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# Campaign Finance Reform

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## ISSUE SUMMARY

# CAMPAIGN FINANCE REFORM

By  
Corey Cook

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## TABLE OF CONTENTS

DIGEST -----	1
INTRODUCTION-----	2
RAISING MONEY: CONTRIBUTIONS AND CONTRIBUTION LIMITS-----	4
Who Contributes?-----	4
Political Action Committees -----	9
Individuals -----	14
Political Party Contributions and Transfers -----	15
Personal Sources -----	17
Implications of Campaign Fundraising Patterns -----	18
Corruption or the Appearance of Corruption -----	19
Incumbency Advantage-----	20
Contribution Limits -----	21
Eliminate Corruption/Appearance of Corruption-----	22
Incumbency Advantage-----	24
Reduce Spending-----	25
SPENDING MONEY: EXPENDITURES AND SPENDING LIMITS -----	27
Rising Costs? -----	29
Incumbency Advantage-----	30
The Role of Campaign Spending in the Elections Process -----	34
Expenditure Limitations-----	35
Limit Spending -----	36
Increase Competition -----	37
PUBLIC FINANCING OF CAMPAIGNS -----	38
Breadth of the Program-----	38
Qualifications to Receive Public Funds -----	40
Revenue Generation to Fund Public Financing -----	40
Dispersal of Public Funds -----	42
The Debate on Public Financing: The Case for Public Funds -----	43
The Debate on Public Financing: The Case Against Public Funds-----	44
Comprehensive Financing Systems-----	45
DISCLOSURE OF CAMPAIGN INFORMATION-----	46
Variables of Campaign Finance Disclosure-----	46
CAMPAIGN FINANCE PROVISIONS IN THE UNITED STATES -----	48
CAMPAIGN FINANCE PROVISIONS IN SELECTED LOCAL JURISDICTIONS---	52
OPTIONS -----	53

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APPENDIX A: HISTORY OF CAMPAIGN FINANCE REFORM EFFORTS IN CALIFORNIA SINCE 1974-----	A1
APPENDIX B: CURRENT SELECTED PROVISIONS OF THE POLITICAL REFORM ACT -----	B1
APPENDIX C: SELECTED CAMPAIGN FINANCE LEGISLATION INTRODUCED IN THE 1993-94 LEGISLATIVE SESSION -----	C1
APPENDIX D: CAMPAIGN FINANCE IN SELECTED JURISDICTIONS -----	D1
Contribution Limits	
San Diego, California -----	D1
Expenditure Limits	
West Virginia -----	D1
Vermont -----	D2
Variable Contribution Limits	
Oakland, California -----	D3
Public Financing	
Massachusetts -----	D4
Comprehensive Systems	
Minnesota -----	D5
Wisconsin -----	D8
Hawaii -----	D10
Seattle, Washington -----	D11
Los Angeles, California -----	D14
New York, New York -----	D16
APPENDIX E: ADJUSTED CAMPAIGN EXPENDITURES: CALIFORNIA LEGISLATURE 1980-1992 -----	E1
APPENDIX F: CAMPAIGN RECEIPTS AND EXPENDITURES: CALIFORNIA LEGISLATURE 1976-1992 -----	F1
APPENDIX G: CAMPAIGN CONTRIBUTIONS: CALIFORNIA LEGISLATURE 1991-92 -----	G1
REFERENCES -----	H1

## DIGEST

This Issue Summary examines the financing of political campaigns in California over the past twenty years. The materials focus primarily upon state legislative elections which provide a large sample size and allow for generalizations across election cycles. Data from initiative campaigns and statewide elections are used to illustrate key points. This research was requested by Assembly Member Gwen Moore.

There are four main variables of a campaign finance system: contribution limits, spending limits, public funding, and campaign finance disclosure. The paper is organized by these variables into seven component sections:

- *Contributions and Contribution Limits:* This section examines fundraising patterns for political campaigns in California, provides data on the sources of contributions, suggests implications of current fundraising patterns, and evaluates the consequences of various contribution limitations.
- *Expenditures and Spending Limits:* This discussion analyzes the role of spending in California political campaigns, explores the cost of state legislative campaigns, examines the implications of current campaign spending practices, and assesses the consequences of expenditure limitations.
- *Public Financing:* This section discusses the use of public funds for political campaigns, outlines the key components of public funding systems, and summarizes the debate over public financing.
- *Campaign Finance Disclosure:* Finally, the paper explores the disclosure of campaign information in California, provides a brief history of disclosure provisions, and analyzes their effectiveness.
- *Campaign Finance Provisions in Selected Jurisdictions:* These charts summarize campaign finance provisions in the United States and in several local jurisdictions, covering a wide spectrum of alternative campaign finance schemes.
- *Options:* This section explores components of each of the above four variables, provides a range of alternatives for each, and examines some implications of implementing each option.
- *Appendices:* The appendices provide detailed background information on campaign finance including: a history of reform efforts in California; a description of current California campaign finance reform legislation; and a series of historical charts detailing the raising and spending of money in California political campaigns.

## INTRODUCTION

Elections are at the heart of representative government. Not only do they provide the formal means for transferring authority from the general populace to a small number of elected representatives, they provide a direct means for holding those representatives accountable. The legitimacy of representative institutions, then, depends in part on the legitimacy of the elections process. Furthermore, the importance of elections in California is increased by the integral role which the initiative process plays in public policy.<sup>1</sup>

Political campaigns serve a valuable role in the electoral process because candidates and other concerned individuals must be able to reach voters to communicate their messages and advocate for their candidacy or their cause. This communication is expensive and requires money, leading one scholar to assert, "campaign expenditures must be recognized as vital to the American way of choosing public officials. The expenditures are inherently neither good nor bad, neither high nor low. They are simply necessary."<sup>2</sup> While some democracies provide public funds to finance political campaigns, private contributions provide the only source of funds for California elections.

A number of studies conducted during the past two decades support the assertion that campaign spending plays a critical role in legislative elections and initiative campaigns.<sup>3</sup> This is not to say that the candidate who raises the most money will necessarily win. Other factors such as partisan affiliation, incumbency status, name recognition, ballot designation, and the impact of free media might have substantial effects on election results. Nonetheless, the ability to raise money is a threshold characteristic for serious challengers. It is important to point out that recent political reforms, such as the implementation of term limits on elected officials, may have a profound impact on the nature of political campaigns and the inherent advantages of incumbency. However, these effects may not be apparent for a number of years.

Former Vice-President Hubert Humphrey once described political fundraising as a "curse...the most disgusting, demeaning, disenchanting, debilitating experience of a politician's life."<sup>4</sup> While the process of raising money may be distasteful, candidates recognize that spending substantial sums of money makes them more competitive. Just to become viable, candidates must be willing to raise large amounts of money. The ability to stockpile huge war chests of campaign funds helps incumbents to ward off potentially troublesome challengers.

California state legislative candidates raised and spent approximately \$72 million during the 1991-1992 election cycle. Ballot measure committees raised and spent an additional \$34 million during the 1992 elections. Spending in 1994 should well surpass this mark, as

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<sup>1</sup> Cook and Simmons, 1994.

<sup>2</sup> Heard, 1962.

<sup>3</sup> See Jacobson; Gierzynski and Breaux; Owens and Wade; Magleby; and Lowenstein.

<sup>4</sup> New Jersey Election Law Enforcement Commission, 1989.

the election also includes statewide races and a number of high-profile initiative campaigns.

Campaign-finance reform has been a contentious political issue in California since it first attracted public attention after the Watergate scandal. Despite numerous legislative proposals and citizen-sponsored initiatives designed to regulate the flow of money into political campaigns (See Appendix A), reform remains illusory. A series of highly publicized political scandals and state legislative political corruption trials involving campaign and personal payments have resulted in a measurable loss of public confidence in state political institutions,<sup>5</sup> further magnifying a need for reform. However, despite well documented public dissatisfaction with the current system of financing political campaigns,<sup>6</sup> there is neither consensus on whether campaign financing should be reformed, not how it should be reformed if it is. First Amendment protections on freedom of speech have been interpreted by the courts to include specific political activities, including raising and spending money for political office, thereby limiting public policy alternatives. In general, states have failed to develop clear or consistent standards for regulating campaign finance, providing for significant variation as detailed in Chart 32 (Page 48).

Campaign finance reaches into the heart of the relationships between elected officials and their constituents, other citizens, political parties, interest groups, and other elected officials. The current system benefits some political actors and disadvantages others--it is not neutral, nor are alternative fundraising mechanisms. Thus, even slight alterations may have significant repercussions throughout the political system. Reforms would profoundly affect representative and power relationships. For example, while an objective of reform may be to encourage political participation by removing "big money" from the political system, this may diminish the amount of information available to citizens, and the quality of political dialogue, both of which are required to make informed electoral decisions. Insufficient political communication may discourage political participation, particularly among some electoral groups.

Some commentators believe there is a fundamental tension between American egalitarian democratic ideals (as expressed in "one person, one vote,") and an unequal distribution of economic resources. This tension is exacerbated by the process of raising and spending private money for election to public office. Reformers have suggested mechanisms to "level the playing field" and strike a balance between these contending systems: contribution limits, expenditure limits, public financing, and disclosure requirements. Since the debate over campaign finance is fueled by fundamental values, alternatives are hotly contested and involve considerable trade-offs.

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<sup>5</sup> The Field Institute, 1992.

<sup>6</sup> Center for Law in the Public Interest, 1992.

## RAISING MONEY: CONTRIBUTIONS AND CONTRIBUTION LIMITS

### Who Contributes?

When California voters overwhelmingly passed Proposition 9 in June 1974, they approved the most comprehensive campaign finance disclosure provisions in United States history. The Political Reform Act required all campaign committees receiving or spending \$500 or more dollars to file a statement of organization with the Secretary of State and to file a series of reports detailing their financial activities. Candidates were required to complete periodic campaign disclosure reports identifying all contributors of \$50 or more and each person or corporation to whom an expenditure of \$50 or more was made. The measure was hailed at the time of its passage as a mechanism for ensuring that "public business (is) conducted openly and honestly--in public for all to see."<sup>7</sup>

However, twenty years later, it is clear that the disclosure provisions do not provide a timely and accurate reporting of campaign data. The last comprehensive study on the source of campaign contributions was conducted in 1985. Neither the Secretary of State nor the Fair Political Practices Commission issues comprehensive campaign finance reports (in part due to budget constraints). Without these reports, quantifying or even identifying the source of political contributions is a time-consuming task. One must go to the Secretary of State's office in Sacramento and request each of the individual candidate reports for the desired election cycle. These reports often exceed one hundred pages for statewide candidates and list thousands of entries without summarizing the data by source. Frequently, pages are missing or numbers do not add up, with no manageable way of checking the figures. So while the data are technically available to the public, the information is not compiled in a comprehensive manner for public consumption. As a practical matter, therefore, it is not useful.

This report attempts to fill this information void by providing a comprehensive evaluation of the sources of campaign contributions. We coded over 81,000 separate contributions in amounts above \$100 according to the name of the contributor and classified by source as individuals; political action committees, corporations and labor unions; partisan sources; and family sources\*. We grouped PACs, corporations, and labor unions together for the purpose of data analysis in order to analyze the contribution patterns of "special interests." Disaggregating the data would not further delineate the source of contributions because corporations and labor unions often establish PACs to distribute money, as well as contributing directly to candidates and ballot measure committees from the organization. "Party and Transfers" includes political party contributions, transfer contributions from other candidates, and legislative-caucus contributions. Although there may be connections between some organizations and individuals, the data do not disclose that information.

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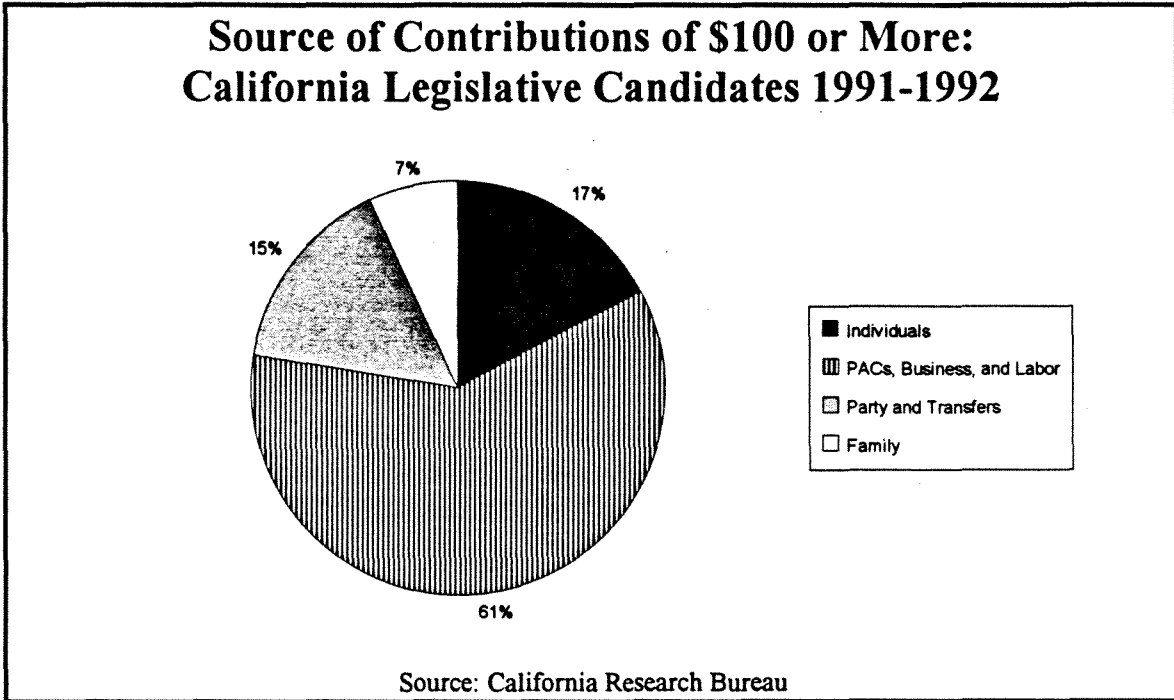
<sup>7</sup> California Ballot Pamphlet, Primary Election 1974.

\* Capitol Weekly publishes contribution data from reports filed with the Secretary of State and is the source of this information.



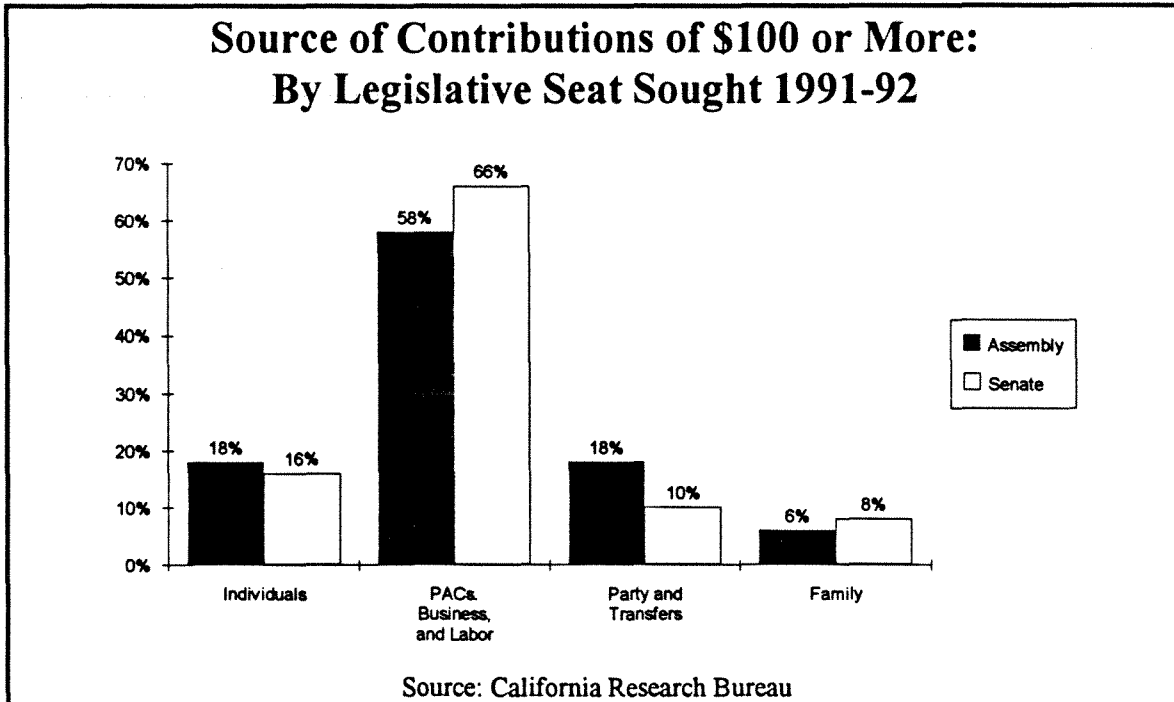
*California Legislative Contributions:* Private organizations contributed nearly 2/3 of the contributions over \$100 raised by California legislative candidates during the 1991-1992 election cycle, while individuals gave just 17 percent.

Chart 1



The source of contributions varied somewhat between the California State Assembly and the State Senate.

Chart 2



Differences between the chambers may be partially explained by several factors:

- There are fewer Senators (40) than Assembly Members (80), giving each Senator's vote relatively more weight. PACs, business, and labor may maximize their influence by contributing to Senators at a higher rate. In the 1992 election 23 Senate incumbents received \$14 million and 58 Assembly incumbents received proportionately less, \$23 million, from these sources.
- Due to tight financial constraints, political parties and party leaders in the Legislature tend to direct their contributions to the most competitive races. During the 1991-92 cycle, Assembly races were the most competitive elections.
- Several candidates for the Senate contributed large amounts of personal funds to their own campaigns.

Another important difference between the two chambers has to do with the vast fundraising difference between incumbents and non-incumbents. Although there were more than three times as many non-incumbents as incumbents seeking office, incumbents outraised non-incumbents by \$54 million to \$25 million in 1991-92. Assembly incumbents raised \$34 million while Assembly non-incumbents raised \$23 million. Senate incumbents raised \$20 million while Senate non-incumbents raised just \$2 million.

Chart 3 shows the difference between the two chambers in the degree to which incumbents outraised their opponents. In order to account for the large number of non-competitive challengers, this ratio is based on the amount of money raised by incumbents divided by the amount raised by their highest-raising challenger. Unopposed incumbents and incumbents whose opponents did not raise money are not included in this figure.

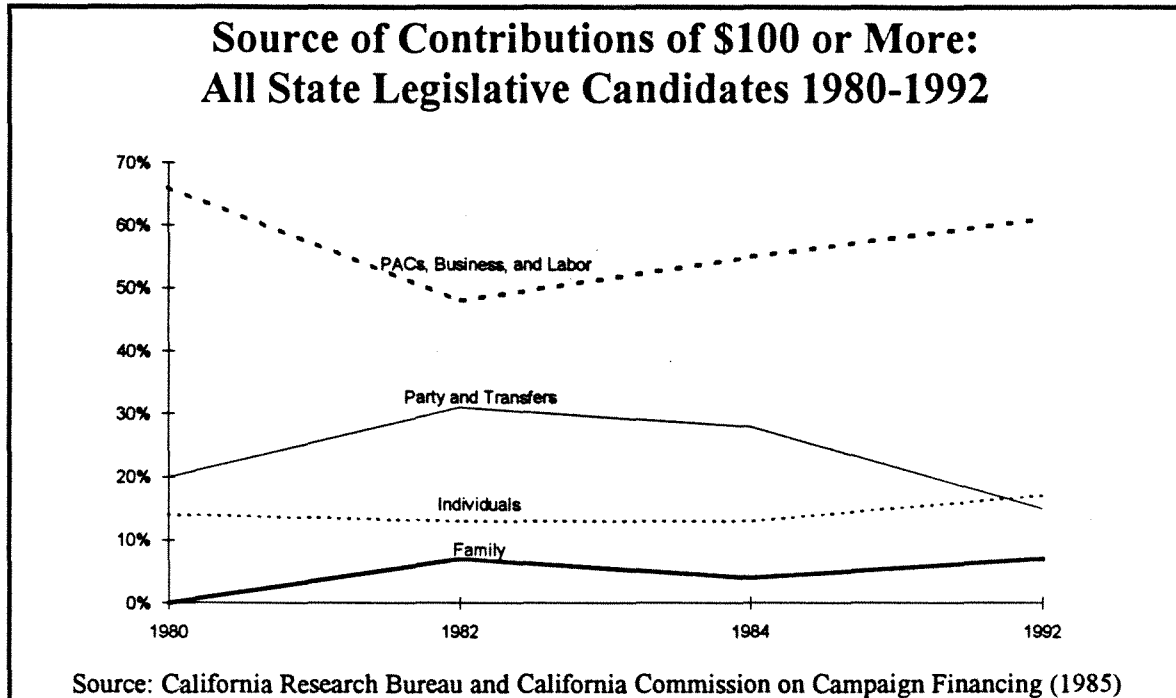
**Chart 3**

<b>Incumbency Advantage by Chamber 1991-92<sup>8</sup></b>			
	<b>Average Amount Raised by Incumbents</b>	<b>Average Amount Raised by Challengers</b>	<b>Incumbency Advantage</b>
<b>Assembly</b>	<b>\$335,887</b>	<b>\$130,677</b>	<b>2.7 to 1</b>
<b>Senate</b>	<b>\$405,163</b>	<b>\$119,502</b>	<b>3.4 to 1</b>

The competitiveness of elections appears to be a key variable related to this incumbency fundraising advantage. Assembly elections were typically more competitive than Senate elections during the 1991-92 election cycle. However, even when controlling for the degree of competition, Senate incumbents enjoyed a wider fundraising advantage than their Assembly colleagues. Including only highly competitive elections (those in which the final vote margin was within ten percentage points) Senate incumbents outspent their highest-raising opponents by 2.6 to 1. Assembly incumbents outspent their opponents by 1.6 to 1.

The relative contributions of funding sources have varied over the last twelve years.

<sup>8</sup> California Secretary of State and California Research Bureau.



As Chart 4 demonstrates, the significance of partisan money in state legislative races is declining. Intra-party contributions reached their height (31 percent) in 1982. Just a decade later that proportion has fallen to 15 percent. Conversely, contributions from PACs, corporations, and labor unions have increased proportionally during the same period. This finding appears to support a Council of State Governments study which attributes the national rise of PACs to a general decline in the power of political parties.<sup>9</sup>

Contributions from individuals (ranging from 13 percent to 17 percent) have shown the most consistency. Family contributions, including personal contributions to a candidate's own campaign, are becoming an increasingly important source of campaign funds. From 1980 to 1992, the share of total contributions from families increased to nearly 10 percent. Small contributions of less than \$100 from all sources comprised less than 5 percent of all contributions during the period surveyed.<sup>10</sup>

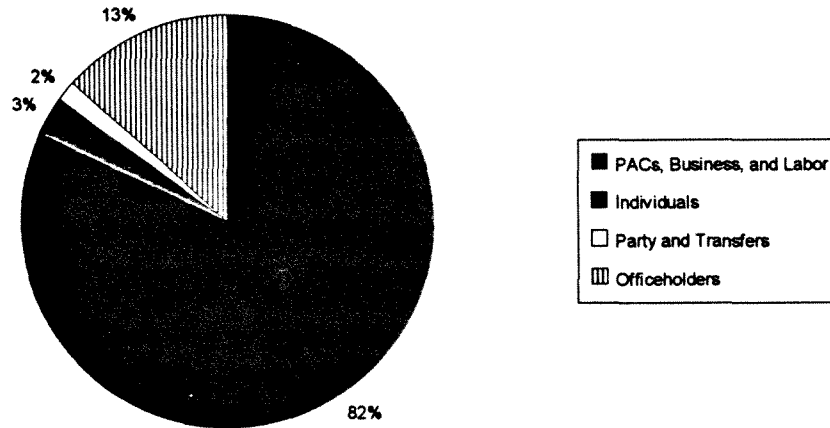
*Initiative Contributions:* Chart 5 shows that PAC, corporate, and labor contributions dominate initiative campaigns. Individual contributions to ballot measure committees comprised just 3 percent of all money raised to support or oppose 1992 propositions. In contrast, PACs, business, and labor accounted for 82 percent of all funds raised. Party contributions and transfers (including political party contributions and contributions from elected officeholders) comprised 15 percent.

<sup>9</sup> Chi, "State Campaign Finance Reform: Options for the Future," 1993.

<sup>10</sup> Ruth Holton, testimony to Senate Committee on Elections and Reapportionment, October 28, 1993.

Chart 5

### Source of Contributions of \$100 or More: Ballot Measure Committees 1992

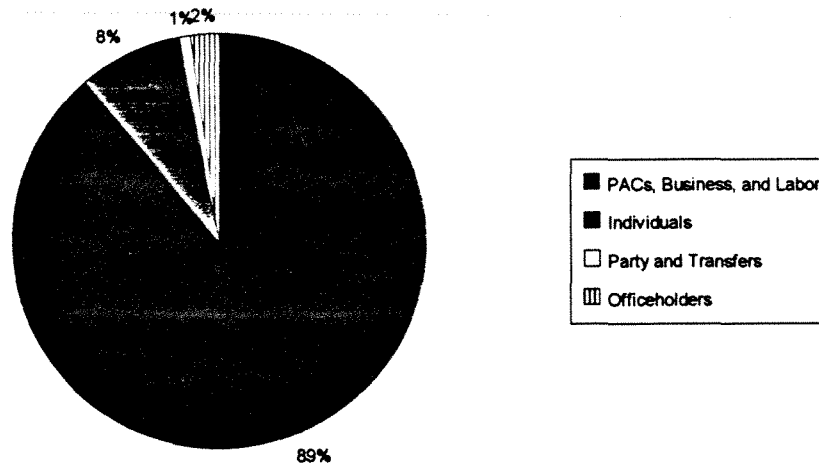


Source: California Research Bureau

In contrast, a study of the highest spending initiative campaigns found that PACs, business, and labor supply almost 90 percent of the money used to support or oppose these ballot measures.<sup>11</sup>

Chart 6

### Source of Contributions of \$100 or More: 18 Highest-Spending Initiative Campaigns (1912-1992)



Source: California Commission on Campaign Financing Democracy by Initiative

<sup>11</sup> Ibid.

Charts 5 and 6 indicate that there is significant variation in the sources of contributions to ballot measure committees in 1992 and the highest spending initiative campaigns. This is primarily due to the content of the initiatives under consideration. For example, in 1992, elected officials played a more expansive role in financing initiative campaigns than is the norm. A large proportion of the \$4.6 million contributed by state officeholders in 1992 was to committees supporting or opposing Proposition 165, the Welfare and State Budget Initiative. Conversely, the highest-spending initiative campaigns typically involve issues critical to the business community. For example, in 1988, \$80 million was spent to conduct campaigns favoring or opposing five insurance initiatives, the vast majority of which was contributed by the insurance industry, trial lawyers, and other political action committees and corporations.<sup>12</sup> Most likely, these initiatives would have garnered similar financial support or opposition regardless of the election year.

### ***Political Action Committees, Corporations, and Labor***

There are 1,640 PACs registered with the California Secretary of State and over 4,210 federal PACs recognized by the Federal Elections Commission. Their emergence is a relatively new phenomenon. PACs originated in the labor union movement of the 1940's in response to Congressional legislation which prohibited labor unions from spending organizational assets for political activities. (Corporations were prohibited from contributing corporate assets by legislation enacted earlier in the century.<sup>13</sup>) The Congress of Industrial Organizations created the "first American PAC" as a separate, segregated fund.<sup>14</sup> This organization, termed "The Political Action Committee" by the CIO, was designed to accept voluntary contributions and expend funds to further the union's political agenda.

Other PACs were created in the ensuing years, but real growth occurred in response to a series of federal reforms in the 1970's. The Federal Election Campaign Act of 1974 (FECA) was designed, in part, to restrict the role of large "fat cat" individual contributors in federal elections. The Act prohibited individuals from contributing in excess of \$1,000 per candidate per election, up to an aggregate of \$25,000 per calendar year. Multi-candidate political committees (organizations receiving contributions from a number of diverse sources and contributing to more than one candidate) faced less restrictive regulations: contribution limits of \$5,000 per candidate per election and no aggregate contribution limit. FECA also overturned a Hatch Act provision which prohibited corporations and labor unions with federal contracts from creating PACs. These provisions fueled the growth of PACs.

Shortly thereafter, the United States Supreme Court held in *Buckley v. Valeo* that FECA's limitations on independent expenditures violated First Amendment protections.<sup>15</sup> The ruling prohibited restrictions on the ability of individuals or committees to independently

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<sup>12</sup> California Commission on Campaign Financing, 1992.

<sup>13</sup> Sorauf, 1990.

<sup>14</sup> Ibid.

<sup>15</sup> *Buckley v. Valeo*, 1976.

promote candidates or advocate positions. This further enhanced the potential power of PACs because they are typically the only non-party organizations sufficiently organized to conduct independent expenditure campaigns. In 1975 the Federal Elections Commission opined that Sun Oil's corporate PAC could use corporate funds to solicit voluntary contributions from employees.<sup>16</sup> This decision cleared the way for a variety of fundraising activities and encouraged labor unions and corporations to create PACs to serve as their political advocacy arms. As Frank Sorauf notes, "virtually every major change in the regulation of campaign finance that Congress enacted in the 1970's spurred the growth of PACs."<sup>17</sup>

PACs tend to cluster around either ideological or economic interests.

- Ideological PACs are generally organized around either broad-based philosophical beliefs or single policy issues. They typically contribute to candidates sympathetic to their positions, regardless of party affiliation or incumbency status. The National Rifle Association and Handgun Control PAC are examples of ideological committees.
- Economic PACs include corporate, labor union, and professional and trade association committees. Examples include Phillip Morris PAC, AFL-CIO PACs, and the California Medical Association PAC. They have a different pattern of contributions. A recent study found that economic PACs are primarily concerned with gaining access to the political process, and therefore tend to favor incumbents over non-incumbents regardless of ideology.<sup>18</sup> Unlike ideological PACs, which often support a single candidate in open seat contests, economic PACs prefer to hedge their bets. They contribute to each of the major candidates in highly competitive open seat elections to ensure that they have supported the eventual winner. Further, an incumbent's voting record is the key factor that PACs consider in determining how much to contribute and to which candidates.<sup>19</sup>

Chart 7 shows that state legislative incumbents received almost twice as much of their funds from PACs, business, and labor than did non-incumbents during the 1991-92 election cycle (71 percent to 38 percent). While challengers received a plurality of their funds from political action committees, individual and party contributions, partisan transfers, and personal and family contributions comprised a significant portion of their funds.

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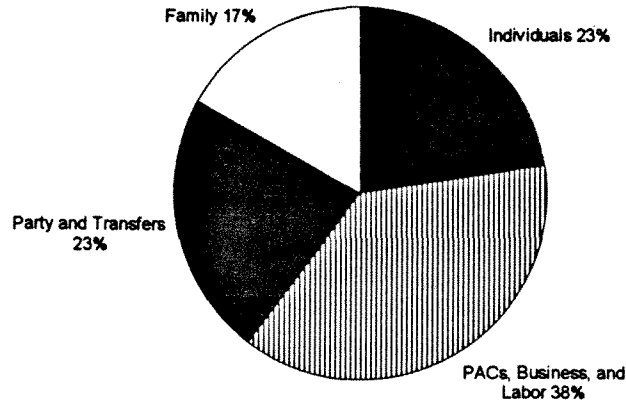
<sup>16</sup> Alexander, 1992.

<sup>17</sup> Sorauf, 1990.

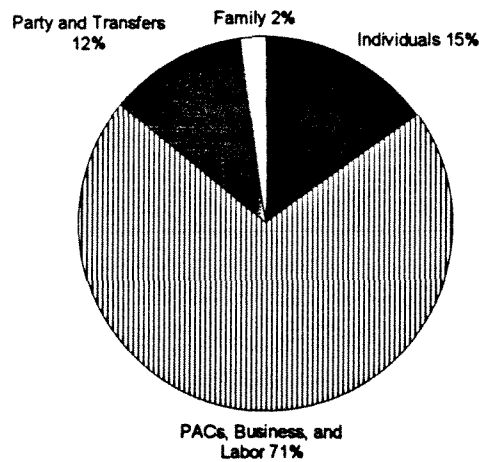
<sup>18</sup> King and Robin, 1989.

<sup>19</sup> Ibid.

### Sources of Contributions of \$100 or More: Non-Incumbents 1991-92



### Incumbents 1991-92



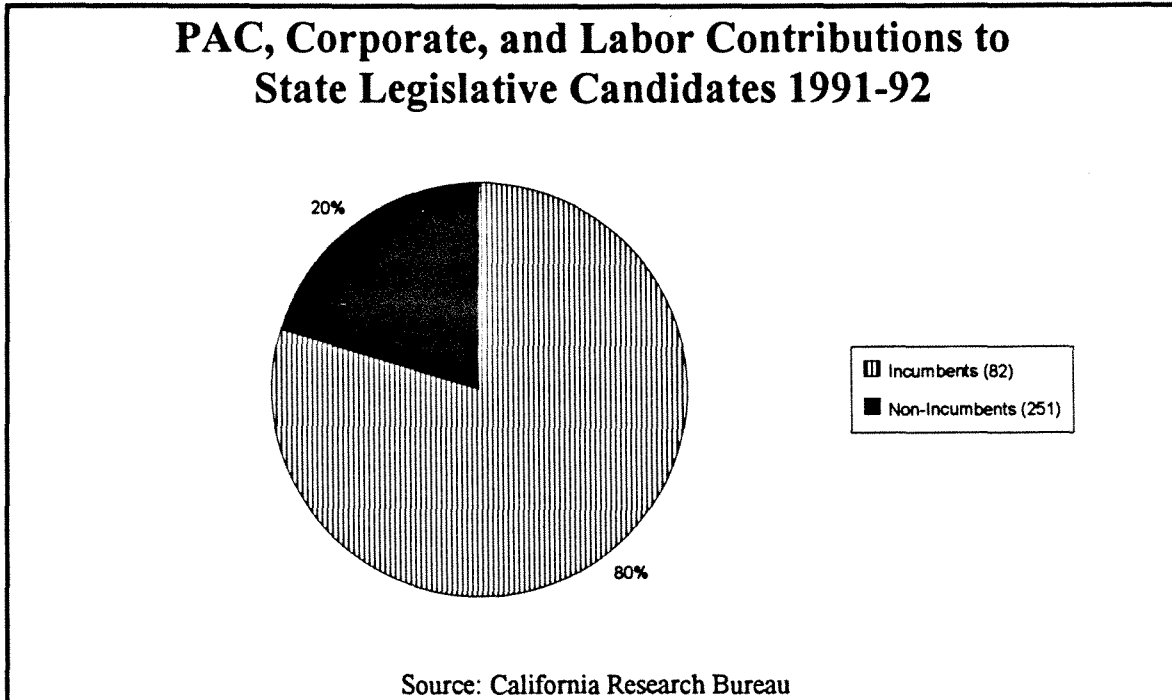
Source: California Research Bureau

According to a California Common Cause report, the ten largest contributors to state legislative candidates accounted for a combined ten percent of the total money raised during the 1991-92 state legislative election cycle (\$7.7 million). Nine of these ten are "economic" PACs: California Medical Association PAC, California Correctional Peace Officer Association PAC, California Teachers Association PAC, California Trial Lawyers' PAC, California Real Estate PAC, Association of California Insurance Companies' PAC, Atlantic Richfield Company PAC, California Dental Association PAC, and California Optometric Association PAC. Allied Business PAC, the ninth-largest contributor, is an

ideological PAC. Incumbents received 59 percent of these contributions, while open seat candidates received 31 percent and challengers 10 percent.<sup>20</sup> In contrast, incumbents received 92 percent of the money contributed by the top ten contributors in 1990.<sup>21</sup> The difference between the two election years might have been due to the large number of open Assembly seats (24) in 1992.

Although there were over three times as many non-incumbents as incumbents seeking election in 1992, Chart 8 indicates that incumbents received 80 percent of the contributions from PACs, corporations, and labor unions.<sup>22</sup>

Chart 8



The existence of highly-contested open-seat elections appears to affect the proportion of political action committee, corporate, and labor union contributions received by non-incumbents and incumbents. Chart 9 shows that Assembly non-incumbents received a greater share of these contributions than Senate non-incumbents. On average, incumbents received 97 percent of the Senate contributions from these sources in 1991-92.<sup>23</sup> There were no open-seat Senate elections. In contrast, there were 24 open Assembly seats incumbents garnered 91 percent of the PAC, corporate, and labor contributions to state Assembly candidates.

<sup>20</sup> California Common Cause Deep Pockets, 1993.

<sup>21</sup> California Common Cause, 1992.

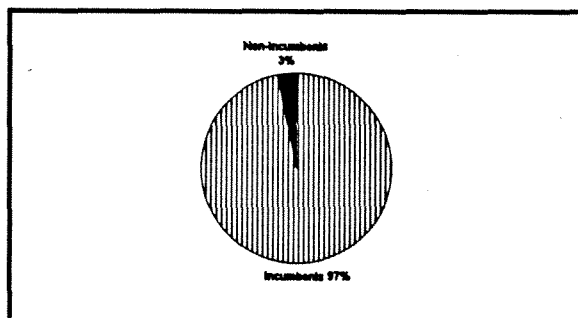
<sup>22</sup> See Appendix G for total contributions to California State Legislative candidates by source and incumbency status for 1991-92.

<sup>23</sup> The data used for Chart 9 were adjusted to account for the far larger proportion of non-incumbents seeking election to the Assembly than the Senate.

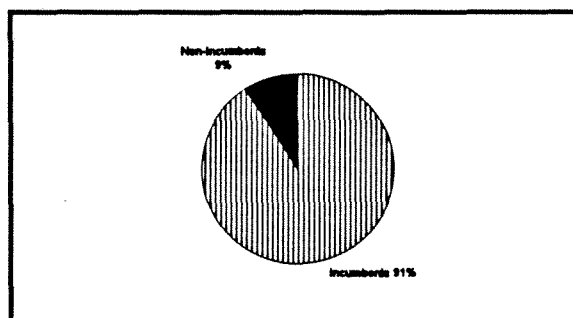


## PAC, Corporate, and Labor Contributions to State Legislative Candidates per Candidate 1991-1992

### Senate



### Assembly



Some analysts argue that the reliance of legislative candidates on PAC, corporate, and labor contributions might compel these candidates to cultivate a "twin constituency," an electoral constituency and a financial one. The paradox is that candidates need to secure the votes of their constituents to be elected, yet they seek money from outside their district to encourage that support. The California Commission on Campaign Financing found in 1985 that 92 percent of all contributions to state legislative candidates originated outside the legislators' districts. Dual constituencies may lead to a more complicated representative relationship between an elected official and the general public. "The two constituencies do not always have the same preferences on issues of public policy... conflicting pressures in both the campaign and in public office follow."<sup>24</sup>

This phenomenon is a relatively new one. For much of American democratic history, powerful political parties composed of broad coalitions of multiple cross-cutting interests predominated and prevented this overlapping. "The electoral and resource constituencies were congruent. Both were rooted in the localism of the geographically defined voting constituency and in the matching units of party organization."<sup>25</sup> However, the influence of political parties on legislative races is on the decline, as evidenced by declining percentages of campaign contributions (Chart 4). Still, the development of dual constituencies is not inherently problematic. Studies of Congressional behavior show that "personal philosophy, party loyalty, and an aversion to offending voters are more influential factors than campaign contributions in determining positions taken by members of Congress."<sup>26</sup> A recent study of the California Legislature found that "for both business and labor interests, neither the number nor the monetary amount of campaign contributions to incumbents are found to have a major influence on legislative roll call voting."<sup>27</sup> However, the study notes that there may be critical issues for which a contributor's specific interest assumes greater importance than a dispersed district interest.

<sup>24</sup> Sorauf, 1990.

<sup>25</sup> Ibid.

<sup>26</sup> Jacobson, 1978.

<sup>27</sup> Dow and Endersby, 1994.

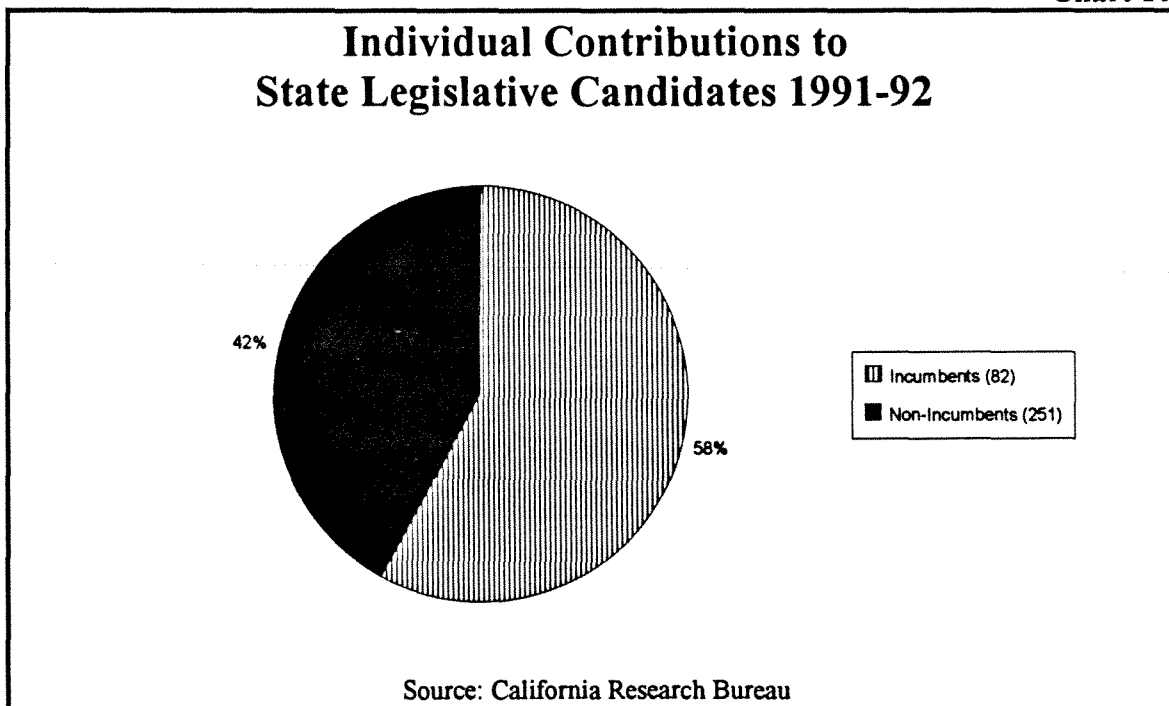
## ***Individuals***

Individuals typically give the largest proportion of contributions in state legislative elections throughout the United States. In addition, candidates for Congress raised between 60 and 70 percent of their funds from individuals throughout the past decade. In California, however, individual contributors play a less prevalent role than in other states or for all of Congress. During the 1991-92 election cycle, individual contributions comprised just 17 percent of the total amount raised by state legislative candidates.

Individuals may contribute money because of ideological or public-policy reasons, the perceived opportunity to improve their financial situation, or for social reasons. For example, "many people donate money to political campaigns simply because they are asked to make a contribution. Other individuals contribute to campaigns out of a sense of civic duty or because they sympathize with a particular candidate or cause that is being advocated."<sup>28</sup> While individuals contribute for a variety of reasons, a recent study found that these individuals have much in common with each other. Typical campaign contributors are "a highly elite politicized stratum of the electorate (for whom) political contribution is a repetitive and perhaps cumulative behavior."<sup>29</sup>

Although there were over three times as many non-incumbents as incumbents seeking election in 1992, incumbents received 58 percent of contributions from individuals.

**Chart 10**



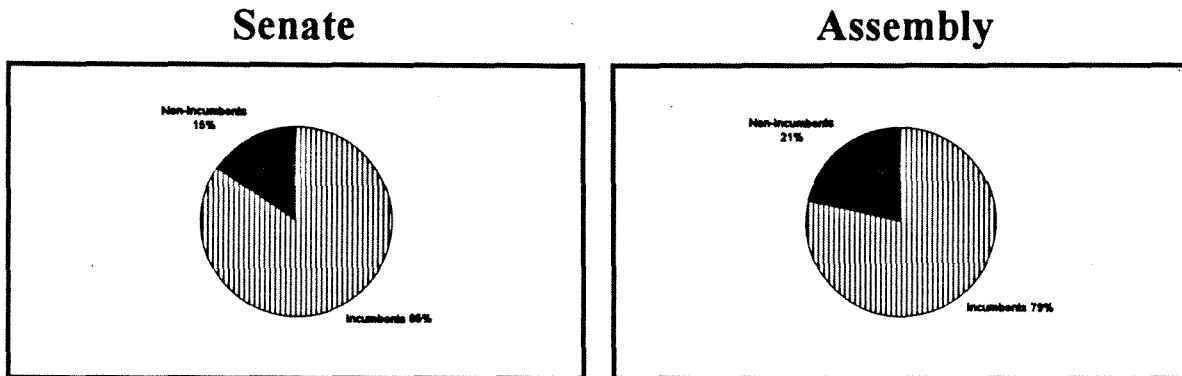
<sup>28</sup> Sorauf, 1992.

<sup>29</sup> Jones and Hopkins, 1985.

Disaggregating the data yields a different result for the Senate and Assembly. Once again, highly competitive open-seat races appear to be a key variable. Non-incumbents received 15 percent of the Senate individual contributions in 1991-92, while non-incumbents received 21 percent of Assembly individual contributions.<sup>30</sup>

Chart 11

### Individual Contributions to State Legislative Candidates per Candidate 1991-1992



These figures may understate the role of individual contributions. Some individuals do not contribute directly to candidates because they feel that their contributions would just be a small drop in a very large bucket.<sup>31</sup> Instead, they pool their money, and their political influence, by contributing to political parties, PACs, or trade associations and labor unions, who "bundle" these contributions and pass them on in larger sums to candidates. So while direct individual contributions comprised just 17 percent of state legislative campaign contributions in 1991-92, individuals actually played a more significant role by contributing to political parties, PACs, and other committees.

#### *Political Party Contributions and Transfers*

Party organizations were the third largest source of state legislative campaign funds in 1991-92 (15 percent). These include direct political-party contributions, transfer contributions from other candidates or officeholders, and legislative-caucus contributions. While the proportion of contributions from these sources is relatively small, party contributions can have an important impact on the outcomes of targeted campaigns. Rather than distributing small sums to a large number of candidates, partisan sources typically target a small number of particularly close races and inject large sums of money at critical points in the election. The average partisan contribution in 1992 was in excess of \$17,000. Also, political parties contribute more to political campaigns than the \$7 million of direct contributions reported by candidates in 1992. Much of this is in the form of "soft money" expenditures which candidates do not report. "Soft money" expenditures include voter registration campaigns, get out the vote efforts, and other activities designed

<sup>30</sup> The data used for Chart 11 were adjusted to account for the far larger proportion of non-incumbents seeking election to the Assembly than the Senate.

<sup>31</sup> Jacobson, 1980.

to assist targeted candidates while simultaneously promoting the party. Since "soft money" is not subject to the same disclosure requirements as direct contributions, it is difficult to know whether parties have increased these activities as their share of direct contributions has waned.

The California Commission on Campaign Financing found that officeholder transfers and legislative caucus contributions provided 23 percent of all funds contributed to legislative candidates during 1983-84, while political parties provided nearly 5 percent of funds raised.<sup>32</sup> In 1992, the share provided by political parties increased to 9 percent, while transfers and legislative caucus contributions fell to just 6 percent.

Political parties support the party nominee in close general elections, regardless of incumbency status. In 1992, political-party contributions went to non-incumbents in higher rates, on average, than officeholder transfers and legislative caucus contributions which tend to support incumbents who are part of the governing party organization in the Legislature. Legislative leaders of both parties are generally responsible for generating and dispensing these legislatively generated funds.

Although there were over three times as many non-incumbents as incumbents seeking election in 1992, incumbents received 52 percent of contributions from political parties and partisan transfers.

Chart 12

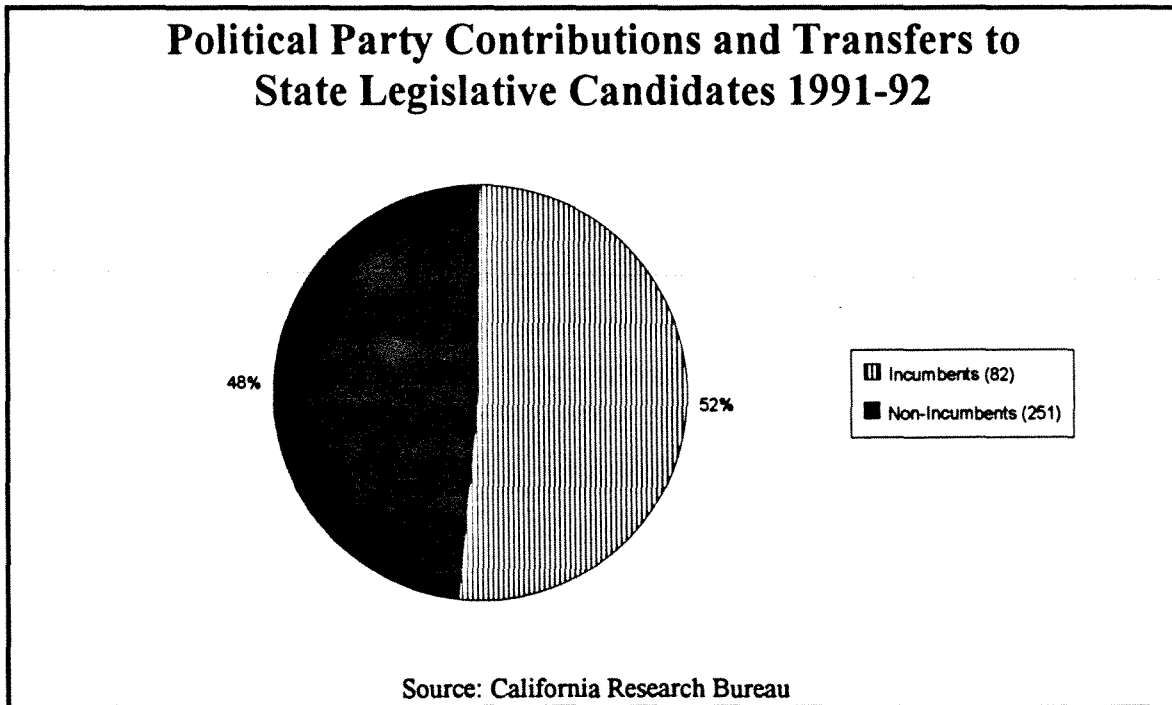


Chart 13 details differences between the two legislative chambers. Assembly seats were far more competitive than were the Senate races in 1991-92 and one quarter of the

<sup>32</sup> California Commission on Campaign Financing, 1985.

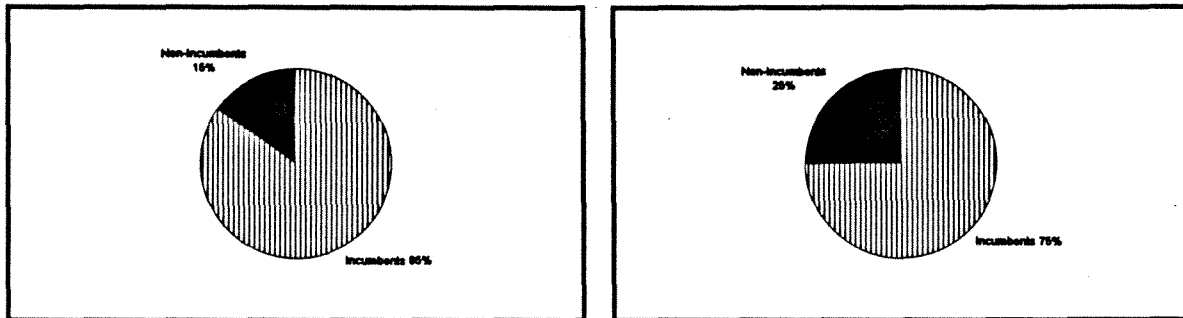
partisan Assembly contributions were distributed to non-incumbents. In contrast, 15 percent of the partisan contributions to Senate candidates were made to incumbents.<sup>33</sup>

Chart 13

## Political Party Contributions and Transfers to State Legislative Candidates per Candidate 1991-1992

Senate

Assembly



### *Personal Sources*

Family and personal campaign contributions comprised the smallest portion of funds raised by state legislative candidates during the 1992 election cycle (7 percent). Several independently wealthy candidates contributed large amounts of their own funds to their campaigns. In 1992, the average personal contribution was in excess of \$23,000, including a single contribution of nearly \$800,000 by an incumbent running for the Senate. Personal contributions have a more substantial impact on individual legislative outcomes than their relatively small proportion would suggest. Wealthy candidates tend to contribute their own funds in substantial amounts when they are engaged in competitive elections and often do so during critical points in the campaign.

Personal campaign contributions are the only category of contributions in which non-incumbents have an advantage. In 1992, non-incumbents received \$4.2 million of the \$5.5 million contributed by family sources. This "advantage" is somewhat dubious; the use of personal wealth may signify an inability to raise sufficient funds from other sources.

Money contributed by a candidate to his or her campaign may not be regulated by state or federal laws. The United States Supreme Court ruled in *Buckley v. Valeo* that limitations on candidates' expenditures of personal funds, and restrictions on independent expenditures, are unconstitutional because "those provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression."<sup>34</sup> Candidates must voluntarily agree to limit the use of personal wealth, as any statutory limitations would be ruled unconstitutional. Some states require candidates receiving public funding to voluntarily limit their personal contributions.

<sup>33</sup> The data used for Chart 13 were adjusted to account for the far larger proportion of non-incumbents seeking election to the Assembly than the Senate.

<sup>34</sup> *Buckley v. Valeo*, 1976.

The use of personal wealth in California elections is increasing markedly. In 1982, two Senate candidates and twelve Assembly candidates donated more than \$20,000 each to their legislative campaigns. Figures for the 1984 election were similar.<sup>35</sup> However, *seven* Senate candidates and *twenty-four* Assembly candidates surpassed the \$30,000 mark in 1992,<sup>36</sup> including four Senate candidates and six Assembly candidates who contributed over \$100,000. This trend is continuing among both legislative and statewide candidates in the current election cycle: three gubernatorial candidates were expected to contribute over \$1 million to their own campaigns during the primary alone.<sup>37</sup>

The ability to raise funds has long been considered a threshold characteristic for potentially competitive challengers. It is an advantage to be able to spend considerable amounts of one's own money, especially during an economic recession when other contributions are more difficult to secure. "The result: lesser income candidates who can't match personally-funded million dollar campaigns are increasingly nudged out of the process."<sup>38</sup> Although personal wealth may make legislators "a bit more independent" it may also make them "a bit more impervious to legitimate constituent pressures" and consequently less accountable to voters.<sup>39</sup>

Chart 14

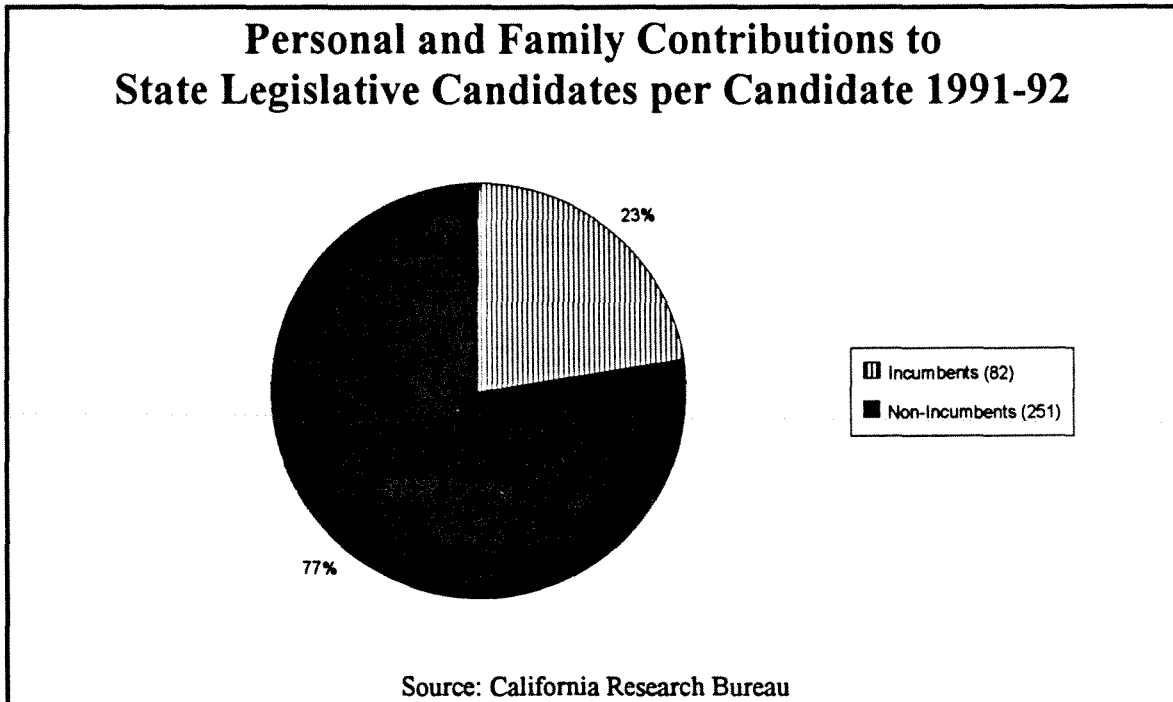


Chart 15 indicates that there was significant variation between the two legislative chambers during the 1992 election cycle. Because candidates are unlikely to expend large sums of their own money in non-competitive races, the fact that Assembly seats were far

<sup>35</sup> California Commission on Campaign Financing, 1985.

<sup>36</sup> Adjusted for inflation, a \$20,000 expenditure is equal to a \$29,928 expenditure in 1992.

<sup>37</sup> Hayward, April 24, 1994.

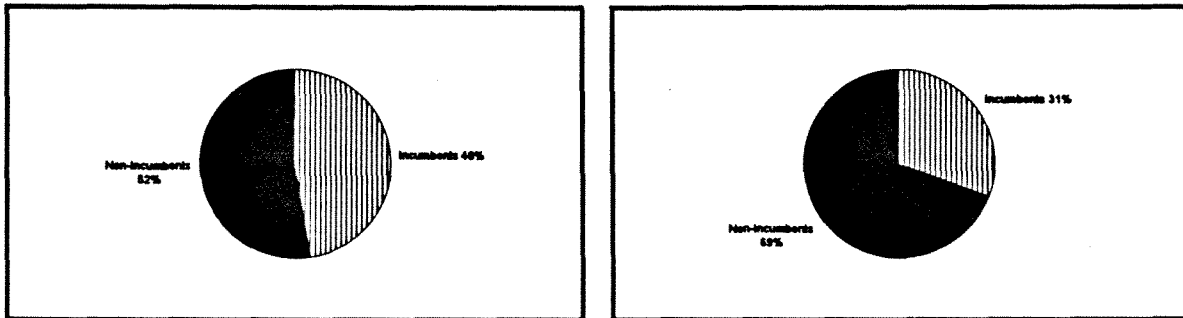
<sup>38</sup> Ibid.

<sup>39</sup> David Canon, quoted in Simpson, 1993.

more competitive than were the Senate races might be responsible for this difference. While non-incumbents received just over half of the Senate family contributions, non-incumbents garnered nearly 70 percent of Assembly family contributions.<sup>40</sup>

Chart 15

### Personal Contributions to State Legislative Candidates per Candidate 1991-1992

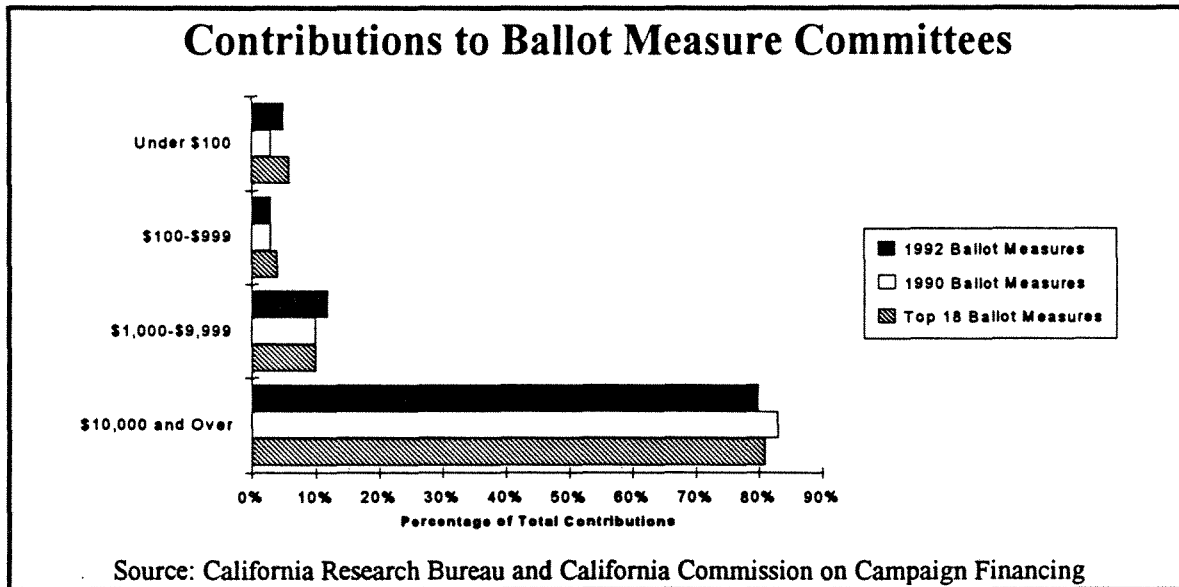


### Implications of Campaign Fundraising Patterns

#### *Corruption or the Appearance of Corruption*

During the 1992 election cycle, California legislative candidates raised almost 75 percent of their campaign funds (\$58.6 million) in contributions in excess of \$1,000. In addition, Chart 16 indicates that large contributors have also played an important role in the financing of initiative campaigns.

Chart 16



<sup>40</sup> The data used for Chart 15 were adjusted to account for the far larger proportion of non-incumbents seeking election to the Assembly than the Senate.

Dependence on large contributors, especially PACs, has led to allegations that campaign contributions distort the political process by providing contributors with disproportionate access to decision-makers and possible favorable treatment, or at least consideration, on certain legislative matters. Some commentators blame the proliferation of large contributors for the loss of public confidence in government and for governmental "gridlock." Other analysts have argued that interest groups are critical representational instruments in a pluralistic society. Interest groups organize individuals and voice group preferences. Their membership gains the attention of governmental decision-makers and provides important and valued information to the legislative process. The large number of identifiable interests might ensure that these groups will be constantly competing with one another, thereby preventing one interest from predominating in highly visible policy decisions. One interest might, however, dominate a narrow policy arena.

Some public opinion polls have shown that the public generally believes that "most state legislators are for sale to their largest campaign contributors." A 1990 *Los Angeles Times* Poll found that nearly 70 percent of those surveyed believed that "state government is pretty much run by a few big interests (and not) for the benefit of all the people... members are too tied to special interests through campaign contributions."<sup>41</sup> The poll, which was conducted prior to a series of widely reported corruption investigations and the conviction of several former legislators, also found that 53 percent of those surveyed thought that "taking bribes is a relatively common practice" of California lawmakers.<sup>42</sup>

### *Incumbency Advantage*

Incumbents have a substantial advantage over non-incumbents in raising campaign funds. As Chart 3 indicated, on average incumbents outraised their challengers by a three to one margin in the 1992 state legislative elections despite an unprecedented number of open seats and electoral competition resulting from legislative redistricting. The re-election rate of California legislators in the 1990's is over 95 percent.

Individuals or groups seeking access to the political process probably contribute campaign funds to incumbents at much higher rates since incumbents are more likely to defeat their challengers. Furthermore, incumbents have a broader financial constituency to draw upon than non-incumbents. Although there were three times as many non-incumbents as incumbents in 1992, incumbents received over 55,000 separate contributions, while non-incumbents received 33,000. Even after term limits take effect, incumbents will most likely have adequate time to develop broad financial bases.

Incumbents also have the advantage of being able to raise funds during non-election years. While non-incumbents are not precluded from raising money in the years prior to an election, they typically declare their candidacies and begin raising money in January of the election year. This gives Senate incumbents a three-year advantage, and Assembly incumbents a one-year advantage over their challengers. Incumbents received 99 percent

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<sup>41</sup> Skelton, January 3, 1990.

<sup>42</sup> Ibid.



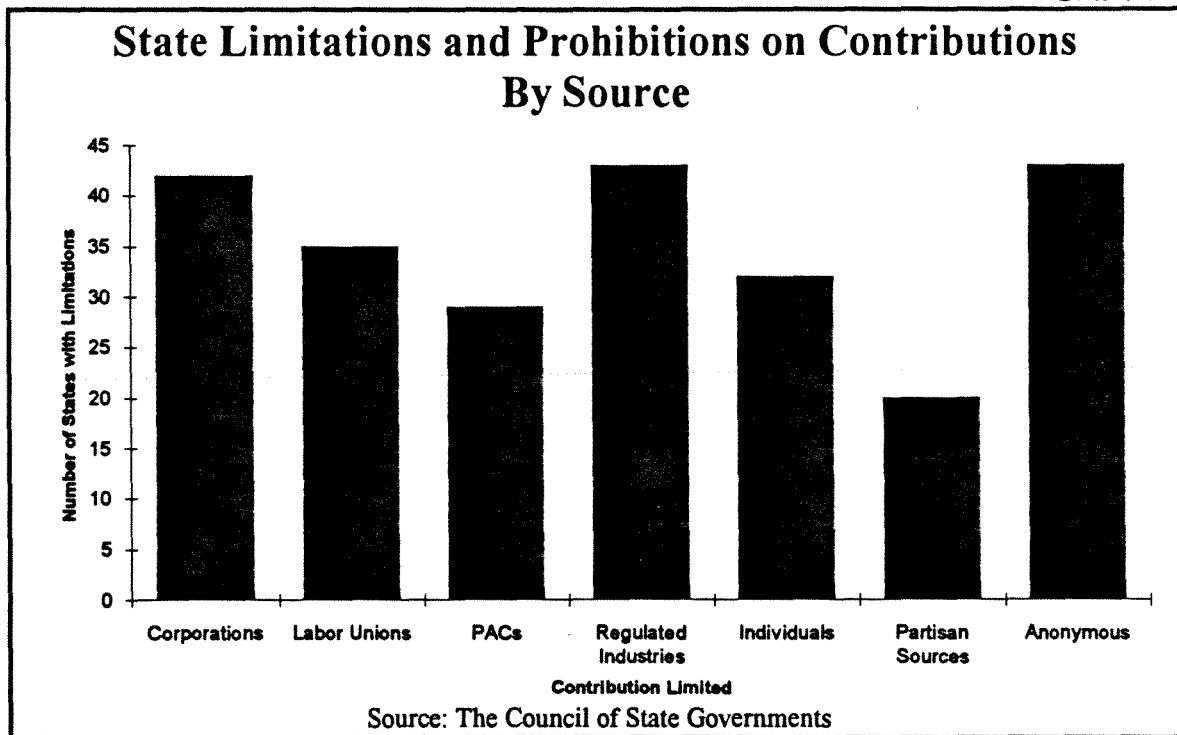
of \$19.5 million raised by legislative candidates in 1991 (a non-election year).<sup>43</sup> However, the incumbency advantage may be overstated. While incumbents have an advantage in *raising* money, studies show they have a **disadvantage** in the electoral impact of *spending* that money. This point will be examined in more detail in the following section.

### Contribution Limits

Contribution limits are designed to eliminate corruption, or the appearance of corruption, from the political process by restricting the financial influence of individuals or organizations who might otherwise contribute disproportionately large sums of money to political candidates. Contribution limits are also intended to assist non-incumbents in competing on a more equitable basis against incumbents. Finally, contribution limits are meant to reduce the amount of money spent in political campaigns.

Forty-two states currently limit the amounts of money that specified contributors may give to statewide and state legislative candidates. State laws vary based on the categories of contributors who are limited, and the amount of the maximum contributions. Chart 16 details the number of states that limit specified categories of contributions.

Chart 16



The 1990 California election was conducted under Proposition 73 contribution limits. Unfortunately, computerized campaign finance data services did not gather campaign finance figures from that election in a format conducive to a comprehensive analysis. However, experience indicates that contribution limits serve as both a ceiling and as a

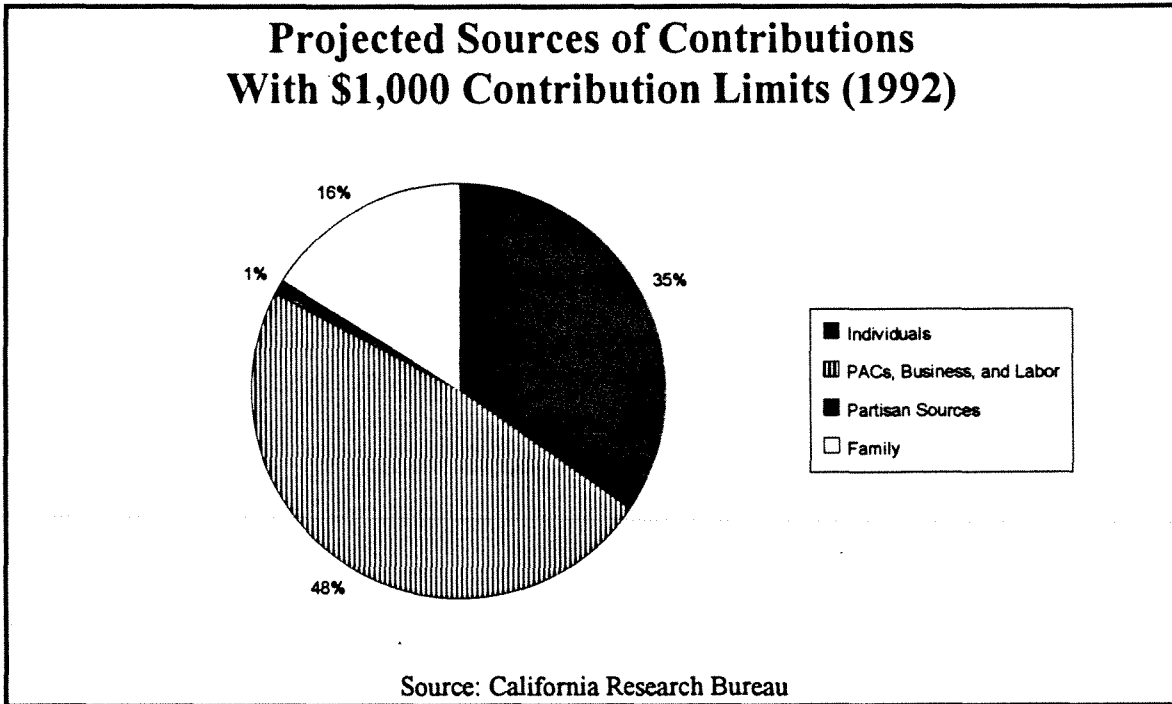
<sup>43</sup> California Common Cause The Price of Admission, 1993.

floor for large contributors. For example, if contribution limits are set at \$1000 per candidate per election cycle,<sup>44</sup> contributors who previously contributed in excess of \$1,000 will instead contribute the maximum amount. Additionally, contributors who previously gave moderately less than \$1,000 will tend to contribute the maximum amount. Thus, contribution limits tend to increase some contributions while decreasing others.

***Eliminate Corruption/Appearance of Corruption***

Large contributors played an important role in the 1992 state legislative and state ballot-measure elections. Contribution limits might have dramatically altered contribution patterns. For example, if \$1,000 limits had been in effect for all contributors (excluding First Amendment-protected personal sources) during the 1992 elections, individual and personal contributions would probably have increased as a proportion of all contributions while PAC and partisan contributions would have significantly declined, as shown below.<sup>45</sup>

**Chart 17**



Contribution limitations can be broadly tailored to yield different contribution patterns. Chart 17 shows the projected sources of contributions with \$1,000 limits for all sources, but different outcomes can be achieved by altering the maximum contributions. For example, because individuals and political parties tend to contribute more equally to non-incumbents than PACs, setting individual contribution limits at high levels might benefit challengers. Increasing individual and party contributions is a frequent reform objective. Other mechanisms may achieve similar results. Recent studies suggest that offering

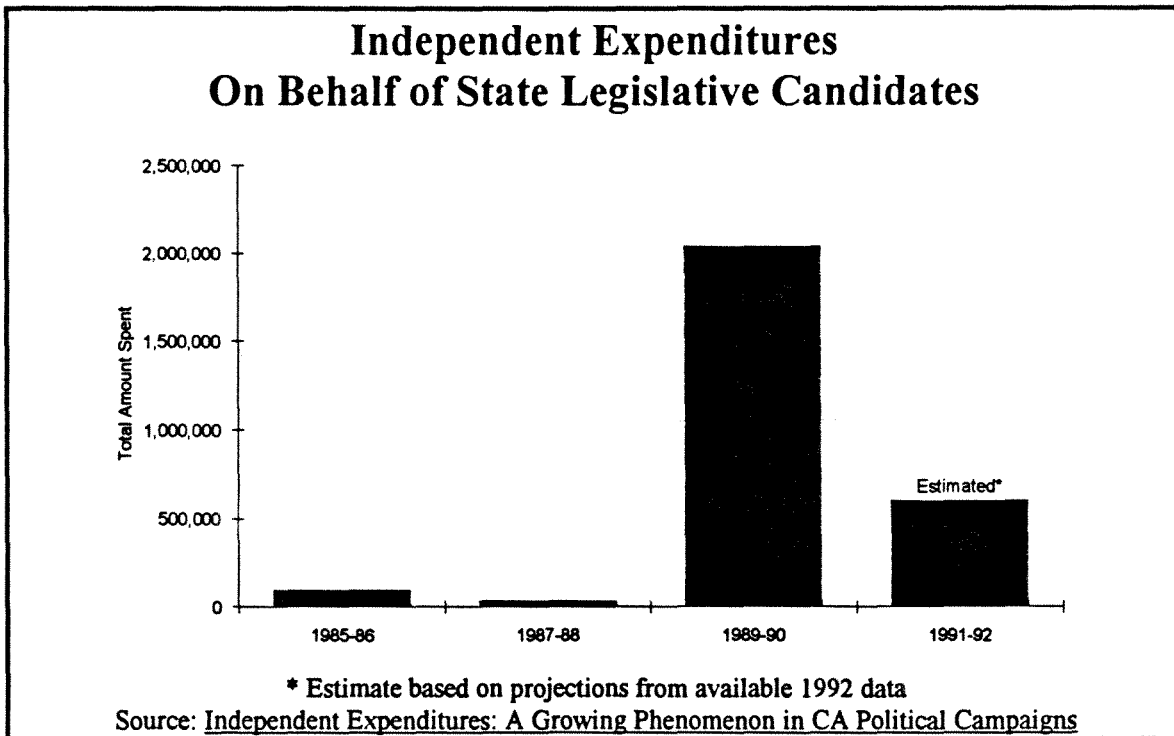
<sup>44</sup> A \$1,000 limit is typical for states with contribution limits.

<sup>45</sup> Family and personal contributions are exempt from these limits due to *Buckley v. Valeo*.

substantial tax credits, providing public matching funds, or increasing the number of legislative districts might also promote individual contributions.

The United States Supreme Court's decision in *Buckley v. Valeo* permits contributors to make unlimited *independent* expenditures on behalf of candidates<sup>46</sup>. The *Buckley* decision ensures that individuals or groups can participate as heavily as they desire in campaigns provided that their expenditures are not coordinated with a candidate's campaign. The California Commission on Campaign Financing asserted in 1985 that independent expenditures would not be widely used in California because independent campaigns are "difficult to organize, expensive to operate, and unlikely to coalesce around legislative races."<sup>47</sup> However, that assertion has proven to be incorrect. Chart 19 shows that during the 1990 election cycle, independent expenditures grew markedly, perhaps as a response to Proposition 73's direct contribution limits. In 1991-92, after Proposition 73 had been struck down by the federal court, independent expenditures decreased. This suggests that contribution limits may re-direct, rather than limit, financial participation in state political campaigns. The public might prefer that candidates directly control their campaigns rather than encourage others to independently campaign on the candidates' behalves.

Chart 18



Arizona's experience also suggests that a possible unintended consequence of contribution limits may be an increase in independent expenditures. Arizona has the strictest contribution limits in the country, \$240 per candidate per election for individuals and political committees. "With contribution limits so low, you'd think that no legislator

<sup>46</sup> Expenditures *on behalf of* candidates exclude contributions to candidates.

<sup>47</sup> California Commission on Campaign Financing, 1985.

would feel a debt to any individual donor. You would, of course, be wrong...political committees don't sit still once they've given all they can to candidates...some mount independent expenditure campaigns."<sup>48</sup> Few political committees or individuals initiate campaigns on behalf of a candidate due to the expense and organizational difficulty. However, when independent expenditures are made, they tend to be for large items such as mass mailings or advertising. In 1990, the average independent expenditure for California state legislative races was \$13,400, including numerous expenditures over \$100,000. These expenditures are especially controversial because, unlike candidates, independent-expenditure committees are not accountable to voters for their campaign activities. Nor are state disclosure standards as strict for independent expenditures as for contributions to and expenditures by candidates.

The dilemma raised by First Amendment protections is significant: "The problem in campaign finance is that we want completely clean elections with no tainted money, and we want full and unfettered rights of free speech and association. You cannot have both. If you're not going to tinker with the First Amendment, you have to accept the fact that you can't dam the flow of political money."<sup>49</sup>

Courts have also cited First Amendment protections when invalidating limitations on contributions to ballot-measure committees. The *Buckley* decision established a precedent by requiring that any infringements on political activities be directly related to preventing corruption of candidates or the political process. In 1982, the U.S. Supreme Court ruled in *Citizens Against Rent Control v. City of Berkeley*, that "the risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue."<sup>50</sup> However, in *Austin v. Michigan Chamber of Commerce* (1990), the Court expanded allowable justifications for restrictions on speech to include activities which may "undermine the integrity of the political process (and) influence unfairly the outcome of elections."<sup>51</sup> This latter decision may be invoked to justify limits on contributions to ballot-measure committees in the future.

### *Incumbency Advantage*

Since incumbents receive a disproportionate share of political action committee, corporate, and labor contributions, contribution limits theoretically could mitigate the incumbent fundraising advantage. However, recent experience indicates that contribution limits by themselves actually favor incumbents. California Common Cause reports that in 1988 and 1992 (elections with no contribution limits) state legislative incumbents outraised their challengers by a five to one margin. When contribution limits were in effect in 1990, incumbents outraised their challengers by eight to one.<sup>52</sup> Analysis of data

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<sup>48</sup> Gurwitt, 1992.

<sup>49</sup> Professor Larry Sabato quoted in Gurwitt, 1992.

<sup>50</sup> *Citizens Against Rent Control v. City of Berkeley*, 1982.

<sup>51</sup> *Austin v. Michigan Chamber of Commerce*, 1990.

<sup>52</sup> California Common Cause *The Price of Admission*, 1993. Common Cause uses a different method for determining incumbency fundraising advantages than the one described on page 6.

from the 1992 election cycle suggests that incumbents would have benefited from \$1,000 contribution limits on political committees, individuals, and partisan sources.

Incumbents benefit from contribution limits in three ways. First, non-incumbents disproportionately rely on a few large contributions while incumbents typically draw from a wider financial base. Second, because incumbents have more time than non-incumbents to raise money, incumbents find it far easier to attract new contributors. Third, if spending is reduced by all candidates, incumbents benefit. As Gary Jacobson explains, "any reform measure which decreases spending by the candidates will favor incumbents. Even though incumbents raise money more easily from all sources, limits on contributions will not help challengers because the problem is...simply getting more money to challengers so that they can mount competitive races. Anything that makes it harder to raise campaign funds is to their detriment."<sup>53</sup> In order to be effective and in compliance with the United States Constitution, contribution limits must strike a balance between the goal of limiting the amount of contributions and the need of non-incumbents to raise a sufficient amount of money to compete more equitably.

### *Reduce Spending*

Legislative candidates spent \$76 million in 1987-88 and \$72 million in 1991-92, but just \$54 million under Proposition 73 limitations during the 1989-90 election cycle.<sup>54</sup> It is not clear if contribution limits were responsible for this decrease in electoral spending. The Fair Political Practices Commission suggests that "Proposition 73 may have been a factor in decreased legislative campaign finance levels (however) the impact of ballot measures on candidate fundraising is another factor to consider. In particular, the primary election reapportionment initiatives and general election term limit initiatives may have diverted campaign funds which would have otherwise been used in legislative contests."<sup>55</sup>

While aggregate spending decreased during the 1990 elections, large sums were spent in some legislative contests. *Seven* Senate candidates spent over \$350,000 each in the general election and *twelve* spent over \$250,000 each in the primary elections. In contrast, in the 1992 general election, just *five* Senate candidates spent in excess of \$350,000 each and *ten* spent over \$250,000 each in the primary. *Twenty* Assembly candidates exceeded \$225,000 each in the general and *sixty-two* spent over \$150,000 each in the primary in 1990. Two years later, *forty-three* candidates spent over \$225,000 each in the general, but just *eighteen* spent over \$150,000 each in the primary.

Furthermore, while strict contribution limits have been in place for congressional elections since 1974, these "did not prevent campaign spending in those races from escalating throughout the late 1970's and most of the 1980's."<sup>56</sup> The 1994 U.S. Senate contest in California is a prime example of large campaign spending in spite of contribution limits.

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<sup>53</sup> Jacobson, 1980.

<sup>54</sup> Fair Political Practices Commission, 1991.

<sup>55</sup> Ibid.

<sup>56</sup> Alexander, 1991.

Although contribution limits might limit the amount of money candidates spend, the overall effect is nearly impossible to estimate because the *Buckley* decision prohibits restrictions on the use of personal wealth and independent expenditure campaigns. One analyst contends that, "donors and candidates all across the country have shown an endless inventiveness in getting around contribution limits."<sup>57</sup>

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<sup>57</sup> Gurwitt, 1992.

## **SPENDING MONEY: EXPENDITURES AND SPENDING LIMITS**

Candidates spend a large amount of money on their campaigns because expenditures have a significant impact on election results. In the 1992 general state legislative elections, legislative candidates who outspent their opponents were victorious 94 percent of the time. In open-seat races, the candidate who spent the most money won 92 percent of the time. A series of studies during the 1970's found that "what candidates spend in legislative contests is indeed related to how well they do on election day."<sup>58</sup> Recent studies of state legislative campaigns have discovered that since voters receive relatively little information regarding state legislative races from independent sources such as the print media, "money provides candidates with the ability to inform voters about their candidacy and generate interest in the election...the effect of campaign expenditures on the outcome should be substantial."<sup>59</sup> Although much is known about the relationship between campaign spending and electoral outcomes, not much is known in a scientific way concerning how campaign spending actually influences an individual's vote choice.

Candidates have found that in addition to increasing their share of the vote, campaign spending can be instrumental in eroding support for other candidates. This fuels an "Arms Race" mentality in which candidates plan to withstand attacks by their opponents by outspending them during the campaign. "In both campaigns and weaponry, fear is a principal motivation. Candidates and countries are afraid the other side will outspend them. They believe the best security lies in deterrence. They raise massive sums out of fear they will be outspent by their opponents."<sup>60</sup> A study conducted during the 1988 primary election cycle found that California legislative candidates spent approximately \$20,000 to increase their share of the vote by 1 percent, while reducing their opponent's share by .8 percent.<sup>61</sup> More campaign spending evidently pays off. However, the effect of spending on vote outcome diminishes incrementally. After a certain point, candidates stop receiving any benefits from spending money, leading Herbert Alexander to assert that, "perhaps half of all campaign spending is wasted. But no one knows which half."<sup>62</sup> So candidates continue to spend, hoping that one last mailer or 30 second television spot will put them over the top.

During the 1992 election cycle, candidates for the state Legislature spent a total of approximately \$72 million on their campaigns. Combined spending on an typical Senate election reached nearly \$1 million, while expenditures by Assembly candidates reached nearly \$700,000 per seat. Ballot measure-committees spent a total of approximately \$36 million contesting the sixteen statewide propositions on the 1992 primary and general election ballots. Despite the large sums spent by California candidates and initiative campaigns, there is very little information available about how this money was spent during the campaigns. Inadequate information can be attributed, in part, to limited state

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<sup>58</sup> Jacobson, 1978.

<sup>59</sup> Gierzynski and Breau "Money and Votes in State Legislative Elections", 1991.

<sup>60</sup> California Commission on Campaign Financing, 1985.

<sup>61</sup> Gierzynski and Breau "It's Money that Matters", 1991.

<sup>62</sup> Alexander, 1992.

disclosure requirements. Current disclosure provisions require candidates to list the recipients of their expenditures, but listing the purpose of the expenditures is not required. For example, an expenditure to an individual could be a payment for campaign consulting, signature gathering, or maintenance work.

Spending on initiative campaigns has also been shown to be a critical factor in electoral outcomes. In recent years, interest groups, certain regulated industries, and individuals have increasingly relied upon the initiative process to enact public policy measures that would be difficult or impossible to enact through the legislative process. As Professor Charles Price reports, due to the advent of paid signature gatherers, high levels of spending can qualify virtually any measure for the ballot.<sup>63</sup> The United States Supreme Court has ruled that prohibiting individuals from being paid to collect signatures violates their freedom of speech.<sup>64</sup> In 1992, qualification costs for the seven voter-initiated propositions ranged from \$600,000 to \$1.5 million each.<sup>65</sup>

Once a measure is placed on the ballot, campaign spending continues to have a significant impact on its eventual success. Studies by Daniel Lowenstein (1982) and David Magleby (1984) found that campaign spending is perhaps the most critical resource of an initiative campaign. Election results may be affected by voter predispositions, the salience of the issue addressed by a ballot measure, free media available to voters, and the endorsements secured by both sides of an issue. By and large, however, "groups or interests opposed to an initiative can virtually guarantee the defeat of an initiative if they significantly outspend the proponents."<sup>66</sup> One-sided spending on behalf of an initiative apparently has a less dramatic, although still measurable, effect on voting outcomes.

A general survey of campaign finance reports yields three general classifications of campaign expenditures: overhead costs; strategic and fundraising expenditures; and voter contacts.

- *Overhead* costs comprise the smallest amount of the typical campaign budget and include campaign staff salaries, rent and utility costs for campaign headquarters, travel expenditures, and other fixed costs.
- *Strategic costs* are the fastest growing segment of expenditures nationally<sup>67</sup> and include consulting fees, polling, and fundraising expenses such as mail solicitations. Campaigns nationally have become increasingly professionalized as volunteer precinct walkers have given way to million dollar direct mail consultants. As Tommy Neal of the National Council of State Legislatures explains, "state legislators who a generation ago walked around the district passing out combs and pencils bearing their names are now hiring full-time campaign managers, pollsters, advertising specialists, and direct mail experts."<sup>68</sup>

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<sup>63</sup> Price, 1992.

<sup>64</sup> *Meyer v. Grant*, 1988.

<sup>65</sup> California Secretary of State, Qualification Costs of Statewide Initiatives, 1992.

<sup>66</sup> Magleby, 1984.

<sup>67</sup> Singer, 1989.

<sup>68</sup> Neal, 1992.

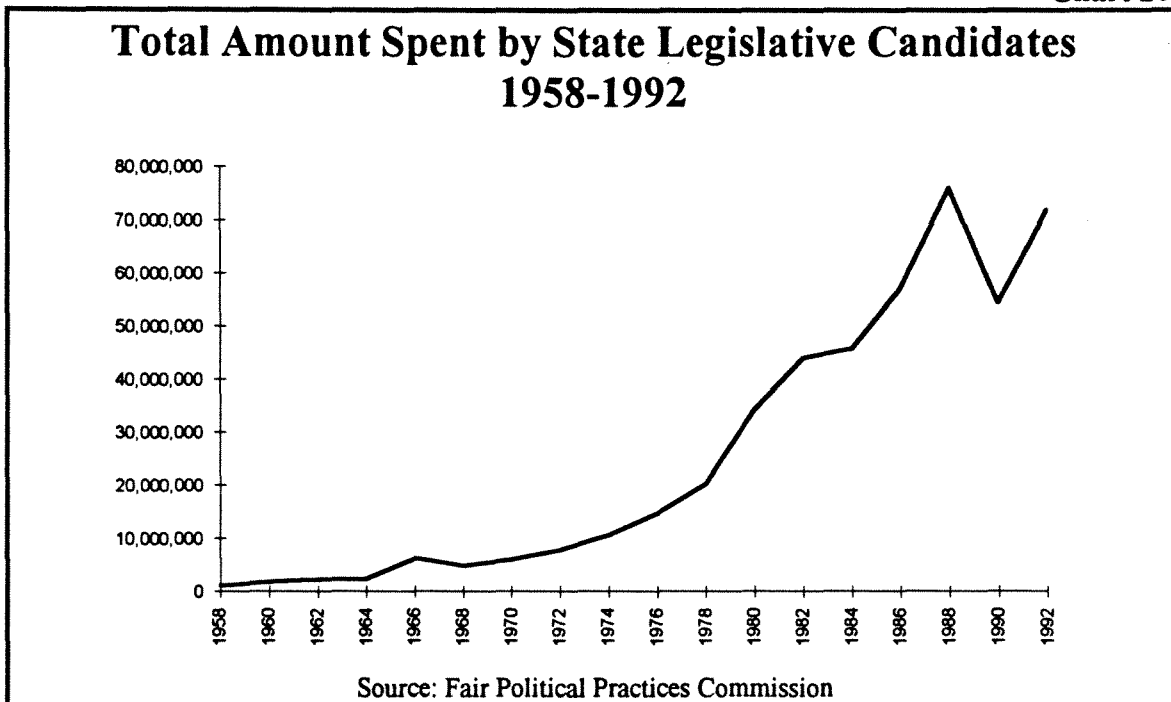


- *Voter contacts* represent the largest group of expenditures including direct mail, slate mailers, electronic media advertisements, voter-registration projects, get-out-the-vote efforts, and phone banks.

### Rising Costs?

The aggregate cost of state legislative elections increased dramatically from 1958 until 1990 and is rising again.

Chart 20



However, two proximate causes of this increase, inflation and population growth, have been largely overlooked. While inflation has an obvious direct effect on campaign expenditures, population growth is slightly less intuitive. Population growth affects campaign spending because, "the larger the district, the higher is the likelihood that the more expensive methods of reaching people will need to be employed."<sup>69</sup> California legislative districts are the largest in the nation in terms of population (Senate districts are larger than congressional districts).<sup>70</sup> As the number of constituents increases, candidates must spend more money on expensive campaign methods such as television and radio advertisements and direct mail to reach them. "Smaller constituencies should cut down on the expenses required to reach voters...(because) they are more likely to be politically homogenous; hence incumbent candidates should find it easier to read constituents' opinions and to hold onto the district without spending a lot of money."<sup>71</sup> It simply costs a greater amount of money to reach a greater number of people. Many jurisdictions

<sup>69</sup> Singer, 1989.

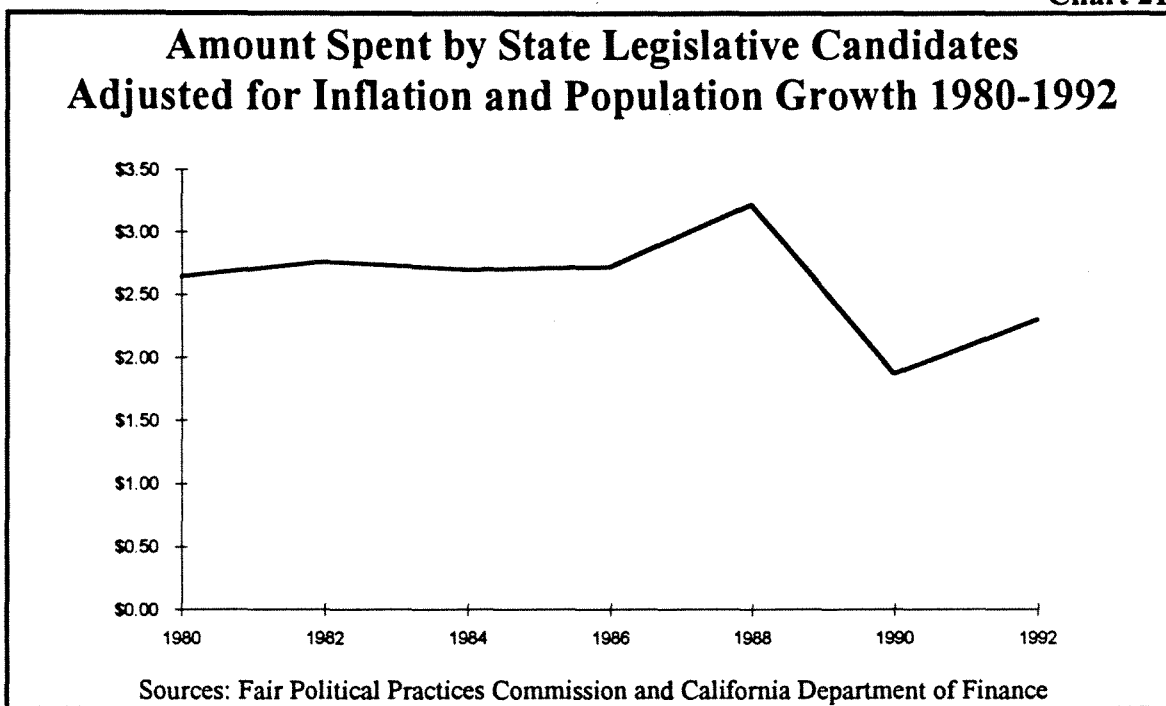
<sup>70</sup> Cook and Simmons, 1994.

<sup>71</sup> Gierzynski and Breaux "Money and Votes in State Legislative Elections", 1991.

recognize this when crafting expenditure limit provisions. For example, spending limits for gubernatorial candidates range from \$400,000 in Vermont to \$5 million in Florida. In addition, larger constituencies typically supply candidates with larger campaign chests than do smaller constituencies, providing candidates with more money to spend.

The amount of money California legislative candidates spent *per capita adjusted for inflation* has actually **decreased** between 1980 and 1992.

Chart 21



The proportion of the population that is registered to vote in California has remained relatively constant since 1980; and the amount spent by state legislative candidates per registered voter shows a similar constant trend. (See charts in Appendix E.)

### **Incumbency Advantage**

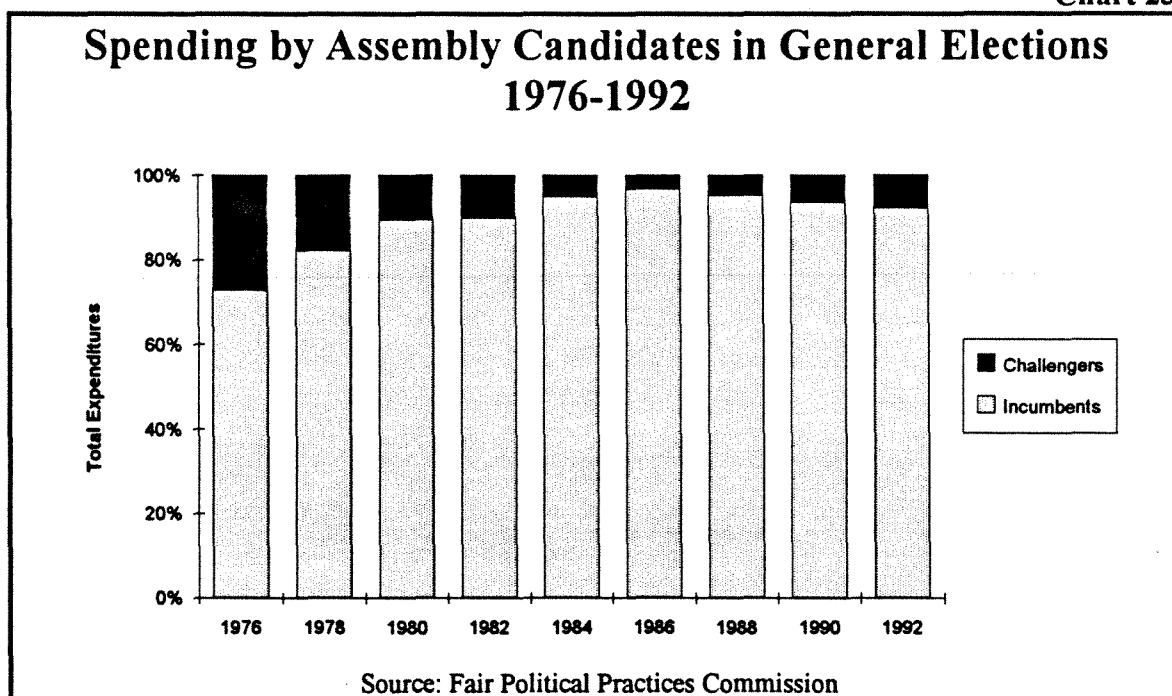
During the past two decades, California legislative incumbents have markedly increased their spending advantage over their challengers. Chart 22 shows that median expenditures by incumbents in general elections have increased since 1976, but expenditures by challengers have not grown proportionately.

Chart 22

<b>Median Expenditures by State Legislative Candidates 1976-1992 General Elections<sup>72</sup></b>				
Year	Assembly Incumbents	Assembly Challengers	Senate Incumbents	Senate Challengers
1976	\$25,135	\$9,421	\$86,275	\$25,697
1978	\$47,379	\$10,359	\$59,367	\$18,652
1980	\$84,956	\$10,108	\$109,250	\$12,732
1982	\$94,122	\$10,705	\$208,105	\$35,494
1984	\$115,410	\$8,475	\$241,622	\$3,812
1986	\$119,310	\$4,105	\$248,105	\$9,486
1988	\$185,177	\$9,375	\$296,330	\$57,549
1990	\$147,806	\$10,252	\$235,894	\$2,535
1992	\$175,075	\$15,003	\$210,033	\$16,045

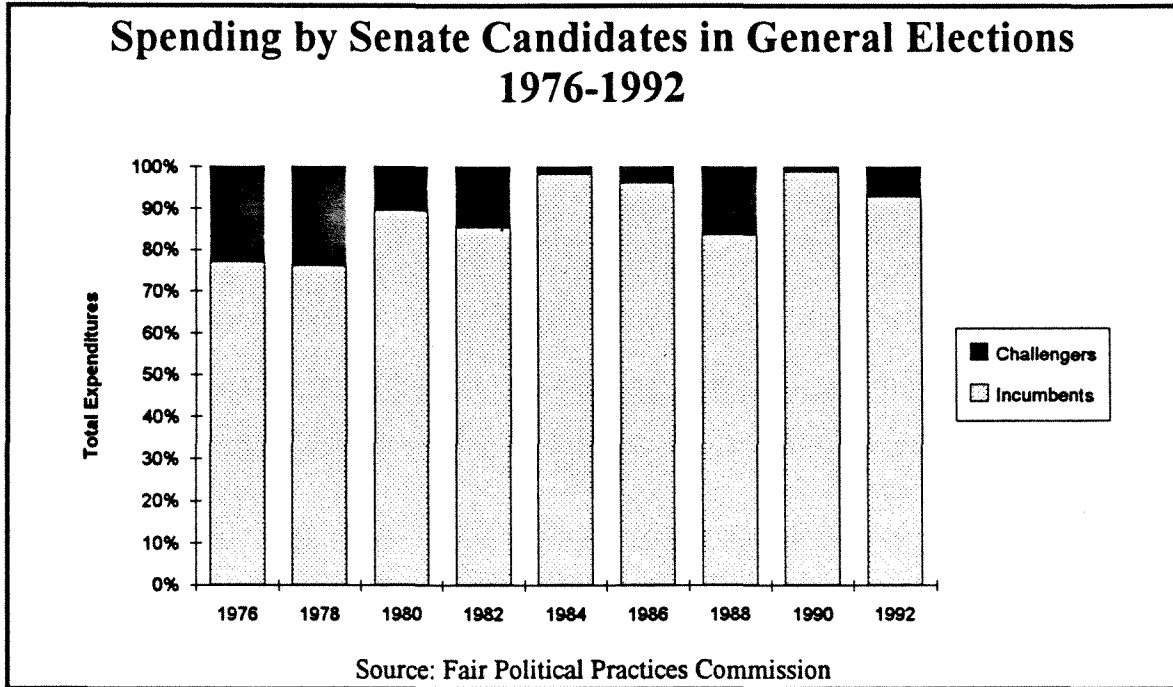
Incumbency spending advantages, based on median amounts spent by candidates, were 3-1 in 1976, over 25-1 in 1986, and decreased to 12-1 during the 1992 general election cycle. Chart 23 and Chart 24 illustrate median spending by incumbents and challengers as a proportion of total campaign spending by those individuals during the general elections between 1976 and 1992.

Chart 23



<sup>72</sup> California Fair Political Practices Commission, 1991.

Chart 24



Figures from primary elections show a similar pattern. In 1976, Assembly incumbents typically spent five times more than their opponents, and Senate incumbents spent four times as much. In 1984, these figures ballooned to an astronomical 105-1 advantage for Assembly incumbents and a 228-1 advantage for Senate incumbents. During the 1992 primary election cycle, the spending advantage for Assembly and Senate incumbents was 40-1 and 30-1, respectively.

Chart 25

### Median Expenditures by State Legislative Candidates 1976-1992 Primary Elections<sup>73</sup>

Year	Assembly Incumbents	Assembly Challengers	Senate Incumbents	Senate Challengers
1976	\$25,574	\$5,190	\$36,402	\$8,593
1978	\$35,550	\$8,106	\$64,933	\$7,067
1980	\$76,024	\$12,219	\$92,380	\$2,730
1982	\$94,197	\$11,010	\$132,085	\$3,536
1984	\$122,103	\$1,165	\$205,407	\$899
1986	\$143,930	\$2,615	\$213,390	\$2,083
1988	\$193,074	\$3,938	\$276,216	\$3,249
1990	\$194,700	\$7,873	\$247,788	\$3,496
1992	\$99,537	\$2,474	\$195,396	\$6,412

<sup>73</sup> Ibid.

Chart 26

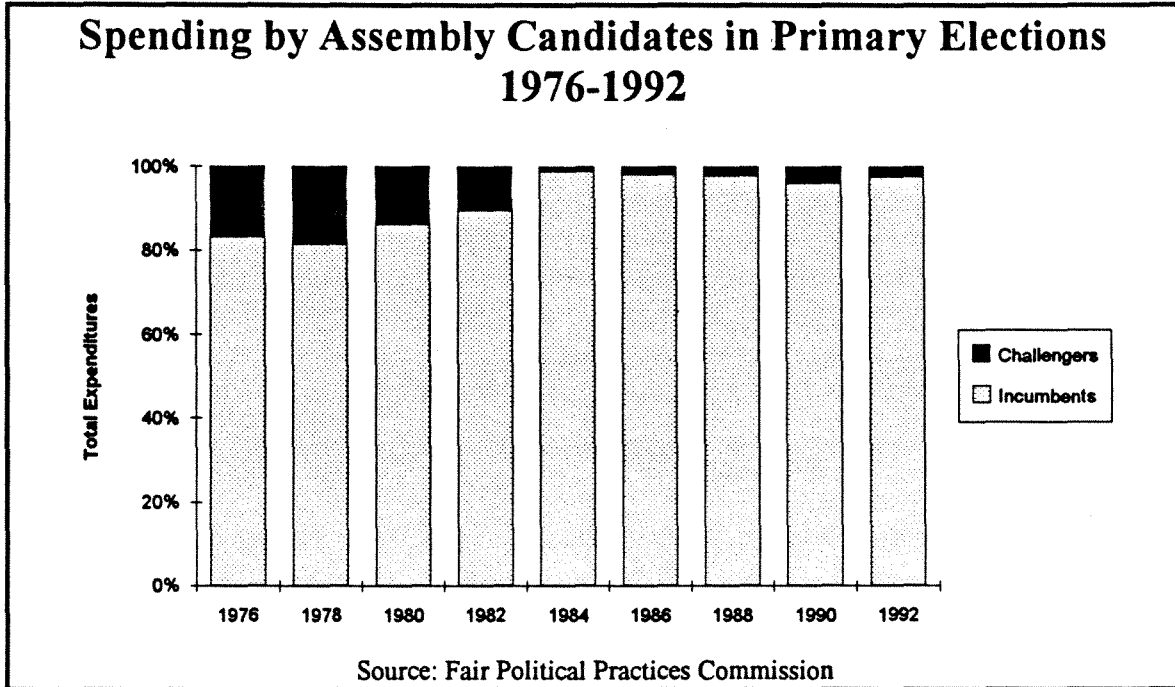
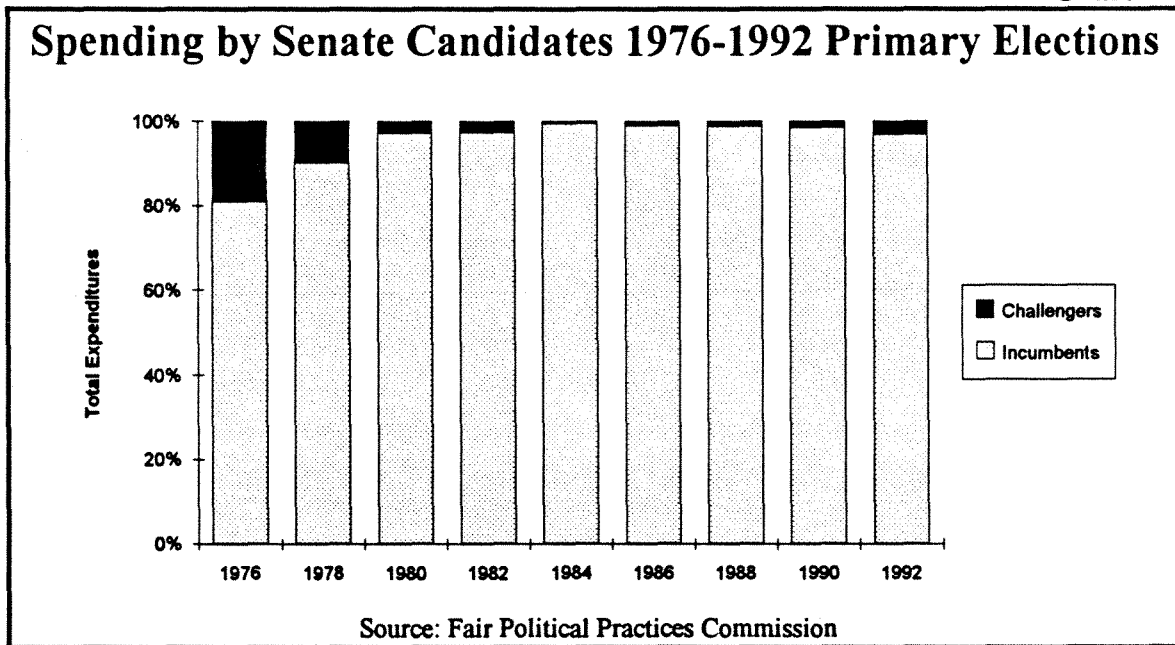


Chart 27



Despite the substantial spending advantage which incumbents hold over their challengers, expenditures by challengers have more impact than those by incumbents. An authoritative study of congressional elections found that due to inherent incumbency advantages, such as name recognition and the resources of political office to increase that recognition, non-incumbents have the most to gain from campaigning and "their level of spending has a greater impact on the outcomes of elections (because) marginal gains from a given

increase in campaign spending are much greater for challengers than for incumbents. What the challenger spends is an important determinant of the outcome, while spending by incumbents makes relatively little difference."<sup>74</sup> A series of recent studies has substantiated these findings at the state level, determining that "as in congressional elections, the effect money has on the vote depends on who is spending: money spent by challengers has a larger effect than money spent by incumbents."<sup>75</sup>

### **The Role of Campaign Spending in the Elections Process**

Some observers question the ethics and rationale of spending 20 times the salary of an electoral office on a campaign. It is difficult to evaluate how much money is an appropriate amount to spend on a campaign. Electoral competition is increased by large amounts of spending: "the more both candidates spend, the better the challenger does."<sup>76</sup> Furthermore, campaigns provide important information to the electorate. Constituents require adequate information to hold their representatives accountable. Campaign expenditures may fill an information void and educate citizens about policy alternatives, enabling them to competently voice their preferences through voting. The current level of publicly available state political information is low. For example, a February 1992 Field Poll found that 72 percent of Californians do not know who their State Senator is and 69 percent do not know who their Assembly Member is. One interpretation of these figures is that citizens currently do not have enough information about state governmental institutions and their elected representatives, and therefore might benefit if candidates spend even more on their campaigns. On the other hand, certain campaign practices might disillusion voters and further discourage political participation.

It takes a great deal of money to successfully compete for popular attention. State legislative candidates spent \$72 million during the 1991-92 election cycle. However, this figure pales in comparison to the advertising budgets of major corporations. In 1992, 23 companies individually spent more money advertising in California than the entire Legislature spent on campaigns. Procter and Gamble, for example, spent approximately \$250 million advertising in California in 1992.<sup>77</sup> While state legislative candidates in California spent \$2.50 per capita in 1992, or \$4.00 per registered voter, *Washington Post* reporter David Broder notes that the Big Three automobile companies spend an average of \$208 on advertising per customer: "the comparison is not irrelevant...one reason the cost of campaigns is (high) is that candidates are competing, not just with each other, but with all the other products and services being marketed to the American public. Why should a society that tolerates an avalanche of auto, soft drink, beer, and cold remedy advertising choke on a relatively small amount of political persuasion."<sup>78</sup> United States Senator Robert Packwood argues that the United States does not spend "anywhere near what other democratic countries do on their elections. We do not come near spending

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<sup>74</sup> Jacobson, 1978.

<sup>75</sup> Gierzynski and Breaux "Money and Votes in State Legislative Elections", 1991.

<sup>76</sup> Jacobson, 1978.

<sup>77</sup> *Advertising Age*, 1994.

<sup>78</sup> Broder, 1991.

what we do in this country on advertising for pet food. I would like to think that the value of an election is worth as much as a can of cat food."<sup>79</sup>

### **Expenditure Limits**

Expenditure limits are designed to curb excessive campaign spending. Advocates also believe that they will enable non-incumbents to compete more equitably with incumbents, although the evidence cited above does not support this position. In 1974, California voters passed Proposition 9 which included spending ceilings for executive-office candidates. However, one year later, the United States Supreme Court's *Buckley v. Valeo* decision invalidated those limitations on the grounds that expenditure ceilings are "substantial restraints on the quality and diversity of political speech (and) the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached."<sup>80</sup>

The court determined that First Amendment protections on free speech may only be restricted if candidates voluntarily accept spending limits in exchange for partial public funding of elections. Public campaign funding systems typically provide limited matching funds for contributions up to a specified amount to candidates who agree to limit their spending. Public funding is a critical and controversial aspect of most spending limit proposals, and will be addressed separately in this paper. Variable contribution limits are another mechanism for implementing voluntary expenditure limits which have been adopted by some municipalities (including the City of Oakland). Under this relatively new model, candidates who voluntarily accept spending ceilings are allowed to receive larger contributions than those who choose not to participate. In any event, spending limitations must be voluntarily accepted by candidates to be constitutional.

Ten states currently limit the amount of money candidates may spend on their campaigns. Florida and North Carolina offer partial public funding to all executive-office candidates who limit their expenditures to specified amounts. New Jersey, Maryland, Rhode Island, and Michigan have similar programs in place for gubernatorial candidates only. Wisconsin and Minnesota have the two most expansive public financing/expenditure limitation programs in the country for all state legislative and executive campaigns. New Hampshire and Hawaii simply set voluntary limits without providing public funds or otherwise encouraging compliance. Even when adjusted to account for differences in population, spending limit levels vary significantly between jurisdictions. For example, Maryland limits gubernatorial candidates to spending \$.46 per registered voter while Rhode Island limits candidates to \$2.79 per registered voters.

State campaign-finance systems do not always link public financing with spending limits. In New Jersey, where 2/3 of the money used for gubernatorial campaigns comes from public sources, the Election Law Enforcement Commission has "repeatedly advocated

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<sup>79</sup> Congressional Record, June 3, 1987.

<sup>80</sup> *Buckley v. Valeo*, 1976.

repeal of expenditure ceilings" and maintenance of public financing provisions.<sup>81</sup> Massachusetts has successfully adopted a "floors without ceilings" program to give seed money to qualifying candidates. This allows all candidates the opportunity to spread their messages early in a campaign and possibly become more viable candidates. Some jurisdictions have found creative ways to implement voluntary spending limitations. For example, while New Hampshire provides no public funds, the state incurs some revenue loss by waiving filing fees for candidates who voluntarily limit their spending.

### *Limit Spending*

Expenditure limits can have widely differing effects on aggregate spending depending on the levels of the limits. While neither Proposition 68 nor Proposition 131 became law, they would have affected campaign spending levels in 1991-92 to a differing degree. In 1988 Proposition 68 proposed to limit Assembly candidates to \$150,000 in the primary election and \$225,000 in the general election and Senate candidates to \$250,000 and \$350,000. In 1990, Proposition 131 proposed higher ceilings of \$250,000 for Assembly primary elections and \$400,000 for Assembly general elections, and \$425,000 for the Senate primary and \$700,000 for the Senate general. It is interesting to compare these limits to actual expenditures during the 1991-92 election cycle to estimate the possible effects of each initiative had they been in effect. Proposition 68 would have affected 15 Senate races and 61 Assembly races in 1991-92, in which candidates spent a total of \$14.6 million in excess of the initiative's limits. Proposition 131 would have affected only four Senate races and 35 Assembly races, in which \$8.2 million was spent in excess of the higher limits. Because only the highest-spending races are affected by campaign expenditure limitations, spending in other races will tend to increase as a result of the public financing provisions. Therefore, while some candidates will be limited in their spending, aggregate spending might actually increase. However, because the U.S. Supreme Court has determined that campaign spending limits must be purely voluntary, if ceilings are set too low, candidates may decline the incentives in order to maintain their desired level of spending.

Independently wealthy candidates and candidates supported by large contributors are most likely to opt out of spending-limit programs. Therefore, most expenditure-limit proposals contain specific provisions restricting large contributions, personal contributions to a candidate's own campaign, and independent expenditures. Without these provisions there would be few incentives for competitive candidates to limit their spending. Because the Supreme Court considers independent expenditures and personal money to be "protected speech" under the First Amendment, any limits on these forms of spending must also be voluntary. Some jurisdictions provide incentives such as:

- Granting public subsidies to candidates whose opponents benefit from independent expenditures or who spend more than a specified amount of their personal funds on their campaigns;
- Removing expenditure limits for candidates whose opponents fail to limit their use of personal funds or benefit from independent expenditures; or

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<sup>81</sup> Alexander, 1991.



- Requiring candidates who receive public funds to restrict their use of personal funds to a specified amount.

### *Increase Competition*

Although incumbents raise and spend more money than their challengers, numerous studies show that limits on spending adversely affect challengers. In the vast majority of races, incumbents enjoy tremendous advantages over their challengers in name recognition among the electorate. Because name recognition is "the main electoral asset bought by money,"<sup>82</sup> restricting the amount of money all candidates may spend will hinder the ability of non-incumbents to compete. Because candidates differ so drastically in the amount of information citizens have about them, due to incumbency status and other factors, expenditure limitations tends to solidify this difference, preventing lesser-known opponents from capturing public attention. For this reason, expenditure limits might work best in campaigns for open seat races in which no incumbent is running. Without advantages due to incumbency, more equal spending may result in more equitable competition. In 1992, challengers finished within ten percentage points of incumbents in four Assembly general election races. The average amount spent by the four challengers was well over \$350,000. It is possible that these challengers would have had a more difficult time competing if expenditure limits had prohibited this high level of spending.

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<sup>82</sup> Polsby, 1988.

## PUBLIC FINANCING OF CAMPAIGNS

Since Utah, Maryland, Rhode Island, and Iowa became the first four states to adopt partial public financing systems in 1973, twenty-five states have implemented public financing mechanisms in varying forms for state elections. Although Proposition 73 prohibits expenditures of public funds on political campaigns, California's tax code has allowed taxpayers to contribute to political parties with their income tax payments since 1982. State law permits individual taxpayers to contribute \$1, \$5, \$10, or \$25 to the California Election Campaign Fund. The California Franchise Tax Board disperses these contributions to the political party central committee designated by the taxpayer on the state income-tax form. The Franchise Tax Board deducts the program's operating costs from the fund, leaving political parties with modest sums. Chart 28 shows how much taxpayers have designated on their state tax forms to various parties since 1982.

Chart 28

Distribution of Funds to California Political Parties 1982-1991 <sup>83</sup>					
Year	Democratic	Republican	Peace & Freedom	Libertarian	Independent
1982	\$233,819	\$146,446	\$12,065	\$7,268	\$6,692
1983	\$139,056	\$120,022	\$4,971	\$4,138	\$2,207
1984	\$110,011	\$114,908	\$3,371	\$3,796	\$1,230
1985	\$122,253	\$117,131	\$3,454	\$3,252	\$1,387
1986	\$119,316	\$99,167	\$3,414	\$2,921	\$1,542
1987	\$105,948	\$79,531	\$2,031	\$2,780	\$923
1988	\$94,166	\$76,426	\$1,641	\$2,971	\$759
1989	\$105,332	\$79,869	\$1,626	\$2,936	\$1,517
1990	\$77,516	\$60,464	\$2,091	\$3,119	\$674
1991	\$75,045	\$44,957	\$1,433	\$3,080	\$1,008

Although detailed figures are not available for 1992 or 1993, the Franchise Tax Board reports that total contributions to the program were approximately \$120,000 each year.

Public financing systems vary in four ways: the breadth of the program, the qualifications for receiving funds, the manner in which revenue is generated for the program, and the manner in which money is dispersed.

### *Breadth of the Program: Recipients and Elections*

Public financing systems differ by which offices and elections are included in the program.

- *Gubernatorial:* In 1995, twelve states will provide some form of public funding to gubernatorial candidates. Of those, just four states (Florida, Hawaii, Massachusetts, and New Jersey) provide funds for primary elections as well as general elections.
- *Executive Branch Officials:* Six states include other statewide candidates in their programs.

<sup>83</sup> California Franchise Tax Board in Alexander, Goss, and Schwartz, 1992.

- *Legislative*: Four states provide public funds to state legislative candidates. Minnesota, Wisconsin, and Nebraska (as of 1994) provide matching funds to state legislative candidates in general elections. Hawaii is the only state to include primary elections for legislative candidates.
- *Political Parties*: Fourteen states provide public funds to political parties.

Because campaign spending impacts primary election results more than general election results,<sup>84</sup> reformers have suggested that public funding programs designed to enhance the ability of challengers to compete should include primary campaigns. Due to the number of legislative districts in which one party has a large registration advantage, competition might be more readily stimulated in primary elections.

However, public financing can be a relatively costly program. Some states have phased it in gradually by beginning with general gubernatorial elections and expanding to other offices and primary elections. Chart 29 summarizes public financing provisions for the twenty-one fully-operational state programs currently in operation. States which enacted programs taking effect in 1994 are not included in this chart. (See Chart 32).

Chart 29

<b>Public Financing Programs Nationally: Breadth of Systems<sup>85</sup></b>							
State	Governor	Statewide	Legislature	Party	Primary	General	Yearly
Alabama				X			X
Arizona				X			X
California				X			X
Florida	X	X			X	X	
Hawaii	X	X	X		X	X	
Idaho				X		X	
Indiana				X			X
Iowa				X		X	
Kentucky				X		X	
Maine				X			X
Mass.	X	X			X	X	
Michigan	X				X	X	
Minnesota	X	X	X	X		X	
Montana	X	X				X	
New Jersey	X				X	X	
N.C.	X			X		X	
Ohio				X			X
Rhode Island	X			X	X	X	
Utah				X			X
Virginia				X			X
Wisconsin	X	X	X			X	

<sup>84</sup> Gierzynski and Breaux "It's Money That Matters", 1991.

<sup>85</sup> Alexander, Goss, and Schwartz, 1992.

### *Qualifications to Receive Public Funds*

One of the most controversial aspects of public financing systems is determining which candidates will receive money. Simply allowing any candidate who qualifies for the ballot to receive public funds might encourage fringe candidates, while excessive qualifying requirements might unconstitutionally benefit incumbents or majority-party candidates. Most commonly, public funding systems for legislative or statewide office require candidates to raise a threshold amount of money to demonstrate that they are viable candidates. Some jurisdictions, instead, allow candidates to obtain a specified number of voter signatures to qualify for public campaign financing.

The national public campaign-financing system for presidential elections relies on party registration to determine which minor party candidates are eligible for federal matching funds. To receive federal matching funds for his or her campaign, a presidential candidate's party must have received at least five percent of the vote in the previous presidential general election. Minnesota employs a similar rule, requiring minor parties to reach 10 percent of the vote in previous gubernatorial elections before its candidates become eligible for matching funds. Most jurisdictions require candidates to have opposition in order to receive public funds.

### *Revenue Generation to Fund Public Financing Programs*

Revenue raising is a critical component of a public-financing system. There are generally three different ways to fund a public-financing program: tax check-off systems, tax add-on systems, and general fund revenues.

A *tax check-off* system allows taxpayers to earmark a small portion of their tax liability (typically between \$1 and \$5) to an election fund that provides public funds to candidates and/or political parties. Proposition 68, had it been implemented, would have been funded by a taxpayer check-off system. While public participation varies across the country, 14.5 percent of taxpayers participated in their state check-off systems on average in 1990.<sup>86</sup> This amount represents a significant decrease from previous rates: "participation in the states reached a high in the late 1970's and early 1980's and has been steadily declining since."<sup>87</sup>

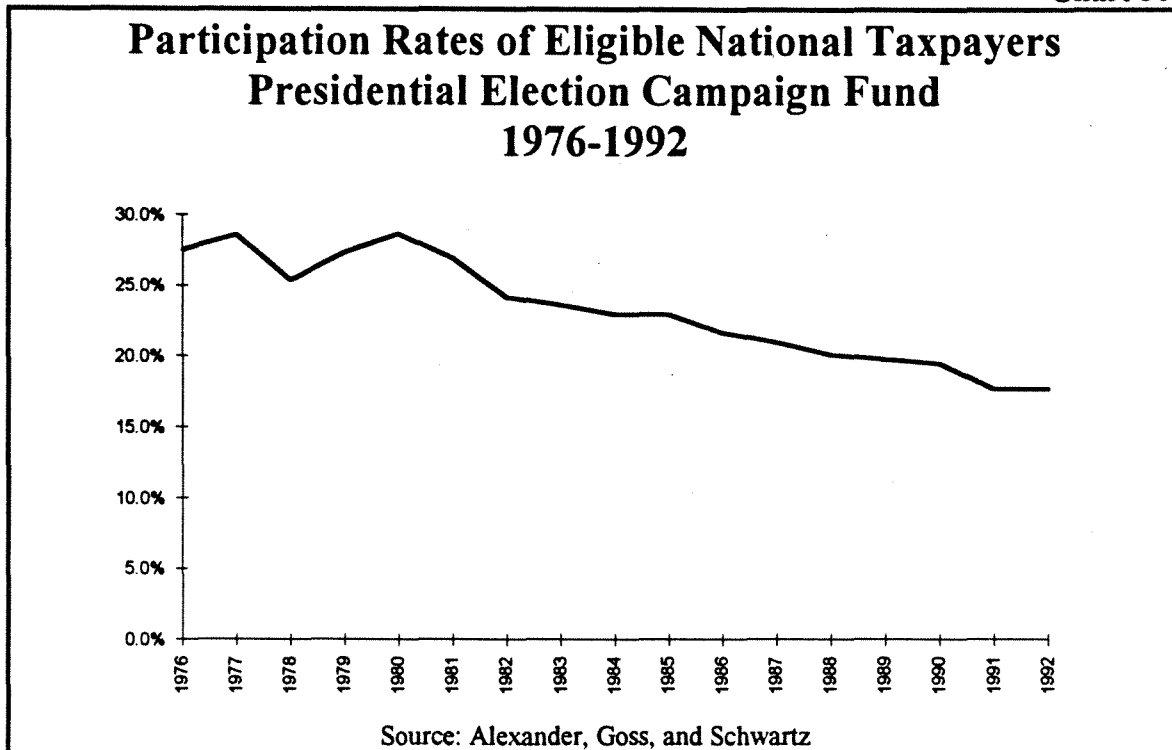
The Presidential Election Campaign Fund, which allows taxpayers to earmark one tax dollar to fund presidential primary and general elections, has experienced a similar decline in participation. The Fund increases disbursements with inflation, but does not adjust the one-dollar check-off for inflation. The decline in taxpayer participation at the fixed \$1 contribution level coupled with increased disbursements might have forced the fund to run a deficit in 1996.<sup>88</sup> However, Congress recently enacted reforms that raised the designation amount to a \$3 voluntary designation.

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Pace, 1994.



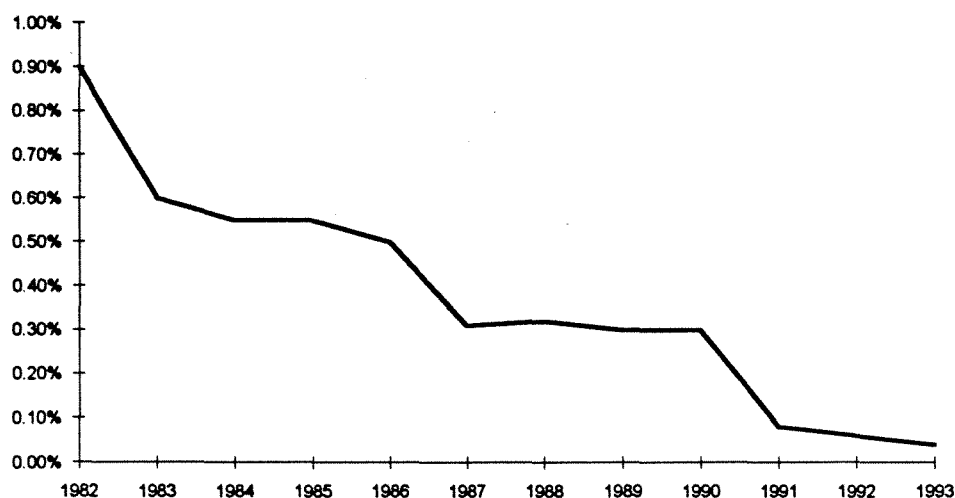
The *tax add-on* system permits taxpayers to voluntarily *increase their tax liability* by a specified amount and to earmark that sum to an election fund. Strictly speaking, this is not a public-funding mechanism. Because the system relies on *voluntary contributions* from taxpayers, tax add-on systems simply funnel private contributions into a political fund for governmental distribution to candidates and political parties, without expending public funds. While the add-on system is popular among political officials because it does not detract from tax revenues or place additional burdens on the state budget, it also ensures that taxpayers will participate less than in tax check-off systems.<sup>89</sup> In California, the proportion of taxpayers choosing to increase their tax burden to contribute to political parties decreased from a high of .9% to a projected low of .4% in 1994.<sup>90</sup> If California chose to provide substantial public subsidies to candidates competing for statewide or state legislative office, it would have to explore funding sources in addition to the tax add-on system. The largest amount collected for the fund, over \$400,000 in 1982, would be insufficient to fund a fully-functional state public campaign-financing system.<sup>91</sup>

<sup>89</sup> Alexander, Goss, and Schwartz, 1992.

<sup>90</sup> Ibid and California Franchise Tax Board.

<sup>91</sup> California Franchise Tax Board.

### Participation Rates of Eligible Taxpayers California Election Campaign Fund 1982-1993



Source: Franchise Tax Board and Alexander, Goss, and Schwartz

*State general-purpose funds* are the third possible source of public funds for political campaigns. Five states (Florida, Kentucky, Nebraska, New Jersey, and Rhode Island) transfer general-fund revenues to state political election funds when revenues from their tax check-off programs are insufficient to balance the program costs. This assures that the public campaign fund systems can survive decreased taxpayer participation. It is also likely to place a substantial burden on the state budget. California's Proposition 131, had it passed, would have allocated \$5 million from the state General Fund to augment a tax check-off program. The Legislative Analyst estimated that had Proposition 68 been implemented, its public financing provisions, not including administrative costs, would have reached approximately \$9 million in 1988. The Legislative Analyst estimated that Proposition 131, which included higher funding levels and included both statewide executive and state legislative candidates, would have cost approximately \$17 million in 1990.<sup>92</sup>

#### *Dispersal of Public Funds*

When states provide public funds to candidates, they most often adopt a system of matching private contributions with public money at a specified rate. Some jurisdictions utilize matching-funds to provide incentives for candidates to alter their fundraising patterns. These jurisdictions identify what they believe to be more "desirable" contributions, such as small individual donations or in-district contributions, and augment them at high levels with public funds. Seattle has successfully implemented a matching funds system that has dramatically altered candidates' fundraising patterns (Appendix D).

<sup>92</sup> California Ballot Pamphlet, Primary Election 1988 and General Election 1990.

The total amount of money available to candidates from matching-funds programs depends primarily upon the match ratio, which is typically between 1-1 and 5-1 public-private. The programs also usually specify a maximum contribution level for these matches, usually between \$50 and \$500 per contribution. Some programs (typically those without expenditure ceilings) specifically limit the amount of public money available to each candidate in order to prevent runaway fundraising and excessive spending.

Other jurisdictions offer qualifying candidates direct public grants. This alternative is less common than offering matching-funds and yields different potential benefits. Candidates often need to establish themselves early in a campaign to gain credibility and attract potential contributors. Direct public grants might allow candidates to build a constituency base and become competitive earlier. This might enable less well-known candidates to compete more equally for private contributions with their already-established opponents. Unlike matching funds, block grants do not specifically encourage certain types of contributions. However, jurisdictions executing grant systems minimize their administrative expenses by issuing a single governmental check to each qualified candidate. Conversely, administering agencies for matching funds programs must process each qualifying contribution separately, thereby raising administrative costs.

More complicated public funding proposals have been advanced. Some reformers have suggested providing state-subsidized television and radio broadcasting time. Electronic advertising comprises a relatively high proportion of campaign expenditures in California, and especially for statewide candidates. A similar proposal is to provide candidates with voter-contact vouchers to defray the costs of mailing, printing, broadcasting, or engaging in other activities that promote direct political dialogue with voters. All qualifying candidates would probably receive a fixed sum of state funding under either system. An alternative proposal, creating a comprehensive-contribution voucher system received national attention in the 1960's and 1970's. This system would severely restrict and possibly prohibit the use of private money for political campaigns. Each citizen would be given a state-funded voucher that could be contributed to a candidate or candidates for campaign use. Vouchers would be the only acceptable form of currency for campaign contributions and expenditures; the use of greenbacks for political purposes would be considered a form of corruption.<sup>93</sup>

### **The Debate on Public Financing- The Case For Public Funds**

Public financing, according to proponents, can mitigate the role of special interests and large contributors while altering fundraising patterns of candidates for political office. Public funds represent an additional independent source of funds from the traditional sources: political action committees, business, and labor; individuals; partisan sources; and family money. Unlike these other sources, public funding is not attached to a candidate's support of certain policies or interests. A comprehensive study of electoral competition and campaign finance conducted by Stanford University Professor David Baron discovered that public financing reduces the incentives for candidates to cater to interest

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<sup>93</sup> For a complete discussion of campaign voucher proposals, see Ackerman, 1993.

groups while strengthening the "incentive to compete for the informed vote."<sup>94</sup> If a goal of campaign finance reform is to increase the relative proportion of a certain type of contribution, such as small individual donations, a matching funds program might help accomplish this objective.

Public financing might also enable candidates to compete on a more equitable basis regardless of incumbency status or personal wealth. Data suggest that increased spending by all candidates, regardless of incumbency status, benefits challengers and other less well known candidates. Public funding can be made available to challengers in equal sums as incumbents, resulting in a substantial benefit to those candidates who are disproportionately disadvantaged at raising money from other sources. This may encourage a broader section of the population to consider seeking political office by making it easier for candidates to become viable. For example, in each Wisconsin election since 1982, challengers have received a far greater proportion of public funds, per candidate, than incumbents.<sup>95</sup> As David Baron explains, "public financing of elections increases the probability of winning of the candidate who is the underdog."<sup>96</sup> In addition, public financing programs might encourage candidates to voluntarily limit other campaign activities in exchange for receiving public funds. For example, if public funds are sufficiently generous, individually wealthy candidates might agree to refrain from contributing exorbitant sums of money to their own campaigns.

Public financing might limit some of the adverse consequences of contribution limits as they affect challengers, and facilitate the adoption of expenditure limits. As former Fair Political Practices Commission Chairman Daniel Lowenstein explains, "limits on contributions must be accompanied by public subsidies. Then the limits could be low enough to curb the influence of special interests while ensuring that candidates have enough money so that they can devote their time and energy to discussing the issues."<sup>97</sup> In addition, public funding provides the only constitutionally approved system for limiting the amount of money which candidates for political office may spend.<sup>98</sup>

### **The Debate on Public Financing- The Case Against Public Funds**

Critics of public financing of elections believe that campaigning for elected office is a private action undertaken by individuals competing in a private marketplace of ideas. Former Senator William Campbell explained, "why should the public have to pay for the government that they are getting? The least we can do is be compassionate enough not to foist on them the idea that not only do they have to pay for the candidate once he gets in office, but they have to pay to help get him into office."<sup>99</sup> They argue further that public financing creates a new bureaucracy that promotes governmental intrusion into private

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<sup>94</sup> Baron, 1994.

<sup>95</sup> Alexander, Goss, and Schwartz, 1992.

<sup>96</sup> Baron, 1994.

<sup>97</sup> California Commission on Campaign Financing, 1985.

<sup>98</sup> Variable contribution limits have yet to pass any significant court tests. Please see Appendix IV.

<sup>99</sup> Alexander and Haggerty, 1980.



activities: supporting and helping to elect candidates for political office. Critics also suggest that public financing forces taxpayers to contribute money to candidates they do not necessarily support, impinging on their First Amendment rights.

In addition to making these philosophical arguments, opponents of public financing also maintain that public financing is not an effective campaign finance measure. Rather than improving competition, it simply encourages a large number of non-viable candidates to seek election. The ballot-pamphlet argument against Proposition 68 claimed that public funding "will encourage irresponsible extremist groups to run for legislative office, not to win election, but to become eligible for tax dollars to finance their cause...no matter how repugnant their views or how few votes they get at the polls."<sup>100</sup> Opponents of public financing argue that the ability to raise money is a reliable test of a candidate's popularity and viability and that providing public funds simply dilutes that process.

### **Comprehensive Financing Systems**

Comprehensive campaign finance reform proposals include all of the three variables discussed so far: contribution limits, expenditure limits, and public financing. Alone, the three variables have different purposes and yield different results. The net result of a comprehensive system depends in large part on the emphasis of the program enacted. For example, strict contribution limits will result in a far different system than less stringent contribution limits in the same comprehensive system. Similarly, low expenditure limits or low levels of public funding will have a different impact than high spending limits and an expansive public-funding program. A recent study found that high levels of public funding can dramatically increase competition; low level funding coupled with expenditure limits might actually *decrease* competition.<sup>101</sup>

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<sup>100</sup> California Ballot Pamphlet, Primary Election 1988.

<sup>101</sup> Abramowitz, 1989.

## DISCLOSURE OF CAMPAIGN FINANCE INFORMATION

The purpose of public disclosure is to ensure that the public has information regarding how candidates raise and spend money prior to elections so that they can hold the candidates accountable for their campaign-financing practices. The Political Reform Act of 1974 states: "The people enact this title to accomplish the following purposes: Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited."<sup>102</sup>

### Variables of Campaign Finance Disclosure

Public disclosure of campaign finance data involves a number of variables:

- *Filers:* California law requires candidates, committees, and elected officeholders who raise or spend more than a specified amount of money to file campaign statements with the Secretary of State.
- *Threshold Levels:* Candidates, elected officers, and committees established to support or oppose a ballot measure are required to report all contributions and expenditures of \$100 or more and the sum of all contributions under \$100. Any person or group of people receiving contributions totaling \$1,000 or more, making independent expenditures totaling \$1,000 or more, or making contributions totaling \$10,000 or more in one calendar year, also must file a statement detailing all contributions of \$100 or more. In addition, any committee making independent expenditures that total \$500 or more must report all expenditures in excess of \$100.
- *Frequency:* Candidates, elected officers, and ballot measure and political committees are required to file semi-annual statements and two pre-election statements before each primary and general election.
- *Timing:* Candidates must file semi-annual statements by July 31 and December 31. Pre-election statements for June elections are required by March 22 and by 12 days before the election. Pre-election statements for November elections are due on or before October 5, and by 12 days before the election.
- *Public Access:* Campaign statements are public records and are maintained for public review by the California Secretary of State.
- *Enforcement:* The Fair Political Practices Commission, a non-partisan appointed body, has primary responsibility for the administration and implementation of campaign finance regulations, including investigating possible violations, determining when violations have occurred, and imposing fines.

Public access to campaign finance information is an important component of a campaign-disclosure system. While California has relatively extensive disclosure provisions, the Secretary of State maintains this information in a cumbersome format that is essentially unavailable for analysis by individual citizens. After each filing deadline, stacks of campaign reports, some hundreds of pages long, line the tables in the Secretary of State's office. There is a wealth of information available in these reports, but citizens cannot

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<sup>102</sup> The Political Reform Act of 1974.

realistically compile and analyze the data in a timely manner. Aside from the public interest groups who synthesize and disseminate the information to voters, the data go unscrutinized. In contrast, the Washington Public Disclosure Commission has a computer access system which makes free on-line campaign-finance data available to the public through computer bulletin boards.

The United States Supreme Court, in considering whether disclosure provisions violate First Amendment protections on rights to privacy of association and belief, ruled that compelled disclosure, while a substantial infringement on privacy rights, is acceptable if it serves a compelling state interest. The court found that the disclosure of campaign information will "alert the voter to the interests to which a candidate is most likely to be responsive...(and) deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity."<sup>103</sup> Implementing additional disclosure requirements, such as lower threshold levels, increasing frequency of filings, and improving public access must also meet these objectives. While improving public access to campaign finance data clearly serves these purposes, the courts might find that more onerous disclosure provisions conflict with First Amendment protections. Major candidates for statewide and state legislative offices typically have a campaign treasurer or staff member responsible for compiling campaign finance reports. However, less well-funded candidates may find more demanding disclosure provisions to be excessively burdensome.

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<sup>103</sup> *Buckley v. Valeo*, 1976.

**CAMPAIGN FINANCE PROVISIONS IN THE UNITED STATES**

**Chart 32**

State	Contribution Limits	Expenditure Limits	Public Financing
Alabama	Unlimited, except \$500 limits on corporations.	None.	Grants to political parties from tax add-on.
Alaska	\$1,000 per year from all sources.	None.	Not Available.
Arizona	PACs and individuals limited based on the office; corporate and labor contributions are prohibited.	None.	Grants to political parties from tax add-on.
Arkansas	\$1,000 per election from all sources.	None.	Not Available.
California	Unlimited, except for special elections.	None.	Grants to political parties from tax add-on.
Colorado	Unlimited.	None.	Not Available.
Connecticut	PACs and individuals limited based on the office; corporate and labor contributions are prohibited.	None.	Not Available.
Delaware	\$1,200 per election to statewide candidates and \$600 to district candidates from all sources.	None.	Not Available.
Florida	\$500 per election from all sources.	Executive office candidates accepting public funds limited to spending \$5 million for Governor and \$2 million for cabinet races.	Matching funds to executive office candidates limiting campaign spending from tax add-on and state general funds.
Georgia	\$3,500 per election from all sources.	None.	Not Available.
Hawaii*	\$2,000 per election period from all sources.	All state candidates accepting public funds limited to spending based on voter registration.	Grants to all state candidates limiting campaign spending from tax check-off.
Idaho	Unlimited.	None.	Grants to political parties from tax check-off.
Illinois	Unlimited.	None.	Not Available.
Indiana	Unlimited, except corporations and labor are limited to aggregate levels per election.	None.	Grants to political parties from license plate revenue.
Iowa	Unlimited, except corporate and labor contributions are prohibited.	None.	Grants to political parties from tax check-off.

Kansas	\$2,000 per election to statewide candidates, \$1,000 to Senate and \$500 to House candidates from all sources.	None.	Not Available.
Kentucky	\$4,000 per election from all sources, except \$6,000 from political parties, and corporate contributions prohibited.	Candidates accepting contributions in higher levels subject to specified spending limitations.	Grants to political parties from tax check-off.
Louisiana	\$5,000 per election to statewide candidates, \$2,500 to district candidates from all sources. Broad-based PACs limited to 2x's this amount.	None.	Not Available.
Maine	Individual contributions limited to \$1,000 per election, all other sources limited to \$5,000.	None.	Grants to political parties from tax add-on.
Maryland	\$4,000 per candidate and \$10,000 aggregate per election from all sources.	Gubernatorial and Lt. Governor candidates accepting public funds limited to spending \$.20 per capita.	Matching funds to Governor and Lt. Governor candidates limiting campaign spending from state general funds.
Massachusetts*	Individual contributions limited to \$1,000, PAC and labor contributions are unlimited, and corporate contributions are prohibited.	None.	Matching grants to qualifying statewide candidates from tax add-on.
Michigan	\$3,400 per election to statewide candidates, \$1,000 to Senate and \$500 to House candidates from all sources; corporate contributions prohibited.	Gubernatorial candidates accepting public funds limited to spending \$1.5 million.	Matching funds to Gubernatorial candidates limiting campaign spending from tax check-off and state general funds.
Minnesota*	All sources limited based on the office, ranging from \$250-\$20,000.	All state candidates accepting public funds limited to spending between \$20,335-\$1.6 million, depending on the office.	Matching funds to all state candidates limiting campaign spending from tax check-off.
Mississippi	Unlimited, except corporations limited to \$1,000 per election.	None.	Not Available.
Missouri	Unlimited.	None.	Not Available.
Montana	All sources limited based on the office, ranging from \$250-\$8,000.	None.	Grants to qualifying gubernatorial and Supreme Court candidates from tax add-on.

Nebraska	Unlimited.	None.	Not Available.
Nevada	Individuals limited to \$10,000 per statewide candidates and \$5,000 per district candidate per election. Other sources are limited to 2x's this amount.	None.	Not Available.
New Hampshire	\$5,000 per election to candidates limiting their spending, \$1,000 to all other candidates from all sources.	Candidates voluntarily accepting limitations subject to limits depending on the office.	Not Available.
New Jersey	\$1,500 per election from individuals, corporations, and labor unions, \$5,000 from PACs. Unlimited transfers between candidates.	Gubernatorial candidates accepting public funds limited to spending \$2.2 million in the primary and \$5 million in the general elections.	Matching funds to gubernatorial candidate limiting campaign spending from tax check-off and state general funds.
New Mexico	Unlimited.	None.	Not Available.
New York	Aggregate limits based on population for all sources; PACs are unlimited.	None.	Not Available.
North Carolina	\$4,000 per election from all sources, except corporate and labor contributions are prohibited.	Executive office candidates accepting public funds limited to spending depending on the office..	Grants to political parties from tax check-off. Grants to executive office candidates limiting campaign spending from tax add-on.
North Dakota	Unlimited, except corporate and labor contributions are prohibited.	None.	Not Available.
Ohio	Unlimited, except corporate contributions are prohibited.	None.	Grants to political parties from tax check-off.
Oklahoma	\$5,000 per calendar year from all sources, except corporate contributions are prohibited.	None.	Not Available.
Oregon	Unlimited.	None.	Grants to political parties from tax add-on.
Pennsylvania	Unlimited, except corporate and labor contributions are prohibited.	None.	Not Available.
Rhode Island	\$2,000 per calendar year from all sources.	Candidates accepting contributions in higher levels subject to specified spending limitations.	Grants to political parties from tax add-on.

South Carolina	\$3,000 per year to statewide candidates and \$1,000 to district candidates from all sources.	None.	Not Available.
South Dakota	Individuals limited to \$1,000 per year to statewide candidates and \$250 to district candidates, PAC contributions are unlimited, corporate and labor contributions are prohibited.	None.	Not Available.
Tennessee	Unlimited, except corporate contributions are prohibited.	None.	Not Available.
Texas	Unlimited, except corporate and labor contributions are prohibited.	None.	Not Available.
Utah	Unlimited.	None.	Grants to political parties from tax check-off.
Vermont*	\$1,000 per election from all sources.	Candidates voluntarily accepting limitations subject to limits depending on the office, ranging from \$2,000-\$400,000.	Not Available.
Virginia	Unlimited.	None.	Grants to political parties from tax add-on.
Washington	Aggregate contribution limits of \$50,000 to statewide candidates and \$5,000 to district candidates from all sources.	None.	Not Available.
West Virginia*	\$1,000 per election from all sources, except corporate contributions are prohibited.	Candidates voluntarily accepting limitations subject to limits depending on the office, ranging from \$12,500-\$1 million.	Not Available.
Wisconsin*	Limitations based on the office and source of contributions as a proportion of spending limit levels.	All state candidates accepting public funds limited to spending between \$17,250-\$1 million, depending on the office.	Matching funds to all state candidates limiting campaign spending from tax check-off.
Wyoming	Individuals limited to \$1,000 per candidate and \$25,000 aggregate per election; PAC contributions are unlimited, corporate and labor contributions are prohibited.	None.	Not Available.

Note: States marked with an \* are described in more detail in Appendix D.

**CAMPAIGN FINANCE PROVISIONS IN SELECTED LOCAL JURISDICTIONS**

**Chart 33**

City	Contribution Limits	Expenditure Limits	Public Funding
Berkeley	\$250 per election from all sources.	None.	Not Available.
Long Beach	\$250 for City Council, \$350 for citywide, and \$500 for Mayoral candidates per election from all sources.	City candidates accepting public funds limited to spending between \$60,000-\$300,000 depending on the office.	Matching funds to city candidates limiting campaign spending from city general funds.
Los Angeles*	\$250 for City Council and \$1,000 for citywide candidates per election from all sources.	City candidates accepting public funds limited to spending between \$300,000-\$2 million, depending on the office.	Matching funds to city candidates limiting campaign spending from city general funds.
New York*	All contributions to citywide candidates are limited to \$6,500. Contributions to other city candidates are limited to \$3,000.	Voluntary expenditure limitations range from \$105,000 to \$4 million per election depending on the office.	Qualifying candidates who agree to limit their spending may receive public matching funds up to \$1,000 per contributor from the City General Fund
Oakland*	Individuals limited to \$500 and broad-based PACs \$1,000 per election to candidates limiting campaign spending. Individuals limited to \$100 and broad-based PACs \$250 to all other candidates per election.	Candidates accepting contributions in higher levels subject to specified spending limitations based on the salary of the office being sought.	Not Available.
Sacramento	Individuals limited to \$500 per election to City Council and \$1,000 to citywide candidates. PACs limited to \$1,500 per election for City Council and \$3,000 for citywide candidates.	None.	Not Available.
San Diego*	\$250 per election from individuals, all other sources are prohibited.	None.	Not Available.
San Francisco	\$500 per election from all sources.	None.	Not Available.
San Jose	\$250 per election from all sources.	None.	Not Available.
Seattle*	\$350 per election from all sources.	Voluntary limitations of \$250,000 for Mayoral candidates and \$110,000 for all other city candidates.	Qualifying candidates who agree to limit their spending may receive public matching funds up to \$50 per contributor from the Seattle General Fund.

Note: Cities marked with an \* are described in more detail in Appendix D



## OPTIONS

There is tremendous variation in campaign finance programs at the federal, state, and local levels. (See Charts 32 and 33, pages 48-52). This variation provides a wide range of potential systems for consideration. Unfortunately, comparative evaluations of the various systems are extremely difficult because each jurisdiction has unique characteristics and concerns and campaign finance provisions reflect those differences. For example, while low contribution and expenditure levels may be appropriate for small, politically homogenous jurisdictions (such as some California cities), much higher levels are suitable for a large state with historically competitive elections, highly professionalized campaigns and large electoral districts. Therefore, it is useful to consider standards based on California's unique circumstances rather than borrowing specific reforms based solely on the experience of other jurisdictions.

This section suggests some standards for framing and considering campaign finance reforms, discusses various issues related to the crafting of such reforms, and suggests alternative mechanisms for accomplishing some reform objectives. Each of the options could have a substantial impact on the conduct of California electoral campaigns. None of the alternatives is politically neutral and each might disproportionately benefit one or more groups of political actors or lead to "unintended consequences," given the interrelated nature of political systems. While not necessarily recommendations of the author or the California Research Bureau, the following are potential options for action.

Of course, one alternative is to maintain the current system of campaign financing in California without adopting changes. Some commentators have argued that enacting campaign finance reforms would simply lead to greater governmental intrusion into private activities and that increased regulation of campaign activities would yield undesirable results. Others have suggested that the current system for financing campaigns in California encourages full participation by large segments of society and that establishing limits on the activities of these political actors might discourage participation in the political and electoral process. Finally, some critics of campaign finance reform have suggested that the United States Supreme Court's *Buckley v. Valeo* decision equating money with protected speech ensures that those who want to participate in the financing of political campaigns will be able to do so in spite of any reforms that may be implemented; this participation will merely take a different form.

This final complaint regarding the constraints placed on reform efforts by the Supreme Court's ruling leads to a separate alternative, challenge the *Buckley* decision. In the long run, challenging *Buckley*, and possibly persuading the Court to adopt an alternative definition of protected speech might be a central component of any movement toward reform. If the Court were to overturn or amend *Buckley*, a host of potential alternatives would become available for legislative consideration.

## **Contribution Limits**

States differ fundamentally on the amount of money individuals or committees may contribute to candidates (Arizona and Montana restrict contributions to \$250 while New York prohibits contributions in excess of \$100,000). They also vary on the application of these limits to different contributors, and on the period of time in which the limits are applied. This variation indicates the difficulty of establishing appropriate and rational levels for contribution limits.

### ***Contribution Limit Standards:***

Each of the following strategies suggest a standard upon which contribution limits may be based: personal income, campaign expenditures, and current contribution patterns.

**Personal Income:** The annual per capita income of California residents is approximately \$21,350. Contribution limits could be established as a function of this level, such as ten percent, or \$2,135 per year, from individuals. One direct benefit of this standard is that it would naturally adjust annually for inflation. The individual contribution limit could serve as a benchmark level for limits on other types of contributors, such as PACs.

**Proportion of Fundraising/Spending:** Contribution limits must be designed to serve the compelling governmental interest of eliminating corruption, or the appearance of corruption in order to meet constitutional standards. Given this standard, it makes sense to limit contributions to a proportion of all funds raised or spent during an election cycle. Candidates could be limited to accepting a set percentage of funds from a single source, based on average fundraising levels by competitive candidates during the previous election cycle (adjusted for inflation). Competitive candidates for the Senate raised and spent \$550,000 on average for both elections combined. Competitive Assembly candidates raised and spent \$450,000 on average. For example, one percent of these average fundraising levels would be \$5,500 for the Senate and \$4,500 for the Assembly, a possible contribution limit. Instead, if expenditure limits are a part of the program, contributions could be limited to a percentage of these spending levels. For example, one percent of Proposition 131's expenditure limits would be \$6,500 per election cycle for Assembly candidates and \$11,250 for Senate candidates. "One percent ceilings" would amount to \$3,750 and \$6,000 for candidates for the Assembly and Senate, respectively, under Proposition 68 expenditure limits. Further, contributions could be limited to aggregate levels by source. For example, candidates could be prohibited from receiving contributions in excess of one-third of the spending limits from either PACs or political parties, ensuring that individual contributions would comprise at least 1/3 of all contributions.

**Current Contribution Patterns:** Contribution ceilings could be based on current contribution patterns. For example, California legislative candidates in competitive elections currently receive, on average, 150 contributions of \$1,000 or more, including 20 contributions of \$5,000 or more and 10 contributions of \$10,000 or more. If all

contributions, regardless of source, were capped at \$5,000, candidates would generally receive approximately twenty or more "maximum contributions." This would limit the impact of any single contributor.

### *Variation by Source*

Contribution limits generally vary for different sources. Typically, reform efforts are designed to encourage small individual contributions, which are more widely spread among the population and less significant on an individual basis than large contributions from wealthy individuals or interest groups. Similarly, contributions from political parties, which aggregate funds from many sources, may represent a more generalized interest. Because political action committees and political parties are ultimately financed by individual contributions, it seems appropriate that a level established for individual contributions be adjusted upward to account for the aggregation of individuals in political committees. Some analysts also value contributions from within a representative's district more highly. Others contend that elected officials must represent the entire jurisdiction, not just a district, and that contributions from outside a district are of equal democratic value.

- *Individuals*: Existing contribution limit systems typically limit individuals in the amount of money they may contribute to any candidate or committee (including political parties). An alternative approach is to set aggregate individual contribution limit levels. For example, an individual could be limited to contributing up to \$50,000 to all candidates for state office. These aggregate limits typically compliment per candidate contribution limits, but may also be adopted alone.
- *Political Action Committees*: PACs are aggregations of individual contributors and therefore have higher contribution limits, usually two or three times the limit for individuals. An alternative is to limit narrow, limited membership PACs, while adopting less stringent limits for broad-based political committees. California law currently distinguishes between these different kinds of PACs.
- *Broad-Based PACs*: To qualify for this classification in California, committees must receive contributions from one hundred or more sources and contribute to five or more candidates. In some jurisdictions, broad-based PACs are prohibited from receiving contributions in excess of certain amounts (typically between one-fifth and one-tenth of individual limits). For example, if individuals are limited to contributing \$1,000 to a candidate, PACs are typically required to accept a certain number of individual contributions of \$200 or less to achieve this designation. Since broad-based PACs bundle a large number of small contributions, the typical contribution limits are high, often ten times the level for individuals.
- *Political Parties*: There are 1,600 PACs in California and just 6 registered political parties. Parties clearly represent larger aggregates of individuals, as required by state law for ballot status. Currently, new political parties must register approximately 80,000 individuals in order to achieve ballot status. Furthermore, political parties fulfill an important function in the electoral system by organizing broad coalitions around policy preferences. Voters can hold officials accountable for actions of the governing

or minority party, facilitating democratic choice. Analysts generally feel that contribution limits for political parties should be very high or non-existent.

- *Partisan Transfers*: It may be unconstitutional to limit partisan transfers of campaign funds from officeholders and legislative leadership to party candidates. (See Appendix A for a discussion of the constitutional issues involved).

### ***Time Period for Limits***

The period of time within which contribution limits are in effect varies in different jurisdictions. Constitutional issues are involved if the period of time disadvantages non-incumbent candidates. (See Appendix A).

- *Per Election Cycle*: Contributors could give up to the maximum amount to a candidate over the entire two or four-year election cycle, depending on the office being sought by the recipient of the contribution.
- *Per Election*: Contributors could contribute up to a maximum amount for both primary and general elections. This might disadvantage candidates in competitive districts because they would have the additional burden of raising funds twice from their contributors.
- *Per Calendar Year*: Contributors could give up to the maximum amount to an officeholder or political committee each calendar year. This would tend to benefit incumbents or open seat candidates who declare their candidacies far in advance of an election. (See pages 20 and 24).
- *Per Fiscal Year*: Contribution limits based on fiscal year cycles have been declared unconstitutional by the federal courts. (See Appendix A).

### ***Other Contribution Limits***

A number of other potential issues surround contribution limits including:

- *Out of District Contributions*: One option is to limit individual contributions from outside a candidate's electoral district, or to place aggregate limits on the amount a candidate may accept from out-of-district contributors. Some commentators have argued that this would disadvantage challengers, especially those in poorer districts, who find it difficult to raise enough money to reach their constituents. Another alternative is to allow larger or more contributions from within a district to provide a partial local fundraising incentive. A similar proposal is to make in-district contributions or lobbying expenses tax-deductible.
- *Off-Year Fundraising*: A separate option is to restrict or prohibit candidates from raising funds during non-election years and directly following an election. This could partially remove the conduct of public business from the continual effort to raise private funds during non-campaign periods of time. This proposal would probably benefit challengers. (See pages 20 and 24).

- *Cash on Hand*: A final option is to restrict or prohibit candidates from carrying-over campaign funds from one election to another. This could prevent public officials from compiling large "war chests" to discourage potential opponents.

### **Expenditure Limits**

Setting spending limit levels for statewide and state legislative candidates is a difficult task. California cannot rely on measures adopted by other jurisdictions because of vast differences in the size of representational districts, the degree of professionalization of political institutions, the competitiveness of elections, and the cost of specialized campaign activities (such as paid media and campaign consulting) which lead to tremendous variation between states. For example, spending limits for gubernatorial candidates range from \$400,000 in Vermont to \$5 million in Florida. Accounting for population does not diminish the variation between states. Maryland limits gubernatorial candidates to spending \$.46 per registered voter *for both elections combined* while Rhode Island limits candidates to \$2.79 per registered voter *per election*.

### ***Spending Limits Standards***

Each of the following strategies presents an alternative approach to establishing expenditure ceilings for state candidates in California.

*Current Spending Patterns*: One option is to base expenditure limits on current spending patterns by candidates for state office in California. Levels could be based on the *highest* spending races, the *average* spending race, the *highest open seat* race, or the *average open seat* race. Spending by winning candidates in the previous election, adjusted for inflation, could be used to generate such levels at the outset.

- **State Senate**: The largest amount spent by a candidate in 1992 was \$925,000 in a primary election, \$625,000 in a general election, and \$1 million combined for both elections. Median spending by Senate candidates was \$250,000 in the primary election, \$300,000 in the general election, and \$550,000 total for both elections.
- **State Assembly**: The largest amount spent by a candidate in 1992 was \$685,000 in a primary election, \$725,000 in a general election, and \$865,000 combined for both elections. Median spending by Assembly candidates was \$200,000 in the primary election, \$250,000 in the general election, and \$450,000 total for both elections.
- **Open Seat Elections**: Because open seat elections tend to be highly competitive, spending in those elections might provide a range for spending limits. The highest spending candidate in 1992 Assembly open seat races spent approximately \$300,000 in the primary election, \$525,000 in the general election, and \$720,000 total for both elections. The average spending by victorious open seat Assembly candidates was \$175,000 for each the primary and general elections.

*Spending per Capita/per Voter*: Spending levels could be based on a given amount per registered voter. This could be indexed according to population or voter registration in

order to differentiate between districts and offices. For example, Senate incumbents spent approximately \$1.12 per capita and Senate non-incumbents spent \$.13 per capita in 1992. Assembly incumbents spent \$1.45 per capita and Assembly non-incumbents spent \$.26 per capita. Per registered voter, Senate incumbents spent \$2.60, Senate non-incumbents spent \$.30, Assembly incumbents spent \$3.32, and Assembly non-incumbents spent \$.60.

### ***Spending Limit Adjustments***

Regardless of how expenditure levels are established, they could be adjusted annually for inflation, population growth, and/or average increases in the cost of media. They could also be established on a per election (primary or general) or per election cycle (both elections combined) basis.

### ***Trigger Mechanisms***

Expenditure limits must be accepted voluntarily by candidates in order to be constitutional (See page 33 and Appendix A). Four mechanisms for triggering expenditure limits are currently used in different jurisdictions. (See Chart 32 and 33, pages 48-52).

- *Public Funding*: Candidates who voluntarily restrict their spending may receive public funds. (See pages 36-43).
- *Variable Contribution Limits*: Candidates who agree to abide by voluntary expenditure limits may raise money in larger amounts than candidates who do not agree to the limits. This alternative might be unconstitutional. (See Appendix D).
- *Entirely Voluntary Program*: If a jurisdiction sets a voluntary expenditure limit without providing public funds to candidates who agree to accept it, the program may be unconstitutional. (See Appendix D).
- *Waive Candidate Qualification Requirements*: Filing fees or signature requirements to appear on the ballot may be waived for candidates accepting voluntary spending limits. This alternative might be unconstitutional. (See Appendix D).
- *Tax Deductions*: Contributions to candidates voluntarily limiting their spending may be made tax-deductible up to a certain amount while contributions to non-participating candidates would not be deductible. This alternative might be unconstitutional.
- *Equal Time Provisions*: Candidates spending above a specified amount may be required to provide equal time to their opponent(s) on all paid voter contacts made after the spending limit is surpassed. For example, once a candidate reaches the spending ceiling, she may be required to equally share each television and radio advertisement and direct mail piece with her opponent. This alternative appears to comply with the intent of the *Buckley* decision. (See Appendix D).

### ***Other Spending Limits***

Other forms of campaign expenditures may also be limited in a voluntary system. Possible alternatives including limiting the amount of money a candidate may contribute to his or

her campaign, and/or limiting the amount of independent expenditures which may be made on a candidate's behalf. (See page 36). Some jurisdictions provide incentives such as:

- Granting public subsidies to candidates whose opponents benefit from independent expenditures or who spend more than a specified amount of their personal funds on their campaigns;
- Removing expenditure limits for candidates whose opponents fail to limit their use of personal funds or benefit from independent expenditures; or
- Requiring candidates who receive public funds to restrict their use of personal funds to a specified amount.

### **Public Campaign Financing**

Numerous jurisdictions provide public funds to candidates for political office. Public financing systems vary in four ways: the breadth of the program, the qualifications for receiving funds, the manner in which revenue is generated, and the manner in which money is dispersed. (See page 38). The most difficult aspect of implementing a public funding system is ensuring that public funds are used efficiently, and that fringe candidates are not encouraged to seek elective office simply to gain access to public funds, and that all viable candidates have the opportunity to receive public funds.

#### ***Qualifications***

Various jurisdictions have adopted qualifications for candidates to receive public funds.

- *Fundraising*: Candidates could be required to raise a threshold amount of money to qualify for public funds, thereby demonstrating that they are viable candidates.
- *Signatures*: Another alternative is to allow candidates to obtain a specified number of voter signatures to qualify for public campaign financing.
- *Ballot Opposition*: Most jurisdictions require candidates to be opposed on the ballot in order for them to receive public funds.
- *Debates*: Candidates receiving public funds could be required to engage in one or more public debates prior to an election (as in Los Angeles).
- *Expenditure Vouchers*: A final option is to require candidates to use public funds for a specified purpose, such as voter contacts. For example, candidates could be given vouchers for ten-minute television or radio commercials, or discounts on mailings.

#### ***Revenue Raising***

Jurisdictions have generally experimented with three alternative mechanisms for generating money to fund a public financing system. (See page 40).

- *Tax Check-Off*: Taxpayers could be allowed to earmark a small portion of their tax liability to an election fund that provides public funds to candidates for state office.

- *Tax Add-On*: Taxpayers could be permitted to voluntarily increase their tax liability by a specified amount and to earmark that sum for an election fund.
- *State General-Purpose Funds*: Funds may be allocated annually from the State General Fund to be dispersed to qualified candidates for political office.

### ***Alternative Systems***

Two alternatives to public financing systems might achieve similar results: voucher systems, and tax-based financing systems.

*Voucher Systems*: Rather than simply limiting private contributions, a voucher system would prohibit them entirely. Citizens would be issued government vouchers worth ten to one hundred dollars that they could contribute to the candidates or committees of their choice. Each citizen could be guaranteed an equal amount to contribute to candidates, regardless of their income. Candidates would use these vouchers for all campaign expenses. Vendors receiving vouchers would redeem them at face value from the state. Independent expenditures and personal contributions from candidates, while impossible to limit on constitutional grounds, would be disclosed by the administering agency.

*Tax-Based Financing Systems*: A tax-based financing system could be implemented to encourage certain contributions and discourage others. For example, small contributions from individuals could be tax deductible, while larger contributions could be taxed on a progressive sliding scale. Either the contributor or the recipient could be liable for this tax burden, with differing effects. Taxing contributors might provide powerful incentives and disincentives for particular contributions and generate income for the state at the expense of political candidates. Taxing recipients might reduce the amount of money candidates have available to spend. A tax-based financing system probably would be most effective as part of a comprehensive system in which public funds are re-distributed from this tax pool to candidates who accept spending limits. If the state should ever begin taxing services, these features may become part of that tax system.

### **Campaign Finance Disclosure and Electoral Information**

Every state requires candidates for political office to disclose certain campaign finance activities, and empowers a public agency to enforce disclosure provisions and report pertinent information to the public. However, there is tremendous variation in disclosure requirements. Campaign finance disclosure provisions differ in five ways: who is required to file statements, when they must file statements, what these statements must contain, how this information is made available to the public, and how campaign finance provisions are enforced. (See page 46). Public access and enforcement are the most controversial provisions.



***Public Access:***

Research suggests that campaign finance data is not readily available to the California public in an accessible format, although candidates and committees collect and file relatively detailed statements. (See pages 4 and 46). Alternatives for improving public access to campaign information include the following options:

- Develop an on-line computer system for campaign finance data such as in place in Washington. (See page 47).
- Require more extensive reporting by candidates of the sources and recipients of campaign funds, as well as the purpose of various expenditures.
- Require the Secretary of State or the Fair Political Practices Commission to issue periodic reports (available on the Internet and in hard copy) detailing the sources and recipients of campaign funds by candidate such as in Los Angeles and New York City. (See Appendix D).
- Require candidates to file campaign finance information on computer disk or pay in-lieu fees to cover the cost of data entry.
- Develop voter pamphlets which would give more information on candidates including statements and positions on issues as pioneered in New York City. (See Appendix A).

***Enforcement:***

Enhanced enforcement of the Political Reform Act (Title IX) could improve disclosure. Options include:

- Adopt stricter penalties and larger fines for violation of Title IX.
- Increase Fair Political Practices Commission funding for the purposes of improving investigations of possible disclosure and campaign violations, and for issuing regular reports on candidate compliance with campaign finance provisions.

## **APPENDIX A: HISTORY OF CAMPAIGN FINANCE REFORM EFFORTS IN CALIFORNIA SINCE 1974**

### **Proposition 9**

In the wake of the Watergate scandal, the California Legislature passed two significant measures in 1973 that were designed to reform politics and campaigns in California. The Waxman-Dymally Act required candidates to register their campaign committees with the Secretary of State and to file campaign statements (at specified times before and after the election) disclosing receipts and expenditures over \$100. The Moscone Conflict of Interest Act required public officials to disclose their financial and property interests.

Concurrently, a handful of political reform groups, including California Common Cause, Ralph Nader's California Citizen Action Group, and People's Lobby, Inc. teamed with then-Secretary of State Edmund G. Brown, Jr. to propose even more stringent reform measures. The coalition drafted an initiative and gathered enough signatures to qualify it for the June 1974 ballot as Proposition 9, The Political Reform Initiative.

Proposition 9 was the most comprehensive campaign and ethics reform package ever proposed in California. It proposed to regulate numerous aspects of political campaigns including campaign finance disclosure, limits on campaign spending, restrictions on the actions of lobbyists, and safeguards against conflicts of interest. According to the proponents of the measure, the Proposition 9 was designed to "put an end to corruption in politics, and (make) politicians directly responsible to the people-not to purchased demands of special interests."<sup>104</sup> Arguments in the voters' pamphlet asserted, "the impact of Watergate and related events has obviously contributed to the serious decline of citizen confidence in the governmental process; Proposition 9 will give citizens a basis for the faith and trust which must lie at the heart of our political process."<sup>105</sup>

Proposition 9 was formally opposed by numerous business and labor groups, including the AFL-CIO, the California Chamber of Commerce, the California Bankers Association, and the California Manufacturers Association. Opponents of the measure contended that, "powerful interests do not dominate California elected officials. It is an over-kill attempt to legislate honesty into political campaigns. This cannot be done; it is not needed."<sup>106</sup> California voters apparently did not agree and overwhelmingly approved Proposition 9 with nearly 70 percent support.

Proposition 9 included the following key provisions:

- Required campaign committees receiving or spending \$500 or more dollars to file a statement of organization with the Secretary of State and to file periodic reports detailing financial activities.

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<sup>104</sup> California Secretary of State, June 4, 1974.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

- Required these campaign finance reports to identify all contributors of \$50 or more and each person or corporation to whom an expenditure of \$50 or more was made.
- Limited candidates for Governor to spending no more than seven cents per voting-age citizen in primary elections and nine cents in general elections. Limited candidates for other statewide offices to spending three cents in both the primary and general elections. Incumbents seeking re-election were prohibited from spending more than 90 percent of the applicable spending limit placed on their challengers.
- Required lobbyists to register with the Secretary of State.
- Required lobbyists to report periodically all payments received for their lobbying activities and to report all lobbying expenses, including an itemized list of any activity that would benefit public officials, candidates, or their families.
- Prohibited lobbyists from spending more than \$10 per month on a single public official and from arranging or making campaign contributions to both public officials and candidates.
- Required public officials to report all financial holdings that might be affected by their actions as officeholders, and were disqualified from participating in the decision-making process surrounding those issues.
- Required the Secretary of State to send a ballot pamphlet to all voters prior to each election detailing provisions of all measures up for a vote and offering arguments for and against each measure as presented by the Legislative Analyst.
- Created the five member Fair Political Practices Commission with a mandated annual appropriation of \$1 million to enforce the act and establish penalties for non-compliance.

Just after California approved Proposition 9, the United States Congress passed The Federal Election Campaign Act Amendments of 1974, "the most sweeping federal campaign reform law in history."<sup>107</sup> The Act enacted the following key provisions:

- Established contribution limits to candidates for federal offices (\$1,000 for individuals and \$5,000 for political committees, the total of which could not exceed \$25,000);
- Prohibited independent expenditures above \$1,000;
- Limited the amount of personal or family money a candidate could spend on his or her own campaign to specified amounts depending on the office being sought;
- Restricted overall general election and primary campaign expenditures by candidates to specific amounts depending on the office being sought; and,
- Created strict campaign finance reporting requirements for donations and expenditures over \$100.

The United States Supreme Court's landmark 1975 decision in *Buckley v. Valeo* invalidated many provisions of the Federal Election Campaign Act:

- The Court ruled that while **political contributions** represent "speech by proxy,"<sup>108</sup> contribution limits "are appropriate legislative weapons against the reality or

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<sup>107</sup> Alexander, 1991.

<sup>108</sup> *Buckley v. Valeo*, 1976

appearance of improper influence stemming from the dependence of candidates on large campaign contributions, and ceilings imposed serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging on the rights of individual citizens and candidates to engage in political debate and discussion."<sup>109</sup> Contribution limits *whose purpose is to prevent governmental corruption* represent the "single exception to the rule that limits on political activity (are) contrary to the First Amendment."<sup>110</sup>

- The Court found that **campaign finance disclosure** provisions are generally constitutional because they "serve substantial governmental interests in informing the electorate and preventing the corruption of the political process."<sup>111</sup>
- Conversely, the court ruled that the **independent expenditure ceilings, limits on candidates expending personal funds on their campaigns, and overall campaign expenditure limits** are unconstitutional because "those provisions place substantial and direct restrictions on the ability of candidates, citizens, and association to engage in protected political expression."<sup>112</sup> While limits on contributions "involve little direct restraint on...political communication," expenditure limits place "substantial restraints on the quality and diversity of political speech, the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached"<sup>113</sup> The Court ruled that for expenditure limits to be constitutional, they must be voluntarily accepted and combined with some form of public financing. Since the federal legislation did not enact public financing of campaigns, expenditure limits were declared void.

Although the *Buckley* decision specifically addressed the Federal Election Campaign Act Amendments of 1974, the ruling applied to state laws as well. In April of 1976, the California Supreme Court applied the reasoning in *Buckley* to Proposition 9 in its ruling in *Citizens for Jobs and Energy v. FPPC*. The Court found the expenditure limits enacted by Proposition 9 to be unconstitutional. At the same time, a series of lawsuits brought by the California Bankers Association and the Institute of Governmental Advocates challenged Proposition 9's restrictive lobbying provisions. The Court affirmed disclosure provisions and the \$10 per month limit on expenditures for public officials. However, in *FPPC v. Superior Court (IGA)*, the Court invalidated the ban on direct contributions by lobbyists to candidates<sup>114</sup> and the requirement that lobbyists make itemized monthly reports on the value of transactions with public officials. During the 1977 legislative session, the Legislature officially repealed the provisions ruled unconstitutional to comply with the rulings.

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<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> *Citizens Against Rent Control v. City of Berkeley*, 1981

<sup>112</sup> *Buckley v. Valeo*, 1976

<sup>113</sup> Ibid.

<sup>114</sup> The FPPC had interpreted this to mean a prohibition on lobbyists arranging contributions from their employers.

## **Legislative Reform Proposals (1976-1984)**

In the immediate aftermath of court rulings, the State Legislature considered legislation to enact various Proposition 9 reforms in a constitutionally acceptable format. Two measures debated at the end of the 1975-76 general session were designed to save the expenditure limits in Proposition 9. Since expenditure limits are constitutionally acceptable only if accompanied by a system of public financing, both **AB 466** (Goggin) and **AB 2817** (Keysor) proposed a system of public financing for statewide elections. Neither bill defined the manner in which public money would be granted to political candidates; neither was enacted.

The Legislature again considered a number of campaign finance measures during the 1977-1978 legislative session. The most comprehensive of these measures, **AB 1372** (Fazio) proposed a system of campaign financing that included contribution limits, expenditure limits, and the public funding of campaigns. Fazio's bill limited contributions by individuals to \$500 and by political committees to \$1,500. In order to qualify for state matching funds at a rate of 3 to 1, candidates had to voluntarily agree to donate no more than \$20,000 of their own funds for statewide races or \$10,000 for state legislative races. In addition, candidates had to abide by strict spending limits based on the office being sought and the number of eligible voters residing in the district. Assembly candidates were allowed to spend up to twenty-two cents per eligible voter and State Senate candidates were allowed up to fifteen cents. Statewide candidates were allowed between two cents and seven cents depending on the office. The bill passed the Assembly Elections and Reapportionment Committee but was defeated by the Assembly Ways and Means Committee.

During the 1979-1980 general session, the Legislature again considered a number of campaign finance proposals. **AB 2927** (Hart) proposed a comprehensive system of campaign finance for state legislative campaigns. The bill established political party contribution limits of up to \$15,000 for Assembly candidates and \$25,000 for Senate candidates, and limited individual contributions to \$500 and political committee contributions to \$1,500. A unique provision allowed Assembly candidates to transfer no more than \$20,000 from their primary election fund to their general election campaign; the limit was \$30,000 for Senate candidates. At the center of the proposal were strict voluntary expenditure limits and a limitation on the amount of personal money candidates could spend on their own campaigns. In exchange for agreeing to these voluntary limits, candidates representing political parties with at least 25% registration in the district would receive a lump sum payment of \$10,000 for State Assembly candidates and \$15,000 for State Senate candidates. In addition, candidates would receive 3 to 1 public matching funds. The bill was passed by the Assembly Elections and Reapportionment Committee but never reached the Floor.

During the 1981-1982 session, the Assembly again considered legislation to establish a system of campaign finance. **AB 2193** (Harris), which resembled **AB 2927** (Hart) from the previous term, reached the floor of the Assembly before falling short of the necessary 2/3

vote, 45-17. Another comprehensive proposal, **AB 3385** (Vasconcellos and Willie Brown) proposed contribution limits, expenditure limits, and 1 to 1 public matching funds. The bill required all candidates applying to receive public matching funds to limit campaign expenditures to \$130,000 for Assembly races and \$260,000 for Senate races, and to limit spending of their personal funds to \$10,000 in Assembly races and \$20,00 in Senate races. **AB 3385** failed in the Assembly Elections and Reapportionment Committee.

Rapidly escalating campaign spending in the 1982 elections and increased pressure from the media and public interest groups raised the prominence and visibility of campaign reform in the 1983-1984 legislative session. In all, over twenty-three separate comprehensive campaign financing schemes were introduced in the Legislature. Of these, four passed their house of origin and two, **AB 12** (Vasconcellos) and **AB 311** (Connelly) were sent to a conference committee. The Vasconcellos proposal was similar to his **AB 3385** a session earlier except that it allowed candidates to spend slightly more money and contained a unique provision benefiting candidates facing wealthy opponents who refuse to limit their personal expenditures. In an attempt to even the playing field, the individual opposing a wealthy candidate who spends unlimited personal funds would be allowed to double his or her campaign expenditures and receive up to 2/3 of the limits in 2 to 1 matching funds. (\$200,000 for the Assembly and \$400,000 for the Senate). The conference committee was unable to report out **AB 12**.

Assembly Member Connelly's **AB 311** proposed a comprehensive campaign finance system: limits on contributions, expenditure limits, restrictions on the use of personal funds, and public matching funds. In addition, it prohibited the transfer of funds between candidates' campaign committees. The conference committee added a provision that tied the bill to the passage of Proposition 40. If Proposition 40 garnered majority approval, **AB 311** would supersede it; if the initiative failed, neither measure would be enacted. The bill was passed by the Legislature but Governor George Deukmejian vetoed it, citing his opposition to the public financing provisions.

#### **Proposition 40 (1984)**

In the spring of 1984, Assembly Member Ross Johnson had unveiled an initiative proposal to "dramatically reform the way campaigns for state office are financed." Assembly Member Johnson argued that his proposal, **Proposition 40**, The Fair Campaign Finance Amendments to the Political Reform Act, would correct a system dominated by the "scramble for the almighty tax dollar (by) placing reasonable limits on contributions."<sup>115</sup>

**Proposition 40** prohibited contributions from corporations, labor unions, and transfers from other candidates. Only political action committees, parties, and individuals would be allowed to donate, and their donations would be limited to \$1000 per candidate per fiscal year. Individuals were further prohibited from contributing more than \$250 to political parties and political committees. The measure prohibited all anonymous and cash contributions and required candidates to file declarations of their candidacy prior to

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<sup>115</sup> Fair Political Practices Commission, 1984.

soliciting or receiving any campaign funds. A minor, yet controversial, provision provided limited public funds to candidates facing wealthy candidates. In order to discourage the use of personal money, a candidate would receive one dollar in public money for every dollar his or her opponent spent of personal funds, up to one million dollars.

Johnson argued that the measure would limit the amount of money in political campaigns, help control the power of special interests, and provide for more competitive elections. Opponents, including political parties, assorted labor and business groups, and California Common Cause, raised objections, claiming that the proposal would limit the ability of challengers to raise enough money to successfully campaign against incumbents.<sup>116</sup>

Further, the FPPC warned that the measure would actually increase the relative importance of PAC contributions from approximately 1/3 to 1/2 of all campaign funds as other forms of contributions were limited or prohibited.<sup>117</sup> Proposition 40 was defeated in the November 1984 General Election by a 65 percent to 35 percent margin.

### **Legislative Reform Proposals (1985-1988)**

After the defeat of Proposition 40, over thirty different comprehensive reform proposals were considered in the next two legislative sessions. Although the proposals received varying levels of support and achieved varying degrees of success, none of the measures were sent to the Governor. Senator Bill Lockyer's **SB 90** was one of the more promising measures. Under its provisions, candidates for state legislative office would face either strict contribution or expenditure limits. At a specified time before an election, candidates would be required to choose to accept either contribution limits (\$1,000 from individuals, \$3,000 from PACs, and \$5,000 from political parties) or expenditure limits (\$230,000 for Senate candidates for the primary and \$405,000 for the general election, and \$115,000 for Assembly candidates for the primary and \$230,000 for the general election). In exchange for accepting expenditure limits, candidates would receive public matching funds from a Legislative Elections Fund. Taxpayers could transfer up to five dollars of their income taxes to the Fund by checking off a box on their tax forms. Nominees for legislative offices would have to reach specified fundraising thresholds in order to become eligible for public funds. Interestingly, the bill also proposed contribution limits for candidates for local offices. The measure passed the State Senate by a vote of 22-10, but was never considered by the Assembly. Senator Lockyer's subsequent measure, **SB 111**, faced a similar fate during the following session.

Assembly Member Filante proposed a unique alternative form of public financing in 1985. In order to persuade candidates to accept voluntary expenditure limits, Filante's **AB 4358** established a system of tax credits for small political contributors. The measure granted a 50% tax credit to individuals contributing \$100 or less to a candidate vying for office *in their district* and who agreed to expenditure limits. All other political contributions were not tax deductible. The proposal was defeated by the Assembly Ways and Means Committee.

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<sup>116</sup> California Common Cause, 1984.

<sup>117</sup> Fair Political Practices Commission, 1984.

In 1987, Assembly Member Jackie Speier introduced **AB 2051** to institute a system of public financing of campaigns, combined with contribution limits, voluntary expenditure limits, prohibitions on the transfer of campaign funds, and limits on the receipt of gifts and honoraria that Members of the Legislature and candidates for elective office could receive. Public funds would be available to candidates on a matching fund basis. Political contributions would no longer be tax deductible and taxpayers would instead have the ability to *add* up to \$3 to their tax liability to be deposited into a state political campaign fund. AB 2051 was defeated in the Assembly Elections and Reapportionment Committee.

Senator Milton Marks introduced **SCA 34** which called on the Legislature to enact limits on the source and amount of political contributions, prohibit the transfer of campaign funds, and provide public funding for candidates accepting expenditure limits. A fund would be created through either a voluntary "add-on" or "check-off" system. Unlike other proposals, details of the system were intentionally left out of the legislation. Rather, the purpose of the constitutional amendment was to have the public ratify the general framework of a comprehensive reform system while leaving the details to future legislative consideration. SCA 34 was defeated by the Senate Appropriations Committee.

### **Propositions 68 and 73 (1988)**

In 1984, the California Commission on Campaign Financing was created to examine the exploding cost of political campaigns in California. The Commission, a non-partisan, non-profit organization, contained prominent members of the business community, labor leaders, legal experts, and academics. The first Commission report, *The New Gold Rush: Financing California's Legislative Campaigns*, focused on problems in campaign financing and issued a series of recommendations for reform including a model law for state legislative campaigns. Bolstered by business support for the proposal, members of the Commission decided to sponsor an initiative and place the proposal on the ballot. The measure was placed on the June 1988 primary ballot as **Proposition 68**. Proposition 68 was directed only at state legislative elections. It contained the following key provisions:

- Limited contributions by individuals to candidates to \$1,000 or less per candidate and a total of \$25,000 per election.
- Limited contributions by political committees to \$2,500 or less per candidate and a total of \$200,000 per election.
- Limited contributions by "small contributor" political committees (PACs that accept no contributions over \$50) to \$5,000 or less per candidate per election.
- Prohibited non-election year contributions.
- Prohibited Assembly candidates from accepting \$50,000 or more from PACs and Senate candidate from accepting \$75,000 or more from PACs.
- Limited political parties to contributing \$50,000 to an Assembly candidate and \$75,000 to a Senate candidate.
- Prohibited transfers of funds between candidates.
- Established a system of public funding based on a taxpayer "check-off" system.



- Required candidates receiving public funds to collect a minimum amount of private money, be opposed by a candidate who had collected at least \$35,000, and voluntarily limit campaign spending and personal money expenditures.
- Matched contributions of \$250 or less from voters in the candidate's district on a 5 to 1 ratio. Matched all other contributions on a 3 to 1 ratio.
- Limited Assembly candidates to spending \$150,000 for a primary election and \$225,000 for a general election. For Senate candidates, limits were \$250,000 for a primary election and \$350,000 for a general election.

Three Legislators (Assembly Member Ross Johnson and Senators Montoya and Kopp) drafted a counter-initiative similar to Proposition 40, and qualified it for the ballot, where it was designated **Proposition 73**. Proposition 73 contained both campaign finance and ethics reform provisions for both legislative offices and statewide offices. Its most striking distinction from Proposition 68 was its ban on public financing for all political campaigns in California.

Proposition 73 contained the following provisions:

- Limited contributions from individuals to \$1,000 per candidate per fiscal year; limited political committee contributions to \$2,500; and limited broad-based political committees and political party contributions to \$5,000.
- Prohibited transfers of funds between candidates.
- Restricted gifts and honoraria for elected officials.
- Prohibited candidates for public office from receiving public campaign funds.
- Banned publicly funded newsletters and mass mailings.

As voters waded through the conflicting arguments of the Proposition 68 and Proposition 73 supporters, they were also confronted by a third group that opposed both sets of reform. The "No-No campaign" was lead by Assembly Speaker Willie Brown and Senate Majority Leader David Roberti and spent \$1.3 million.<sup>118</sup> Adding to the confusion was the presence of other complex and competing issues on the ballot, including auto insurance reform.

Proposition 68 passed by a margin of 53 percent to 47 percent. Surprisingly, Proposition 73, whose supporters spent just \$30,000 on the campaign, passed by a vote of 58 percent to 42 percent. Thus, during the same election, California voters both approved and disapproved the public financing of political campaigns. The passage of the two conflicting measures resulted in over five years of legal battles and court rulings and, some analysts contend, a disappointed and disillusioned electorate.

The California Constitution specifies that, "if the provision of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail."<sup>119</sup> Advocates of Proposition 73 claimed that it should be

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<sup>118</sup> Ibid.

<sup>119</sup> California Constitution Article II Section 10(b).

adopted in full and invalidate all of Proposition 68. Supporters of Proposition 68 countered that nearly thirty separate provisions of the initiative did not directly conflict and should therefore become law. The Fair Political Practices Commission attempted to sort out the separate provisions. However, supporters of Proposition 68 mounted a legal challenge against the FPPC. The California Supreme Court ruled in *Taxpayers to Limit Campaign Spending v. FPPC* that "because the two schemes were presented to the voters as alternative, competing measures, only Proposition 73, which received the higher number of affirmative votes, was effective...and that Proposition 68 was inoperative."<sup>120</sup>

While this ruling *apparently* sealed the fate of Proposition 68, the legal battles surrounding Proposition 73 continued. The next round of court rulings began when a number of opponents of Proposition 73 challenged the constitutionality of its contribution limit provisions. In *Service Employees International Union v. FPPC*, a federal district court found that because the contribution limits were based on fiscal years, rather than election cycles, they "unconstitutionally discriminate in favor of incumbents and their supporters and against challengers and their supporters."<sup>121</sup> Citing the Supreme Court decision in *Buckley*, the court also found the ban on the transfer of funds to be an unconstitutional expenditure limitation. The court did, however, suggest that a more narrowly defined restriction on transfers might be constitutionally acceptable. The ruling applied only to general and primary elections: the contribution limits and the ban on transfers of funds were retained for special elections. Other sections of the initiative remained in force.

Rather than disrupt campaigns already in progress, the court ruled that disputed the Proposition 73 limits would remain in force for state legislative candidates until the end of the 1990 election cycles. A report by California Common Cause found that fundraising by state legislative candidates decreased markedly under Proposition 73. Legislative candidates raised \$79 million in 1988, only \$52 million in 1990, and \$72 million in 1992.<sup>122</sup> However, the ratio by which incumbents were able to outraise and outspend challengers increased dramatically in 1990. In 1988 and 1992, incumbents outraised their opponents by five to one. In 1990, under Proposition 73, incumbents held an *eight to one* advantage in fundraising.<sup>123</sup> This seems to support the Court's reasoning.

Once Proposition 73's key provisions were declared unconstitutional, proponents of Proposition 68 moved to have it re-activated. They argued that because the contribution limits were invalidated for primary and general elections, "the remaining parts of Proposition 73 are likewise unenforceable because they are nonseverable from the invalid portions of the measure."<sup>124</sup> The California Supreme Court disagreed, ruling that the "claim must fail if any substantial part of Proposition 73 survives." Since the ban on publicly funded mass mailings in Proposition 73 "was a substantial feature of the

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<sup>120</sup> *Taxpayers to Limit Campaign Spending v. FPPC* 1990.

<sup>121</sup> *Service Employees International Union v. FPPC* 1990.

<sup>122</sup> California Common Cause, 1993.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Walter Gerken, et al. v. Fair Political Practices Commission*, 1993.

initiative," it prevented the re-institution of Proposition 68.<sup>125</sup> In a sharply worded dissent, Justice Arabian argued that "the overriding objective of the voters who supported the measure cannot be achieved."<sup>126</sup> He asserted that voters approved of both measures in order to ensure that one or the other would be adopted. Instead, only minimal aspects of one initiative have actually taken effect.

In March 1994 Senator Quentin Kopp and Assembly Member Ross Johnson petitioned the California Supreme Court to remedy the portions of Proposition 73 declared unconstitutional by the federal court by judicially changing the construction of contribution limits from a fiscal year to an election cycle basis. Although several justices appear to have encouraged this action, it remains unclear whether the court will revive the measure. A court decision is expected in August.

### **Proposition 131 (1990)**

In 1990, Attorney General John Van de Kamp proposed the third campaign finance initiative submitted to the voters in two years. With the support of Ralph Nader and California Common Cause, Van de Kamp crafted an initiative addressing numerous aspects of political reform. It became an integral part of his gubernatorial campaign. The measure, whose campaign finance provisions resembled Proposition 68, qualified for the November 1990 ballot and was designated as Proposition 131, the "Clean Government Initiative." It contained the following provisions:

- Term Limits. Elected statewide officials were limited to eight successive years in office and state legislators to twelve successive years.
- Limited on gifts and honoraria for public officials.
- Limited contributions from individuals to \$1,000 per candidate per election cycle. Limited political committees to \$2,500 per candidate, and broad-based political committees to \$10,000. Political parties were prohibited from contributing more than 1/6 of the applicable spending limit for the particular office being sought.
- Prohibited non-election year contributions.
- Required candidates to raise two-thirds of all contributions from individuals.
- Limited Assembly candidates to spending \$250,000 for a primary election and \$400,000 for a general election. For Senate candidates, the limits were \$425,000 for a primary election and \$700,000 for a general election.
- Public funds were to be provided by both General Fund appropriations and an income tax check-off program.

Proposition 131 was defeated by a wide margin, 38% to 62%.

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<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

## Legislative Reform Proposals (1989-1992)

In the three legislative sessions since the passage of Propositions 68 and 73, the California Legislature has considered over forty separate campaign finance measures. None have passed and gone to the Governor. It has proved difficult to build a political coalition able to pass a comprehensive reform plan, particularly since a 2/3 vote is required to amend the Political Reform Act, unless changes are approved by the electorate. In 1992, two competing campaign finance reform measures were introduced: **AB 2328**, which was sponsored by thirteen Republican Members, and **AB 2951**, which was sponsored by five Democrats.

- The Republican bill, AB 2328, was designed to simultaneously repeal and re-write the provisions of Proposition 73 that were ruled unconstitutional by the federal district court. The measure re-instated the Proposition 73 contribution limits but enforced them on an *election cycle* basis rather than a *fiscal year* basis. The bill also re-stated provisions prohibiting the use of public money for political campaigns and on mailing newsletters at public expense. The bill was defeated in committee.
- The Democratic measure, AB 2951, also repealed provisions of Proposition 73, and created a complex comprehensive system of contribution limits, voluntary expenditure limits, and public financing. *Contributions*: The bill limited individual contributions to \$1,000 per candidate per election. For political committees and small contributor political committees the limits were \$2,500 and \$5,000, respectively. Transfers of funds between candidates were prohibited and the total amount a candidate may raise from non-individuals was limited to 1/3 of the expenditure limits and from political parties to 1/6 of the expenditure limits. *Spending Limits*: To receive public funds, candidates had to agree to limit their spending. to \$200,000 in the primary and \$250,000 in the general election for Assembly candidates, \$350,000 in the primary and \$450,000 in the general election for Senate candidates, \$1.3 million in the primary and \$2.4 million in the general election for all statewide officials (other than Governor), and \$4.5 million in the primary and \$7.2 million in the general election for candidates for Governor. Candidates had to limit their personal expenditures to between \$25,000 and \$100,000, depending on the office being sought. The bill contained a unique provision regarding independent expenditures. Candidates whose opponents had independent expenditures in excess of 1/6 of the spending limit made on their behalf could have their spending limits increased by that amount. *Matching Funds*: The bill established a system of 1 to 1 public matching funds for the first \$250 of each contribution. The bill also established some unique disclosure provisions. The measure was defeated despite receiving a simple majority in the Assembly, 42-33.

Even had it passed, AB 2951 would have taken effect only if SCA 4 (Keene) had been passed by the Legislature and ratified by the voters. SCA 4 amended Article II of the California Constitution to require the Legislature to institute a system of comprehensive campaign financing including contribution and expenditure limits, limited public matching funds, and a prohibition on the transfer of campaign funds between candidates. The measure passed the Senate on a 28-6 vote, but was defeated 35-37 in the Assembly.

## **APPENDIX B: CURRENT SELECTED PROVISIONS OF THE POLITICAL REFORM ACT**

### **Disclosure Provisions:**

- Candidates, elected officers, and political committees are required to file semi-annual statements and two pre-election statements as specified before each primary and general election.
- Ballot measure committees are required to file semi-annual statements and two statements prior to the election the measure appears on the ballot.
- Candidates, elected officers, political committees, and ballot measure committees are required to report all contributions of \$100 or more and the sum of all contributions under \$100.
- Any individual or committee making independent expenditures which total \$500 or more must issue semi-annual reports which include detailed information for all expenditures in excess of \$100.

### **Campaign Finance Provisions:**

- Individuals, political committees, and political parties may make unlimited contributions to candidates for primary and general elections, political committees, and political parties.
- Candidates in primary, general, and special elections may make unlimited expenditures.
- Candidates, elected public officials, and their campaign committees may make unlimited transfers of funds to other candidates, elected public officials, and campaign committees.
- Candidates, elected officials, political committees, and political parties may accept an unlimited amount and number of contributions during non-election years.
- Candidates may carry-over an unlimited amount of campaign funds from one election to another, and from one year to another.
- Candidates for public office may expend an unlimited amount of their personal or family funds on their own campaigns.
- Individuals, political committees, and broad based political committees may make an unlimited number and amount of independent expenditures on behalf of candidates, political parties, ballot measures, or for other purposes.
- Contributions to, and expenditures by, ballot measure campaigns are unlimited.
- Special Elections: Individuals may contribute up to \$1,000 per candidate; political committees may contribute a total of \$2,500 or less; and broad based political committees may contribute up to a total of \$5,000.
- Candidates for public office are prohibited from accepting or expending public moneys for their campaigns.

## **APPENDIX C: SELECTED CAMPAIGN FINANCE LEGISLATION INTRODUCED IN THE 1993-94 REGULAR SESSION\***

### **Contribution Limits Legislation:**

#### ***SB 1693 (Campbell)***

SB 1693 would establish the most strict contribution limitations in the nation. The bill would prohibit candidates from soliciting or accepting any contribution for an election campaign in excess of \$10, unless the contributor resides in the district of the office to which the candidate is seeking election. Constituent contributors may contribute up to \$250. SB 1693 was defeated by the Senate Committee on Elections and Reapportionment.

#### ***SB 1897 (Hayden)***

SB 1897 would prohibit any individual appointed to a board or commission by the Governor, Speaker of the Assembly, or the Senate Committee on Rules from soliciting contributions from anyone with business before that board or commission. Appointed officials would also be prohibited from engaging in fundraising activities which would benefit the appointing public official or committee member. SB 1897 was defeated by the Senate.

#### ***AB 569 and ACA 4 (Friedman)***

These companion measures would limit off-year fundraising by all legislative and statewide candidates. Candidates would be prohibited from soliciting or receiving funds prior to October 1 for legislative candidates and July 1 for statewide candidates in the year before they seek election. The legislation would also lengthen the terms of Members of the Assembly from two to four years. Both bills were defeated by the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments.

#### ***AB 1343 (Johnson)***

AB 1343, is nearly identical to the provisions of AB 2328, introduced by Assembly Member Johnson in 1992 (See pg. A11 for discussion). AB 1343 was defeated by the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments.

#### ***AB 1761 (Frazee)***

AB 1761 would prohibit political committees from making contributions to candidates for public office or making independent expenditures on their behalf. The legislation would restrict contributions from individuals to \$1,000 per candidate and \$1,000 per political party. Only individuals would be allowed to contribute to political parties. Political

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\* Note: Bill descriptions and status are current as of July 1, 1994.

parties would be restricted to contributing \$5,000 to candidates for the Assembly, \$10,000 to candidates for the Senate, \$50,000 to candidates for the Board of Equalization, and \$100,000 to all other statewide candidates. AB 1761 was referred to the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments, where no action has been taken.

***AB 1993 (Bowen)***

AB 1993 would repeal all of Proposition 73, save the ban on publicly-funded mass mailings, and would establish individual contribution limits of \$1,000 to candidates, committees, or political parties; \$2,500 limits for political committees; and \$5,000 limits for small contributor committees. The bill would limit the aggregate amounts which individuals, political committees, and small contributor committees may contribute in one two-year election cycle. Transfers between candidates, and non-election year fundraising would be prohibited. AB 1993 would also increase funding for the FPPC, and increase the maximum penalties for violations of Title IX from \$2000 to \$5,000 per violation. Detailed requirements are specified for the use of surplus campaign funds officeholder accounts. Independent expenditures by individuals or committees on behalf of candidates would be prohibited once an individual or committee has donated \$500 or more to that candidate. AB 1993 was defeated by the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments.

***AB 3224 (Jones)***

AB 3224 would repeal provisions of Proposition 73 declared unconstitutional by the federal courts, limit contributions by political parties to \$5,000 and prohibit transfers of funds between candidates. The legislation would also prohibit all anonymous or cash contributions and off-year fundraising. AB 3224 was defeated by the Assembly Elections, Reapportionment, and Constitutional Amendments Committee by a 2-3 vote.

***ACA 41 (McPherson)***

ACA 41 is a statutory initiative requiring a 2/3 Legislative vote to be placed on the next statewide ballot. It would establish a campaign finance system including the following provisions: contribution limits; prohibitions on corporate and labor union contributions; a prohibition on public financing of state elections; and restrictions on the transfer of campaign funds. The contribution limits would be set at \$1,000 per year from individuals, \$2,500 per election cycle from political committees, and \$5,000 per election cycle from broad-based political committees. ACA 41 is currently under consideration by the Assembly Elections, Reapportionment, and Constitutional Amendments Committee.

## **Expenditure Limits/Public Funding Legislation:**

### ***AB 3631 (Karnette)***

AB 3631 addresses the current tax check-off system, including the California Election Campaign Fund which provides public money to political parties. This legislation would repeal all of the ten programs listed on tax returns which receive less than \$100,000 in 1996. If current check-off trends continue, the California Election Campaign Fund would probably garner that amount of money. The legislation was passed by the Assembly Committee on Revenue and Taxation and is under consideration by the Assembly Ways and Means Committee.

### ***ACA 39 (Jones)***

ACA 39 would prohibit a county or city charter from authorizing the expenditure of public funds for political campaigns within their jurisdictions. The legislation is currently being considered by the Assembly Committee on Local Government.

## **Comprehensive Legislation-(Includes Contribution Limits, Expenditure Limits, and Public Financing)**

### ***SB 588 (Lockyer) and SCA 14 (Marks)***

SB 588, and its companion measure, SCA 14, proposed a system of comprehensive campaign finance for state legislative offices which includes contribution limits, expenditure limitations, public financing, and restrictions on independent expenditures. SCA 14 would have required the Legislature and Governor to establish such a system on or before December 31, 1995, but it was defeated in the Senate. SB 588 was then amended and is now a statutory initiative to be placed on the next statewide ballot for ratification if enacted. SB 588 has passed the Senate and is now on the Assembly floor.

### ***Contribution Limits:***

- SB 588 limits contributions from qualified organizations to \$5,000 per state legislative candidate per election and from political parties to 1/3 of the applicable spending limit. All other contributions would be limited to \$2,000.
- State legislative candidates would be allowed to raise up to \$20,000 (for Assembly candidates) or \$40,000 (for Senate candidates) in "seed money" which would not be subject to the limitations.
- The bill prohibits transfers between candidates.

### ***Matching Public Funds and Expenditure Limits:***

- In order to receive public matching funds, candidates would have to raise a specified amount of money, be opposed on the ballot, and agree to abide by expenditure limits based on the average number of registered voters per district in California.



- Assembly candidates could spend no more than \$1.75 per registered voter for the general election. Senate candidates would be limited to \$1.50 for the general election.
- Public funds for qualifying candidates would be provided through a tax check-off system for the general election only.
- Contributions would be matched 4 to 1 for the first \$100, 3 to 1 for any amount between \$101 and \$500, and 2 to 1 for any amount between \$501 and \$1,000.
- Independent expenditures on behalf of a candidate by anyone contributing more than \$100 to that candidate would be prohibited.

### ***SB 878 (Hayden)***

SB 878 would create a very stringent comprehensive campaign financing system. The bill would prohibit all political contributions in excess of \$100. Candidates would be eligible to receive matching funds in exchange for agreeing to abide by expenditure limits. The limits would be set at the following levels: for Assembly candidates, \$100,000 for the primary election and \$150,000 for the general election; for Senate candidates, \$150,000 for the primary election and \$225,000 for the general election; for Gubernatorial candidates, \$1 million for the primary election and \$1.8 million for the general election; for all other statewide offices, \$250,000 for the primary election and \$450,000 for the general election. The Legislature would appropriate \$5 million of State General Funds to finance the matching funds program. SB 878 is in the Senate Committee on Elections and Reapportionment.

### ***SCA 13 (Lockyer)***

SCA 13 would add Section 21 to Article II of the California Constitution requiring the Legislature to enact a system of campaign financing prior to 1995 which would contain: contribution limits, expenditure limitations, and partial public funding for state legislative candidates. The bill differs from SCA 14 (Marks) because it also requires the Legislature to establish provisions governing the use of non-campaign officeholder expense accounts and to set contribution limits for local officials. The bill is in the Senate Committee on Elections and Reapportionment.

### ***SCA 21 (Hayden)***

SCA 21 would add sections to Article II of the California Constitution. It would prohibit candidates for state office from accepting campaign contributions in excess of \$1,000 from individuals, \$2,500 from political committees, and \$5,000 from small contributor committees. The bill would prohibit candidates from soliciting or accepting contributions before October 1 of the year prior to that in which the candidate is seeking election. The transfer of funds to other candidates or campaign committees would be prohibited. The legislation requires the creation of a public matching funds program whereby the first \$250 of contributions would be matched. To receive matching funds, candidates would have to agree to expenditure limits set at varied rates depending on the office being sought. SCA 21 is in the Senate Committee on Elections and Reapportionment.

***AB 3694 (Bowen)***

AB 3694, which would be placed on the ballot as a statutory initiative, is similar to AB 1993, also introduced by Assembly Member Bowen. The two bills differ in one respect. AB 3694 would create a Legislative Election Fund paid for with income tax check-offs which would provide public funds to qualified candidates facing wealthy opponents. Candidates would be eligible to receive one dollar for every dollar in personal money spent by his or her opponent. AB 3694 was defeated by the Assembly Elections, Reapportionment, and Constitutional Amendments Committee.

***ACA 12 (Sher)***

ACA 12 would amend Article IV of the California Constitution to require the California Legislature and Governor to enact a system of campaign financing which would include contribution limits, expenditure limitations, restrictions on the transfer of funds, and limited public financing. The bill passed the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments, and is currently in the Assembly inactive file.

**Campaign Disclosure Legislation:**

***SB 758 (Hayden)***

SB 758 would require any committee receiving contributions or making campaign expenditures totaling \$30,000 or more, to file their campaign disclosure statements on computer diskette as well as hard copy. The Secretary of State would be required to establish a system whereby all campaign contribution records would be recorded in a computer database and made electronically available to the public through the Internet and through traditional print methods by January 1996. The information would be available to any individual with access to a computer bulletin board or through public libraries. SB 758 was passed by the Senate but was defeated in the Assembly Elections, Reapportionment, and Constitutional Amendments Committee.

***AB 2052 (Margolin)***

AB 2052 would broaden disclosure requirements for political committees. Currently, the Political Reform Act requires all committees making campaign contributions or independent expenditures to file periodic campaign statements. This bill would similarly require political committees to disclose payments to slate mailer organizations. AB 2052 was passed by the Assembly and is currently in the Senate inactive file.

***AB 2220 (Martinez)***

AB 2220 would increase the maximum monetary penalty for violation of the Political Reform Act from \$2,000 to \$4,000. This bill has been passed by the Assembly and is being considered by the Senate Elections and Reapportionment Committee.

***AB 2503 (Bowler, Conroy, Honeycutt, and Richter)***

AB 2503 would require a candidate or committee which makes a late campaign contribution or late independent expenditure to include in their late contribution report the date and amount of that contribution along with the cumulative amount contributed to or spent on behalf of the recipient candidate or ballot committee. AB 2503 passed the Assembly but was defeated by the Senate Committee on Elections and Reapportionment.

***AB 2504 (Bowler)***

AB 2504 would require candidates or campaign committees to return any contribution of \$500 or more which does not specify the occupation and employer of the contributor. AB 2504 was defeated 3-3 by the Assembly Elections, Reapportionment, and Constitutional Amendments Committee.

***AB 3181 (Costa)***

AB 3181 amends the system for qualifying initiatives for the ballot. It also requires committees supporting or opposing the qualification of an initiative to file additional campaign statements 30 days after the initiative is titled and 21 days after a petition is filed. This bill requires all late contribution reports filed by contributors, candidates, and committees to include the cumulative total of all contributions made to the recipient candidate or ballot committee. AB 3181 passed the Assembly and was reported out by Senate Committee on Elections and Reapportionment.

***AB 3611 (Moore)***

AB 3611 would require the Secretary of State to develop a program which utilizes electronic information processing and dissemination technology to improve the availability of campaign disclosure information. The bill requires that the Secretary of State issue a report on the scope and cost of the program by July 1995. AB 3611 was passed by the Assembly Elections, Reapportionment, and Constitutional Amendments Committee and is currently being considered by the Assembly Ways and Means Committee.

## APPENDIX D: CAMPAIGN FINANCE IN SELECTED JURISDICTIONS

### Contribution Limits

#### *San Diego, California*

San Diego has one of the most stringent contribution limit schemes in the nation. The San Diego Municipal Election Campaign Control Ordinance was enacted in 1973. The purpose of the ordinance is to "preserve an orderly political forum in which individuals may express themselves effectively; (and) to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections."<sup>127</sup> In order to accomplish this, candidates are allowed to accept contributions from individuals in amounts not exceeding \$250 per election cycle. Contributions from other sources are prohibited, including from corporations, unions, political committees, and political parties.

A recent study conducted by the San Diego Elections, Campaign and Governmental Ethics Advisory Board evaluated the effectiveness of the city's campaign finance ordinance, and made recommendations for further reform. The study found that while "campaign spending in San Diego municipal elections has not historically been subject to the excess evident in California state and federal elections,"<sup>128</sup> the ordinance creates a number of unintended consequences. Specifically, the stringent contribution limits are "badly outdated...fail to take into account inflation, and give wealthy candidates an unfair advantage over the less well-funded. It disadvantages less well-known challengers with a more limited base of donors in favor of wealthy individuals and better known incumbents."<sup>129</sup> Because *Buckley v. Valeo* prohibits restrictions of the amount of money candidates may contribute to their own campaigns, personal money plays a large role in San Diego elections.<sup>130</sup> In order to rectify this problem, the Board recommended raising the limits to \$350 per election. In addition, the Board suggested prohibiting non-election year fundraising by mayoral and city council candidates in order to encourage competition.

### Expenditure Limits

#### *West Virginia*

In 1987, West Virginia enacted the first voluntary expenditure limit program not supported by public financing. The restrictions comprise a significant portion of a Code of Fair Campaign Practices and grew out of a failure by the state Legislature to adopt binding statutory restrictions on campaign spending and \$1,000 contribution limits.<sup>131</sup> Under the current system, candidates for state and federal office may sign the Code, which includes a

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<sup>127</sup> Government Code Section 81002 (a).

<sup>128</sup> *Buckley v. Valeo* 1976.

<sup>129</sup> San Diego Municipal Code §27.2901

<sup>130</sup> The City of San Diego Elections, Campaign, and Governmental Ethics Advisory Board 1993.

<sup>131</sup> Alexander, Goss, and Schwartz 1992.

pledge to refrain from issuing slanderous or distorted campaign advertising, and which states "I personally support a limit on campaign expenditures that, when reasonable, sufficient, and fairly applied, does not limit or restrict the expression of ideas of the candidate or others on behalf of the candidate, but instead challenges individuals to engage in open dialogue on the issues rather than merely to pursue the excessive repetition of images and slogans. Accordingly, I adhere to the following limits on campaign spending."<sup>132</sup> The limits, *per election*, are as follows.<sup>133</sup>

U.S. Senate -----	\$1,000,000
U.S. House of Representatives -----	\$333,333
Governor -----	\$1,000,000
Other Constitutional Officers -----	\$100,000
Supreme Court -----	\$125,000
State Senate -----	\$25,000
House of Delegates -----	\$12,500
Circuit Judge -----	\$25,000

Candidates exceeding the limits are not liable for fines or legal sanctions: "if a candidate violates the Code's limits, it allows an opposition candidate to point to that.... The only sanctions are the sanctions of the news media and the opposing candidate."<sup>134</sup> Although no gubernatorial candidates have agreed to limit their spending since the Code was implemented, state officials report that spending has "dipped dramatically" in state legislative campaigns since the Code was adopted. In its first year of operation (1988) nearly 75 percent of successful legislative candidates abided by the self-imposed limits, while about a third of candidates have agreed since.<sup>135</sup>

### *Vermont*

Vermont became the second state to pass legislation creating a system of voluntary expenditure limits not accompanied by public financing in 1992. Under the Vermont act, candidates are required to file a statement voluntarily accepting or declining specified expenditure limits, and a pledge not to solicit independent expenditures on or before August 1 for the September primary election. The limits vary depending on the office being sought and the status of the candidates. For each of the specified levels, challengers are allowed to spend 110 percent of the listed amounts. Gubernatorial candidates are limited to expending no more than \$400,000 combined in the primary and general elections, while other statewide candidates are limited to spending between \$40,000 and \$100,000 depending on the office. Vermont places amazingly low spending limits on legislative candidates. State Senators are restricted to spending no more than \$4,000 for both the primary and general elections, while State Representatives from single member districts are limited to \$2,000, and Representatives from double member districts to

<sup>132</sup> State of West Virginia Code of Fair Campaign Practices.

<sup>133</sup> For example, Senate candidates may spend \$50,000 for the primary and general elections combined.

<sup>134</sup> West Virginia Secretary of State Ken Heschler in Institute for Southern Studies, 1993.

<sup>135</sup> Institute of Southern Studies, 1993.

\$3,000. Two weeks after pledges are filed with the Secretary of State, a list of candidates accepting limits is issued by the Secretary of State. Candidates agreeing to the limits and then exceeding the amounts are required to remit the extra amount to the state general fund within ninety days after the election or be fined by the Secretary of State.

The effectiveness of expenditure limits by themselves seem to be limited. Without public subsidies or any other incentive for limiting spending, save possible public approval, most candidates are unlikely to limit their spending. Furthermore, although the expenditure limits are voluntary, because candidates are not offered public funds, in accordance with Supreme Court mandates, this program might be ruled unconstitutional.<sup>136</sup> New Hampshire, which has a similar program, waives high candidate filing fees and signature requirements for candidates accepting voluntary limits in order to pass the constitutionality test without actually distributing public funds. Lastly, the enforcement provisions of the Vermont act are exceptionally weak. Candidates who choose initially to limit their spending and then exceed these limits, might simply engage in fundraising after the election to avoid a fine.

### **Variable Contribution Limits**

#### *Oakland, California*

In 1993, Oakland adopted a unique blend of contribution limits and expenditure limits. Finding that large contributors were having an increasingly "disproportionate or controlling influence on the election of candidates...(causing) the public perception that votes are being improperly influenced by monetary contributions (and that) raising large amounts of money distracts officeholders from important public matters,"<sup>137</sup> the Oakland City Council crafted The City of Oakland Campaign Reform Act.

The measure, which will take effect for the 1994 elections, is designed to limit both fundraising and spending for Mayor, City Council, City Auditor, and School Board primary and general elections without appropriating public funds. The Act contains voluntary expenditure limits based on the current salary of city council members and the mayor. Candidates agreeing to the expenditure limits are allowed to accept contributions at higher levels than candidates choosing not to limit their spending.

Candidates who refuse to limit their expenditures are prohibited from receiving individual contributions in amounts not to exceed \$100 per election, and contributions more than \$250 from broad based political committees. In contrast, candidates who voluntarily participate in the program are prohibited from accepting contributions in excess of \$500 from individuals and \$1,000 from broad based political committee per election. Partisan transfers are permitted within contribution limits for all candidates. In exchange for the ability to raise funds in larger amounts, City Council and School Board candidates must restrict their spending to 300 percent of the salary of a city council member for the

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<sup>136</sup> See discussion of expenditure limitations and public financing, pg. 33.

<sup>137</sup> City of Oakland Ordinance No. 11612 C.M.S. "The City of Oakland Campaign Reform Act".

primary election and 250 percent for the general election (approximately \$50,000 and \$42,000, respectively). City Auditor and Council Member-At-Large candidates are limited to 500 percent of a council member's salary for the primary election and 400 percent for the general election (approximately \$85,000 and \$67,000, respectively). Mayoral candidates are limited to 300 percent of the mayor's salary for the primary and 250 percent for the general (approximately \$240,000 and \$200,000, respectively).

While the Oakland Act is being implemented for the first time in the 1994 elections, there is a chance that the measure might be ruled unconstitutional. The expenditure limits might pass Supreme Court muster, but contribution limits appear to violate the intent of the *Buckley v. Valeo* decision, in which contribution limits are permitted only for the purpose of preventing corruption or the appearance of corruption. The variable contribution limit system suggests that money is corrupting at one level for certain candidates but at a higher level for other candidates.

New Hampshire currently operates a system of variable contribution limits while Washington voters rejected a similar plan in a 1992 campaign reform initiative. Rhode Island and Kentucky have recently enacted laws that include expenditure limits and both variable contribution limits and public financing in case the variable limits are ruled unconstitutional.<sup>138</sup>

## **Public Financing Without Expenditure Limits**

### ***Massachusetts***

In 1975, Massachusetts implemented a system of voluntary public funding without expenditure limits for statewide election campaigns. The program is funded through a tax add-on system. Public participation rates hover around 2 percent.<sup>139</sup> However, because the program is available only to statewide candidates, the fund builds during the four year cycle between elections, and adequately funds the program.

In order to qualify for the program, candidates must receive a threshold amount of money in contributions of \$250 or less. Unlike most public financing systems, candidates are eligible to receive funds for both the primary and general elections. However, candidates are required to raise threshold amounts for each election. Gubernatorial candidates are required to raise \$75,000 for the primary election and \$125,000 for the general election to qualify for matching funds. Levels for other statewide candidates are considerably lower. Depending on the office and the election, candidates receiving public funds must raise between \$15,000 and \$62,500 in small contributions.

The program was initially begun to ensure that spending would not be excessively restricted after the imposition of contribution limits. Massachusetts restricts contributions to candidates or any political committee from individuals, political action committees,

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<sup>138</sup> Common Cause State Issue Brief, 1993.

<sup>139</sup> Alexander, Goss, and Schwartz, 1992.

political parties, and partisan transfers. Under state law, individuals and PACs are prohibited from contributing in excess of \$1,000 per candidate per calendar year. Political parties are limited to \$3,000 per candidate per calendar year. Partisan transfers are capped at \$100 each.

Allocation of the public campaign fund depends upon taxpayer participation in the program and the aggregate amount raised. However, state law specifies that 60 percent of the fund be used for the primary election and 40 percent be used for the general. Qualifying candidates receive matching funds for contributions of \$250 or less up to a specified maximum amount. Prior to 1990, when the campaign fund was at an especially low level, candidates did not routinely reach the maximum funding level. However, all candidates receiving public funds in 1992 maxed out on public funds. The program reached its maximum funding levels in 1986, when the gubernatorial candidates received a total of \$270,000 and candidates for attorney general campaign received \$250,000 for the two elections.

## **Comprehensive Campaign Finance Systems**

### ***Minnesota***

Minnesota was the first state to adopt a comprehensive system of public financing for both state legislative and gubernatorial candidates, in its Ethics in Government Act of 1974. In addition to unique contribution limits, expenditure limits, and public financing, the bill created substantial campaign and lobbying disclosure provisions, and a State Ethical Practices Board. Due to an exceptionally high participation rate by candidates, the Minnesota system is typically considered a model for other states. In 1992, 441 of the 457 candidate eligible for public funding accepted expenditure limits in exchange for the funds. This 97 percent acceptance rate has actually grown from a low of 88 percent in 1988.<sup>140</sup> For this reason it is worthwhile to examine the Minnesota system in detail.

### ***Contribution Limits:***

- Candidates for Governor and Lieutenant Governor, who run as a team, may not accept contributions from individuals or political committees in excess of \$20,000 during a given election year, or \$3,000 in all other years. They are also prohibited from accepting contributions from political parties in excess of \$100,000 during an election year and \$15,000 during a non-election year.
- Candidates for Attorney General may receive up to \$10,000 in an election year and \$2,000 in a non-election year from individuals and political committees, and \$50,000 in an election year and \$10,000 in a non-election year from political parties.
- All other statewide executive candidates are limited to half the allowable limits for Attorney General.
- State Senate candidates are prohibited from accepting contributions over \$1,500 in an election year and \$500 in a non-election year from individuals and political committees

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<sup>140</sup> Ibid.



and \$7,500 in an election year and \$2,500 in a non-election year from political parties. State Representative candidates are limited to half the limits for State Senate.

*Voluntary Expenditure Limits:*

Candidates accepting public funds in exchange for spending limits are prohibited from spending more than the following amounts per calendar year (to be annually adjusted each year based on the Consumer Price Index):

- Candidates for Governor and Lieutenant Governor are limited to approximately \$1,700,000 during an election year and 25 percent of the expenditure limit in a non-election year.
- Candidates for Attorney General are limited to approximately \$275,000 during an election year and 25 percent of the expenditure limit in a non-election year.
- Other state executive office candidates (Secretary of State, Treasurer, and Auditor) are limited to approximately \$140,000 during an election year and 25 percent of the expenditure limit in a non-election year.
- State Senate candidates are limited to approximately \$42,000 during an election year and 25 percent of the expenditure limit in a non-election year.
- Candidates for State Representative are limited to approximately \$22,000 during an election year and 25 percent of the expenditure limit in a non-election year.

There are two exceptions to these limits. First, if a primary candidate wins a primary election with less than twice as many votes as the second place finisher, a "close primary rule" allows that candidate to spend a total of 125 percent of the limit during that election year. Second, if a candidate accepting public financing is opposed by a candidate who qualifies for public funds but does not join the program, the first candidate's expenditure limits are lifted.

*Public Financing:*

Minnesota's public financing provisions are supported by a tax check-off system whereby taxpayers can designate up to \$5 to be placed in the State Elections Campaign Fund. Contributions may be designated to either a specified political party fund or a general candidate account. To be eligible, candidates must agree to limit their expenditures and must raise contributions equal to 20 percent of the limit by October 1 of the election year. Funds from the general account are dispersed to candidates in November after election results have been certified. In addition statewide candidates must receive 5 percent of the vote and state legislative candidates 10 percent of the vote in the general election in order to receive public funds.

Once candidates are certified to receive funds, the general candidate account is apportioned by the Ethical Practices Board based on the following proportions: 70 percent of the general campaign funds are divided equally among state legislative candidates, 21

percent among gubernatorial candidates, and 9 percent among the remaining executive office candidates.

Funds from the political party account are dispersed in October after primary results are certified. 10 percent of the funds in the party account are allocated directly to the state parties as specified by taxpayer check-offs. 70 percent are allocated to the winners of state legislative primaries depending on the amount of money checked off in the candidates' district. This results in substantial variability between candidates across the state. The remaining 20 percent of the funds are allocated to statewide candidates, with gubernatorial candidates receiving 14 percent of the political party account. The twin account system thus allows taxpayers either to designate funds for general distribution or based on partisan identification. Distribution of money based on this system was as follows for the 1990 election:<sup>141</sup>

Office	Democratic	Republican
Governor/Lt. Governor	\$408,231	\$0
Attorney General	\$69,983	\$56,983
Secretary of State	\$34,991	\$28,491
State Auditor	\$34,991	\$28,491
State Treasurer	\$34,991	\$28,491
State Senate	\$716,662	\$574,388
State Assembly	\$469,497	\$367,736

A special report published in April 1992, "Bankrolling the Legislature" highlighted flaws in the Minnesota campaign finance system. The report found that because "Minnesota has never restricted how much special interest money candidates can rake in even if they accept public financing...special interests are pumping more and more money into campaigns and getting results."<sup>142</sup> According to the report, "special interest" contributions have quadrupled during the sixteen year history of the program while public financing increased by 600 percent. The report referred to a loophole in the campaign finance law allows special interests to avoid contribution limits by contributing significant amounts to "Friends of..." committees that are separate from candidate campaign committees and not subject to regulation under state law. In addition, public financing provisions have disproportionately benefited incumbents in politically safe districts, including 24 legislators who were unopposed during the 1992 election. The report recommended:

- Limiting the aggregate sum of PAC contributions which a candidate may collect;
- Prohibiting candidates from creating numerous fundraising committees;
- Banning partisan transfers; and
- Encouraging contributions from small individual donors through tax breaks or a matching funds system.

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<sup>141</sup> Ibid.

<sup>142</sup> St. Paul Pioneer Press, 1992.

## *Wisconsin*

Wisconsin became the second state to institute a comprehensive campaign finance program for state legislative candidates and statewide officials in 1978. The law is unique because certain provisions, such as disclosure and contribution limits, apply to *all* state and local elections. Further, while public funds are provided only for the general election, expenditure limits apply to both the primary and general elections.

### *Contribution Limits:*

- Statewide candidates are prohibited from accepting contributions from individuals in excess of \$10,000; State Senate candidates are limited to \$1,000; and State Assembly candidates are limited to \$500. Certain judicial candidates may accept between \$1,000 and \$3,000 depending on the office and local candidates are limited to \$250.
- Political action committees may contribute much more than individuals to statewide candidates. The maximum PAC contribution is 4 percent of applicable expenditure limits. Gubernatorial candidates are prohibited from receiving contributions in excess of \$43,128. Contributions to other statewide officials are capped between \$8,625 and \$21,564 depending on the office. PAC contributions to legislative candidates have the same limits as for individual contributions (\$1,000 for State Senate candidates and \$500 for State Assembly candidates). Legislative candidates may not accept more than 45 percent of the expenditure limit in PAC contributions.
- While contributions from political parties are not explicitly capped at a certain level, candidates may not accept more than 65 percent of the expenditure limits from a combination of PAC and partisan sources.
- Corporations and labor unions are prohibited from making contributions.

### *Voluntary Expenditure Limits:*

The following spending limits apply to both the primary and general election combined:

- Gubernatorial candidates- \$1,078,200.
- Lieutenant Governor candidates- \$323,475.
- Candidates for Attorney General- \$539,000.
- All other statewide candidate- \$215,625.
- State Senate candidates- \$34,500, (not to exceed \$21,575 in either the primary or general election).
- State Assembly candidates- \$17,250 (not to exceed \$10,775 in either election).
- Candidates for local and county office are restricted to specified expenditure amounts based upon the population of their jurisdiction or district.

### *Public Financing:*

- In order to receive public funds for the general election, a candidate must have won the primary election, received at least 6 percent of the total votes cast for that office in

the primary election<sup>143</sup>, face an opponent, and receive at least 5-10 percent of the expenditure limits in contributions of \$100 or less depending on the office being sought.

- Candidates are entitled to the maximum 45 percent public funding grant only if they have not received PAC contributions. Public funding decreases in proportion to PAC funding.

Funds are raised through a \$1 tax check-off system. Three fourths of the money raised is appropriated to a legislative account and 25 percent is apportioned to an executive account. However, due to a decline in tax filer designations, insufficient funds are raised to fund all candidates to maximum grant level. Instead, all qualifying candidates may receive up to a certain portion of the available funds. For example, in 1990, all qualifying State Senate candidates received up to the maximum public funding amount, while the maximum grants for statewide officials dropped significantly (from \$485,190 to \$303,269 for gubernatorial candidates).<sup>144</sup>

In 1993, the Wisconsin Legislative Council created a Special Committee on Campaign Financing to study the effectiveness of this system and suggest possible reforms. The Special Committee uncovered a series of significant problems and proposed a massive restructuring of the campaign financing system.

**Contribution Limits:** The Committee found that limits on campaign contributions were not sufficient to ensure "public trust in the integrity of the election process" and also disproportionately benefited incumbents.<sup>145</sup> The Committee proposed to:

- Reduce the amount that individuals and political committees may contribute by 50 percent;
- Prevent the "bundling" of individual contributions; and
- Eliminate fundraising by elected officeholders from the date of inauguration until the passage of the biennial budget bill.

**Expenditure Limits:** The Committee found that expenditure limits were set at excessively low levels, "inadequate to enable candidates to conduct effective campaigns in competitive races, thereby reducing opportunities for the electorate to be informed regarding candidates and issues."<sup>146</sup> Further, these expenditure limits disproportionately discriminate against challengers. Finally, because of low limits, candidates were increasingly opting out of the voluntary program. In 1990, just 2/3 of eligible candidates agreed to limit their spending, and the Republican candidate for Governor became the first major party gubernatorial candidate to refuse the program. In order to address these issues, the Committee proposed to:

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<sup>143</sup> This provision is designed to regulate the number of minor party candidates eligible for public funds.

<sup>144</sup> Wisconsin Legislative Council, 1992.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

- Raise expenditure levels significantly, to \$2 million for gubernatorial candidates, between \$250,00 and \$700,000 for other statewide candidates, and \$80,000 and \$40,000 for Senate and Assembly candidates, respectively.
- Allow challengers to spend 125 percent of the new limits while restricting incumbents and open seat candidates to the specified amounts.

Public Funding: The Committee found that minor parties had been nearly shut out of public funding. Further, wealthy candidates and candidates supported by independent expenditures had a significant advantage in elections. The committee proposed:

- Eliminate the requirement that candidates receive 6 percent of the total primary vote to become eligible for public funds.
- Allow candidates whose opponent has independent expenditures made on his or her behalf to spend an identical amount in excess of the expenditure levels.
- Raise the tax check-off level from \$1 to \$3 to fully fund public financing provisions.

The Committee's recommendations were defeated by the Legislature.

### *Hawaii*

Hawaii became the third state to provide public funding to both gubernatorial and state legislative candidates in 1979. However, Hawaii's campaign financing system differs dramatically from its predecessors as the strength of Hawaii's program is its contribution limits, which encourage a reliance on state political parties.

#### *Contribution Limits:*

- Contributions from individuals, corporations, labor unions, and independent committees are limited to \$2,000 per candidate per election.
- Limits on political parties are much less stringent. Political parties may contribute up to 20 percent of the spending limit for gubernatorial candidates, 30 percent to State Senate candidates, and 40 percent to candidates for State Representative.
- A constitutionally questionable provision prohibits candidates and their immediate family members from contributing in excess of \$50,000 to their political campaigns. This appears to violate First Amendment protections as outlined by the Court in *Buckley v. Valeo*.
- Candidates for state legislative office and local offices (such as mayor, city council, or local board of education) are limited to only one fundraising event that costs more than \$25 per person to attend.

#### *Voluntary Expenditure Limits:*

Candidates voluntarily accepting spending limits are restricted to spending levels based on the number of registered voters in their district in the previous statewide general election. Because legislative district sizes and registration levels vary, spending limits vary substantially between state legislative candidates.

- Gubernatorial candidates are limited to spending \$1.25 per registered voter.
- Lieutenant Governor and State legislative candidates may spend \$.70 per registered voter.
- County Board of Education and other local candidates may spend only \$.10 per registered voter.
- Fundraising costs are not subject to the limits.

*Public Financing:*

- Public funds are available for both the primary and general elections.
- Candidates must raise a threshold amount of money in contributions of \$100 or less to qualify for public funds. Threshold amounts vary depending on the office being sought (\$1,000 for state legislative candidates to \$25,000 for gubernatorial candidates).
- Candidates for Governor, Lieutenant Governor, and Mayor receive public matching funds at a 1-1 ratio up to 20 percent of the applicable spending limit. All other qualifying candidates for elective office who agree to limit their spending are allocated \$250 for each elections.
- Public funds are raised through a \$2 tax check-off system. Hawaii has the highest participation rate in the country: 30 percent of taxpayers typically designate money to a political fund.<sup>147</sup>

Because Hawaii's spending limits are very restrictive and public funding levels are small, few candidates voluntarily limit their spending. Between 1984 and 1988, just ten candidates agreed to limit their spending out of 191 elections. After the public funding level was increased from \$50 to \$250 per election in 1990, eighteen legislative candidates participated in the program.

*Seattle, Washington*

Seattle was the first major municipality in the United States to adopt a comprehensive campaign finance system in 1978. The program was in effect for the 1979 and 1981 elections, was terminated by a sunset clause in 1981, reinstated in 1984 for the 1987 election, and was superseded in 1992 by a statewide initiative. Initiative 134, which prohibits the use of public funds for state and local elections, eliminated Seattle's authority to implement its comprehensive system, which included partial public financing in exchange for voluntary expenditure limits. Seattle's strict contribution limits remain in effect, however. Thus, the 1994 elections will provide an interesting test of contribution limits and will provide a meaningful comparison with previous elections in Seattle. Provisions of the original comprehensive Seattle Campaign Finance Program included:

*Contribution Limits:*

- All contributions to candidates for public office, regardless of the source, are limited to \$350 in a campaign year. Off-year contributions are prohibited.

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<sup>147</sup> Alexander, Goss, and Schwartz, 1992.

*Voluntary Expenditure Limits:*

Candidates receiving public matching funds may not spend more than the following amounts over a four year election cycle:

- Mayoral candidates- \$250,000.
- All other city candidates (City Attorney, City Comptroller, City Treasurer, and the City Council)- \$110,000.

*Public Financing:*

- Public funds are available for both the primary and general elections.
- To become eligible for public financing, mayoral candidates must collect \$30,000 and other city candidates \$20,000 in contributions of \$100 or less.
- Qualifying city candidates receive public matching funds at a 1-1 ratio of up to \$50 per contribution.
- Originally, matching funds were appropriated from the City of Seattle General Fund. When the program was re-instituted in 1984, the ordinance was amended to allow taxpayers to designate up to \$4 of their annual tax liability to a city election fund. The check-off appeared on the annual municipal electrical utility bill.

The City of Seattle Office of Election Administration evaluated the city's campaign finance system in 1988. The report identifies key quantifiable objectives:

- Encouraging small individual contributions;
- Mitigating the influence of large contributors; and
- Encouraging public participation in the electoral process.

The system met these objectives in closely contested city elections during the 1979 and 1981 elections, primarily by encouraging candidates to seek small contributors. The study discovered that:

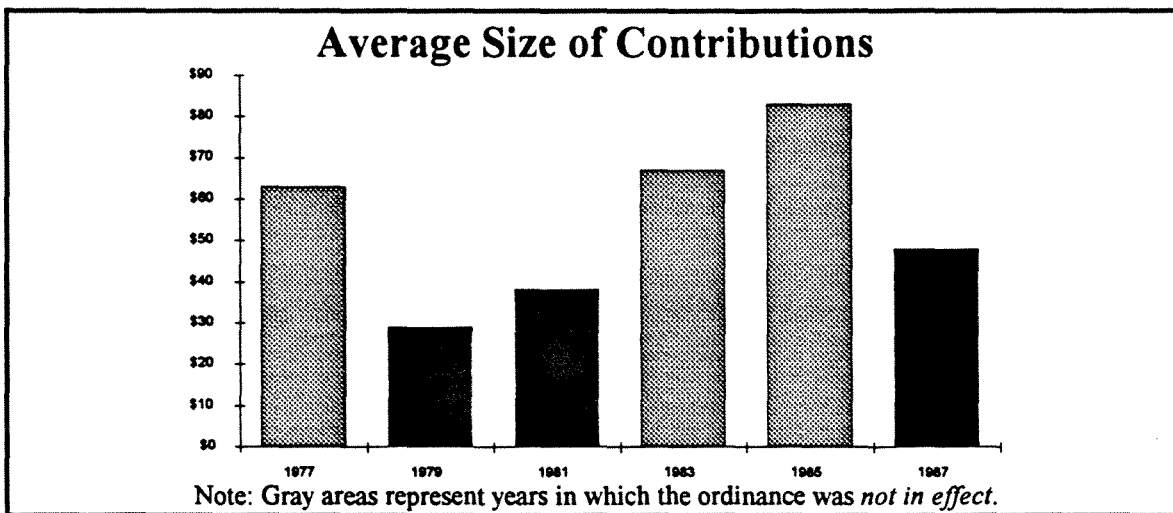
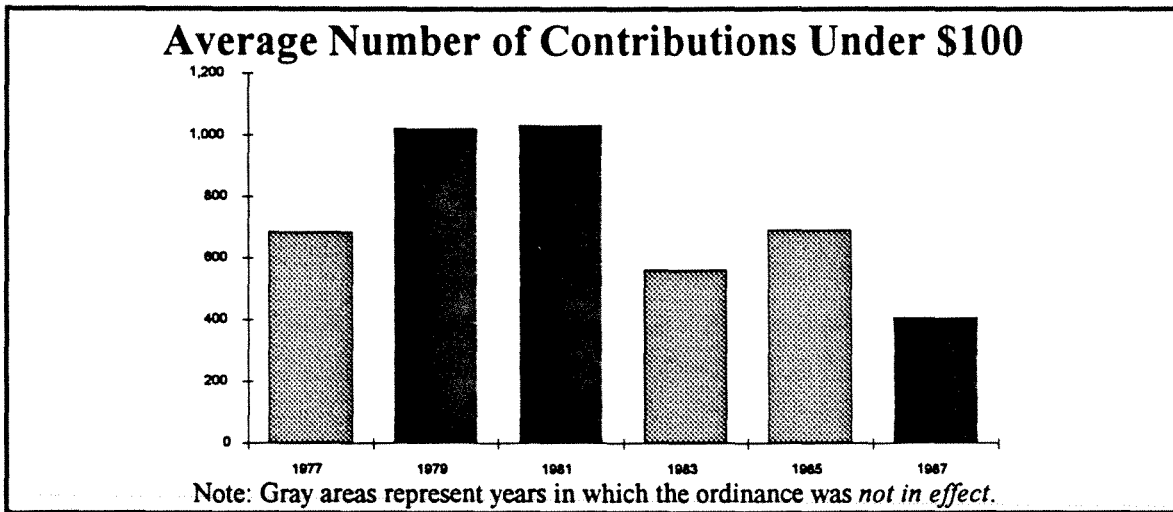
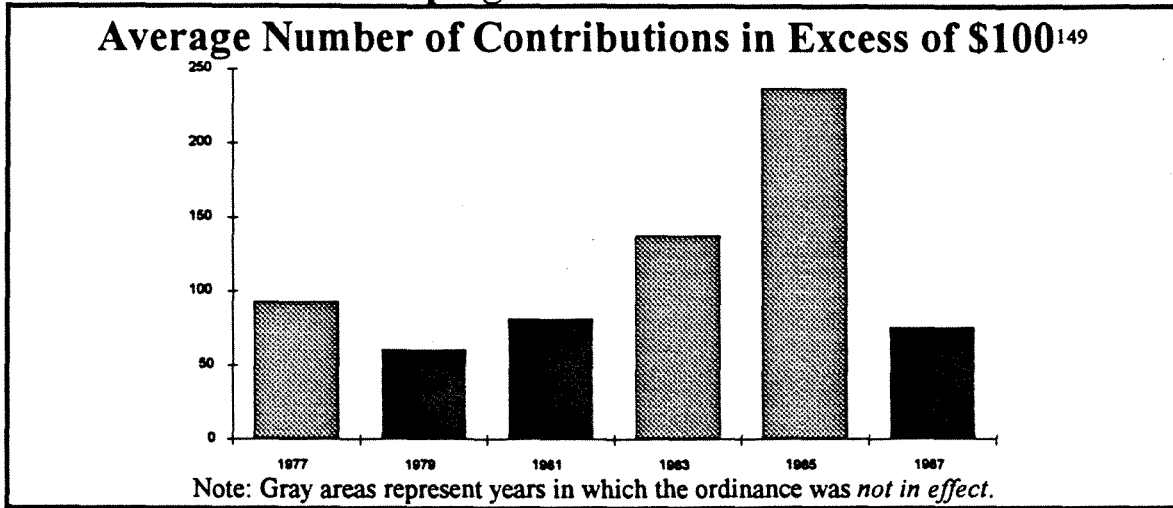
- There was a substantial decrease in the average contribution size;
- A decrease in the number of contributions exceeding \$100;
- A corresponding increase in the number of contributions under \$100; and
- An increase in the total number of contributors.

When the matching fund system was eliminated for the 1983 election, these trends reversed: large contributions increased and small individual contributions returned to previously low levels. Interestingly, when the ordinance was re-instated in 1987, many of these trends again reversed: the proportion of larger contributions decreased, and the average size of contributions decreased. The study concludes from this data that Seattle's public financing system largely met its stated objectives.<sup>148</sup>

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<sup>148</sup> Miller, 1988.

## Seattle Campaign Finance Data 1977-1987



<sup>149</sup> Miller, 1988.



## *Los Angeles, California*

The Los Angeles City Council approved City Charter Section 312 in 1985. The measure limits large contributions in city elections. Since that time, campaign finance provisions have been gradually added by city council and citizen-sponsored initiatives, creating the most comprehensive campaign financing system in California. In June of 1990, voters passed Measure H, which created the Los Angeles Ethics Commission, established considerable ethics regulations, provided a substantial salary increase for local officials, and instituted public financing for local elections. The stated purpose of the measure was to reduce campaign spending, decrease the influence of special interests, and increase competition in city elections. The measure was immediately challenged in court as a violation of Proposition 73's ban on public funding of California elections. The California Supreme Court upheld its validity in 1992, allowing it to take effect. The Court ruled that the California Constitution gives charter cities the right to legislate municipal affairs: "Proposition 73's prohibition on public financing does not preclude the City of Los Angeles from adopting and enforcing the public funding provisions of its campaign reform measure."<sup>150</sup> Counties do not have similar independent authority, however. The Court previously invalidated Sacramento County's public financing ordinance on the grounds that state law prevails over a conflicting county law in matters in which authority is not specifically delegated to counties in the California Constitution.<sup>151</sup> The provisions of Los Angeles' campaign finance system are as follows:

### *Contribution Limits:*

- Limited all contributions to candidates for citywide elected office to \$1,000 per election. Contributions to City Council candidates are capped at \$250 per election.
- Restricted candidates in the aggregate amount of money they may raise from non-individuals (PACs, political parties, labor unions, and corporations). Mayoral candidates may not accept more than \$900,000, while other citywide officials are limited to 400,000, and City Council candidates are limited to \$150,000. (If the Matching Funds Trust Fund does not contain enough money to fully subsidize all of the qualifying candidates up to the maximum level, this provision is discarded.)
- Permits citywide candidates to raise funds *only* during a period beginning twenty-four months prior to an election and ending three months after that election. City Council candidates may only receive contributions eighteen months prior to and three months after an election.
- Permits candidates to transfer campaign funds to political parties, ballot measure committees, and non-city candidates, but may not transfer contributions to other candidates for Los Angeles elected office.
- If a candidate participating in the matching funds program is opposed by an opponent who contributes in excess of \$30,000 of personal funds to his or her campaign, the participating candidate may raise the identical amount in contributions not subject to the above limits.

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<sup>150</sup> *Ross Johnson v. Tom Bradley*, 1992.

<sup>151</sup> *County of Sacramento v. Fair Political Practices Commission*, 1990.

### *Voluntary Expenditure Limits:*

Candidates who voluntarily accept spending limits in exchange for matching public funds are restricted to the following spending levels:

- Mayoral candidates- \$2 million for a primary election and \$1.6 million for a run-off election.
- Candidates for other citywide offices- between \$800,000 and \$900,000 for a primary election and \$600,000 and \$700,000 for a run-off election, depending on the office.
- City Council candidates- \$300,000 for a primary and \$250,000 for a run-off election.
- The costs of complying with campaign finance provisions, such as bookkeeping, legal services, and accounting, may reach up to 20 percent of the expenditure ceilings without counting toward total expenditures.
- If a candidate refuses to participate and spends more than the applicable spending limits, or benefits from large independent expenditures, the opposing candidate may receive public funds without following spending limits.

### *Public Financing:*

- Public funds are available to qualifying candidates for both the primary and run-off elections.
- To qualify, citywide candidates must raise a threshold amount of money in contributions of \$500 or less. City Council candidates must raise a threshold amount in contributions of \$250 or less. Threshold amounts vary from \$150,000 for mayoral candidates to \$25,000 for City Council candidates.
- To qualify, a candidate must be opposed by a candidate who qualifies for the program or has raised a specified amount of money.
- To qualify, a candidate must agree not to spend more than a specified amount of personal funds on their own campaign. The limit is \$100,000 for mayoral candidates and \$25,000 for City Council candidates.
- To qualify, a candidate must agree to hold at least one scheduled debate with their opponent prior to the primary election and two debates prior to the general election.
- Matching public funds are available to qualifying citywide candidates on a 1-1 ratio for each individual contribution of \$500 or less raised within one year prior to the election. City Council candidates may receive matching funds for individual contributions up to \$250.
- The amount of public funding a candidate may receive depends on the office being sought. Candidates for mayor may receive up to \$667,000 for the primary and \$800,00 for the run-off election, while City Council candidates may receive a maximum of \$100,000 in the primary election and \$125,000 in the run-off.
- \$2 million from the Los Angeles City General Fund is appropriated annually to a Matching Funds Trust Fund to finance this matching funds program.

Los Angeles has only held one citywide election under Measure H's provisions. Of the 119 candidates on the April 1993 primary ballot, only 28 received matching funds (totaling

\$3.3 million.) Of the ten candidates in run-off elections, nine received matching funds (totaling \$1.4 million.) Participation was clearly better in the run-off election. Still, Benjamin Bycel, Executive Director of the Los Angeles Ethics Commission, concluded that "the program increased the ability of challengers to compete."<sup>152</sup> While incumbents outspent their challengers by a 10 to 1 margin in 1989, and a 20 to 1 margin in 1991, incumbents outspent their challengers by just 3 to 1 in 1993 (under Measure H). More importantly, average spending by challengers increased dramatically from approximately \$15,000 in 1991 to nearly \$70,000 in 1993. Qualifying primary candidates received at least 48 percent of their campaign funds from small individual contributors. When combined with public grants, these candidates received an average of 64 percent of their funds from those contributors or the city of Los Angeles.<sup>153</sup>

Aggregate campaign spending increased during the 1993 election cycle. This appears to be the result of the increased number of serious challengers, because average spending by incumbents decreased. The central challenge facing administrators of the Los Angeles campaign finance law is to encourage more candidates to participate in the program.

### *New York, New York*

The New York City Council approved the Campaign Finance Act of 1988 to reduce "the influence of wealthy contributors on electoral campaigns and address the public perception that large contributions to candidates purchased special access to elected officials and purchased special privilege in the conduct of official business."<sup>154</sup> The ambitious Act also sought to increase participation by candidates and voters in more competitive elections. To accomplish these objectives, the City Council adopted a multifaceted approach to election reform. The reforms included:

- A Campaign Finance Board responsible for administering and enforcing the campaign regulations and producing and distributing a non-partisan voter guide to all registered voters in the city. The guide, which is printed in numerous languages, has been hailed as a national voter education model.
- An entirely voluntary comprehensive financing system. While most jurisdictions with comprehensive systems have voluntary expenditure limits in exchange for public funding, all aspects of the New York City system are voluntarily accepted in exchange for public funding. Candidates not accepting public money, are subject to much less stringent state laws governing contribution limits and disclosure.
- Disclosure provisions include a computerized Campaign Finance Information System that compiles detailed information from candidates' disclosure reports in an easily accessible format.

The Act was amended in 1992, and now contains a blend of voluntary contribution limits, expenditure limits, and partial public funding for city elections.

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<sup>152</sup> Benjamin Bycel testimony, Senate Committee on Elections and Reapportionment, October 28, 1993.

<sup>153</sup> City of Los Angeles Ethic Commission, 1994.

<sup>154</sup> New York City Campaign Finance Board "Dollars and Disclosure", 1990.

*Contribution Limits:*

- All participating candidates for citywide elected office are prohibited from soliciting or accepting contributions in excess of \$6,500 for the primary and general election combined. Contributions to participating candidates for Borough President are limited to \$5,000, while contributions to participating City Council candidates are capped at \$3,000 per campaign cycle.
- Non-participating candidates may not accept contributions in excess of the levels permitted by state law: \$100,000 per election cycle for citywide candidates and \$7,900 for City Council candidates.

*Voluntary Expenditure Limits:*

Candidates voluntarily accepting spending limits in exchange for matching funds are restricted to the following spending levels:

- Mayoral candidates- \$4 million on the primary election and \$4 million on the general election.
- Candidates for Comptroller and Public Advocate- \$2.5 million on each of the primary and general elections.
- Candidates for Borough President- \$900,000 for each election
- City Council candidates- \$105,000 for each election.

*Public Financing:*

To qualify for public funds, candidates must agree to abide by the contribution and expenditure limits, be opposed on the ballot, file extensive disclosure statements, and meet the following threshold levels:

- Mayoral candidates must collect \$250,000 in contributions from 1,000 New York City residents;
- Comptroller and Public Advocate candidates must receive \$125,000 in contributions from 500 city residents;
- Candidates for Borough President must raise between \$10,000 and \$50,000, depending on census figures, from 100 borough residents.
- City Council candidates must raise \$5,000 from 50 contributions residing within their district.
- All threshold contributions are subject to the contribution limits.

Qualifying candidates receive matching funds on a 1-1 ratio for each individual contribution of \$1,000 or less. Candidates facing a high spending non-participant receive matching funds at a rate of 2 to 1. City Council candidates may receive a maximum of \$40,000 per election (38 percent of the applicable spending limit). All other candidates are limited to a maximum of half of the applicable spending limit from public sources.

Following the 1989 elections, the New York Campaign Finance Program received a great deal of praise. The New York Times called the program "An Electoral Example for the Country,"<sup>155</sup> and numerous candidates, both winners and losers, credited the program with enabling them to run competitive campaigns based on community fundraising. Citywide elections were reportedly, "the most competitive in decades"<sup>156</sup> due to more equitable campaign spending levels. However, only half of the incumbents seeking re-election to the City Council agreed to participate in the program in 1989.

The Campaign Finance Board subsequently offered a number of amendments to the program to facilitate its use in City Council races, including increasing public grants. While only 34 percent of Council candidates participated in 1989, approximately 57 percent participated in 1991, and 86 percent of primary election candidates participated in 1993 as well as 56 percent of general election candidates. Electoral competition has also been enhanced. In 1989, only one third of City Council incumbents faced primary election challengers. This figure increased to one half in 1991. Further, the contested elections resulted in closer vote margins. The New York City Campaign Finance Board found that the margin of votes was five percent closer between incumbents and participating challengers than incumbents and non-participating challengers in the primary election and 11 percent closer in the general election. During the 1993 election, the Board reports that 78 percent of the victorious candidates participated in the comprehensive financing program.<sup>157</sup>

Public financing also had a dramatic effect on the source of campaign funds. In 1993, participants raised 53 percent of their funds from individuals and received an additional 17 percent of their total funds in public matching funds. Corporations, political action committees, and other political committees accounted for less than 30 percent of the total sum raised by participating candidates.<sup>158</sup> The Campaign Finance Board has proposed adjusting the program to further limit the role of wealthy contributors and special interests, including lowering contribution limits from \$6,500 to \$5,000 for citywide candidates.

The central challenge facing the New York City program is to encourage greater participation in the voluntary program. While citywide candidates have consistently joined the program, partly to receive financial benefits and partly to appease the news media, City Council candidates have had low rates of participation. The Board has proposed a series of amendments to further enhance candidates participation, including lowering threshold levels, increasing spending limits by nearly 25 percent, and increasing the penalties non-participation by providing greater benefits, such as 3 to 1 matching funds, to their participating opponents.

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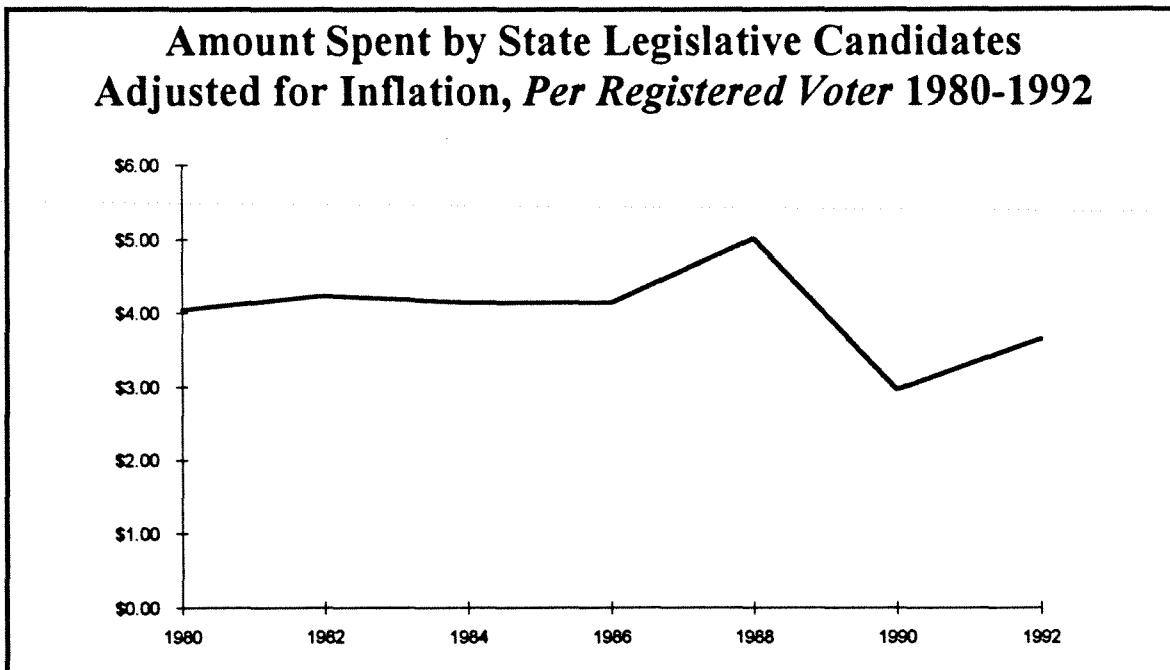
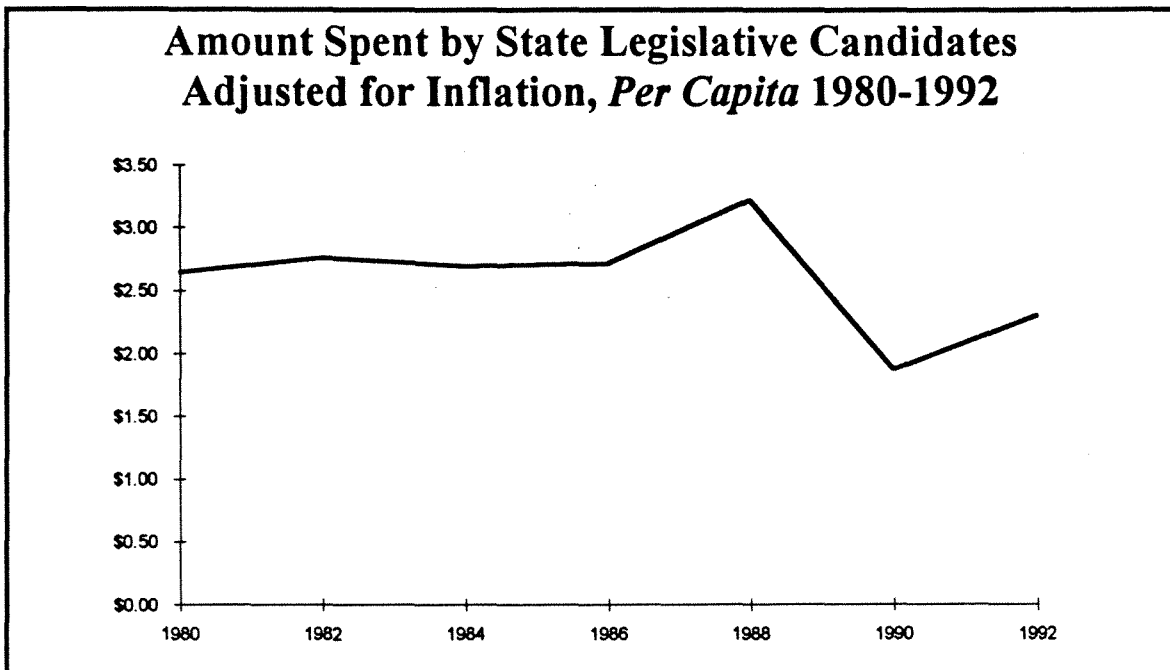
<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> New York City Campaign Finance Board "Campaign Finance Program", 1993.

<sup>158</sup> Ibid.

**APPENDIX E: ADJUSTED CALIFORNIA LEGISLATIVE CAMPAIGN  
EXPENDITURES 1980-1992**



**APPENDIX F: CAMPAIGN RECEIPTS AND EXPENDITURES: CALIFORNIA  
LEGISLATURE 1976-1992**

**1992 General Election**

Receipts

**\$31 million** (total for all candidates)

\$4.17 million Senate

\$26.01 million Assembly

Expenditures

**\$34 million** (total for all candidates)

Exact figures not available

Exact figures not available

**1992 Primary Election**

Receipts

**\$42 million** (total for all candidates)

\$9.77 million Senate

\$32.04 million Assembly

Expenditures

**\$38 million** (total for all candidates)

Exact figures not available

Exact figures not available

**1990 General Election**

Receipts

**\$56 million** (total for all candidates)

\$4.51 million Senate

\$12.71 million Assembly

\$38.32 million Constitutional

Expenditures

**\$70 million** (total for all candidates)

\$7.05 million Senate

\$16.90 million Assembly

\$46.40 million Constitutional

**1990 Primary Election**

Receipts

**\$81 million** (total for all candidates)

\$7.96 million Senate

\$26.81 million Assembly

\$46.29 million Constitutional

Expenditures

**\$72 million** (total for all candidates)

\$6.45 million Senate

\$24.07 million Assembly

\$41.07 million Constitutional

**1988 General Election**

Receipts

**\$33 million** (total for all candidates)

\$8.38 million Senate

\$24.71 million Assembly

Expenditures

**\$40 million** (total for all candidates)

\$9.88 million Senate

\$30.33 million Assembly

**1988 Primary Election**

Receipts

**\$43 million** (total for all candidates)

\$12.18 million Senate

\$31.32 million Assembly

Expenditures

**\$36 million** (total for all candidates)

\$10.38 million Senate

\$25.54 million Assembly

### 1986 General Election

Receipts

**\$47 million** (total for all candidates)  
\$10.48 million Senate  
\$15.14 million Assembly  
\$21.03 million Constitutional

Expenditures

**\$59 million** (total for all candidates)  
\$12.10 million Senate  
\$18.32 million Assembly  
\$28.19 million Constitutional

### 1986 Primary Election

Receipts

**\$59 million** (total for all candidates)  
\$8.38 million Senate  
\$22.66 million Assembly  
\$27.86 million Constitutional

Expenditures

**\$47 million** (total for all candidates)  
\$6.45 million Senate  
\$20.10 million Assembly  
\$20.81 million Constitutional

### 1984 General Election

Receipts

**\$22 million** (total for all candidates)  
\$7.29 million Senate  
\$14.73 million Assembly

Expenditures

**\$24 million** (total for all candidates)  
\$8.04 million Senate  
\$16.22 million Assembly

### 1984 Primary Election

Receipts

**\$28 million** (total for all candidates)  
\$7.76 million Senate  
\$19.84 million Assembly

Expenditures

**\$21 million** (total for all candidates)  
\$6.03 million Senate  
\$14.53 million Assembly

### 1982 General Election

Receipts

**\$40 million** (total for all candidates)  
\$6.24 million Senate  
\$15.79 million Assembly  
\$18.22 million Constitutional

Expenditures

**\$43 million** (total for all candidates))  
\$6.92 million Senate  
\$17.38 million Assembly  
\$18.64 million Constitutional

### 1982 Primary Election

Receipts

**\$45 million** (total for all candidates)  
\$5.99 million Senate  
\$17.75 million Assembly  
\$22.39 million Constitutional

Expenditures

**\$40 million** (total for all candidates)  
\$5.01 million Senate  
\$14.69 million Assembly  
\$21.88 million Constitutional



### 1980 General Election

Receipts

**\$17 million** (total for all candidates)  
\$3.79 million Senate  
\$12.86 million Assembly

Expenditures

**\$18 million** (total for all candidates)  
\$3.88 million Senate  
\$13.72 million Assembly

### 1980 Primary Election

Receipts

**\$19 million** (total for all candidates)  
\$4.32 million Senate  
\$14.72 million Assembly

Expenditures

**\$17 million** (total for all candidates)  
\$3.61 million Senate  
\$13.13 million Assembly

### 1978 General Election

Receipts

**\$21 million** (total for all candidates)  
\$3.09 million Senate  
\$7.07 million Assembly  
\$11.22 million Constitutional

Expenditures

**\$22 million** (total for all candidates)  
\$3.13 million Senate  
\$7.49 million Assembly  
\$11.10 million Constitutional

### 1978 Primary Election

Receipts

**\$24 million** (total for all candidates)  
\$2.75 million Senate  
\$8.45 million Assembly  
\$12.56 million Constitutional

Expenditures

**\$22 million** (total for all candidates)  
\$2.32 million Senate  
\$7.34 million Assembly  
\$12.41 million Constitutional

### 1976 General Election

Receipts

**\$7 million** (total for all candidates)  
\$2.29 million Senate  
\$5.07 million Assembly

Expenditures

**\$8 million** (total for all candidates)  
\$2.59 million Senate  
\$5.10 million Assembly

### 1976 Primary Election

Receipts

**\$9 million** (total for all candidates)  
\$2.58 million Senate  
\$5.98 million Assembly

Expenditures

**\$7 million** (total for all candidates)  
\$2.17 million Senate  
\$4.89 million Assembly

**APPENDIX G: CAMPAIGN CONTRIBUTIONS:**

**California Legislature 1991-1992**

	AMOUNT	NUMBER	AVERAGE
<b>TOTAL LEGISLATURE</b>	<b>\$79,890,679</b>	<b>81,108</b>	<b>\$984</b>
Individuals	\$13,976,490	42,431	\$329
PACs, Business, and Labor	\$48,047,943	37,565	\$1,279
Party and Transfers	\$12,362,483	873	\$14,161
Family	\$5,503,763	238	\$23,125
<b>NON-INCUMBENTS (251)</b>	<b>\$25,793,034</b>	<b>30,066</b>	<b>\$858</b>
Individuals	\$5,851,106	20,217	\$289
PACs, Business, and Labor	\$9,722,506	9,130	\$1,065
Party and Transfers	\$5,961,380	510	\$11,689
Family	\$4,258,042	209	\$20,373
<b>INCUMBENTS (82)</b>	<b>\$54,097,645</b>	<b>51,042</b>	<b>\$1,060</b>
Individuals	\$8,125,384	22,214	\$366
PACs, Business, and Labor	\$38,325,437	28,436	\$1,348
Party and Transfers	\$6,401,103	363	\$17,634
Family	\$1,245,721	29	\$42,956
<b>INDIVIDUAL MONEY</b>	<b>\$13,976,490</b>	<b>42,348</b>	<b>\$330</b>
Incumbents (82)	\$8,125,384	20,217	\$366
Non-Incumbents (251)	\$5,851,106	22,214	\$289
<b>PAC MONEY</b>	<b>\$48,047,943</b>	<b>37,565</b>	<b>\$1,279</b>
Incumbents (82)	\$38,325,437	28,436	\$1,348
Non-Incumbents (251)	\$9,722,506	9,130	\$1,065
<b>PARTY MONEY</b>	<b>\$12,362,483</b>	<b>873</b>	<b>\$14,161</b>
Incumbents (82)	\$6,401,103	363	\$17,634
Non-Incumbents (251)	\$5,961,380	510	\$11,689
<b>FAMILY MONEY</b>	<b>\$5,503,763</b>	<b>238</b>	<b>\$23,125</b>
Incumbents (82)	\$1,245,721	29	\$42,956
Non-Incumbents (251)	\$4,258,042	209	\$20,373

**California State Senate 1991-1992**

	Amount	Number	Average	Median
<b>TOTAL SENATE</b>	\$22,884,746	21,483	\$1,065	N/A
Individuals	\$3,628,953	9,781	\$371	N/A
PACs, Business, and Labor	\$14,980,282	11,534	\$1,299	N/A
Party and Transfers	\$2,361,896	139	\$16,992	N/A
Family	\$1,913,615	29	\$65,987	N/A
<b>NON-INCUMBENTS (25)</b>	\$2,542,688	2,180	\$1,166	
Individuals	\$595,673	1,695	\$351	\$125
PACs, Business, and Labor	\$527,335	438	\$1,204	\$500
Party and Transfers	\$380,240	24	\$15,843	\$1,025
Family	\$1,039,440	23	\$45,193	\$3,025
<b>INCUMBENTS (23)</b>	\$20,342,058	19,303	\$1,034	
Individuals	\$3,033,280	8,086	\$375	\$200
PACs, Business, and Labor	\$14,452,947	11,096	\$1,303	\$600
Party and Transfers	\$1,981,656	115	\$17,232	\$5,000
Family	\$874,175	6	\$145,696	\$28,500
<b>INDIVIDUAL MONEY</b>	\$3,628,953	9,781	\$371	
Incumbents (23)	\$3,033,280	8,086	\$375	\$200
Non-Incumbents (25)	\$595,673	1,695	\$351	\$125
<b>PAC MONEY</b>	\$14,980,282	11,534	\$1,299	
Incumbents (23)	\$14,452,947	11,096	\$1,303	\$600
Non-Incumbents (25)	\$527,335	438	\$1,204	\$500
<b>PARTY MONEY</b>	\$2,361,896	139	\$16,992	
Incumbents (23)	\$1,981,656	115	\$17,232	\$5,000
Non-Incumbents (25)	\$380,240	24	\$15,843	\$1,025
<b>FAMILY MONEY</b>	\$1,913,615	29	\$65,987	
Incumbents (23)	\$874,175	6	\$145,696	\$28,500
Non-Incumbents (25)	\$1,039,440	23	\$45,193	\$3,025

**California State Assembly 1991-1992**

	Amount	Number	Average	Median
<b>TOTAL ASSEMBLY</b>	\$57,005,933	59,625	\$956	N/A
Individuals	\$10,347,537	32,650	\$317	N/A
PACs, Business, and Labor	\$33,067,661	26,032	\$1,270	N/A
Party and Transfers	\$10,000,587	734	\$13,625	N/A
Family	\$3,590,148	209	\$17,178	N/A
<b>NON-INCUMBENTS (226)</b>	\$23,250,346	27,886	\$833	
Individuals	\$5,255,433	18,522	\$284	\$150
PACs, Business, and Labor	\$9,195,171	8,692	\$1,058	\$500
Party and Transfers	\$5,581,140	486	\$11,484	\$1,223
Family	\$3,218,602	186	\$17,304	\$5,804
<b>INCUMBENTS (59)</b>	\$33,755,587	31,739	\$1,063	
Individuals	\$5,092,104	14,128	\$360	\$200
PACs, Business, and Labor	\$23,872,490	17,340	\$1,377	\$500
Party and Transfers	\$4,419,447	248	\$17,820	\$3,000
Family	\$371,546	23	\$16,154	\$2,730
<b>INDIVIDUAL MONEY</b>	\$10,347,537	32,650	\$317	
Incumbents (59)	\$5,092,104	14,128	\$360	\$200
Non-Incumbents (226)	\$5,255,433	18,522	\$284	\$150
<b>PAC MONEY</b>	\$33,067,661	26,032	\$1,270	
Incumbents (59)	\$23,872,490	17,340	\$1,377	\$500
Non-Incumbents (226)	\$9,195,171	8,692	\$1,058	\$500
<b>PARTY MONEY</b>	\$10,000,587	734	\$13,625	
Incumbents (59)	\$4,419,447	248	\$17,820	\$3,000
Non-Incumbents (226)	\$5,581,140	486	\$11,484	\$1,223
<b>FAMILY MONEY</b>	\$3,590,148	209	\$17,178	
Incumbents (59)	\$371,546	23	\$16,154	\$2,730
Non-Incumbents (226)	\$3,218,602	186	\$17,304	\$5,804

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