Campaign Finance Reform in California

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I. Campaign Finance Practices and Problems

The financing of political campaigns in California is, in substantial measure, inadequate, discriminatory, and corrupt. It is a serious problem in the state's political system.

In general, present methods of campaign financing do not provide enough money for communication by candidates with voters. This inadequacy limits electoral competition and officeholder accountability, and it restricts public knowledge and participation in politics. Many candidates with potentially substantial electoral support do not receive sufficient funds. Fundraising takes an inordinate share of the time and efforts of candidates and key supporters, thereby displacing other campaign or official activities valuable to the public.

The existing financing system discriminates heavily in favor of those with wealth in the election of officials. Candidates or potential candidates without wealth or access to affluent backers are often at a decisive disadvantage. Most seriously, large contributors or potential contributors have special access to and undue influence with government decisionmakers. The financing system is repellent to a substantial part of the public. It deters public participation in politics and impairs respect and confidence in government.

At the same time, however, the present methods do permit those organizations and individuals with the means and desire to participate freely in the political process by making campaign contributions and expenditures. A large and increasing amount of money is raised from diverse sources, and some campaigns are financed adequately. Much of the money is given without conditions or serious expectation of favoritism. By limiting the number of candidates, existing methods of financing counteract lax statutory requirements for ballot access. Ordi-

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narily, a person must be able to raise or personally put up substantial amounts of money in order to be a serious candidate.

Political campaigns are financed in California, as in the United States generally, primarily by private contributions.[1] There is no direct financing by the government, with the important exception that incumbents make appreciable use of public employees, property, and mailings in campaign-related activities. Indirectly, the government subsidizes candidates through federal tax credits and state tax deductions for campaign contributions.[2]

There are almost no significant restrictions in California on the sources or amounts of contributions to candidates for state offices. In contrast to a number of other states, there are no prohibitions on corporation or union gifts.[3] The California Political Reform Act,[4] adopted by initiative in 1974, forbade contributions by paid "lobbyists" to candidates for any state office;[5] but that restriction was held unconstitutional because it was too great an infringement upon lobbyists' freedom of political association.[6] The one significant restriction on contributions under California statutes is that political parties are barred from contributing to candidates for party nominations in primary elections.[7]

There are no significant restrictions on expenditures by candidates or by others in elections for state offices, again except for a prohibition

1. Presidential elections are a major exception. Under the Federal Election Campaign Act, presidential candidates may choose exclusive government treasury financing of their campaigns in the general election, 26 U.S.C. §§ 9003, 9004 (1976), and partial public treasury financing in primaries, 26 U.S.C. §§ 9034, 9033 (1976).

Eleven states now provide public treasury financing for some state offices or for political parties. *See* H. ALEXANDER & J. FRUTIG, PUBLIC FINANCING OF STATE ELECTIONS (1982); Fed. Election Comm'n, *Campaign Finance Law* 81, Chart C (1981). Generally, the amount of public funding is dependent on the number of taxpayers who designate that one or two dollars of their income taxes be used to finance campaigns or parties. Amounts designated have been relatively small, although not insignificant. H. ALEXANDER & J. FRUTIG, *supra*. In Michigan and New Jersey there has been substantial public funding for gubernatorial primary and general elections. *Id.* at 114, 172-73.

2. *See infra* notes 63-65 and accompanying text.

3. *See* Fed. Election Comm'n, *Campaign Finance Law* 81, Chart B (1981).

4. CAL. GOV'T CODE, §§ 81000-91014 (West 1976 & Supp. 1983).

5. *Id.* at § 86202.

6. Fair Political Practices Comm'n v. Superior Court, 25 Cal. 3d. 33, 599 P.2d 46, 157 Cal. Rptr. 855 (1979), *cert. denied*, 444 U.S. 1049 (1980).

7. CAL. ELEC. CODE § 11702 (West 1977). This prohibition is probably invalid as an infringement on the constitutional right of political association of the parties and their members. *See* Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981); Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981); Buckley v. Valeo, 424 U.S. 1 (1976); Cousins v. Wigoda, 419 U.S. 477 (1975); Abrams v. Reno, 452 F. Supp. 1166 (S.D. Fla. 1978), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982).

on expenditures by political parties in primary elections.[8] The California Political Reform Act did restrict the amount candidates could spend on elections for governor and other statewide offices,[9] but in *Buckley v. Valeo*,[10] the United States Supreme Court held that candidate expenditure limits violate the First Amendment,[11] unless the limits are imposed as a condition on receipt of public treasury payments for campaign expenses.[12]

The Political Reform Act does require candidates and others to keep records and make extensive public disclosure of campaign contributions and expenditures, including disclosure at several intervals prior to elections.[13] The name, address, occupation, and business or employer of contributors of $100 or more and the amount of their contributions must be divulged.[14] The reporting requirements are administered by an independent agency, the Fair Political Practices Commission (FPPC). The Commission has considerable rulemaking and enforcement powers, as well as a guarantee of substantial funding.[15] To date, there apparently has been a high level of compliance with the reporting requirements, and a great amount of campaign finance information has been disclosed regularly.[16]

There has been a huge increase in campaign contributions and expenditures for state offices over the past two decades, although the cost per voter remains modest. Inflation and population growth have been major factors in the increase, but there has been a sharp rise even in constant dollars expended per registered voter.[17] A substantial propor-

8. This prohibition also seems constitutionally vulnerable. *See* First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) and the cases cited *supra* note 7.

9. CAL. GOV'T CODE §§ 85100-85305 (West 1976) (repealed 1977).

10. 424 U.S. 1 (1976).

11. *Id.* at 54-59.

12. *Id.* at 57 n.65.

13. CAL. GOV'T CODE §§ 84100-84305 (West 1976 & Supp. 1983).

14. *Id.* at § 84211(f).

15. *Id.* at §§ 83100-83122.

16. The FPPC publishes voluminous information on campaign finance. Prior to elections it provides the aggregate contributions received and expenditures made by candidates for state offices, and itemizes the large contributions made to each candidate. After each primary and general election, it publishes reports on campaign receipts and expenditures by state candidates. These documents include total receipts, total expenditures, cash on hand for candidates, lists of each candidate's donors of $100 or more, the breakdowns of the general sources of a candidate's contributions (e.g., business, labor, agriculture, other candidates), contributions by major donors, and expenditures by independent committees. As the following notes illustrate, the commission has also published a number of special studies on various aspects of campaign finance.

17. In 1958, all candidates for state offices and their affiliated committees reportedly spent $5.6 million. By 1978, the expenditures were $42.7 million—an increase of 633%.

tion of total contributions is from relatively large contributors.[18] The share from corporations, trade and professional organizations, and

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FPPC, *Campaign Costs: How Much Have They Increased and Why? A Study of State Elections, 1958-1978* 2, table I (1980). In the 1982 election, $83 million was spent—an increase of almost another 100%. FPPC, *1982 Campaign Costs Shatter Record*, Press Release, (Feb. 25, 1983).

Expenditures per vote for gubernatorial elections in constant dollars increased from $.28 in 1958 to $.42 in 1978. FPPC, *Campaign Costs: How Much They Have Increased and Why? supra*, at 27. For State Senate elections, the cost per vote in constant dollars almost quadrupled from $.09 in 1958 to $.35 in 1978. *Id.* The greatest increase took place in State Assembly elections where expenditures went from $.10 to $.47. *Id.*

It is not clear why campaign expenditures in constant dollars have increased so sharply. For an inconclusive analysis by the FPPC, see *id.* at 31-50. The FPPC did conclude that its data provide "no support for the hypothesis that increasing competition is a factor underlying increasing campaign costs." *Id.* at 38. There is no competitive contest in the overwhelming majority of legislative districts. Better reporting may have been a factor, but much of the increase has occurred since 1974 without any changes in the reporting regime. *Id.* at 48-49.

Candidates are spending a substantially greater amount and proportion of their total expenditures on mailings, especially particularized, computer-aided mailings. *Id.* at 46-48. About one-third of the reported expenditures in 1978 were for postage, *id.* at 41, and postage rates have increased faster than the rate of inflation generally. *See infra* note 51. The increase in postage rates, however, would explain only a small part of the overall rise in expenditures.

One important factor may be that more money has become available for campaign finance. This could be because of increased wealth in the state, or perhaps because of the increased role—real or perceived—of the government in the economy so that the stakes in government decisions seem much greater. Candidates may also have become more systematic and proficient in raising contributions. If it appears that there is a chance to win an election, large amounts of money often can be put into a campaign in its final stages with little or no warning for opponents. This threat undoubtedly causes some seemingly safe candidates to raise, and perhaps spend, large sums that otherwise they would not think necessary. Even if a candidate does not need contributions received for his own campaign, the money can be transferred to other candidates or used for various non-campaign purposes that may be politically or otherwise advantageous to the candidate.

18. *See generally* the FPPC biennial reports of contributions received by candidates for state offices in general and primary elections—*e.g.*, FPPC, *1982 Legislative Winners: A Report on Campaign Contributions of $100 or More Received During the Primary and General Elections* 1-523 (Aug. 1983); FPPC, *Contributions Received by Statewide and State Officeholders and Candidates from Major Contributors, January 1, 1981, through June 30, 1982*, at 2-248 (Oct. 1982).

Only eight percent of the contributions received by legislative winners in 1982 were from sources contributing less than $100 to a candidate. FPPC, *Legislative Leaders Top Campaign Contribution List*, Press Release 2 (Aug. 10, 1983). In the 1980 general election nine percent of the contributions to legislative candidates came from those sources. FPPC, *Sources of Contributions to California State Legislative Candidates for the November 4, 1980 General Election* 1 (Aug. 6, 1981).

Contributors of $5,000 or more gave $23.1 million to winners of legislative elections in 1982. FPPC, *1982 Legislative Winners, supra* at ii-xxx. This sum amounted to two-thirds of the total contributions of $34.8 million received by those winners. *See* FPPC, *Legislative Leaders Top Campaign Contribution Lists, supra*, at 2. Twenty of the largest contributors alone gave $5.9 million to legislative candidates in the 1982 election cycle. Common Cause,

other business entities and related political action committees is great and has grown substantially.[19] Party contributions, in contrast, have diminished and relatively are very small.[20] A significant portion of overall contributions is given initially to legislative leaders and other strategically situated legislators, who then transfer large amounts to other legislative candidates.[21]

Campaign contributions are given not only to elect candidates who independently support contributors' interests but, in important part, to gain special access to elected officials and to obtain favorable decisions by them. Much of the money comes from those individuals or groups with economic interests that they believe may be affected significantly by the actions of officials receiving the contributions.[22] Large amounts

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Twenty Who Gave $16 Million: A Study of Money and Politics in California 1975-1982, at 69 (1983).

19. In the 1982 primary and general elections almost two-thirds of the amounts received by winners of state legislative races in contributions of $100 or more came from businesses and trade related organizations, including agriculture groups and health care providers. FPPC, *1982 Legislative Winners, supra* note 18, at vii, table I. By comparison labor organizations provided only five percent of the amounts in contributions of $100 or more. *Id.*

Business and financial organizations made 45% of the reported "major donor" contributions and independent expenditures in the 1976 general election. FPPC, *Campaign Contribution and Spending Report* 258 (1977). This figure was 58% in 1980. FPPC, *Campaign Contribution and Expenditure Report for November 4, 1980 General Election* (1981). Under the California Political Reform Act, a "major donor" is a person, or group of persons, that contributes $5,000 or more in a calendar year to California state and local elections. CAL. GOV'T CODE § 82013(c) (West 1976 & Supp. 1983). If a person or group spends $500 or more to influence voters, the person or group is deemed an "independent expenditure committee," which must publicly report the expenditures. *Id.* at § 84208.

It is also worth noting that much of the money—77% in the 1980 general election—received by candidates for the legislature comes from business entities, political action committees, and other sources located outside the particular candidate's district. FPPC, *Sources of Contributions to California State Legislative Candidates, supra* note 18, at 2.

20. The FPPC summaries for 1976 and 1980 show that political organizations made nine percent of the major donor contributions and independent expenditures in the 1976 general election and three percent in the 1980 general election. FPPC, *Campaign Contributions and Spending Report* 25 (1976); FPPC, *Campaign Contribution and Spending Report* C-31 (1980). In the 1982 elections, political parties contributed only 1.2% of the amount of contributions in excess of $100 received by winners of legislative seats. FPPC, *1982 Legislative Winners, supra* note 18, at vii, table I.

21. *See* FPPC, *1982 Legislative Winners, supra* note 18, at vii, ii-xxx; FPPC, *Legislative Leaders Top Campaign Contribution List, supra* note 18, at 1: "Chairman Dan Stanford explained the legislative leaders raise large amounts in contributions from such traditional sources as business and labor and then transfer those funds to other candidates. . . . For the 80 Assembly winners, transfers accounted for 20% of the identifiable contributions, double the percentage of only two years earlier. For Senate winners, transfers represented 25% of their contributions of $100 or more, compared to a mere 4% in the 1980 General Election." *Id.* at 1, 3.

22. According to Common Cause, 22 groups gave almost $8.5 million to candidates and other contributing committees in the 1982 state elections. Common Cause, *Biggest Contribu-*

of money in increased profits, lower taxes, higher government subsidies, and other benefits are often at stake.[23] To some extent, the interests of these contributors counter each other, but there is a gross imbalance on many issues.[24] Indeed, large givers, even business and labor, often work together. Undoubtedly, there are substantial unjustifiable costs to the public and to the natural environment because of special interest influence from campaign contributions.[25]

Many contributions by "economic interests" are made without a specific desire for, or expectation of, favorable treatment. Such contributions may be given for past supportive decisions or because the contributor approves of the candidate's stands apart from any direct relation to the contributor's economic advantage. Moreover, contributions seeking favor may be needless or unsuccessful. In many cases, officeholders do not give special treatment or, if they do, it is not because of campaign gifts. Nevertheless, contributions are deemed sufficiently worthwhile that they are made in large and sharply increasing amounts by those with financial stakes in government decisions. On the whole these contributions are not given altruistically, but as "an investment in . . . economic well-being."[26] Indeed, candidates frequently take advantage of concerns about government decisions to pressure contributors to give substantial sums. There is a significant amount of coercion by officeholders or likely officeholders in campaign

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tors Gave $8.5 Million in 1982 Elections, Press Release (Nov. 10, 1982). Of these 22 contributors, 11 were business organizations, six were unions, four were professional or trade organizations, and one was an organization of gun owners. Among these top contributors were: California Medical Political Action Committee (PAC), United Farm Workers PAC, California State Employees Association, United for California (supported by major corporations), Association for Better Citizenship (California Teachers Association), California Real Estate PAC, California Trial Lawyers PAC, Bankers Responsible Government Committee, and Gun Owners of California. *Id.*

In 1982, the 60 largest organizational contributors, other than political parties, gave almost $8.5 million to *legislative winners* alone. Approximately 45% of this amount came from 33 business organizations, 25% from 11 labor groups, 13% from eight professional organizations, and 12% from four health groups. FPPC, *1982 Legislative Winners, supra* note 18, at ii-v (1983).

23. *See* Common Cause, *Twenty Who Gave $16 Million, supra* note 18, at 54-61.

24. *See, e.g.*, R. FELLMETH, POWER AND LAND IN CALIFORNIA, ch. I, §§ III-IV & ch. VIII, § 1 (1971).

25. *See* Common Cause, *Twenty Who Gave $16 million, supra* note 18, at 53-61; *See also In Sacramento, Money Talks Louder than Voters*, San Francisco Examiner, Feb. 1, 1982, at Part 1, p. A-6.

26. *In Sacramento, Money Talks Louder than Voters, supra* note 25, at Part 1, p. A-1. Of course, many large contributers to candidates also spend substantial amounts for lobbying, advertising, and public relations efforts to influence officeholders and the public regarding government decisions.

fundraising.[27]

Some candidates freely take money from special interests, even if that entails commitments to the contributors. More significantly, candidates accept such contributions because they believe that the added campaign expenditures thereby permitted materially increase their chances of election.[28] At a minimum, candidates or potential candidates often conduct themselves to maintain their principal sources of funds and to avoid a challenge well-financed by special interest contributions.

Incumbents commonly raise and spend a great deal more money than challengers.[29] Economic interests regularly contribute to likely winners, who are most often incumbents.[30] Incumbents obtain many contributions in the year or years preceding their re-election year.[31] This "off-year" fundraising is facilitated because measures important to potential contributors are then pending before the legislature and other governmental entities. Accumulating a substantial "war chest" before

27. "Lobbyists' office [sic] are being deluged with invitations . . . they all get the message across; it's time to pony up . . .

"The written invitations often are followed up by personal telephone calls from legislators to lobbyists. If a lobbyist plans on dealing with that legislator he usually coughs up the money—his client's money—or at least makes a favorable recommendation to the political action committee his client maintains.

"Lobbyists, the public tends to believe, corrupt otherwise innocent legislatures by pressing money upon them. That doubtless occurs.

"But just as often it is the legislator who is putting the arm on the lobbyist for money, a form of gentle extortion that implies that if the lobbyist doesn't come through, he can expect unfriendly treatment in the future." Dan Walters, Sacramento Union (quoted in Common Cause, *Twenty Who Gave $16 Million, supra* note 18, at 4).

28. The median winner in the 1982 State Senate general election outspent the median major party loser by a ratio of 3.66 to 1; in the Assembly the ratio was 4.4 to 1. FPPC, *Campaign Receipts and Expenditures by State Candidates, November 2, 1982 General Election* (Feb. 1983). In 1980 the figures were 8.4 to 1, and 5.3 to 1, respectively. *Id.*

In those general election contests that the FPPC classifies as "competitive," the median State Senate winner raised $296,393, as against the median major party loser's $247,733. FPPC, *The Impact of Campaign Contribution Limitations and Public Financing on Candidates for the California State Legislature* 144-165 (1983). In "competitive" Assembly races the median winner raised $228,989, and the median major party loser $186,132. *Id.*

29. The median expenditure in the general election for the State Senate in 1982 was $208,105 for incumbents and $35,494 for challengers. In 1980, the corresponding figures were $109,205 and $12,732. For Assembly elections the median amount spent was $94,122 for incumbents and $10,705 for challengers in 1982, and $84,956 for incumbents and $10,108 for challengers in 1980. FPPC, *Campaign Receipts and Expenditures by State Candidates, supra* note 28.

30. *See* FPPC, *The California PAC Phenomenon* 14-23 (May 1980); Common Cause, *Twenty Who Gave $16 million, supra* note 18, at chs. 2 & 3.

31. *See, e.g.,* FPPC, *Contributions Received by Statewide and State Officeholders and Candidates from Major Contributors, supra* note 18, at 209-48.

the date of filing for candidacy deters challengers and gives incumbents advantage should a major contest develop. If the incumbent does not need the money for his or her own re-election, it can be used to support other candidates[32] or for any other lawful purpose.

II. Objectives of Reforms

Major changes in campaign financing are needed in California. These changes should reduce substantially the dependence of candidates on large individual or group contributions and diminish the influence of major contributors with government officials. The ability of affluent individuals, organizations, and economic interests to elect officials also needs to be materially lessened. Yet, at the same time, it is important that there be enough money for adequate, forceful campaigns by candidates who can show appreciable public support. There needs to be more electoral competition. Necessary campaign funds should be attainable with practical effort and be timely for effective use.

Citizen participation in politics needs to be increased. There should be substantial incentives for candidates to solicit and for persons to make modest campaign donations. Expenditure levels should be high enough so that candidates will make significant expenditures on person-to-person contact and other grassroots campaign activities. As a vital means of citizen participation in government, political parties ought to be strengthened by the campaign finance system, and at the same time made more accessible, democratic, and effective through other efforts.

To the extent that these objectives of campaign finance reform require inconsistent actions, priority should be given to reducing undue influence from contributions, then to lessening the advantage furnished by wealth in elections, and finally to providing adequate funds for campaigns and strengthening citizen participation.

III. Possible Reforms

A. Disclosure of Campaign Finances

Extensive public disclosure of campaign finances is valuable for

32. During the 1980 general election, state officeholders and candidates transferred approximately $1.5 million to the campaigns of other candidates for the Legislature. FPPC, *Sources of Contributions to California State Legislative Candidates, supra* note 18, at 2. By 1982, the amount increased to almost $3.5 million for *winners of legislative seats* alone. FPPC, *1982 Legislative Winners, supra* note 18, at vii. A large share of this money, however, came from legislative leaders acting on behalf of the party caucus in their house. *See supra* note 21.

many reasons.[33] It places constraints on the sources and amounts of contributions, and perhaps even on the amount and nature of expenditures. Disclosure deters favoritism to contributors in situations where contributions might be perceived to influence official actions. Pre-election reporting especially provides voters with relevant information about a candidate's supporters and positions. In general, disclosure has increased knowledge about campaign financing and has provided the basis for further reforms.[34]

On the negative side, disclosure disregards contributors' desires for privacy in their political activity. It undoubtedly deters some innocuous donations because of persons' actual or feared vulnerability to adverse reactions or because of their dislike of publicity. Disclosure thus may aggravate the shortage of campaign financing, especially for candidates opposed by incumbents or interests capable of extensive retaliation. Record keeping and reporting requirements also add to the cost of campaigns.

It is unclear whether significant and desirable changes can be made in California's disclosure requirements. "Closing dates" for certain reports could be moved nearer to elections.[35] In legislative races, contributions of $500 or more, instead of the present $1000, received after the final pre-election closing date probably should be reported by telegram or personal delivery within forty-eight hours of receipt.[36]

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33. *See generally* John F. Kennedy School of Government, Institute of Politics, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-1978*, at 1-1, 1-24, 1-25 (1979).

In Buckley v. Valeo, 424 U.S. 1, 60-84 (1976) the Supreme Court held that the broad disclosure requirements of the Federal Election Campaign Act were valid as generally applied. The Court noted that minor parties' First Amendment rights might be violated if they could show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* at 74.

The Court then ruled in Brown v. Socialist Workers 1974 Campaign Comm., 459 U.S. 87, 88, 100 (1982) that a state could not constitutionally require disclosure by the Socialist Workers Party of the names of campaign contributors or recipients of expenditures when the party "historically has been the object of harassment by government officials and private parties, [and] the evidence . . . establishes a reasonable probability that disclosing the names of [the party's] contributors and recipients will subject them to threats, harassment, and reprisals." *Id.* at 423-24.

34. *See generally* FPPC, *The Impact of Campaign Contribution Limitations and Public Financing, supra* note 28.

35. The first pre-election report for primary elections could be due approximately six weeks before the primary rather than the present ten weeks. CAL. GOV'T CODE § 84200 (West 1976 & Supp. 1983). The closing date for the final pre-election report for both primary and general elections might be 14 days before voting with three days to file, rather than the current 17 days and five days to file. *Id.* at §§ 84200(b) & 84202.

36. *See id.* at §§ 84207(a), 82306 (West 1976 & Supp. 1984).

These changes would produce more timely information, though the effect probably would not be important in most cases, and the final preelection report would be somewhat less useful. Modest improvements in disclosure probably could be realized by additional enforcement efforts and by imposition of stiffer penalties.

There may be advantages in cutting back on the required content of disclosure reports.[37] Even though record keeping requirements continue, a reduction in report content would diminish the burden on campaigns. Possibly only contributions of $200 or more, rather than $100, should have to be disclosed in detail (i.e., contributors' names, addresses, amounts, and occupations, and the names of their employers or businesses).[38] Less information also might be required on expenditures, with a substantially higher threshold for particularized reporting.[39] With less disclosure, possibly greater use would be made of significant information in reports.

A major problem with campaign finance disclosure is the meaningful dissemination of information in reports to potential voters. Primary reliance for publication must rest on opposing candidates, who often lack the necessary means or incentive, particularly given their own campaign finance sources. Prior to elections, the FPPC now publishes receipt and expenditure totals for candidates, and a list of the largest contributors to each candidate.[40] Through modern information technology, the FPPC probably could provide additional analyses and summaries. For example, FPPC reports might publish the names of all substantial contributors to each candidate and the amount of their contributions, the industries or occupations of the contributors, and to the extent practicable, aggregate contributions to each candidate from different industries and occupations. Although the information would be helpful to voters, certain of these analyses would be difficult or impossible to do thoroughly and accurately in the short time before elections. The analyses and summaries also might be subject to controversy, and could constitute a dangerous interference by government in elections.

Unfortunately, there is relatively little media publication or broadcast of campaign finance information. The FPPC should mail summaries and analyses, in a readily usable form, at the earliest practicable time to newspapers and broadcasters. The First Amendment apparently prohibits the government from compelling newspaper publica-

37. *See id.* at § 84211.
38. *Id.* at § 84211(f).
39. *See id.* at § 84211(j).
40. *See supra* note 16.

tion, with or without compensation.[41] Although the constitutional barriers are less for broadcast media,[42] any required dissemination of campaign finance information over the airwaves would have to be imposed by the federal government because it has preempted broadcast regulation.[43] Government funds to pay for voluntary publication or broadcast undoubtedly would be very limited. In any event, in media markets with large populations only the most limited space or time ordinarily could be given to the dissemination of campaign finance information relating to each of the scores of candidates seeking office.[44] It does not seem practical to mail information to all registered voters, even as part of the ballot pamphlet. Finally, if there were greater dissemination of campaign finance information, it is not clear how much attention and weight the public would give the information in view of the many factors affecting voting and other political activity.

B. Limitations on Contributions

The most obvious and direct way to restrict special influence and access because of large contributions, and more generally to curtail the advantage of wealth in elections, is to impose limits on the amount a contributor or class of contributors can give to a candidate. Substantial restrictions on contributions may be imposed constitutionally under the Supreme Court's reasoning in *Buckley v. Valeo*.[45] Moreover, contribu-

41. *See* Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974).

42. *See* Columbia Broadcasting System v. FCC, 453 U.S. 367 (1981); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

43. *See* KVUE, Inc. v. Austin Broadcasting Corp., 709 F.2d 922, 931-37 (5th Cir. 1983).

44. In the San Francisco Bay Area media market, for example, there are at least 20 Assembly and 10 State Senate seats, as well as contests for statewide offices, the United States Congress, and a multitude of local offices. Space and time problems would be even more acute in primaries because of the still larger number of candidates.

45. "[A] limitation upon the amount that any one person or group may contribute . . . entails only a marginal restriction upon the contributor's ability to engage in free communication. . . . The quantity of communication by the contributor does not increase perceptibly with the size of his contribution . . . . While contributions may result in political expression if spent by a candidate or an association to present views to the voters, . . . [that] involves speech by someone other than the contributor.

"It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the $1,000 contribution limitation [in the FECA]. . . .

. . . [W]hile the contribution limitation provisions might well have been structured to take account of the graduated expenditure limitations for congressional and Presidential campaigns, Congress' failure to engage in such fine tuning does not invalidate the legisla-

tion limits seemingly have a great deal of public support,[46] and probably would increase public confidence in the political system and government.

1. Level of Contribution Limits

Given the large amounts raised and spent in campaigns, contribution limits could be set relatively high without significant risk of undue influence from any single gift.[47] A critical problem with high limits, however, is cumulative contributions from an interest group or related interest groups. A large corporation may have many executives, an industry dozens of firms and connected businesses, or a profession thousands of members who can make donations. To a significant extent, these contributions can be programmed and coordinated, even to the point of being delivered jointly.[48] But regardless of how and when the contributions are made, they come from persons with common interests, at least as frequently perceived by officeholders.

Accordingly, contribution limits need to be set relatively low to prevent excessive influence from cumulative gifts. An alternative would be to impose a ceiling on the aggregate amount that candidates could receive in contributions of more than a modest sum. This alternative would give candidates flexibility to raise some money in large

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tion. . . . [A] court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000." 424 US. at 20-21, 26-27, 30 (footnotes omitted).

The Court went on to note, however, that "the Act's $1,000 contribution limitation . . . [leaves] persons free . . . to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues. . . .

"Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes even-handed restrictions. . . .

"[T]he record provides no basis for concluding that the Act invidiously disadvantages [minor party and independent candidates]." 424 U.S. 28-29, 31, 33. (footnotes omitted).

46. According to Thomas K. Houston, former chairman of the FPPC, a poll found that 90% of California voters would support a measure which imposed contribution and spending limits, and required fair campaign practices. *Campaign Spending Is Issue on Coast*, N. Y. Times, Feb. 5, 1984.

47. Except for voluntary services, "contributions" should be defined to encompass things of value given to a candidate or other person, or expended subject to the direction of or in concert with the candidate or person, to effect the outcome of an election. *Cf.* CAL. GOV'T CODE § 82015 (West 1976 & Supp. 1983).

48. There should be broad "attribution" provisions treating contributions by parent corporations, subsidiaries, divisions, or persons subject to the control of another as coming from a single source. Nevertheless, the problem of cumulative contribution would still remain. For a case study, see Common Cause, *Disturbing Developments: A Study of the San Diego City Council Elections of 1983* (1984).

sums, but because of the aggregate limits many candidates would have greater freedom to accept or reject larger contributions, thereby reducing the leverage of particular gifts or potential gifts.[49]

The problem with low contribution limits is the need for substantial campaign funds. Absent extraordinary volunteer efforts, it necessarily costs a great deal to communicate with potential voters in California's highly populated legislative districts, let alone for statewide offices.[50] There is multifarious competition for the public's attention, and elections for public office—particularly for legislative and lesser statewide offices—seemingly do not rank very high among most persons' attention priorities. Media rates are expensive, especially in the many election districts that constitute only a small part of a media market. To communicate with constituents by mass media in these districts, a candidate must pay large sums for an audience primarily outside the district. The cost of mailings, the principal alternative to mass media communication, has been rising faster than the price level generally.[51]

If contribution limits materially restrict available campaign funds, they can preclude adequate communication by candidates with potential voters. As one study concluded, "[l]imited campaign funds often mean limited campaign activity, which, in turn, means a poorly informed and apathetic electorate."[52] In many instances, limited funds

49. Candidate demand for private contributions might be mitigated in other ways; for example, by low spending limits, or substantial public treasury financing for campaigns.

50. For example, there often may be 100,000 or more households in an Assembly district. It costs approximately 18 to 20 cents to prepare and mail a campaign message to each of those households. Thus, a single mailing to all households in the district costs approximately $20,000. Three or more of these general mailings are often thought to be the minimum necessary for an effective campaign. Numerous special mailings to selected groups are also desirable. A substantial television and radio campaign can easily cost $75,000 or more, even in a district that lies within a single broadcast media market. In larger media markets the expense may become prohibitive. There are also substantial overhead costs for a campaign. Accordingly, expenditures of $150,000 to $200,000 can reasonably be made during an Assembly general election campaign. State Senate districts, which are twice as large, are even more expensive, although not proportionately so.

51. During the period from 1948-1982, first class postage rates increased 400% (from 4 cents per ounce to 20 cents), and bulk rates increased 445% (from 2 cents per piece to 10.9 cents). For the same period, the California consumer price index rose 246.1%. *See* FPPC, *Campaign Costs for the California State Legislature, 1958 through 1982*, at 2 (1983).

Mail has become an increasingly important means for candidate communication with potential voters: "In 1958, payments for campaign literature, including postage, accounted for between one-fourth and one-third of all expenditures; by 1978, payments for campaign literature accounted for approximately one-half of all expenditures." *See* FPPC, *Campaign Costs: How Much Have They Increased and Why?, supra* note 17, at 45-46. *See also* John F. Kennedy School of Government, *supra* note 33, at 1-15 (1979).

52. John F. Kennedy School of Government, *supra* note 33, at 1-17.

would preclude serious competition. This lack of competition is compounded whenever one of the candidates for an office is an incumbent or otherwise well-known, especially when that candidate has a far greater ability to raise money within the contribution limits from a large number of contributors.

Contribution limits, therefore, must be fixed with regard to the campaign funds that need to be raised, as well as to the prevention of undue influence. Strict limits probably would increase the number of contributors by forcing candidates to solicit more widely, by making more persons feel that modest contributions are worth giving, and by enhancing respect for the electoral process generally. But even with intense, imaginative fundraising efforts, many campaigns would be handicapped severely by low limits if there were no substantial alternative sources of funds. Indeed, unavailability of large contributions would preclude some candidates from raising the sums necessary to cover the relatively high initial investment for extensive solicitation of small contributions. A special, higher contribution limit probably is needed for an appropriate amount of "start-up" funds to make possible substantial campaigns by lesser known candidates.[53]

Given the high stakes in elections, contribution limits frequently would be violated if they did not provide for needed campaign funds and there were no adequate alternative sources. These violations would occur despite explicit prohibitions on the use of intermediaries, restrictions on cash or anonymous contributions, and even strong enforcement efforts. Moreover, contribution limits can be circumvented by "independent expenditures" made on behalf of a candidate. The Supreme Court held in *Buckley v. Valeo* that these expenditures generally cannot be prohibited or limited if they are not subject to the candidate's control or made in concert with her.[54] Truly independent expenditures are often not as effective as those made by the candidate, but in many instances they can be significant. The names and interests of contributors to independent efforts often are known or available to

53. To illustrate, a candidate for the legislature might be permitted to raise $30,000 or $40,000 in contributions in excess of the contribution limit during a primary or general election campaign.

54. 424 U.S. at 39-51. In Common Cause v. Schmitt, 455 U.S. 129 (1982), however, an equally divided Court affirmed the district court decision, 512 F. Supp. 489 (D.C. Cir. 1980), invalidating limits on independent expenditures on behalf of a Presidential candidate receiving government payment of his campaign expenses. The *Schmitt* case may indicate greater openness by the Court toward restrictions on independent expenditures. In this respect, the Court in *Buckley* qualified its position by observing that "the independent advocacy re-

officeholders whom they help elect, with the consequent possibility of special access or influence.

2. *Organizational Contributions*

A number of states have laws prohibiting corporation or labor union contributions to political campaigns.[55] The Supreme Court has recently indicated that existing broad prohibitions on corporate and union expenditures and contributions in federal elections are constitutional.[56] If there are limits on organizational contributions generally, however, a ban on corporate or labor contributions does not seem necessary. In states where these prohibitions are in effect, they are often evaded by organizationally arranged or inspired gifts directly from individual officers or employers, or by contributions from "voluntary funds" collected from donations by employees or members, and distributed by corporate or union officials.[57] Any efforts to impose a ban on corporate or union contributions would produce potent opposition in the California legislature from those organizations.

It seems improper to fix limits for organizations with many members or contributors at the same levels as limits for individuals, especially if the members or contributors do not have the incentive or convenient opportunity to make contributions directly to candidates. Again, higher contribution limits for these organizations may be necessary politically to enact campaign finance reforms. Organizational lim-

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stricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions." 424 U.S. at 46.

Apparently prohibition of independent expenditures by corporations and labor unions is valid under the Court's reasoning in Federal Election Comm'n v. National Right to Work Comm., 459 U.S. 197 (1982). *See infra* note 56.

Although independent expenditures generally cannot be prohibited, they can be narrowly defined. *See* Buckley v. Valeo, 424 U.S. at 46-47, particularly n.53. *See generally* Note, *Campaign Finance Re-Reform: The Regulation of Independent Political Committees*, 71 CALIF. L. REV. 673 (1983).

55. *See supra* note 3.

56. Federal Election Comm'n v. National Right to Work Comm. 459 U.S. 197 (1982), and the cases discussed therein. *National Right to Work* involved application of the general prohibition on corporate expenditures in federal elections to expenditures made by a nonprofit corporation to solicit contributions for a political fund established and administered by the corporation. The Court held that the prohibition applied to nonprofit corporations and that it was constitutional. The majority declared that the various restrictions imposed by Congress on corporate and union expenditures and contributions were "to account for the particular legal and economic attributes of corporations and labor unions," and that under the federal Constitution these restrictions are "a permissible assessment of the dangers posed by those entities to the electoral process." *Id.* at 209.

57. D. ADAMANY & G. AGREE, POLITICAL MONEY 51-52 (1975); H. ALEXANDER, FINANCING POLITICS 71-72 (2d. ed. 1980).

its, therefore, should be fixed at modest levels with very broad gradations reflecting the number of organization members or contributors. Perhaps larger contributions should be permitted only from a fund composed of small contributions to the organization, for example fifty dollars or less. A different approach to organizational contributions would be to have relatively high limits—or no limits—on contributions to a candidate from a single organization, but reasonable limits on the aggregate gifts to a candidate from all organizations.[58]

Political parties should be strengthened by making their contribution limits much higher than the limits for other organizations.[59] Parties can perform very valuable functions by forming coalitions, selecting candidates, organizing government, and holding elected offi-

58. *See, e.g.*, the proposed Obey-Railsback Amendment to the Federal Election Campaign Act, H.R. 4970, 96th Cong., 1st Sess., 125 CONG. REC. H6762 (1979).

The constitutionality of an aggregate limit on contributions from organizations or other sources is uncertain. The Court in *Buckley* stated that there are protected interests in making a contribution to a candidate: "The Act's contribution . . . limitations . . . impinge on protected associational freedoms. Making a contribution . . . serves to affiliate a person with a candidate. . . . A limitation on the amount of money a person may give . . . [still] permits the symbolic expression of support evidenced by a contribution. . . ." 424 U.S. at 21, 22. An aggregate limit on contributions from organizations prohibits an organization from making *any* contribution once the ceiling is reached, and therefore may be an unconstitutional infringement on the organization's right of political association.

The Court in *Buckley* did hold that Congress could impose a cumulative limit ($25,000) on the amount that an individual could contribute to all candidates for federal office in a calendar year. *Id.* at 38. This limit might be considered analogous to an aggregate limit on contributions to a candidate in that both limits would prevent a contribution to a candidate once the maximum was reached. The cumulative limit on contributors approved in *Buckley*, however, allows a contributor to choose which candidates will receive contributions. The aggregate limit on candidate receipts, on the other hand, deprives a potential contributor of this choice once the candidate's ceiling is reached.

59. There is some question under the analysis in Buckley v. Valeo, 424 U.S. at 26-27, and Citizens Against Rent Control v. City of Berkeley, 454 U.S. at 294-99, whether limits on party contributions to candidates in general elections are constitutional where the party is not just acting as a conduit or agent for the contributor to the party. *Buckley* justified limitations on contributions or expenditures only on the basis of preventing improper influence or the appearance of improper influence. In *Citizens Against Rent Control*, 454 U.S. at 290, the court reiterated, "*Buckley* identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception related to the perception of undue influence of large contributors to candidates. . . ." *Id.* at 296-97.

It is not clear whether there would be a significant risk of undue influence, or the appearance of undue influence, in favor of contributors to the party because of party contributions to candidates. Party influence with officeholders as a result of party contributions, on the other hand, seems to raise very different constitutional issues. The party probably would not be perceived as a person or interest group seeking improper influence in the sense of narrow private advantage. Contributions by a party in the primary to candidates seeking the party's nomination also should require different analysis. *See supra* note 7, and the cases cited therein.

cials accountable.[60] Parties themselves are subject to the electorate in ways that differ from other organizations. If parties were allowed to make large contributions, that would give them an important role, help them to attract and keep able participants, and provide party activists with greater influence over officeholders.

Besides strengthening parties, higher limits on contributions by parties could indirectly reduce the influence of contributors. Party contributions often could not be traced to a particular source, or at least the recipient candidate would not attribute them to any particular source. Earmarking of contributions to parties for specific candidates should be prohibited, although enforcement would be difficult. To further guard against improper influence, party contributions to candidates could be restricted to a fund made up exclusively of relatively small contributions. Parties should be able to accept large or unlimited gifts for other purposes, including voter registration and get-out-the-vote drives.

3. Candidate's Use of Personal Resources

In *Buckley v. Valeo*, the Court held that limits on a candidate's use of his or her own money or property are unconstitutional, except as a condition on receipt of government payments for campaign expenses.[61] As a consequence, wealthy candidates can freely spend large amounts of personal funds on their own campaigns, even if their opponents are subject to restrictive contribution limits. This unfair advantage can be obviated if contribution limits are suspended for a candidate's opponents to the extent that the candidate uses his or her own funds in excess of a specified sum. Advance notice of excess expenditures could be required so that opponents have a fair opportunity to obtain larger contributions.[62]

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60. *See generally* V.O. KEY, POLITICS, PARTIES AND PRESSURE GROUPS 199-227 (5th ed. 1964).

61. 424 U.S. at 51-54, 57 n.65.

62. Required notice for "excess" spending of personal funds raises constitutional questions. There is no risk of improper influence or the appearance of improper influence by contributors with the candidate. *See supra* note 59. The Court in *Buckley* explicitly rejected "equalizing the relative financial resources of candidates competing for elective office" as a justification for expenditure or contribution limits. *Id.* at 54.

Limited advance notice, however, is generally much less of a restriction than prohibitions or limitations on expenditures or contributions. The courts probably would deem this notice requirement constitutional because it would give opponents a fairer chance to compete against a wealthy candidate while maintaining basically equitable limits on the opponents.

C. Government Financing of Campaigns

Substantial new sources of campaign funds are needed in California, especially if significant restrictions are imposed on the size of private contributions.

1. Tax Benefits for Contributions

Government now finances campaigns in California through federal and state tax credits and deductions, and through incumbent use of public employees and property for campaign purposes. Under federal law, an individual taxpayer may receive a credit against income tax equal to fifty percent of the amounts contributed for the nomination or election of candidates for public office.[63] The maximum credit each year is fifty dollars.[64] California law provides that a taxpayer may deduct a maximum of $100 in political contributions each year in calculating taxable income.[65] By reducing contributors' taxes, the government indirectly makes payments to candidates, with the allocation of the public funds being determined by the taxpayer contributors.

Tax benefits to contributors provide public treasury financing with minimum government involvement in campaigns. Tax benefits provoke the least opposition from officeholders and the public.[66] They encourage candidates to solicit modest contributions and provide contributors with incentives to make contributions. These benefits could be liberalized to secure more campaign funds; for example, California might authorize a state tax credit, or the federal government could raise its tax credit to seventy-five percent of the amount contributed up to a maximum of $100 per taxpayer.[67]

Tax benefits for campaign contributions do have serious drawbacks, however. They use the tax system for purposes other than government revenue. They discriminate against those who have no taxable income—a substantial portion of the adult population. Nontaxpayers could be reimbursed for their contributions, but that does not

63. 26 U.S.C. § 41(a) (1976).

64. 26 U.S.C. § 41(b)(1) (1976).

65. CAL. REV. & TAX. CODE § 17245 (West 1983).

66. *See* AMERICAN ENTERPRISE INSTITUTE, PUBLIC FINANCING OF CONGRESSIONAL CAMPAIGNS 35-38 (1978); Wertheimer, *Toward Consensus*, COMMON CAUSE MAGAZINE 40-41 (Nov./Dec. 1983).

67. Alaska, which has no income tax, provides a 100% refund of campaign contributions up to $100. ALASKA STAT. § 43 (1980). *See* H. ALEXANDER & J. FRUTIG *supra* note 1, at 277-78. When combined with the federal tax credit, the Alaska refund means that a contributor could receive $3 in tax reduction and payments from government for each $2 contributed up to $50.

seem practical.[68] Tax deductions, in contrast to credits, provide smaller tax savings to lower bracket taxpayers or no tax savings to individuals who do not itemize deductions.

It is uncertain to what extent tax benefits increase contributions or would increase them if the benefits were greater. For many individuals, a partial paper credit or deduction, up to more than a year after an out-of-pocket donation, does not provide much incentive to make contributions. In large part, these tax benefits may simply subsidize contributions that would have been made anyway.[69] This situation may change as the tax benefits are exploited more effectively by candidates and become more widely understood by taxpayers.

A further problem with tax benefits, as generally conceived, is that they provide no government control over allocation of the public subsidies involved. There is no statutory limit on the amount of tax-subsidized contributions that can be received by a candidate, nor any minimum that is reasonably assured. Some candidates will receive large amounts of these contributions, in particular those candidates with high name recognition, ample finances to solicit modest contributions, or the support of powerful causes or organizations. In contrast, other candidates will receive relatively little from tax-benefit contributions despite the candidates' need and potential support. Furthermore, there is no public control over use of the contributions, including use for non-campaign purposes.[70] In sum, existing and commonly proposed tax benefits for contributions can be regarded as a striking example of improperly "throwing public money at a problem."

2. *Payments Directly by the Government*

Direct funding of campaign expenditures from the public treasury is a superior alternative to the present methods of financing campaigns. These public funds should be provided in sufficient, timely amounts so

68. *But see supra* note 67.

69. *See* D. ADAMANY & G. AGREE, *supra* note 57, at 126-28.

70. Conceivably, segregation of tax benefit contributions could be required and limitations could be imposed on the aggregate amount of those contributions that each candidate could receive and on the use of the funds. There would be serious problems in enforcing these limitations. Often, a contributor would not know whether a contribution qualified for tax benefit or not, but would nevertheless claim the credit or deduction. A possible solution would be to require the contributor to show written verification from the candidate that the contribution came within the candidate's limit. Knowing falsification by the candidate in making this verification could be a crime. Enforcement of the verification requirement against contributors, however, would burden tax administration and, to a degree, reduce the tax incentive to make contributions. *See* H.R. 4428, 98th Cong., 1st Sess. (1983). *Cf.* H. ALEXANDER, TAX INCENTIVES FOR POLITICAL CONTRIBUTIONS 37-62 (1961).

that most candidates for state elective offices with potential extensive support can finance a substantial campaign. Modest private contributions also ought to be allowed because they are an important form of citizen participation in elections. The system, accordingly, should be one of mixed public-private financing.

Supporters of direct public financing of campaigns anticipate that it would produce more representative and fairer government, greater access to public office for those without personal wealth or wealthy backers, and better informed citizen participation in elections.[71] They believe that the hard, "dollars-and-cents" savings for most of the public from reducing special interest influence will greatly exceed the cost of government payments; that tax loopholes will be reduced, subsidies abated, and costs to consumers from unjustifiable governmental interference in the private market lessened.[72]

Apart from opposition for reasons of partisan or incumbent advantage, or continued special interest influence, public financing is opposed because of its cost and a belief that other uses of the funds are more valuable. Public financing of primary and general elections for statewide and legislative offices probably would cost in the range of $25-$35 million per year in current dollars over a four-year election cycle.[73] Although this amount is an appreciable sum, it represents only approximately one-tenth of one percent of the state budget, or about one dollar per year for each Californian.

There might be further objection to public financing on the ground it violates citizens' political freedom. Taxes should not be used, it may be argued, to support candidates that a taxpayer opposes or does not favor. Analogy has been made to the use of taxes to support religion.[74]

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71. *See, e.g.*, Common Cause, *Twenty Who Gave $16 Million*, *supra* note 18, at 75-78.

72. "[P]roponents claim that the true costs of the present system are dramatically understated because . . . of the many subsidies special interest groups receive from [legislators] who have been favored with their contributions. This, or at least a large part of it, will cease once public funding is adopted . . . . Under the present system the general populace pays an excessively high price in distorted public policy decisions . . . ." AMERICAN ENTERPRISE INSTITUTE, PUBLIC FINANCING OF CONGRESSIONAL CAMPAIGNS 23 (1978).

73. *See* Common Cause, *Costs of A.B. 12*, Press Release (June 22, 1983) (calculations averaging from $14.7-31.5 million per year for legislative races only); FPPC, *The Impact of Campaign Contribution Limits and Public Financing, supra* note 28, at 138-140 (estimate of nine million dollars per year for legislative general elections only). Public funding of campaigns for statewide elections for Governor, Lieutenant Governor, Secretary of State, Treasurer, Controller, and Superintendent of Public Institution seemingly would average four to seven million dollars per year.

74. *See, e.g.*, Buckley v. Valeo, 424 U.S. at 248 (Burger, C.J., dissenting); Polsby, Buckley v. Valeo, *The Special Nature of Political Speech*, 1 SUP. CT. REV. 31-35 (1976).

The separation of church and state, however, is expressly mandated by federal and state constitutions.

Eligible voters, as well as citizens generally, have an interest in substantial, informative campaigns in choosing officeholders.[75] They also have an important stake in government officials—even those they oppose—being free from the influence of campaign contributions.[76] Seemingly, there is a general interest, too, in a fair election process that does not discriminate materially among citizens on the basis of wealth or access to wealth, and that increases public confidence and participation in government.

3. Government Funding and Political Parties

One of the most troubling aspects of public financing of campaigns is the role of political parties. A forceful argument can be made that direct public financing of candidates will cause greater fragmentation, incoherence and ineffectiveness in government by further reducing parties' influence over officeholders and candidates;[77] that public funding ought to be through parties; and that the parties should have broad discretion in deciding for which candidate the public funds are to be spent and how the money is to be used. In a number of nations with a parliamentary form of government, public financing of campaigns is through political parties.[78] More relevant, and much more surprising, is that party control is the rule in several states in this country which provide for government funding.[79] Subject to some restrictions, party organizations in those states determine how the funds are allocated among candidates and party activities.

At the present time, however, party control over public treasury campaign funds does not seem feasible in California. It would not be considered seriously by the legislature or by campaign finance reform

75. *See* First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 777 (1978).

76. *Buckley*, 424 U.S. at 26-27.

77. *See* AMERICAN ENTERPRISE INSTITUTE, *supra* note 72, at 26: "[A]ny form of government subsidy which is given directly to candidates rather than to political party organizations inevitably will reduce the candidates' dependence upon the parties. This weakening bond will tend to undercut whatever party cohesiveness and discipline there is, producing a more atomized and fragmented political system, with still weaker political parties . . . making it harder to hold public officials accountable. Weakened party ties also will affect public policy by making it more difficult to mobilize majorities in legislative bodies." *See also* Comments by H. Alexander, AMERICAN BAR ASSOCIATION, SYMPOSIUM ON CAMPAIGN FINANCING REGULATION 39-40 (1975).

78. *See* D. ADAMANY & G. AGREE, *supra* note 57, at ch. 9.

79. H. ALEXANDER & J. FRUTIG, *supra* note 1, at 14. The states that fund campaigns through parties are Idaho, Iowa, Kentucky, Maine, North Carolina, Rhode Island and Utah. *Id.* The amounts involved have been small.

groups. The state's tradition is too candidate-oriented. There appears to be scant support for using parties to structure the election process and little understanding of the important constructive role that they can perform in a democratic system of government. Since parties in California are now hardly more than empty shells, direct public financing of candidates would not actually weaken the parties much further.

Political parties in California need to be changed if they are to control public campaign funds, as well as perform other important functions. The California Election Code mandates that the statewide governing bodies of parties be composed largely of legislators, defeated candidates for the legislature, and those persons' appointees.[80] At the local level, the Code requires that county central committees be elected by primary election voters.[81] Because significant campaigns for these committees are impractical in larger counties, incumbents are almost automatically re-elected, and new members are chosen on arbitrary bases. Consistent with the Code, there is little relationship between state and local party bodies—and certainly no hierarchy of party structures built democratically on an open, activist grassroots base. Legislators have been unwilling to give up their dominance and permit the parties to be significant independent centers of strength to which the legislators themselves might be accountable.

Much of the legislation restricting political parties is now being challenged on constitutional freedom of speech and association grounds.[82] If successful, these challenges would permit the parties, subject to basic rights of access and procedural safeguards, to organize and govern themselves.

4. Candidate Eligibility and Bases for Public Payments

Public monies used for campaign expenses should be appropriated from the state's general fund. The total public payments should not be fixed, as they are under the federal law for presidential campaigns,[83] by the number of taxpayers who designate on their income tax forms that they wish to have a specified amount of their taxes used to finance cam-

80. *See* CAL. ELEC. CODE §§ 8660, 9160 (West Supp. 1983).

81. *Id.* at §§ 8820-8823.5, 9320-9323.

82. *See, e.g.*, Cousins v. Wigoda, 419 U.S. 477 (1975); Abrams v. Reno, 452 F. Supp. 1166 (S.D. Fla. 1978), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982). A recent case in the United States District Court, Northern District of California, San Francisco County Democratic Central Comm. v. Eu, No. C-83-5599-MHP, *appeal docketed*, No. 84-1851 (9th Cir. Apr. 16, 1984), held that California statutes prescribing party organizations and certain procedures, and prohibiting party organization primary endorsements were unconstitutional.

83. 26 U.S.C. § 6096 (1976).

paigns. Unfortunately, this "checkoff" system has been copied in a number of states that have public financing of campaigns or political parties.[84] The tax checkoff seems inconsistent with majoritarian and representative government because it permits individual taxpayers to determine the amount of government funds that are available for campaign financing. It is a gimmick that provides no additional revenue; the money must still come from general treasury funds. Like tax benefits for contributors, the checkoff system discriminates against non-taxpayers, who are excluded from participation. The total checked may be substantially less than the full public payments that candidates need and otherwise are entitled to under the law.[85] Legislative appropriation in excess of the amounts checked seems unlikely; repeal of the checkoff system once established would be very difficult. If only part of the public payments are available, contribution limits based upon full payments would seriously prejudice some candidates, especially challengers.

Public financing is important in primaries as well as in general elections; indeed, the need for public financing is probably greater in primaries. Candidates are more numerous, and generally not as well known as the candidates in a general election. Name recognition is often expensive to secure. Frequently, primary candidates must strive harder to obtain campaign contributions, and therefore are more vulnerable to "strings" attached to contributions. They do not have the benefit of party loyalty in fundraising or the political support that follows simply from being designated the sole party representative on the ballot. With the overwhelming majority of legislative districts in California now "one party" districts (either naturally or by incumbent gerrymandering), primary elections may offer the only realistic possibility for electoral competition in many districts.[86] Those interested in influ-

84. H. ALEXANDER & J. FRUTIG, *supra* note 1, at 15-24.

It should be noted that a few states have enacted provisions permitting a taxpayer to make a campaign contribution in connection with his tax return to a fund for candidates or parties. These provisions are distinguishable from the checkoff system because the contribution is in addition to taxes; the tax return is simply the means by which the voluntary contribution is made. Thus far, however, taxpayers have made little use of these provisions. *Id.* at 7.

85. *See generally*, Noragon, *Political Finance and Political Reform: The Experience with State Income Tax Checkoffs*, 75 AM. POL. SCI. REV. 667 (1981).

86. Given the great advantages of incumbents in primary elections, serious competition normally would occur only when the incumbent was not seeking re-election.

One of the ironies of gerrymandering is that the problems of campaign financing are reduced, in many cases, in districts dominated by one party. With no prospect of election, candidates of the subordinate party will make minimal effort or have little success in raising campaign funds. Nominees of the dominant party have no need to raise much money. *But*

encing the outcome of elections and in receiving favorable treatment from officeholders are likely to place an increasing share of their contributions in competitive primaries.

Public payment of primary campaign expenses probably would double the cost to the public treasury of funding campaigns, even if maximum payments to individual candidates were substantially less than in general elections. Because of the costs involved and the desirability of limiting the number of substantial candidates for a nomination, questions of candidate eligibility for public funds in primaries are critical.

In order to be eligible for public funds in any election, a candidate should meet the requirements to be listed on the ballot. Since these requirements are usually easy to satisfy in primaries, a candidate should also be required to show appreciable public support. This support could be demonstrated by receipt of a prescribed minimum amount of contributions, preferably in modest sums from individuals, or, to permit participation by those who cannot afford contributions, possibly by signed endorsements from registered voters in the election district, or by a combination of contributions and signatures.[87] Above a fixed minimum amount, the support requirement should be adjusted according to the number of voters in the district registered in the candidate's party, up to a reasonable maximum. Overall, eligibility requirements should be strict enough so that normally no more than two or three candidates are able to qualify for public financing in each party primary.

For general elections, party or independent nomination alone probably should be enough to make a candidate eligible for public financing. But arguably eligibility requirements should depend further on the amount of public payments that a candidate receives simply by becoming eligible, and on the criteria used for subsequent payments. If, for example, public grants are limited solely to matching private contributions at a low ratio,[88] then no significant further eligibility requirements need to be imposed.[89] But if large payments are made on

see supra note 17. Of course, gerrymandering otherwise exacerbates problems of electoral competition, accountability, and citizen participation.

87. A problem with signatures, either as a basis for eligibility or for subsequent payments, is that they may be given too freely, since they cost signers very little but have monetary value for candidates. They also involve substantial verification burdens, especially if registered voters may sign for only one candidate per nomination or office.

88. This type of system is used for federal presidential primary elections and caucuses. 26 U.S.C. § 9034 (Supp. 1983).

89. Candidates could be required, however, to present a minimum amount of matchable contributions at any one time to limit administrative cost and inconvenience.

eligibility, candidates might be required to obtain a specified minimum amount of contributions or number of signatures in order to avoid payments to nominees with no prospects of appreciable support.

Public payments in general elections might be patterned after the system used in presidential elections. Upon nomination, major party presidential nominees are immediately paid the maximum total amount of government funds that they can receive for the election.[90] Minor party or independent nominees receive a portion of that same maximum based on their party or personal vote in the most recent presidential election.[91] An alternative to the presidential system would be to pay all candidates a substantial part, perhaps twenty-five or thirty-three percent, of their maximum payments on nomination. Candidates would be entitled to the remainder of their public funds based on matching of modest private contributions and, again, possibly signed endorsements. The initial grant would facilitate a well-organized, effective campaign and would reduce the fundraising burden on candidates. This alternative treats all candidates, whether major party, minor party or independent, according to the same rules.

Although substantial grants to independent and minor party candidates on nomination would be a boon to them, the grants would significantly increase the cost of public funding or require reductions in payments to other candidates with better prospects. The grants would be widely regarded as wasteful.[92] By strengthening minor party nominees, the public funding would work to undermine the two-party system, and in some cases cause the vote to be so divided that a candidate would be elected even though an opponent was preferred by a majority of the voters.[93] At the same time, it is important to avoid what many would regard as serious unfairness to minor party or independent nominees and to respect constitutional prohibitions of unjustifiable discrimination against those nominees.[94]

Probably the best approach to public funding in general elections would be to make initial grants on nomination up to a substantial maximum amount based on the number of registered voters in a nominee's party, or, for an independent nominee, the number of eligible persons that signed the candidate's nomination papers. In most cases, major party nominees would receive the maximum initial amount; minor

90. 26 U.S.C. § 9006(b) (Supp. 1983).

91. *Id.* at §§ 9004, 9005, 9006(b).

92. *See* Buckley v. Valeo, 424 U.S. at 95-98, and cases cited therein.

93. *See* Barton, *The General Election Ballot: More Nominees or More Representative Nominees?*, 22 STAN. L. REV. 165, 170 (1970).

94. *Buckley*, 424 U.S. at 95-98; Williams v. Rhodes, 393 U.S. 23 (1968).

party nominees would receive only a fraction of that amount.[95] Thereafter, all candidates equally would be entitled to public funds based on matching of private contributions, limited to their maximum total public payment for the election, of course.

If a system of public financing is adopted that provides solely for matching of private contributions, or for low payments on eligibility, matching ratios should be high; for example, three or four public dollars for each matchable private dollar contributed. The maximum cumulative matchable contribution from a source ought to be several hundred dollars; and organizational as well as individual contributions should be matched. The objective is for most candidates with a reasonable degree of private support to receive the maximum or substantial amounts of public funding early in the campaign without undue effort. If maximum matchable contributions are kept modest, liberal matching should not cause disproportionate contributor influence.

Public funding based on the matching of private contributions has several significant advantages. It provides for private rather than government allocation of public funds, which reduces the possibility of official discrimination among candidates. Matching gives candidates reason to solicit modest contributions and citizens incentive to make those contributions. In theory, if not generally in practice, it permits minor party and independent candidates to receive as much public money as major party candidates. Of course, matching does not guarantee a minimum amount of money for eligible candidates. Candidates still must obtain the matchable contributions. Furthermore, participation is more burdensome under a matching system for persons with lower incomes.

5. Uses of Public Funds

Candidates should be allowed to use public funds only to further their nomination or election.[96] Expenditures illegal under state or fed-

95. If this system were adopted, initial public payments to a party's nominee would increase as that party's registration increased, subject to the maximum limits.

Basing public payments on the number of votes cast for a party or candidate in a past election is undesirable, given changes in districts or differences in election contests. Votes for a candidate in a preceding closed primary would be an unsuitable measure because only persons registered in the candidate's party can vote for the candidate in that primary.

96. Public funds not used for campaign purposes would have to be repaid to the government treasury. A candidate might utilize her public funds on campaign expenses and retain private contributions or use them for non-campaign purposes. This could be prevented by requiring that private donations not spent for campaign purposes be paid to the state to the extent that the candidate had received public payments. This policy, however, would encourage candidates to spend everything they received, regardless of need. Perhaps a candi-

eral law should be excluded. Any rebates or kickbacks received by a candidate as a result of expenditure of public funds should be paid to the public treasury. Expenditures that are not likely to provide appreciable information about a candidate or campaign issues could be ineligible for public subsidy. By way of illustration, billboards, bumper strips, buttons, and brief television and radio "spots" might not be covered, or might be reimbursed only to a limited extent.

The danger is that exclusions from public payments would significantly impair some campaigns. Name identification from billboards, bumper strips, and short broadcast spots is often a legitimate and vital need of candidates, particularly when opponents are incumbents or otherwise well-known. Broadcasts longer than one or two minutes are expensive and often ineffective because it is difficult to attract and maintain large audiences. Furthermore, candidates can use private contributions for expenditures not covered by public payments. On balance, it seems preferable to leave candidates with broad flexibility in spending public funds. Opponents' criticism and voter reaction will provide some constraints.[97]

6. Government Provision of Materials and Services

The state ballot pamphlet, which now contains information on ballot measures and is mailed to all registered voters,[98] should be expanded to include statements by candidates for state office. This change would economically provide significant information to many potential voters, as well as greater public control over use of public funds. The incremental cost would be relatively small, especially when compared to the cost of each candidate separately mailing a statement to all registered voters. To limit the expense and bulk of the ballot pamphlet, only candidates eligible to receive public funding might be allowed to include statements in the pamphlet.

Apart from expansion of the ballot pamphlet, the state could mail in the same envelope statements of all candidates for a nomination or an office at a lesser cost than the candidates acting separately could mail their statements. It also might be feasible for state presses to print certain material for candidates. The point, perhaps capable of other

date should be required to pay the state a portion of the private contributions not spent on the campaign equal to the proportion that private contributions bear to the candidate's total campaign receipts, public and private.

97. An interesting possibility would be to condition payment of public funds on a candidate's compliance with a code of fair campaign practices, created by statute or administrative regulation.

98. CAL. ELEC. CODE §§ 3567.5-3579 (West 1977 & Supp. 1984).

applications, is that the state may properly be able to provide campaign assistance more economically, or with more control, through the direct provision of materials, services, or facilities, rather than by making payments to candidates.

7. Enforcement of Rules

The rules governing public financing of campaigns need to be carefully and effectively drawn and enforced, especially because of the vulnerability of public funding to discredit among citizens. There must be strong controls to prevent ineligible candidates from receiving funds and eligible candidates from receiving funds in excess of entitlements. It is important to assure that candidates expend funds only for proper purposes. Candidates should be required to deposit public payments in a separate account, and to maintain a detailed record of expenditures from that account. Payments from the account should be only by written instrument naming the payee, except perhaps for narrowly circumscribed petty cash transactions.

There should be appropriate and adequate civil remedies and criminal sanctions for violation of the public financing laws. In order to secure effective enforcement, the legislation should authorize the FPPC, an agency that is relatively free from partisanship and political pressure, to impose civil penalties, seek injunctive relief, and adopt regulations to implement the laws.[99] The Attorney General and district attorneys should be responsible for criminal prosecutions and should also have authority to obtain civil remedies. Finally, careful audits and field investigations need to be made by an appropriate government agency to monitor compliance with the law.

There is concern about government financing being manipulated by legislators or other public officials for incumbent or partisan advantage.[100] For example, available public funds might be reduced without an increase in contribution limits, thereby prejudicing challengers. Administrators might delay or refuse to make payments to candidates.

99. *Cf.* CAL. GOV'T CODE §§ 83111-83116, 91001(b), 91005 (West 1976 & Supp. 1982) (FPPC powers to implement and enforce campaign finance disclosure requirements).

"Attorneys General are mostly elected at the state level. If not, they are appointed on the basis of partisan activities, and it is always hard to get evenhanded and impartial administration and enforcement of laws where the officials who are responsible have achieved their positions as the result of their partisan activity. It's awfully hard for an attorney general to prosecute someone in his own party, and it is also hard to prosecute someone in the other party . . . ." Comments by H. Alexander, *supra* note 77, at 2.

100. *See, e.g.*, Buckley v. Valeo, 424 U.S. at 248-50 (Burger, C.J., dissenting); Polsby, Buckley v. Valeo: *The Special Nature of Political Speech*, *supra* note 74, at 35-41.

Enforcement officials could conduct baseless investigations of candidates during a campaign.

Official abuses would be protested sharply, however, by aggrieved candidates and their supporters. Protests would be publicized in the media, and often would create substantial adverse public reaction toward those committing the abuses. Judges probably would respond severely to unfair partisan—or incumbent—motivated violations of the public funding laws. For purposes of administration and enforcement, it is important that statutes be explicit about the amount and timing of candidate entitlement to public funds. There need to be exacting penalties for willful or negligent violation of candidate rights; and aggrieved candidates should be able to obtain prompt, effective judicial remedies to enforce those rights. Furthermore, the law ought to provide that contribution limits are removed in elections in which substantially full public funding is not made available.[101]

D. Expenditure Limitations

There may be more public support for limitations on campaign spending than for any other campaign finance reform. Nonetheless, in *Buckley* the Supreme Court held that expenditure limits violate the First Amendment, except when imposed as a condition on a candidate's acceptance of government payment of campaign expenses.[102]

Expenditure limits, to the extent that they are constitutionally permissible, will prevent gross disparities in spending between opposing candidates in some campaigns. Despite moderate contribution limits and substantial public funding, certain candidates, especially incumbents, will be able to raise much more money than their opponents because of name recognition, affluent supporters, pressure on contributors, advocacy of a zealously supported cause or other factors. Expenditure limits would also limit fundraising burdens and pressures on many candidates.[103] These candidates could be more independent in soliciting and accepting contributions. Finally, expenditure limits might encourage greater candidate use of volunteers, especially in vari-

101. At some point, severe restrictions on private contributions without sufficient alternative sources of funds probably would violate the First and Fourteenth Amendments. *See supra* note 45.

102. 424 U.S. at 54-58.

103. *See* Comments by F. Wertheimer, A.B.A. SYMPOSIUM ON CAMPAIGN FINANCING REGULATION 48 (1975): "[S]pending limits play . . . a very critical role in making contribution limits work, in terms of functioning and of putting a cap on the system, limiting the incentive . . . to get around the [contribution limits]."

ous forms of person-to-person campaigning.[104]

Despite their positive aspects, it is questionable whether expenditure limits are desirable if there are strong contribution limits. A principal concern is that the limits will be set too low, in particular by incumbents with their campaign advantages in name recognition and ability to communicate with the public. Low limits often would prejudice challengers and preclude substantial competition. Furthermore, candidates may cut expenditures for grassroots volunteer activity first when limits require spending priorities.

Expenditure limits involve further problems because substantial campaigns are much more costly in some districts than in others as a consequence of variations in media, political organization, and the accessibility of voters. In addition, competitive campaigns against incumbents or well-known candidates may require greater expenditures than against other opponents. It would not be practical, however, to fix different limits for different districts, let alone for different types of candidates, because the relevant campaign cost variables are too numerous and complex. Limits could be varied for differences in population or registered voters, but these factors account for only a small part of the differences in campaign costs.

Enforcement of expenditure limits is difficult. Obviously, there are strong motives and numerous ways to spend money and other resources on behalf of candidates. To the extent that limits are not enforceable or enforced, law-abiding candidates will be disadvantaged. Independent expenditures may be used to avoid spending limits, just as they are used to circumvent contribution limits.[105] These independent expenditures could be a significant factor in some election contests. To limit their effect, the legislature would need to adopt the most restrictive definition of independent expenditures constitutionally permissible.[106] Furthermore, a low limit might be set on the size of contributions to those making independent expenditures but the constitutionality of that kind of limitation is uncertain.[107]

104. In order to enact and maintain government financing of campaigns, it may be necessary to combine the government funding with the much more popular expenditure limits.

105. *See* text accompanying note 54.

106. *See* Buckley v. Valeo, 424 U.S. at 46-47, particularly n.53; *see also supra* note 54.

107. *Buckley* held that restrictions on independent expenditures were unconstitutional because they were not justified by a sufficient public interest. The Court concluded that the record did not show that the restrictions served materially to prevent improper influence or the appearance of improper influence with officeholders. 424 U.S. at 39-51.

In upholding limits on contributions to candidates, on the other hand, the Court indicated that contribution limits interfere less with protected First Amendment interests, or perhaps are subject to a less demanding constitutional standard. The Court reasoned: "A

If expenditure limits are imposed despite the problems that they involve, they should be set relatively high, even though this means that they lose much of their positive effect. The legislature should include a formula to adjust the limits so that they rise automatically with substantial increases in the price level and the number of registered voters. Candidates who accept public funds, thereby subjecting themselves to limits, ought to be permitted to spend extra sums to the extent that their non-publicly funded opponents spend in excess of those limits. Moreover, the publicly funded candidates probably should be given additional public funds equal to the excess spent by their opponents, up to a specified maximum. Candidates making excess expenditures should be required to give timely advance notice to their publicly funded opponents before making the expenditures.[108]

IV. Conclusion: The Legislative Situation

A number of comprehensive campaign finance reform bills have been introduced in the California Legislature during the past decade.[109] The bills have provided for substantial public funding in general, and usually, primary elections, tight restraints on contributions,

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limitation on the amount of money a person may give to a candidate or campaign organization . . . involves little direct restraint on . . . political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. . . . [T]he transformation of contributions into political debate involves speech by someone other than the contributor. . . . The quantity of communication by the contributor does not increase perceptibly with the size of his contribution. . . ." *Id.* at 27. Furthermore, in California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182 (1981), the Court upheld limits on contributions not to a candidate but to a committee that made contributions to candidates.

It is not clear, however, that the Court would find a state interest sufficient to limit contributions that could be used only for independent expenditures. In Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981) the Court held invalid a limitation on contributions for purposes of ballot measure campaign expenditures. The Court seemingly gave more First Amendment protection to campaign contributions than it had indicated in *Buckley*. The majority declared: "Contributions by individuals to support concerted action by a committee advocating a position on a ballot measure is beyond question a very significant form of political expression." *Id.* at 298. The Court asserted that, under *Buckley*, contribution limits are permissible only when used to prevent contributors from securing " 'a political quid pro quo from current and potential officeholders' " or when used to avoid " 'the appearance of improper influence.' " 454 U.S. at 297 (quoting Buckley v. Valeo, 424 U.S. at 26-27). Applying the Court's analysis, limits on contributions for independent expenditures arguably are constitutionally unjustified.

108. The purpose of the advance notice requirement, of course, is to give opponents a fair opportunity to obtain and use effectively additional private contributions and, if available, public treasury payments. It is uncertain whether the courts would regard this purpose as sufficient to justify the notice requirement. See the discussion of this issue, *supra* note 62.

109. *See, e.g.*, A.B. 3178 (1982); A.B. 2927 (1980); A.B. 1372 (1977). These bills have been based largely on carefully worked out proposals put forth by Common Cause, an or-

and limits on expenditures. By imposing low contribution limits and offering liberal amounts of government funding, the bills have been designed to induce most candidates to accept public financing, with the limits on expenditures and other regulations that are attached to that financing.

Despite considerable "lip service," until recently the bills have had few legislative supporters, and have received little consideration in state senate and assembly election committees. A number of legislators have favored limits on contributions or expenditures, but most have opposed public funding. They have not wanted to finance challengers more adequately, and thereby lose part of their fundraising and other campaign advantages as incumbents. In addition, legislators have experienced little constituent demand for public financing. Indeed, legislators feel that the public, for the most part, opposes using tax dollars to pay for campaigns, despite ambiguous polls showing majority approval for the general concept.[110] The Republicans generally have not supported major reform, seemingly because they have thought that the present system gives them a fundraising advantage over the Democrats. Environmentalists, consumers, taxpayers and other groups that seemingly would benefit significantly have not put much effort into campaign finance reform; these groups have been occupied with issues that apparently relate more immediately to their interests.

In the last two years, however, legislators seem to have changed their attitude toward campaign finance reforms considerably. In 1982, the Assembly for the first time passed a comprehensive bill providing substantial public funding for campaigns.[111] This year bills have passed both the Assembly[112] and Senate;[113] these different bills are now

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ganization concerned with reform of the political system and government structure and process.

110. *See, e.g.*, Pfautch, *Campaign Finance: The Signals from the Polls*, PUBLIC OPINION 52 (Aug./Sept. 1980). (In a Gallup Poll 57% of respondents answered that it was a "good idea" that "the federal government provide a fixed amount of money for the election campaign of candidates for Congress and that all private contributions from other sources be prohibited.").

111. A.B. 3178 (1982).

112. A.B. 12 (1983). As amended through February, 1984, the bill provides large amounts of public funding in general elections for candidates for the legislature who meet high monetary thresholds. Public payments are based on matching of private contributions up to $1,000. There are single-source limitations on contributions of $1,000 for individuals and $3,000 for organizations, and aggregate limits on contributions by certain organizations. Expenditure limits, which are 50% higher than maximum public payments, apply to candidates who receive public funds; these candidates may exceed the limits if their opponents spend greater amounts.

113. S.B. 87 (1983).

before a special two-house joint committee.[114] There appears to be new Republican openness, and perhaps ultimately support, for public financing as well as for contribution and expenditure limits.[115]

Legislators from both parties seem to be growing weary of soliciting ever increasing amounts of money for their campaigns.[116] Many apparently find this task one of the most burdensome and distasteful aspects of politics, and are sensitive to the adverse publicity often involved. There is considerable anxiety about expensive campaigns by challengers. There also seems to be growing public concern and dissatisfaction with the present system. Even special interest groups sometimes appear to be tiring of the constant demands and pressures upon them for contributions, especially since many times they receive little in return.

Nevertheless, it remains unlikely that California will soon enact the kind of broad reforms proposed in this article, especially with a conservative Republican governor and the state government's perceived financial problems. It is doubtful whether enough incumbents, let alone influential special interest groups, will feel that these reforms will be advantageous, or at least not materially harmful, to them. And there is danger that any reforms that are enacted will unduly favor incumbents—for example, by requiring high thresholds for eligibility for public funds, by not providing public funding in primary elections, or by low contribution limits. It must be recognized that "in dealing with campaign finance laws we are dealing with the heart of political power—how it is obtained, how it is exercised, who it may or may not benefit. Incumbents, . . . [p]arties . . . , and . . . powerful interest

114. The understanding apparently is that this Joint Committee on Campaign and Election Reform will review the entire subject of campaign finance reform, hold public hearings, and make recommendations to the two houses of the legislature early in 1984. The amended version of A.B. 12, *supra* note 112, has become the single bill with which the legislators are working.

115. *See* Lembke, *A Bipartisan Push for Some Campaign Finance Reforms*, CAL. J. 155-57 (Apr. 1983). Republicans may be more amenable to campaign finance reform because in the 1982 campaign they were at a financial disadvantage as a result of the success of Democratic legislative leaders in raising large sums from sources with economic stakes in legislative decisions. *Id.* at 156; *See also supra* note 21. In the 1982 general elections, median expenditures by Democratic candidates in State Assembly races increased from $69,000 to $81,000; on the other hand, median expenditures by Republican candidates in those legislative races declined from $69,000 to $61,000. FPPC, *Campaign Receipts and Expenditures by State Candidates, supra* note 28. Democrats, however, apparently remain fearful of Republican fundraising abilities.

116. "Assembly Minority Leader [Robert] Naylor laments 'the inordinate amount of time we spend raising money around here. Every year, the ante gets raised dramatically. . . . I'm convinced its having some adverse effect on the objectivity of the legislative process.' " Lembke, *supra* note 115, at 157.

groups all approach this issue with intense ferocity."[117]

Over time however, campaign finance reforms similar to those proposed here will gain support and will be adopted, possibly by initiative. The defects of the present methods of financing campaigns are too egregious. Alternatives must be enacted that will make the election process and government more representative and evenhanded.

117. Letter from Archibald Cox to Common Cause Members (Fall, 1983).