition 11 • Surtax on Oil Profits

1980 Primary Election Result: Yes-44%/No-56%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$163,405	44.5%	Business	$5,627,884	99.7%
Individuals	175,792	47.8%	Individuals	18,600	0.3%
Labor Organizations	0	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	4,600	1.3%	Political Parties/Clubs	0	0.0%
Broadbased Org's	22,550	6.1%	Broadbased Org's	0	0.0%
Officeholders	1,100	0.3%	Officeholders	0	0.0%
Total	**$367,447**	**100.0%**	**Total**	**$5,646,484**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$49,797	11.9%	Under $100	$22,126	0.4%
$100 to $999	45,226	10.8%	$100 to $999	93,746	1.7%
$1,000 to $9,999	242,640	58.2%	$1,000 to $9,999	286,291	5.1%
$10,000 to $49,999	79,581	19.1%	$10,000 to $49,999	213,444	3.8%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	350,972	6.2%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	3,416,534	60.3%
$1 million & Over	0	0.0%	$1 million & Over	1,285,497	22.7%
Total	**$417,244**	**100.0%**	**Total**	**$5,668,610**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Harvey Furgatch	$20,000	Chevron Corp.	$1,285,497
Bill Press	$17,111	Shell Oil Co.	$653,349
David Calef	$11,725	ARCO	$608,163
California Builders for Proposition 4	$10,745	Union Oil Co.	$543,142
Headland Properties	$10,000	Mobil Oil Corp.	$445,976

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$29,105	6.6%	Broadcast Ads	$2,862,822	51.1%
Consultants	4,478	1.0%	Consultants	418,486	7.5%
Fundraising	4,990	1.1%	Fundraising	2,358	0.0%
General	200,760	45.2%	General	1,070,267	19.1%
Campaign Literature	20,646	4.7%	Campaign Literature	928,903	16.6%
Newspaper Ads	0	0.0%	Newspaper Ads	17,980	0.3%
Outdoor Ads	0	0.0%	Outdoor Ads	104,761	1.9%
Paid Circulators/Surveys	166,924	37.6%	Paid Circulators/Surveys	150,422	2.7%
Trav./Accomodations	16,824	3.8%	Trav./Accomodations	44,575	0.8%
Total	**$443,727**	**100.0%**	**Total**	**$5,600,574**	**100.0%**

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TOP 18 SPENDING INITIATIVE CAMPAIGNS: NO. 18—$8,468,189*

Proposition 61 • State Salary Limitations

1986 General Election Result: Yes-34%/No-66%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$9,532	10.5%	Business	$759,357	11.4%
Individuals	79,986	88.4%	Individuals	2,693,547	40.3%
Labor Organizations	0	0.0%	Labor Organizations	3,112,636	46.6%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	1,300	0.0%
Broadbased Org's	950	1.1%	Broadbased Org's	62,471	0.9%
Officeholders	0	0.0%	Officeholders	53,000	0.8%
Total	**$90,468**	**100.0%**	**Total**	**$6,682,311**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$983,940	91.6%	Under $100	$469,579	6.6%
$100 to $999	68,178	6.3%	$100 to $999	1,729,682	24.2%
$1,000 to $9,999	7,332	0.7%	$1,000 to $9,999	1,829,133	25.6%
$10,000 to $49,999	14,958	1.4%	$10,000 to $49,999	724,855	10.1%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	671,983	9.4%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	1,726,658	24.1%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$1,074,408**	**100.0%**	**Total**	**$7,151,890**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT		OPPOSITION	
David M. Shell	$14,958	California Judges Assn.	$540,000
		CA State Employees Assn.	$387,490
		California Teachers Assn.	$362,497
(No other contributors gave $10,000 or more)		CA Assn. Highway Patrolmen	$266,981
		L.A. Police Protective League	$225,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$17,400	1.4%	Broadcast Ads	$1,866,750	28.0%
Consultants	101,170	8.2%	Consultants	1,214,365	18.2%
Fundraising	225,480	18.4%	Fundraising	3,121	0.0%
General	173,228	14.1%	General	993,342	14.9%
Campaign Literature	66,602	5.4%	Campaign Literature	1,096,825	16.4%
Newspaper Ads	790	0.1%	Newspaper Ads	21,070	0.3%
Outdoor Ads	0	0.0%	Outdoor Ads	650,394	9.7%
Paid Circulators/Surveys	617,617	50.3%	Paid Circulators/Surveys	674,125	10.1%
Trav./Accomodations	25,029	2.0%	Trav./Accomodations	155,113	2.3%
Total	**$1,227,316**	**100.0%**	**Total**	**$6,675,105**	**100.0%**

**All initiatives in the "Top 18" sample ranked according to 1988 dollars, but amounts shown in actual dollars.*

DATA PROJECT OVERVIEW: 1990 INITIATIVES

June 1990 v. November 1990 Initiatives

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

JUNE INITIATIVES			NOV. INITIATIVES		
Business	$4,072,128	24.7%	Business	$66,711,449	74.0%
Individuals	1,842,815	11.2%	Individuals	11,053,642	12.3%
Labor Organizations	607,051	3.7%	Labor Organizations	753,085	0.8%
Political Parties/Clubs	6,878,202	41.7%	Political Parties/Clubs	169,111	0.2%
Broadbased Org's	755,800	4.6%	Broadbased Org's	4,273,427	4.7%
Officeholders	2,357,951	14.3%	Officeholders	7,182,925	8.0%
Total	**$16,513,946**	**100.0%**	**Total**	**$90,143,639**	**100.0%**

CONTRIBUTION SIZE

JUNE INITIATIVES			NOV. INITIATIVES		
Under $100	$670,975	3.9%	Under $100	$2,344,897	2.5%
$100 to $999	639,380	3.7%	$100 to $999	3,164,644	3.4%
$1,000 to $9,999	2,413,559	14.0%	$1,000 to $9,999	8,747,381	9.5%
$10,000 to $49,999	2,208,360	12.9%	$10,000 to $49,999	8,151,497	8.8%
$50,000 to $99,999	1,761,349	10.2%	$50,000 to $99,999	5,902,740	6.4%
$100,000 to $999,999	3,269,735	19.0%	$100,000 to $999,999	29,833,601	32.3%
$1 million & Over	6,221,563	36.2%	$1 million & Over	34,343,776	37.1%
Total	**$17,184,921**	**100.0%**	**Total**	**$92,488,535**	**100.0%**

TOP FIVE CONTRIBUTORS

(Includes contributions to all 1990 initiative campaigns studied)

JUNE INITIATIVES		NOV. INITIATIVES	
IMPAC 2000 (Nat'l Democratic Org.)	$2,755,000	Anheuser-Busch	$8,308,852
Committee for Fair Reapportionment	$1,739,000	Harold Arbit	$4,923,834
Republican Nat'l Comm.	$1,727,563	Miller Brewing Company	$3,372,780
California Republican Party	$462,349	Willie Brown Committees	$2,266,165
Southern Pacific Transportation Co.	$382,000	California Beer & Wine Wholesalers	$1,641,399

EXPENDITURE PATTERNS (Amounts $100 or More)

JUNE INITIATIVES			NOV. INITIATIVES		
Broadcast Ads	$7,387,606	43.6%	Broadcast Ads	$44,733,770	48.5%
Consultants	2,471,744	14.6%	Consultants	11,365,145	12.3%
Fundraising	366,039	2.2%	Fundraising	1,407,345	1.5%
General	1,313,585	7.8%	General	10,747,824	11.6%
Campaign Literature	2,646,308	15.6%	Campaign Literature	14,791,769	16.0%
Newspaper Ads	48,512	0.3%	Newspaper Ads	467,452	0.5%
Outdoor Ads	33,190	0.2%	Outdoor Ads	660,804	0.7%
Paid Circulators/Surveys	2,569,946	15.2%	Paid Circulators/Surveys	7,235,105	7.8%
Trav./Accomodations	96,108	0.6%	Trav./Accomodations	856,074	0.9%
Total	**$16,933,038**	**100.0%**	**Total**	**$92,265,288**	**100.0%**

1990 INITIATIVES

Proposition 115 • Criminal Justice Reform

1990 Primary Election Result: Yes-57%/No-43%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$1,043,228	49.9%	Business	$63,032	32.3%
Individuals	700,639	33.5%	Individuals	121,562	62.2%
Labor Organizations	55,000	2.6%	Labor Organizations	7,200	3.7%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	200	0.0%	Broadbased Org's	3,300	1.7%
Officeholders	290,000	13.9%	Officeholders	200	0.1%
Total	**$2,089,067**	**100.0%**	**Total**	**$195,294**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$1,705	0.1%	Under $100	$14,846	7.1%
$100 to $999	34,316	1.6%	$100 to $999	96,834	46.1%
$1,000 to $9,999	519,879	24.9%	$1,000 to $9,999	78,460	37.3%
$10,000 to $49,999	570,879	27.3%	$10,000 to $49,999	20,000	9.5%
$50,000 to $99,999	211,123	10.1%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	752,870	36.0%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$2,090,772**	**100.0%**	**Total**	**$210,140**	**100.0%**

TOP FIVE CONTRIBUTOR (Giving $10,000 or More)

SUPPORT		OPPOSITION	
Pete Wilson for Governor	$150,000	California Attorneys for Criminal Justice	$10,000
Alex G. Spanos	$101,525	California Trial Lawyers	$10,000
Sam Bamieh	$101,345		
Gallo Winery	$100,000	*(No other contributors gave $10,000 or more.)*	
Mercury General Corp.	$100,000		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$772,083	36.8%	Broadcast Ads	$44,669	21.1%
Consultants	332,324	15.8%	Consultants	62,686	29.6%
Fundraising	18,504	0.9%	Fundraising	2,165	1.0%
General	337,197	16.1%	General	52,751	24.9%
Campaign Literature	12,466	0.6%	Campaign Literature	19,314	9.1%
Newspaper Ads	0	0.0%	Newspaper Ads	1,198	0.6%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	609,924	29.1%	Paid Circulators/Surveys	25,001	11.8%
Trav./Accomodations	16,142	0.8%	Trav./Accomodations	3,836	1.8%
Total	**$2,098,640**	**100.0%**	**Total**	**$211,620**	**100.0%**

1990 INITIATIVES

Proposition 116 • Rail Transportation Bond Act

1990 Primary Election Result: Yes-53%/No-47%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION	
Business	$1,137,440	92.1%	Business	
Individuals	46,765	3.8%	Individuals	
Labor Organizations	1,026	0.1%	Labor Organizations	*(There was no organized opposition to Proposition 116.)*
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	
Broadbased Org's	23,858	1.9%	Broadbased Org's	
Officeholders	25,550	2.1%	Officeholders	
Total	**$1,234,639**	**100.0%**	**Total**	

CONTRIBUTION SIZE

SUPPORT			OPPOSITION	
Under $100	$124,336	9.1%	Under $100	
$100 to $999	46,140	3.4%	$100 to $999	
$1,000 to $9,999	317,757	23.4%	$1,000 to $9,999	*(There was no organized opposition to Proposition 116.)*
$10,000 to $49,999	201,241	14.8%	$10,000 to $49,999	
$50,000 to $99,999	137,500	10.1%	$50,000 to $99,999	
$100,000 to $999,999	532,000	39.1%	$100,000 to $999,999	
$1 million & Over	0	0.0%	$1 million & Over	
Total	**$1,358,975**	**100.0%**	**Total**	

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Southern Pacific Transportation Co.	$382,000		
Angelo K. Tsakopoulos Realty	$150,000		*(There was no organized opposition to Proposition 116.)*
Mola Development Corp.	$87,500		
Irvine Company	$50,000		
Birtcher Corp.	$35,000		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION	
Broadcast Ads	$161,881	12.7%	Broadcast Ads	
Consultants	131,293	10.3%	Consultants	
Fundraising	66,620	5.2%	Fundraising	
General	109,085	8.6%	General	*(There was no organized opposition to Proposition 116.)*
Campaign Literature	316,168	24.8%	Campaign Literature	
Newspaper Ads	31,760	2.5%	Newspaper Ads	
Outdoor Ads	31,252	2.5%	Outdoor Ads	
Paid Circulators/Surveys	418,000	32.8%	Paid Circulators/Surveys	
Trav./Accomodations	8,776	0.7%	Trav./Accomodations	
Total	**$1,274,834**	**100.0%**	**Total**	

1990 INITIATIVES

Proposition 117 • Wildlife Protection

1990 Primary Election Result: Yes-52%/No-48%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$313,606	41.9%	Business	$76,790	43.6%
Individuals	188,329	25.2%	Individuals	30,542	17.3%
Labor Organizations	5,000	0.7%	Labor Organizations	250	0.1%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	214,874	28.7%	Broadbased Org's	68,702	39.0%
Officeholders	26,000	3.5%	Officeholders	0	0.0%
Total	**$747,809**	**100.0%**	**Total**	**$176,284**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$385,976	34.0%	Under $100	$36,503	17.2%
$100 to $999	158,337	14.0%	$100 to $999	66,518	31.3%
$1,000 to $9,999	177,449	15.7%	$1,000 to $9,999	88,766	41.7%
$10,000 to $49,999	152,371	13.4%	$10,000 to $49,999	21,000	9.9%
$50,000 to $99,999	259,651	22.9%	$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	**$1,133,784**	**100.0%**	**Total**	**$212,787**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT		OPPOSITION	
China Flat Associates	$75,000	National Rifle Assn.	$11,000
Planning & Conservation League	$74,651	Safari Club International	$10,000
Abe Wouk Foundation, Inc.	$60,000		
Big Sur Land Trust	$50,000	*(No other contributors gave $10,000 or more.)*	
Trust for Public Land	$40,000		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$22,483	2.2%	Broadcast Ads	$45,166	21.2%
Consultants	54,901	5.3%	Consultants	58,059	27.2%
Fundraising	34,950	3.4%	Fundraising	5,368	2.5%
General	169,521	16.4%	General	36,027	16.9%
Campaign Literature	462,732	44.9%	Campaign Literature	41,942	19.7%
Newspaper Ads	8,290	0.8%	Newspaper Ads	2,940	1.4%
Outdoor Ads	0	0.0%	Outdoor Ads	335	0.2%
Paid Circulators/Surveys	275,400	26.7%	Paid Circulators/Surveys	20,000	9.4%
Trav./Accomodations	2,937	0.3%	Trav./Accomodations	3,353	1.6%
Total	**$1,031,215**	**100.0%**	**Total**	**$213,190**	**100.0%**

1990 INITIATIVES

Proposition 118 • Reapportionment/Ethics

1990 Primary Election Result: Yes-33%/No-67%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$83,907	7.3%	Business	$89,768	2.7%
Individuals	192,219	16.6%	Individuals	11,775	0.4%
Labor Organizations	0	0.0%	Labor Organizations	268,787	8.1%
Political Parties/Clubs	823,703	71.3%	Political Parties/Clubs	2,325,750	69.7%
Broadbased Org's	51,000	4.4%	Broadbased Org's	3,975	0.1%
Officeholders	4,500	0.4%	Officeholders	634,800	19.0%
Total	**$1,155,329**	**100.0%**	**Total**	**$3,334,855**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$935	0.1%	Under $100	$5,633	0.2%
$100 to $999	10,497	0.9%	$100 to $999	13,084	0.4%
$1,000 to $9,999	139,920	12.1%	$1,000 to $9,999	111,658	3.3%
$10,000 to $49,999	140,000	12.1%	$10,000 to $49,999	254,654	7.6%
$50,000 to $99,999	50,000	4.3%	$50,000 to $99,999	242,959	7.3%
$100,000 to $999,999	814,912	70.5%	$100,000 to $999,999	465,500	13.9%
$1 million & Over	0	0.0%	$1 million & Over	2,247,000	67.3%
Total	**$1,156,264**	**100.0%**	**Total**	**$3,340,488**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION (To Props. 118 & 119)	
Republican Nat'l Comm.	$602,563	IMPAC 2000 (Nat'l Democratic Org.)	$2,755,000
California Republican Party	$212,349	Committee for Fair Reapportionment	$1,739,000
Sam Bamieh	$50,000	Willie Brown Committees	$346,000
Orange Cnty Comm. for State/Local Cand	$35,000	David Roberti Committees	$285,000
Alex G. Spanos	$20,000	California Trial Lawyers	$100,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$0	0.0%	Broadcast Ads	$2,127,094	63.7%
Consultants	184,051	15.2%	Consultants	708,488	21.2%
Fundraising	17,009	1.4%	Fundraising	5,517	0.2%
General	209,438	17.3%	General	11,560	0.3%
Campaign Literature	216,388	17.9%	Campaign Literature	482,669	14.5%
Newspaper Ads	0	0.0%	Newspaper Ads	550	0.0%
Outdoor Ads	1,603	0.1%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	566,471	46.9%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	12,309	1.0%	Trav./Accomodations	1,519	0.0%
Total	**$1,207,269**	**100.0%**	**Total**	**$3,337,397**	**100.0%**

**The campaign in opposition to Props. 118 and 119 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 118 and 119 opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

1990 INITIATIVES

Proposition 119 • Reapportionment by Commission

1990 Primary Election Result: Yes-36%/No-64%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$995,164	44.4%	Business	$89,768	2.7%
Individuals	395,504	17.6%	Individuals	11,775	0.4%
Labor Organizations	0	0.0%	Labor Organizations	268,787	8.1%
Political Parties/Clubs	405,999	18.1%	Political Parties/Clubs	2,325,750	69.7%
Broadbased Org's	299,319	13.3%	Broadbased Org's	3,975	0.1%
Officeholders	146,976	6.6%	Officeholders	634,800	19.0%
Total	**$2,242,962**	**100.0%**	**Total**	**$3,334,855**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$28,141	1.2%	Under $100	$5,633	0.2%
$100 to $999	188,398	8.3%	$100 to $999	13,084	0.4%
$1,000 to $9,999	721,845	31.8%	$1,000 to $9,999	111,658	3.3%
$10,000 to $49,999	561,719	24.7%	$10,000 to $49,999	254,654	7.6%
$50,000 to $99,999	273,000	12.0%	$50,000 to $99,999	242,959	7.3%
$100,000 to $999,999	498,000	21.9%	$100,000 to $999,999	465,500	13.9%
$1 million & Over	0	0.0%	$1 million & Over	2,247,000	67.3%
Total	**$2,271,103**	**100.0%**	**Total**	**$3,340,488**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION (To Props. 118 & 119)	
Republican Nat'l Comm.	$328,000	IMPAC 2000 (Nat'l Democratic Org.)	$2,755,000
Ford Land Company	$170,000	Committee for Fair Reapportionment	$1,739,000
Friends of Becky Morgan	$65,500	Willie Brown Committees	$346,000
Hewlett Packard	$55,000	David Roberti Committees	$285,000
Golden Eagle California PAC	$52,500	California Trial Lawyers	$100,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$891,521	30.3%	Broadcast Ads	$2,127,094	63.7%
Consultants	179,591	6.1%	Consultants	708,488	21.2%
Fundraising	210,020	7.1%	Fundraising	5,517	0.2%
General	354,895	12.1%	General	11,560	0.3%
Campaign Literature	610,214	20.8%	Campaign Literature	482,669	14.5%
Newspaper Ads	1,190	0.0%	Newspaper Ads	550	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	655,150	22.3%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	37,468	1.3%	Trav./Accomodations	1,519	0.0%
Total	**$2,940,049**	**100.0%**	**Total**	**$3,337,397**	**100.0%**

**The campaign in opposition to Props. 118 and 119 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 118 and 119 opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

1990 INITIATIVES

Proposition 126 • Alcohol Tax Legislative Measure

1990 General Election Result: Yes-41%/No-59%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION	
Business	$3,293,375	100.0%	Business	
Individuals	0	0.0%	Individuals	*(There was no organized opposition to Proposition 126.)*
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	**$3,293,375**	**100.0%**	**Total**	

CONTRIBUTION SIZE

SUPPORT			OPPOSITION	
Under $100	$0	0.0%	Under $100	
$100 to $999	136	0.0%	$100 to $999	
$1,000 to $9,999	3,028	0.1%	$1,000 to $9,999	*(There was no organized opposition to Proposition 126.)*
$10,000 to $49,999	0	0.0%	$10,000 to $49,999	
$50,000 to $99,999	80,000	2.4%	$50,000 to $99,999	
$100,000 to $999,999	1,940,794	58.9%	$100,000 to $999,999	
$1 million & Over	1,269,417	38.5%	$1 million & Over	
Total	**$3,293,375**	**100.0%**	**Total**	

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Taxpayers for Common Sense	$1,269,417		
Beer Institute	$802,078		*(There was no organized opposition to Proposition 126.)*
Wine Institute	$590,000		
Seagram & Sons	$259,188		
Heublein Inc.	$159,528		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION	
Broadcast Ads	$2,052,579	62.2%	Broadcast Ads	
Consultants	187,454	5.7%	Consultants	
Fundraising	0	0.0%	Fundraising	
General	18,311	0.6%	General	
Campaign Literature	1,041,066	31.6%	Campaign Literature	*(There was no organized opposition to Proposition 126.)*
Newspaper Ads	0	0.0%	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	**$3,299,410**	**100.0%**	**Total**	

1990 INITIATIVES

Proposition 128 • "Big Green"

1990 General Election Result: Yes-36%/No-64%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$483,958	9.7%	Business	$12,322,666	99.5%
Individuals	2,182,090	43.8%	Individuals	49,080	0.4%
Labor Organizations	8,476	0.2%	Labor Organizations	6,910	0.1%
Political Parties/Clubs	700	0.0%	Political Parties/Clubs	100	0.0%
Broadbased Org's	1,201,564	24.1%	Broadbased Org's	7,603	0.1%
Officeholders	1,105,124	22.2%	Officeholders	0	0.0%
Total	**$4,981,912**	**100.0%**	**Total**	**$12,386,359**	**100%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$127,272	2.5%	Under $100	$8,618	0.1%
$100 to $999	586,044	11.5%	$100 to $999	111,773	0.9%
$1,000 to $9,999	1,125,507	22.0%	$1,000 to $9,999	1,379,826	11.1%
$10,000 to $49,999	704,370	13.8%	$10,000 to $49,999	1,581,140	12.8%
$50,000 to $99,999	567,848	11.1%	$50,000 to $99,999	956,499	7.7%
$100,000 to $999,999	992,943	19.4%	$100,000 to $999,999	8,357,121	67.4%
$1 million & Over	1,005,200	19.7%	$1 million & Over	0	0.0%
Total	**$5,109,184**	**100.0%**	**Total**	**$12,394,977**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Tom Hayden Committees	$1,005,200	ARCO	$947,500
Campaign California	$353,443	Chevron Corp.	$811,800
Sierra Club	$294,500	Shell Good Government Fund	$600,000
Chevy Chase	$125,000	Dow Chemical	$595,788
Ted Turner	$120,000	Unocal Corporation	$460,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$3,087,710	53.8%	Broadcast Ads	$7,349,057	56.0%
Consultants	189,724	3.3%	Consultants	1,900,656	14.5%
Fundraising	375,070	6.5%	Fundraising	75,668	0.6%
General	1,256,099	21.9%	General	722,895	5.5%
Campaign Literature	567,120	9.9%	Campaign Literature	2,071,151	15.8%
Newspaper Ads	12,842	0.2%	Newspaper Ads	176,396	1.3%
Outdoor Ads	17,705	0.3%	Outdoor Ads	104,239	0.8%
Paid Circulators/Surveys	141,358	2.5%	Paid Circulators/Surveys	523,791	4.0%
Trav./Accomodations	90,241	1.6%	Trav./Accomodations	192,984	1.5%
Total	**$5,737,869**	**100.0%**	**Total**	**$13,116,837**	**100.0%**

1990 INITIATIVES

Proposition 129 • Criminal Justice Reform

1990 General Election Result: Yes-28%/No-72%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$418,877	44.2%	Business	$0	0.0%
Individuals	235,075	24.8%	Individuals	2,000	16.4%
Labor Organizations	7,018	0.7%	Labor Organizations	0	0.0%
Political Parties/Clubs	9,537	1.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	189	0.0%	Broadbased Org's	10,200	83.6%
Officeholders	277,073	29.2%	Officeholders	0	0.0%
Total	**$947,768**	**100.0%**	**Total**	**$12,200**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$124	0.0%	Under $100	$0	0.0%
$100 to $999	9,272	1.0%	$100 to $999	200	1.6%
$1,000 to $9,999	123,037	13.0%	$1,000 to $9,999	2,000	16.4%
$10,000 to $49,999	141,000	14.9%	$10,000 to $49,999	10,000	82.0%
$50,000 to $99,999	97,500	10.3%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	576,960	60.9%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$947,892**	**100.0%**	**Total**	**$12,200**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT		OPPOSITION	
Carpenters/Contractors Coop. Comm.	$300,000	National Right to Life	$10,000
John Van de Kamp Committees	$276,960		
Fred Field	$97,500	*(No other contributors gave $10,000 or more.)*	
Night Time Films Inc.	$25,000		
A.J. Perenchio	$25,000		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$0	0.0%	Broadcast Ads	$4,102	20.1%
Consultants	68,142	6.2%	Consultants	0	0.0%
Fundraising	4,500	0.4%	Fundraising	0	0.0%
General	320,023	29.1%	General	91	0.4%
Campaign Literature	63,560	5.8%	Campaign Literature	16,195	79.4%
Newspaper Ads	612	0.1%	Newspaper Ads	0	0.0%
Outdoor Ads	659	0.1%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	638,224	58.0%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	4,462	0.4%	Trav./Accomodations	0	0.0%
Total	**$1,100,181**	**100.0%**	**Total**	**$20,387**	**100.0%**

1990 INITIATIVES

Proposition 130 • "Forests Forever"

1990 General Election Result: Yes-48%/No-52%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$71,402	1.1%	Business	$5,570,011	96.9%
Individuals	6,230,888	97.3%	Individuals	153,584	2.7%
Labor Organizations	5,000	0.1%	Labor Organizations	12,000	0.2%
Political Parties/Clubs	28,537	0.4%	Political Parties/Clubs	0	0.0%
Broadbased Org's	67,030	1.0%	Broadbased Org's	12,659	0.2%
Officeholders	1,000	0.0%	Officeholders	0	0.0%
Total	**$6,403,857**	**100.0%**	**Total**	**$5,748,254**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$973,633	13.2%	Under $100	$63,908	1.1%
$100 to $999	131,381	1.8%	$100 to $999	273,955	4.7%
$1,000 to $9,999	170,573	2.3%	$1,000 to $9,999	450,653	7.8%
$10,000 to $49,999	178,069	2.4%	$10,000 to $49,999	344,184	5.9%
$50,000 to $99,999	0	0.0%	$50,000 to $99,999	267,003	4.6%
$100,000 to $999,999	0	0.0%	$100,000 to $999,999	2,303,636	39.6%
$1 million & Over	5,923,834	80.3%	$1 million & Over	2,108,823	36.3%
Total	**$7,377,490**	**100.0%**	**Total**	**$5,812,162**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPP. (to 130) & SUPP. (for 138)	
Harold Arbit	$4,923,834	Georgia Pacific	$1,500,000
Frank Wells	$1,000,000	Sierra Pacific Industries	$1,375,113
Richard F. Nourafchan	$45,700	Louisiana Pacific Corporation	$1,342,533
Planning & Conservation League	$36,487	Simpson Timber Company	$980,758
California Democratic Party	$28,537	Pacific Lumber Company	$863,992

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$4,687,569	66.2%	Broadcast Ads	$2,558,334	45.6%
Consultants	352,459	5.0%	Consultants	369,429	6.6%
Fundraising	64,398	0.9%	Fundraising	336,962	6.0%
General	444,137	6.3%	General	664,339	11.8%
Campaign Literature	565,861	8.0%	Campaign Literature	1,005,439	17.9%
Newspaper Ads	3,495	0.0%	Newspaper Ads	174	0.0%
Outdoor Ads	272	0.0%	Outdoor Ads	135,766	2.4%
Paid Circulators/Surveys	914,230	12.9%	Paid Circulators/Surveys	461,411	8.2%
Trav./Accomodations	47,539	0.7%	Trav./Accomodations	77,097	1.4%
Total	**$7,079,960**	**100.0%**	**Total**	**$5,608,951**	**100.0%**

**The campaign in opposition to Prop. 130 and in support of Prop. 138 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 130 (Opp.) and 138 (Sup.) campaign were divided in half and allocated to each separate campaign (except where indicated).*

1990 INITIATIVES

Proposition 131 • Term Limits/Campaign Reform

1990 General Election Result: Yes-38%/No-62%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$109,329	9.8%	Business	$91,493	3.9%
Individuals	290,062	25.9%	Individuals	55,216	2.4%
Labor Organizations	2,028	0.2%	Labor Organizations	15,375	0.7%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	44,250	1.9%
Broadbased Org's	158,590	14.2%	Broadbased Org's	5,000	0.2%
Officeholders	560,004	50.0%	Officeholders	2,137,669	91.0%
Total	**$1,120,013**	**100.0%**	**Total**	**$2,349,002**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$75,432	6.3%	Under $100	$5,480	0.2%
$100 to $999	37,821	3.2%	$100 to $999	53,520	2.3%
$1,000 to $9,999	222,750	18.6%	$1,000 to $9,999	82,889	3.5%
$10,000 to $49,999	160,000	13.4%	$10,000 to $49,999	153,500	6.5%
$50,000 to $99,999	139,651	11.7%	$50,000 to $99,999	115,500	4.9%
$100,000 to $999,999	559,791	46.8%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	1,943,593	82.5%
Total	**$1,195,445**	**100.0%**	**Total**	**$2,354,482**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION (Against Props. 131 & 140)	
John Van de Kamp Committees	$559,791	Willie Brown Committees	$2,266,165
Californians for Cleaning Out Drug Dealers	$77,000	David Roberti Committees	$1,621,021
California Common Cause	$62,651	Herschel Rosenthal Committees	$99,500
A.J. Perenchio	$30,000	IMPAC 2000 (Nat'l Democratic Org.)	$81,500
George M. Marcus	$25,000	Friends of Tom Bane for Assembly	$50,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$7,620	0.7%	Broadcast Ads	$1,646,932	70.1%
Consultants	68,301	5.9%	Consultants	305,915	13.0%
Fundraising	45,996	3.9%	Fundraising	1,904	0.1%
General	373,728	32.1%	General	27,101	1.2%
Campaign Literature	92,222	7.9%	Campaign Literature	360,787	15.4%
Newspaper Ads	629	0.1%	Newspaper Ads	325	0.0%
Outdoor Ads	659	0.1%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	568,199	48.8%	Paid Circulators/Surveys	1,750	0.1%
Trav./Accomodations	7,261	0.6%	Trav./Accomodations	3,038	0.1%
Total	**$1,164,614**	**100.0%**	**Total**	**$2,347,751**	**100.0%**

**The campaign in opposition to Props. 131 and 140 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 131 and 140 opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

1990 INITIATIVES

Proposition 132 • Ban on Gill Net Fishing

1990 General Election Result: Yes-56%/No-44%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$220,701	36.6%	Business	$37,900	91.5%
Individuals	283,566	47.0%	Individuals	3,536	8.5%
Labor Organizations	100	0.0%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	76,647	12.7%	Broadbased Org's	0	0.0%
Officeholders	22,000	3.6%	Officeholders	0	0.0%
Total	**$603,014**	**100.0%**	**Total**	**$41,436**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$46,295	7.1%	Under $100	$100	0.2%
$100 to $999	104,772	16.1%	$100 to $999	5,136	12.4%
$1,000 to $9,999	236,720	36.5%	$1,000 to $9,999	8,000	19.3%
$10,000 to $49,999	156,523	24.1%	$10,000 to $49,999	28,300	68.1%
$50,000 to $99,999	105,000	16.2%	$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	**$649,309**	**100.0%**	**Total**	**$41,536**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT		OPPOSITION	
Thomas G. Pfleger	$55,000	Pacific Coast Fishermans Ass'n.	$17,000
Harriet E. Pfleger Trust	$50,000	California Gillnetters Ass'n.	$11,300
James P. Baldwin	$40,000		
United Angler	$38,523	*(No other contributors gave $10,000 or more.)*	
William H. McWethy, Jr.	$25,000		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$23,040	3.2%	Broadcast Ads	$0	0.0%
Consultants	511,444	71.9%	Consultants	5,790	17.5%
Fundraising	11,358	1.6%	Fundraising	0	0.0%
General	84,011	11.8%	General	0	0.0%
Campaign Literature	31,743	4.5%	Campaign Literature	16,013	48.4%
Newspaper Ads	4,185	0.6%	Newspaper Ads	0	0.0%
Outdoor Ads	19,440	2.7%	Outdoor Ads	11,300	34.1%
Paid Circulators/Surveys	23,310	3.3%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	2,338	0.3%	Trav./Accomodations	0	0.0%
Total	**$710,869**	**100.0%**	**Total**	**$33,103**	**100.0%**

1990 INITIATIVES

Proposition 133 • Drug Enforcement & Prevention

1990 General Election Result: Yes-32%/No-68%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION	
Business	$491,193	60.1%	Business	
Individuals	172,566	21.1%	Individuals	
Labor Organizations	26,605	3.3%	Labor Organizations	*(There was no organized opposition to Proposition 133.)*
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	
Broadbased Org's	6,324	0.8%	Broadbased Org's	
Officeholders	119,945	14.7%	Officeholders	
Total	**$816,633**	**100.0%**	**Total**	

CONTRIBUTION SIZE

SUPPORT			OPPOSITION	
Under $100	$2,530	0.3%	Under $100	
$100 to $999	36,693	4.5%	$100 to $999	
$1,000 to $9,999	371,995	45.4%	$1,000 to $9,999	
$10,000 to $49,999	190,000	23.2%	$10,000 to $49,999	*(There was no organized opposition to Proposition 133.)*
$50,000 to $99,999	100,000	12.2%	$50,000 to $99,999	
$100,000 to $999,999	117,945	14.4%	$100,000 to $999,999	
$1 million & Over	0	0.0%	$1 million & Over	
Total	**$819,163**	**100.0%**	**Total**	

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Friends of McCarthy	$117,945		
Evergreen International	$50,000		*(There was no organized opposition to Proposition 133.)*
ARCO	$50,000		
Charles W. Davidson	$20,000		
Fritts Ford	$20,000		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION	
Broadcast Ads	$138,862	17.3%	Broadcast Ads	
Consultants	143	0.0%	Consultants	
Fundraising	29,940	3.7%	Fundraising	
General	145,931	18.2%	General	
Campaign Literature	22,823	2.8%	Campaign Literature	*(There was no organized opposition to Proposition 133.)*
Newspaper Ads	0	0.0%	Newspaper Ads	
Outdoor Ads	0	0.0%	Outdoor Ads	
Paid Circulators/Surveys	461,917	57.6%	Paid Circulators/Surveys	
Trav./Accomodations	2,966	0.4%	Trav./Accomodations	
Total	**$802,581**	**100.0%**	**Total**	

1990 INITIATIVES

Proposition 134 • Alcohol Tax Initiative

1990 General Election Result: Yes-31%/No-69%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$757,007	49.9%	Business	$26,751,352	99.9%
Individuals	259,196	17.1%	Individuals	31,550	0.1%
Labor Organizations	29,400	1.9%	Labor Organizations	0	0.0%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	100	0.0%
Broadbased Org's	419,602	27.7%	Broadbased Org's	0	0.0%
Officeholders	52,100	3.4%	Officeholders	0	0.0%
Total	**$1,517,305**	**100.0%**	**Total**	**$26,783,002**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$94,195	5.8%	Under $100	$28,433	0.1%
$100 to $999	210,517	13.1%	$100 to $999	135,114	0.5%
$1,000 to $9,999	309,607	19.2%	$1,000 to $9,999	876,377	3.3%
$10,000 to $49,999	278,567	17.3%	$10,000 to $49,999	1,238,826	4.6%
$50,000 to $99,999	192,500	11.9%	$50,000 to $99,999	920,777	3.4%
$100,000 to $999,999	526,114	32.6%	$100,000 to $999,999	6,833,468	25.5%
$1 million & Over	0	0.0%	$1 million & Over	16,778,440	62.6%
Total	**$1,611,500**	**100.0%**	**Total**	**$26,811,435**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
Five PAC (Emergency Physicians)	$237,000	Anheuser-Busch	$8,218,852
Health Action Committee	$152,895	Miller Brewing Company	$3,287,780
Mental Health Assn. in L.A. County	$136,219	California Beer & Wine Wholesalers	$1,641,399
Counties Preservation Fund	$82,500	Coors Brewing Company	$1,415,722
California Hospital Professionals	$60,000	Seagram & Sons	$1,153,261

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$37,901	2.0%	Broadcast Ads	$15,223,966	62.7%
Consultants	70,425	3.7%	Consultants	1,301,339	5.4%
Fundraising	3,433	0.2%	Fundraising	203	0.0%
General	481,409	25.4%	General	4,533,003	18.7%
Campaign Literature	356,578	18.8%	Campaign Literature	1,999,162	8.2%
Newspaper Ads	721	0.0%	Newspaper Ads	263,105	1.1%
Outdoor Ads	2,163	0.1%	Outdoor Ads	139,643	0.6%
Paid Circulators/Surveys	912,772	48.1%	Paid Circulators/Surveys	640,584	2.6%
Trav./Accomodations	31,500	1.7%	Trav./Accomodations	183,004	0.8%
Total	**$1,896,901**	**100.0%**	**Total**	**$24,284,009**	**100.0%**

1990 INITIATIVES

Proposition 135 • Pesticide Regulation

1990 General Election Result: Yes-30%/No-70%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION
Business	$6,183,398	95.5%	Business
Individuals	279,845	4.3%	Individuals
Labor Organizations	0	0.0%	Labor Organizations
Political Parties/Clubs	0	0.0%	Political Parties/Clubs
Broadbased Org's	8,813	0.1%	Broadbased Org's
Officeholders	1,100	0.0%	Officeholders
Total	**$6,473,156**	**100.0%**	**Total**

(Prop. 135 was a counter initiative to Prop. 128 [Big Green]. Opposition to Prop. 135 occurred from within the campaign for Prop. 128.)

CONTRIBUTION SIZE

SUPPORT			OPPOSITION
Under $100	$123,973	1.9%	Under $100
$100 to $999	820,907	12.4%	$100 to $999
$1,000 to $9,999	1,810,189	27.4%	$1,000 to $9,999
$10,000 to $49,999	1,205,472	18.3%	$10,000 to $49,999
$50,000 to $99,999	937,561	14.2%	$50,000 to $99,999
$100,000 to $999,999	1,699,027	25.8%	$100,000 to $999,999
$1 million & Over	0	0.0%	$1 million & Over
Total	**$6,597,129**	**100.0%**	**Total**

(Prop. 135 was a counter initiative to Prop. 128 [Big Green]. Opposition to Prop. 135 occurred from within the campaign for Prop. 128.)

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION
Philip Morris	$370,000	
CA Grocers Assn.	$280,000	
Butte County Farm Bureau	$150,000	
Castle & Cooke	$100,000	
Gallo Winery	$100,000	

(Prop. 135 was a counter initiative to Prop. 128 [Big Green]. Opposition to Prop. 135 occurred from within the campaign for Prop. 128.)

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION
Broadcast Ads	$2,986,558	52.6%	Broadcast Ads
Consultants	1,443,459	25.4%	Consultants
Fundraising	36,257	0.6%	Fundraising
General	445,304	7.8%	General
Campaign Literature	458,202	8.1%	Campaign Literature
Newspaper Ads	331	0.0%	Newspaper Ads
Outdoor Ads	74,300	1.3%	Outdoor Ads
Paid Circulators/Surveys	132,536	2.3%	Paid Circulators/Surveys
Trav./Accomodations	104,209	1.8%	Trav./Accomodations
Total	**$5,681,156**	**100.0%**	**Total**

(Prop. 135 was a counter initiative to Prop. 128 [Big Green]. Opposition to Prop. 135 occurred from within the campaign for Prop. 128.)

1990 INITIATIVES

Propositions 136 & 137 • Taxes/Initiative Process

Prop. 136 (State/Local Taxation) 1990 General Election Result: Yes-48%/No-52%
Prop. 137 (Initiative Process) 1990 General Election Result: Yes-45%/No-55%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT*			OPPOSITION**		
Business	$6,790,230	79.6%	Business	$12,000	12.9%
Individuals	145,768	1.7%	Individuals	0	0.0%
Labor Organizations	8,450	0.1%	Labor Organizations	80,376	86.5%
Political Parties/Clubs	0	0.0%	Political Parties/Clubs	0	0.0%
Broadbased Org's	1,589,745	18.6%	Broadbased Org's	500	0.5%
Officeholders	0	0.0%	Officeholders	0	0.0%
Total	**$8,534,193**	**100.0%**	**Total**	**$92,876**	**100.0%**

CONTRIBUTION SIZE

SUPPORT*			OPPOSITION**		
Under $100	$54,792	0.6%	Under $100	$80	0.1%
$100 to $999	144,519	1.7%	$100 to $999	1,135	1.2%
$1,000 to $9,999	349,530	4.1%	$1,000 to $9,999	56,741	61.0%
$10,000 to $49,999	720,163	8.4%	$10,000 to $49,999	35,000	37.7%
$50,000 to $99,999	855,398	10.0%	$50,000 to $99,999	0	0.0%
$100,000 to $999,999	3,933,114	45.8%	$100,000 to $999,999	0	0.0%
$1 million & Over	2,531,469	29.5%	$1 million & Over	0	0.0%
Total	**$8,588,985**	**100.0%**	**Total**	**$92,956**	**100.0%**

TOP FIVE CONTRIBUTORS (Giving $10,000 or More)

SUPPORT*		OPPOSITION**	
Howard Jarvis Taxpayers Assn.	$1,531,469	Calif. State Council of Service Employees	$20,000
Beer Institute	$1,000,000	Amer. Fed. of State, County & Muni. Emp.	$15,000
Philip Morris	$560,000		
Seagram & Sons	$479,103	*(No other contributors gave $10,000 or more.)*	
Wine Institute	$332,500		

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT*			OPPOSITION**		
Broadcast Ads	$1,781,537	16.2%	Broadcast Ads	$10,674	11.1%
Consultants	3,517,882	31.9%	Consultants	31,087	32.4%
Fundraising	12,197	0.1%	Fundraising	0	0.0%
General	367,863	3.3%	General	12,861	13.4%
Campaign Literature	5,136,500	46.6%	Campaign Literature	25,221	26.3%
Newspaper Ads	2,540	0.0%	Newspaper Ads	1,500	1.6%
Outdoor Ads	7,530	0.1%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	171,353	1.6%	Paid Circulators/Surveys	13,581	14.2%
Trav./Accomodations	25,631	0.2%	Trav./Accomodations	962	1.0%
Total	**$11,023,033**	**100.0%**	**Total**	**$95,886**	**100.0%**

**The campaigns for Propositions 136 and 137 were a united effort sponsored primarily by the Howard Jarvis Taxpayers Association. Since campaign activites for the two initiative efforts were intertwined, it was difficult to judge from campaign disclosure statements the proportional amounts spent for each ballot measure. Figures for both campaigns were thus combined. **The opposition, however, focused only on Proposition 136.*

1990 INITIATIVES

Proposition 138 • Forest Clearcutting

1990 General Election Result: Yes-29%/No-71%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT*			OPPOSITION
Business	$5,570,011	96.9%	Business
Individuals	153,584	2.7%	Individuals
Labor Organizations	12,000	0.2%	Labor Organizations
Political Parties/Clubs	0	0.0%	Political Parties/Clubs
Broadbased Org's	12,659	0.2%	Broadbased Org's
Officeholders	0	0.0%	Officeholders
Total	**$5,748,254**	**100.0%**	**Total**

(Prop. 138 was a counter initiative to Prop. 130 ["Forests Forever"]. Opposition to Prop. 138 occurred from within the campaign for Prop. 130.)

CONTRIBUTION SIZE

SUPPORT*			OPPOSITION
Under $100	$63,908	1.1%	Under $100
$100 to $999	273,955	4.7%	$100 to $999
$1,000 to $9,999	450,653	7.8%	$1,000 to $9,999
$10,000 to $49,999	344,184	5.9%	$10,000 to $49,999
$50,000 to $99,999	267,003	4.6%	$50,000 to $99,999
$100,000 to $999,999	2,303,636	39.6%	$100,000 to $999,999
$1 million & Over	2,108,823	36.3%	$1 million & Over
Total	**$5,812,162**	**100.0%**	**Total**

(Prop. 138 was a counter initiative to Prop. 130 ["Forests Forever"]. Opposition to Prop. 138 occurred from within the campaign for Prop. 130.)

TOP FIVE CONTRIBUTORS

SUPPORT*		OPPOSITION
Georgia Pacific	$1,500,000	
Sierra Pacific Industries	$1,375,113	
Louisiana Pacific Corporation	$1,342,533	
Simpson Timber Company	$980,758	
Pacific Lumber Company	$863,992	

(Prop. 138 was a counter initiative to Prop. 130 ["Forests Forever"]. Opposition to Prop. 138 occurred from within the campaign for Prop. 130.)

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT*			OPPOSITION
Broadcast Ads	$2,558,334	45.6%	Broadcast Ads
Consultants	369,429	6.6%	Consultants
Fundraising	336,962	6.0%	Fundraising
General	664,339	11.8%	General
Campaign Literature	1,005,439	17.9%	Campaign Literature
Newspaper Ads	174	0.0%	Newspaper Ads
Outdoor Ads	135,766	2.4%	Outdoor Ads
Paid Circulators/Surveys	461,411	8.2%	Paid Circulators/Surveys
Trav./Accomodations	77,097	1.4%	Trav./Accomodations
Total	**$5,608,951**	**100.0%**	**Total**

(Prop. 138 was a counter initiative to Prop. 130 ["Forests Forever"]. Opposition to Prop. 138 occurred from within the campaign for Prop. 130.)

**The campaign in opposition to Prop. 130 and in support of Prop. 138 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 130 (Opp.) and 138 (Sup.) campaign were divided in half and allocated to each separate campaign (except where indicated).*

1990 INITIATIVES

Proposition 139 • Prison Labor Program

1990 General Election Result: Yes-54%/No-46%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION		
Business	$437,125	35.8%	Business	$50,545	18.1%
Individuals	221,593	18.1%	Individuals	3,050	1.1%
Labor Organizations	317,542	26.0%	Labor Organizations	216,430	77.4%
Political Parties/Clubs	31,850	2.6%	Political Parties/Clubs	9,537	3.4%
Broadbased Org's	0	0.0%	Broadbased Org's	0	0.0%
Officeholders	214,000	17.5%	Officeholders	0	0.0%
Total	**$1,222,110**	**100.0%**	**Total**	**$279,562**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION		
Under $100	$323,565	20.9%	Under $100	$665	0.2%
$100 to $999	69,118	4.5%	$100 to $999	31,623	11.3%
$1,000 to $9,999	293,600	19.0%	$1,000 to $9,999	144,239	51.5%
$10,000 to $49,999	296,850	19.2%	$10,000 to $49,999	53,700	19.2%
$50,000 to $99,999	60,000	3.9%	$50,000 to $99,999	50,000	17.8%
$100,000 to $999,999	502,542	32.5%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	0	0.0%
Total	**$1,545,675**	**100.0%**	**Total**	**$280,227**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION	
CA Correct. Peace Officers Assn.	$317,542	California Labor Federation	$50,000
Deukmejian Campaign Committee	$185,000	C.W.A. District 9 Issues P.A.C.	$13,700
ARCO	$60,000	Traffic Control Service, Inc.	$10,000
California Republican Party	$31,850	Bay Counties District Counc. of Carpenters	$10,000
Gallo Winery	$20,000	Flasher Barricade Association	$10,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION		
Broadcast Ads	$12,542	0.9%	Broadcast Ads	$215,615	76.4%
Consultants	405,186	30.6%	Consultants	1,495	0.5%
Fundraising	21,391	1.6%	Fundraising	0	0.0%
General	80,430	6.1%	General	16,745	5.9%
Campaign Literature	278,611	21.0%	Campaign Literature	36,790	13.0%
Newspaper Ads	0	0.0%	Newspaper Ads	0	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	11,362	4.0%
Paid Circulators/Surveys	527,637	39.8%	Paid Circulators/Surveys	0	0.0%
Trav./Accomodations	312	0.0%	Trav./Accomodations	115	0.0%
Total	**$1,326,109**	**100.0%**	**Total**	**$282,122**	**100.0%**

1990 INITIATIVES

Proposition 140 • Officeholder Term Limits

1990 General Election Result: Yes-52%/No-48%

SOURCES OF CONTRIBUTIONS (Amounts $100 or more)

SUPPORT			OPPOSITION*		
Business	$240,759	13.9%	Business	$91,493	3.9%
Individuals	246,177	14.2%	Individuals	55,216	2.4%
Labor Organizations	0	0.0%	Labor Organizations	15,375	0.7%
Political Parties/Clubs	250	0.0%	Political Parties/Clubs	44,250	1.9%
Broadbased Org's	691,303	39.9%	Broadbased Org's	5,000	0.2%
Officeholders	555,242	32.0%	Officeholders	2,137,669	91.0%
Total	**$1,733,731**	**100.0%**	**Total**	**$2,349,002**	**100.0%**

CONTRIBUTION SIZE

SUPPORT			OPPOSITION*		
Under $100	$346,413	16.7%	Under $100	$5,480	0.2%
$100 to $999	73,671	3.5%	$100 to $999	53,520	2.3%
$1,000 to $9,999	199,606	9.6%	$1,000 to $9,999	82,889	3.5%
$10,000 to $49,999	178,150	8.6%	$10,000 to $49,999	153,500	6.5%
$50,000 to $99,999	155,000	7.5%	$50,000 to $99,999	115,500	4.9%
$100,000 to $999,999	1,127,304	54.2%	$100,000 to $999,999	0	0.0%
$1 million & Over	0	0.0%	$1 million & Over	1,943,593	82.5%
Total	**$2,080,144**	**100.0%**	**Total**	**$2,354,482**	**100.0%**

TOP FIVE CONTRIBUTORS

SUPPORT		OPPOSITION (To Props. 131 & 140)	
Supervisor Pete Schabarum Committees	$541,810	Willie Brown Committees	$2,266,165
Alliance for Representative Government	$305,494	David Roberti Committees	$1,621,021
Citizens For Congressional Reform	$280,000	Herschel Rosenthal Committees	$99,500
Fred R. Sacher	$80,000	IMPAC 2000 (Nat'l Democratic Org.)	$81,500
National Tax Limitation Committee	$75,000	Friends of Tom Bane for Assembly	$50,000

EXPENDITURE PATTERNS (Amounts $100 or More)

SUPPORT			OPPOSITION*		
Broadcast Ads	$756,486	38.7%	Broadcast Ads	$1,646,932	70.1%
Consultants	146,926	7.5%	Consultants	305,915	13.0%
Fundraising	49,202	2.5%	Fundraising	1,904	0.1%
General	80,415	4.1%	General	27,101	1.2%
Campaign Literature	321,567	16.5%	Campaign Literature	360,787	15.4%
Newspaper Ads	100	0.0%	Newspaper Ads	325	0.0%
Outdoor Ads	0	0.0%	Outdoor Ads	0	0.0%
Paid Circulators/Surveys	596,723	30.5%	Paid Circulators/Surveys	1,750	0.1%
Trav./Accomodations	2,279	0.1%	Trav./Accomodations	3,038	0.1%
Total	**$1,953,698**	**100.0%**	**Total**	**$2,347,751**	**100.0%**

**The campaign in opposition to Props. 131 and 140 was a united effort. For the purposes of analysis, the contribution and expenditure figures from the combined Prop. 131 and 140 opposition campaign were divided in half and allocated to each separate campaign (except where indicated).*

APPENDIX G

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 G.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 G.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 G.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 G.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 H

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
Paul Bloch, Deputy Secretary of State, Election Services, Missouri Secretary of State's Office
Bill Boyarksy, *Los Angeles Times*
Yvonne Brathwaite Burke, Jones, Day, Reavis & Pogue
Willie Brown, Assembly Speaker, State of California
Richard Bryant, Elections Division, Los Angeles County Registrar's Office
Norma Bucknell, Office Manager, Elections Division, Oregon Secretary of State's Office

Joseph Cerrell, Cerrell Associates
John Cloonan, Director, Elections Division, Massachusetts Secretary of State's Office
Dennis Cooper, Washington State Code Reviser
Geoffrey Cowan, Senior Lecturer, UCLA School of Law
Charlene Cruz, Elections Division, Los Angeles County Registrar's Office

Caren Daniels-Meade, Chief, Elections Division, California Secretary of State's Office
Donetta Davidson, Elections Officer, State of Colorado
Sallie Debolt, Elections Officer, Ohio Secretary of State's Office
Andy Demetriou, Attorney, Jones, Day, Reavis & Pogue
Jody Raines Dennis, Attorney, Arkansas Secretary of State's Office
Thayre Dennis, Senior Staff Assistant, Utah Lieutenant Governor's Office
Roger Diamond, Attorney
Phil Dubois, University of North Carolina

Linda Edgeworth, Elections Officer, Alaska Secretary of State's Office
Robert Elliott, Deputy Secretary of State, Nevada Secretary of State
Phil Ellison
Ralph Englert, Deputy Secretary of State, Nebraska Secretary of State's Office

Barry Fadem, Attorney, Bagatelos & Fadem
Floyd Feeney, Professor of Law, University of California, Davis Law School
Mervin Field, Director, The Field Institute
Lorraine Fleury, Director of Elections, State of Maine
Lisa Foster, Executive Director, California Common Cause
Joel Fox, President, Howard Jarvis Taxpayers Association

Toni Galloway, Public Information Officer, California Attorney General's Office

Dave Hansen, Deputy Lieutenant Governor, Utah
Julie Hansen, Voter Revolt
Gary Hart, Senator, State of California
Nancy Hart, Montana Elections Bureau Chief,
Craig Hendrickson, Tax Free America
Randall Henry, Consultant, Assemblyman Jim Costa's Office
Margaret Herman, Legislative Advocate, League of Women Voters of California
Robert Herstek, Graphic Designer and Lecturer
Toni Hinton, Election Assistant, California Secretary of State's Office
John H. Hodgson II, Attorney
Timothy A. Hodson, California State Senate Elections Committee
Allan Hoffenblum, Campaign Manager, Hoffenblum & Associates
Ruth Holton, Legislative Advocate, California Common Cause
Jack Horton, Chief Deputy, California Legislative Counsel's Office
Brian Huse, Associate Political Director, California League of Conservation Voters

Wayne Imberi, Technical Analyst, California Fair Political Practices Commission

Graham Johnson, Executive Director, Washington State Public Disclosure Commission
Ross Johnson, Assemblymember, California Assembly
William T. Jones, Professor, California Institute of Technology

Tom Kiley, Cosgrove, Eisenberg & Kiley
Kelly Kimball, Kimball Petition Management
Paul Koplin, President, The California Channel
Joyce Koupal, Community Activist

Jacqueline Ladd, Supervisor of Election Information, Massachusetts Secretary of State's Office
Linda Lairson, Projects Programs Specialist, Elections Division, Arizona Secretary of State's Office
Leslie Laurance, California State Archives
Barbara Lee, Elections Assistant, California Secretary of State's Office
Eugene Lee, Professor, University of California, Berkeley
Daniel H. Lowenstein, Professor, UCLA School of Law

Donald E. Male, State Printer, State of California
Paul Mandabach, Winner, Wagner & Mandabach Campaigns
Angela Mansor, Projects Programs Specialist, Arizona Secretary of State's Office
Ken Masterton, Co-Director, Masterton & Wright
Peter McNamee, California Fair Political Practices Commission
Sue Merriwether, Elections Coordinator, Nevada Secretary of State's Office
Ronald Michaelson, Executive Director, Illinois State Board of Elections
Anthony Miller, Chief Deputy Secretary of State, California Secretary of State's Office
Barbara Milman, California Assembly Rules Committee
Cathy Mitchell, Elections Analyst, Elections Division, California Secretary of State's Office
Peter Montalto, Senior Elections Analyst, Elections Division, Massachusetts Secretary of State's Office
John Mott-Smith, Elections Specialist, California Secretary of State's Office

Chris Nelson, Elections Supervisor, South Dakota Secretary of State's Office
Jack Nicholl, Nicholl & Siegal
Alan Niederman, Coordinating Producer, Century Communications

Dave Peterson, Elections Specialist, Michigan Secretary of State's Office
Harry Petrucci, Assistant Director, Elections Division, Massachusetts Secretary of State's Office
John Phillips, Hall & Phillips
David Pitman, Assistant Chief, Elections Division, California Secretary of State's Office
James Platler, Ph.D.

Jamie Rogers, Administrative Assistant, Elections, Montana Secretary of State's Office
James M. Rogers, Attorney
Bill Rosendahl, Vice President of Operations, Century Communications
Harvey Rosenfield, Voter Revolt
Peg Rosenfield, Elections Division, Ohio Secretary of State's Office

Bob Schaible, Deputy Secretary of State, North Dakota Secretary of State's Office
David Schmidt, Author
Josephine Scott, Elections Officer, Michigan Secretary of State's Office
Deborah Seiler, Editor, *The Seiler Report*
Fred Silva, Chief Fiscal Advisor, Senator David Roberti's Office

David Sullivan, Chief Legal Counsel, Massachusetts Secretary of State's Office

Eric Taylor, Elections Division, Florida Attorney General's Office
Earl Thaxton, Principal Analyst, Colorado Legislative Council
Cathy Cole Thompson
Stuart Tobisman, Attorney, O'Melveny & Myers
David Townsend, Political Consultant, Townsend & Company
Betty Trotter, League of Women Voters

Roy Ulrich, Attorney

John Vickerman, Former Chief Deputy Analyst, California Office of the Legislative Analyst

Dan Walters, *Sacramento Bee*
Melissa Warren, Media Director, California Secretary of State's Office
Terry Whiteberg, Account Executive, Treasure Chest Advertising Co., Inc.
Don Whiting, Assistant Secretary of State, Washington
Kathy Williams, Staff Paralegal, Washington, D.C. Board of Elections and Ethics
Shari Williams, Executive Director, Americans Back in Charge
Pamela Wilmot, Director, Massachusetts Common Cause
Chuck Winner, Winner/Wagner Associates
Bradley Wittman, Director, Information and Voter Registration Division, Michigan Bureau of Elections
Jean Womer, Administrative Aide, Elections, Washington Secretary of State's Office
Frederic Woocher, Attorney, Strumwasser & Woocher

Ben Ysursa, Chief Deputy, Secretary of State, Idaho Secretary of State's Office
Penny Ysursa, Elections Office, Idaho Secretary of State's Office

Walter Zelman, Consultant, California Department of Insurance
Bill Zimmerman, Zimmerman, Galanty & Fiman
Betty Zisk, Professor, Boston University

APPENDIX I

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APPENDIX J

Examples of Ballot Pamphlets from California and Other States and Localities

The Commission has proposed that the secretary of state graphically redesign the entire California Ballot Pamphlet to increase its 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 have designed their ballot pamphlets in ways that make the information they contain more accessible and easier to read than in California. This Appendix contains a portion of the existing California Ballot Pamphlet as well as excerpts from two innovative ballot pamphlets used by other states and one from San Francisco. Included are the following:

- *California Ballot Pamphlet* (Proposition 131, Nov. 1990)
- *San Francisco Ballot Pamphlet* (Proposition R, Nov. 1988)
- *Massachusetts Ballot Pamphlet* (Proposition 3, Nov. 1990)
- *Utah Ballot Pamphlet* (Proposition 1, Nov. 1986)

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

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

R

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

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.

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

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

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

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MASSACHUSETTS BALLOT PAMPHLET

3

QUESTION THREE: LAW PROPOSED BY INITIATIVE PETITION 5

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

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

[redacted]

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?

[redacted]

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.

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.

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 K

Proposed Summary Ballot Pamphlet

The Commission recommends that the secretary of state create a new, one-page, fold-out chart summarizing the key ballot measure issues and mail this chart to all registered voters three weeks before the election. (For a full discussion of this recommendation, see Chapter 7, "The Ballot Pamphlet.") This new Summary Ballot Pamphlet would supplement but not replace the current ballot pamphlet. The following example, using three November 1990 initiative measures for illustrative purposes, demonstrates how the new Summary Ballot Pamphlet might appear.

In this proposed new Summary Ballot Pamphlet, the attorney general would prepare the "Summary of Main Provisions" (this example condenses the existing attorney general'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 F). "Legislative Vote" results were mocked-up for purposes of this example; under the Commission's recommendations, the legislature would be required to vote on each balloted initiative.

November 6, 1990 Ballot Measures

For Recorded Information on Each Ballot Measure, Call Toll-Free 1-800-OUR-VOTE

	SUMMARY	ARGUMENTS		ENDORSEMENTS		MAJOR CONTRIBUTORS		LEGISLATIVE VOTE
	OF MAIN PROVISIONS	PRO	CON	FOR	AGAINST	FOR	AGAINST	SENATE & ASSEMBLY
128 ENVIRONMENT & PUBLIC HEALTH Constitutional Amendment *Put on the Ballot by Petition Signatures*	• **Phases out pesticide use on food of pesticides known to cause cancer or reproductive harm, or deplete the ozone layer.** • **Requires reduced emissions of gases contributing to global warming.** • **Regulates Oil Drilling and Exploration.** • **Creates Elected Environmental Advocate.** • **Appropriates $40 million for environmental research.** • **Authorizes $300 million in general obligation bonds for ancient redwoods acquisition, forestry projects.**	*Prop. 128 is the Big Green Initiative. It will protect us, and especially our children from toxic chemical pollution of our air, water and food. It was written by California's well-respected major environmental organizations, and is supported by leading California health care professionals, scientists, farmers, business and labor leaders.*	*Prop. 128 is 39 pages and more than 16,000 words long. Clearly we need to protect California's environment. But we must take a rational approach, one that examines issues concerning California's resources—air, water, forests, food and coastline—independently. There are too many important issues in Prop. 128 to be voted on together.*	Dr. Jay Hair *Pres., Nat'l Wildlife Federation* Lucy Blake *Exec. Dir., California League of Conservation Voters* Michael Paparian *State Dir., Sierra Club of Calif.*	B. Keating-Edh *Pres., Consumer Alert* W. Sampson, M.D. *Stanford Univ. Medical School* Larry McCarthy *Pres., Cal. Taxpayers' Ass'n* Al Stehly *Family Farmer*	**Tom Hayden Comm.:** $1,005,200 **Camp. Calif.:** $353,443 **Sierra Club:** $294,500 **Chevy Chase:** $125,000 **Ted Turner:** $120,000	**ARCO:** $947,500 **Chevron:** $811,800 **Shell Oil:** $600,000 **Dow Chem.:** $595,788 **Unocal:** $460,000	***TOTAL*** Yes: 44/No: 76 ***BY PARTY*** *(Voting Yes)* Dem.: 40/Rep.: 2 Indep.: 1 *(Voting No)* Dem.: 29/Rep.: 47 Indep.: 1
129 CRIME REDUCTION& DRUG CONTROL Constitutional Amendment *Put on the Ballot by Petition Signatures*	• **Appropriates up to $1.9 billion over the next eight years to state and local governments for drug enforcement, treatment and programs to address the gang problem.** • **Authorizes issuance of $740 million of general obligation bonds for drug abuse, confinement and treatment facilities.** • **Amends the state constitution to provide that specified provisions relating to the rights of criminal defendants do not abridge right to privacy as it affects reproductive choice.**	*Politicians talk about fighting a war against drugs. But if this is a war, California is losing. Tired of empty promises? Ready to start fighting to win? Vote yes on Prop. 129, the California war on drugs. Not only will it fight drugs and crime, it will also clarify ambiguous language in the law that threatens a woman's right to "choice" in California.*	*Vote no on Prop. 129. It is too broad, too complicated, and a terrible way to run government. This proposition would dedicate these tax revenues for specific government programs. There are serious flaws in this plan. Prop. 129 would earmark every new tax dollar, without regard to need, economy or efficiency.*	J. Van de Kamp *State Atty. General* Johan Klehs *State Assemblyman* Frank Jordan *San Francisco Police Chief*	Quentin Kopp *State Senator* Larry McCarthy *Pres., Cal. Taxpayers' Ass'n* Richard Gann *Pres., Paul Gann's Citizen Comm.*	**Carpenters Coop.:** $300,000 **J. Van de Kamp:** $276,960 **Fred Field:** $97,500 **Night Time Films:** $25,000 **A.J. Perenchio:** $25,000	**National Right to Life:** $10,000 *(No other contributors gave $10,000 or more.)*	***TOTAL*** Yes: 44/No: 76 ***BY PARTY*** *(Voting Yes)* Dem.: 40/Rep.: 2 Indep.: 1 *(Voting No)* Dem.: 29/Rep.: 47 Indep.: 1
130 FOREST AQUISITION & TIMBER HARVEST *Put on the Ballot by Petition Signatures*	• **Authorizes 10-year state forest acquisition program. Authorizes general obligation bond issue of $742 million to fund acquisition.** • **Regulates lumber cutting practices. Limits logging sites, mandates sustained yield standards. Limits burning of forest residues.** • **Requires wildlife surveys, mitigation measures.** • **Revises membership composition of the Board of Forestry.** • **Discourages foreign export of forest products. Imposes penalties for violations.**	*California's ancient redwood forests, with giant trees more than 2,000 years old, are being destroyed even faster than the tropical rain forests of the Amazon. No law exists today to stop clear-cutting of these magnificent forests. If you want to save California's ancient forests, vote no on Prop. 138 and yes on Prop. 130.*	*There is no question that California's precious forests must be protected. But Prop. 130 is simply too radical an approach. It will reduce timber harvesting by 70%, putting more than 100,000 people out of work. It will increase home, timber and paper product prices. Vote no on Prop. 130; yes on Prop. 138.*	Dr. Rupert Cutler *Pres., Defenders of Wildlife* Michael L. Fischer *Exec. Dir., Sierra Club* David Pesonen *Former Dir., Calif. Dept. of Forestry*	Gerald Partain *Former Dir., Calif. Dept. of Forestry* Philip Lowell *Exec. Dir., Redwood Region Conserv. Council* Scott Wall *Pres., Calif. Licensed Foresters Ass'n*	**Harold Arbit:** $4,923,834 **Frank Wells:** $1,000,000 **R. Nourafchan:** $45,700 **Planning & Conserv. League:** $36,487 **CA Demo. Party:** $28,537	**Georgia Pacific:** $1,500,000 **Sierra Pacific:** $1,375,113 **Louisiana Pacific:** $1,342,533 **Simpson Timber:** $980,758 **Pacific Lumber:** $863,992	***TOTAL*** Yes: 44/No: 76 ***BY PARTY*** *(Voting Yes)* Dem.: 40/Rep.: 2 Indep.: 1 *(Voting No)* Dem.: 29/Rep.: 47 Indep.: 1

This is the final report of the California Commission on Campaign Financing's two-year study of California's initiative process. It is the most comprehensive examination of the 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 Commission has received funding for this study from the William and Flora Hewlett Foundation, the James Irvine Foundation, the Ralph M. Parsons Foundation and the Weingart Foundation. In addition, the John Randolph Haynes and Dora Haynes Foundation contributed special funding toward the Commission's study of local ballot initiatives in the Los Angeles metropolitan area, which study will be published separately in the near future.