

OVERVIEW

The purpose of this Oversight/Informational Hearing is to explore and discuss current practices as well as the outlook for advances in campaign finance regulation and disclosure in California.

Campaign finance regulatory systems usually consist of one or more of the following components: public disclosure of campaign finances, limits on campaign contributions to candidates and other political organizations, voluntary limits on campaign expenditures, and incentives to abide by expenditure limits including access to public funds for campaign purposes.

Opinions vary widely on the best approach to campaign finance regulation. Some observers believe that robust and timely disclosure alone is sufficient and that it is futile or even counterproductive to limit contributions or expenditures. Others contend that disclosure is an invasion of contributors' privacy. On the opposite end of the philosophical spectrum is a belief that only comprehensive systems providing public funds as an alternative to private fundraising can adequately address the potential corrupting influence of money in politics.

Main Components of the Existing California System

California's existing system of campaign finance regulation and disclosure includes, but is not limited to, all of the following pursuant to the Political Reform Act (PRA):

- Limits on campaign contributions to candidates seeking a state office and committees that make contributions to state candidates. *See attached chart from the Fair Political Practices Commission (FPPC) for the current contribution limits.*
- A prohibition against state lobbyists from making campaign contributions to state officeholders or candidates for a state office if the lobbyist is registered to lobby the agency of the officeholder or candidate.
- Voluntary campaign expenditure limits for state candidates. *See the attached FPPC chart for the current voluntary expenditure limits.* Statewide candidates who accept the voluntary expenditure limits are designated as having done so in the state ballot pamphlet while legislative candidates who accept the voluntary expenditure limits are designated as having done so in the voter information portion of county sample ballots. Participating candidates may also purchase space to place a 250-word

statement in these publications.

- A ban on the use of public moneys for the purpose of seeking elective office.
- Requirements for state and local candidates, political committees, and slate mail organizations to file specified periodic and activity-based campaign finance reports, including semiannual statements, pre-election statements, supplemental pre-election statements, and late contribution/expenditure reports that include specified campaign finance information.
- A requirement that the Secretary of State (SOS), in consultation with the FPPC, provide an online and electronic filing system for use by specified state candidates, state committees, as well as state lobbyists, lobbying firms, and lobbyist employers. This online reporting and disclosure system is commonly referred to as the CAL-ACCESS system. The SOS must make all the data filed using the system available on the Internet for public viewing in an easily understood format and to provide a means whereby entities that are required to file statements or reports online or electronically with the SOS pursuant to the PRA, can submit those required filings free of charge.

Summary of Notable Campaign Finance Ballot Measures

Proposition 9

In response to the Watergate scandal, California voters approved an initiative, Proposition 9, which enacted the PRA, in June of 1974. The PRA has been amended hundreds of times since enactment and, among other things, currently regulates campaign finance disclosure, contributions, expenditures, lobbying practices, government conflicts of interest and ethics. Proposition 9 also established the FPPC which is charged with enforcing the PRA.

Propositions 68 and 73

In spite of Proposition 9's passage, prior to 1988 there were no limits on the amount of money candidates for California state office could accept or spend. In June of 1988 however, voters approved two separate campaign finance reform initiatives: Proposition 68 and Proposition 73. The California State Supreme Court eventually ruled that because the two measures contained conflicting comprehensive regulatory schemes they could not be merged and only one could be implemented. Since Proposition 73 received more affirmative votes than Proposition 68, the Court ordered the implementation of Proposition 73 and proclaimed all the provisions of Proposition 68 invalid. In 1990, all state and local elections were conducted under the Proposition 73 limits.

Proposition 73 prohibited the use of public moneys for campaign purposes and limited the amount of contributions candidates, committees, and political parties could accept from all entities on a fiscal year basis (\$1,000, \$2,500, or \$5,000, depending on the source). It also prohibited the transfer of campaign funds between candidates. These same provisions also applied to special elections (but were based on election cycles rather than fiscal years). The competing Proposition 68 was a more comprehensive measure consisting not only of contribution limits, but partial public financing of campaigns for candidates who agreed to an overall limit on campaign expenditures.

Many of the provisions of Proposition 73 however, were ultimately found unconstitutional in federal court. The fiscal-year based contribution limits were deemed to discriminate against non-incumbents. The only provisions of Proposition 73 that survived legal challenge were the contribution limits for special elections, some restrictions on the type of mass mailings officeholders may send out at public expense, and the prohibition on the use of public money for campaign purposes.

Proposition 208

Another initiative, Proposition 208 was approved by the voters in 1996. Proposition 208 was sponsored by many of the same individuals and organizations behind Proposition 68. This new measure enacted a campaign finance reform plan consisting of variable contribution limits, i.e., candidates who agree to abide by a voluntary expenditure cap would be rewarded with contribution limits higher than those imposed on candidates who refused the expenditure cap. Transfers of campaign funds between different candidates and their committees were also prohibited. Additionally, candidates for statewide office were prohibited from accepting contributions more than 12 months prior to the primary election while all other candidates were prohibited from accepting contributions more than six months prior to the primary election.

Proposition 208 was also challenged in federal court subsequent to passage and was almost immediately enjoined from enforcement. The court initially concluded that the contributions limits were so low that they precluded an opportunity to conduct a meaningful campaign and thereby infringed on a candidate's First Amendment rights (legislative candidates could not accept contributions in excess of \$250 per election from each donor, or \$500 if they accepted the expenditure cap). The court also suggested that the notion of variable contribution limits was coercive.

Proposition 34

The proponents of Proposition 208 were still pursuing appeals in federal court when it was largely repealed by Proposition 34 which was placed on the ballot by the Legislature and approved by the voters in November of 2000. Proposition 34, in conjunction with follow-up legislation, imposed contribution limits, limited candidate-to-candidate

transfers, prohibited certain lobbyist contributions, provided for voluntary spending limits in exchange for candidate access to ballot pamphlets, enhanced on-line reporting of large contributions, and increased fines for violations of the PRA. These provisions are still in effect today. A federal court subsequently invalidated one of Proposition 34's slate mail disclosure requirements.

Proposition 89

Proposition 89, an initiative measure which appeared on the November 7, 2006 General Election ballot, was defeated by an almost 3-1 margin. Proposition 89 would have enacted a "clean money" system of campaign financing similar to those currently in place in Arizona and Maine. Under "clean money," participating candidates would qualify for large amounts of public funds to expend on their campaigns once they collect a threshold amount of small (\$5) qualifying contributions. Once qualified, candidates could not raise or spend campaign funds from any other source other than the "clean money" (with limited exceptions). Proposition 89 also lowered the current limit on contributions that non-participating candidates may accept and placed restrictions on direct corporate contributions to initiative campaigns. Proposition 89 would have funded the "clean money" system by raising roughly \$200 million per year through an increase in the current income tax on corporations and specified financial institutions.

Proposition 15

Proposition 15, another "clean money" system was placed on the June, 2010 ballot by the Legislature. While it fared better than Proposition 89, it was nevertheless defeated 57.3% to 42.7%. Proposition 15 would have created a pilot project whereby qualifying candidates for SOS could have received public campaign funds for the 2014 and 2018 elections if they agreed not to accept most private contributions. Funding would have come from a substantial increase in the filing fees for lobbyists and their employers. State courts in Arizona and Vermont had invalidated lobbyist fees that were used to fund public financing programs similar to this one. Prior to the election, lobbyists' lawyers filed suit in both state and federal court but in both instances, the courts held that the issue was not yet ripe for review since Proposition 15 had yet to be approved by the voters. With the defeat at the polls, the lawsuit was dropped.

Existing Systems in California Municipalities and Other States

Several California municipalities as other states regulate campaign financing in myriad ways including disclosure, contribution limits, public financing, or some combination thereof. The ban on use of public funds for campaign purposes enacted by Proposition 73 as discussed above has been interpreted to not apply to charter cities. California cities

that offer some form of public funding for candidates include Long Beach, Los Angeles, Oakland, and San Francisco.

Other states that offer some form of public funding for candidates include Arizona, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, Rhode Island, and West Virginia.

For a broader discussion and more detailed description of these systems see the attached documents from the National Conference of State Legislatures (NCSL), California Common Cause, and the Campaign Legal center. For a complete list and copies of local California campaign finance ordinances visit the FPPC's website at the following link: <http://www.fppc.ca.gov/%5C/index.php?id=9>.

Effect of Supreme Court Decisions

Numerous decisions handed down by the Supreme Court of the United States over the last four decades has shaped the ability of our federal, state, and local governments to regulate campaign financing more than any other factor. Laws regulating the disclosure of campaign finances have been generally upheld by the Supreme Court although challenges are still common and legislative bodies continually attempt to address exploited loopholes. However, beginning with their decision in *Buckley v. Valeo* in 1976, and up through and including their decision in *McCutcheon v. Federal Election Commission* in 2014, the Supreme Court has struck down on First Amendment grounds several provisions of federal, state, and municipal campaign finance law. For instance:

- Limits on direct campaign contributions to candidates and their committees are permissible in order to address the possibility or perception of corruption but the limits cannot be so low as to prevent the candidates from running an effective campaign.
- Limits on overall campaign expenditures are not permissible and therefore must be voluntary. The Court has upheld the legitimacy of offering non-coercive incentives such as public financing to encourage candidates to abide by voluntary expenditure limits.
- Limits on the amounts and sources of expenditures for communications that expressly advocate support or opposition to clearly identified candidates made by entities without the consultation, coordination, or with the express, prior consent of any affected candidates are impermissible. These types of expenditures are commonly known as “independent expenditures.” It should be noted however that bans on direct campaign contributions and independent expenditures made by foreign nationals are

still intact.

- Limits on the aggregate amount of campaign contributions made to candidates and other political entities within any applicable individual limits by a single contributor are impermissible.
- Limits on campaign contributions to ballot measure committees are impermissible.

It should be noted that legal challenges to campaign finance regulations are ongoing and it is safe to assume that the Supreme Court will continue to rule on some of those challenges. Some observers predict that the Court will continue to invalidate campaign finance regulations further given its recent rulings. For instance, in a April 18, 2014 column that appeared in the Orange County Register (*see attached*), Professor Erwin Chemerinsky, Dean of the UC Irvine School of Law states, “There also be a wave of challenges to federal, state and local laws limiting the size of contributions. Indeed, anything other than disclosure laws – which the court has consistently upheld – are likely to be declared unconstitutional.”

Cal-Access Issues and Map Light Partnership

Created in 1999, Cal-Access is the database and filing system the SOS has used to make much of the lobbying and campaign finance information available online at no cost to users. On November 30, 2011, the Cal-Access system went down, and the system was unavailable for most of the month of December. Although the system has remained online since the cause of the failure was addressed, frequent concerns have been expressed by users and other observers regarding the current state and usefulness of Cal-Access.

In 2012, the Legislature enacted SB 1001 (Yee) which imposed a \$50 annual fee on political committees that are required to file disclosure reports pursuant to the PRA and increased the fee on lobbying firms and lobbyist employers from \$25 to \$50 per year per lobbyist. The revenue generated by the bill is deposited into the Political Disclosure, Accountability, Transparency, and Access Fund (PDATA Fund), and is available to be used to update or replace Cal-Access. It is estimated that these fees result in approximately \$450,000 of new revenue yearly for the PDATA Fund. Subsequent legislative efforts to upgrade or replace the system since passage of SB 1001 have so far proved unsuccessful.

On September 3, 2015, the SOS announced the launching of Power Search, a new open source campaign finance search engine available on the SOS’s website described as “the first step in modernizing and upgrading Cal-Access.” Power Search was developed in conjunction with MapLight, a nonprofit, nonpartisan research organization that tracks money’s influence on politics and funded with a grant from the James Irvine Foundation.

According to the SOS, “The new Power Search tool provides an easy-to-use interface to search campaign finance data that is refreshed daily from the state’s existing CAL-ACCESS system.”

Recent Legislative Action Related to Campaign Finance and Disclosure

The Legislature has considered several significant bills addressing various aspects of campaign finance regulation and disclosure in recent years including, but not limited to, all of the following:

SB 27 (Correa), Chapter 16 of 2014. Established conditions under which a nonprofit corporation or other multipurpose organization (MPO), as defined, that makes campaign contributions or expenditures is required to publicly disclose names of its donors. Requires the FPPC’s Web site to include a list of the largest contributors to committees that support or oppose state ballot measures or candidates, as specified.

SB 52 (Leno), of 2014. Died on Assembly floor. Required certain political advertisements disseminated by a committee other than a political party or candidate-controlled committee to disclose the contributors making the two largest (radio) or three largest (television, video, mass mailing, or print) cumulative contributions to the committee and the name of the committee paying for the ad, as specified.

SB 844 (Pavley), Chapter 920 of 2014. Required the SOS to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure in a manner that is easy for voters to access and understand, including a current list of the top 10 contributors supporting and opposing a ballot measure.

SB 1272 (Lieu), Chapter 175 of 2014. Required the following advisory question to be placed on the statewide ballot “Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?” However, On August 11, 2014, SB 1272 (Proposition 49) was removed from the ballot by order of the California Supreme Court. A decision from the Court on whether to permit Proposition 49 to appear on the ballot is still pending.

SB 1441 (Lara), Chapter 930 of 2014 and AB 1673 (Garcia), Chapter 882 of 2014. Identical bills that revised the definition of “contribution” to include a payment made by a lobbyist or a cohabitant of a lobbyist for costs related to a fundraising event held at the

home of the lobbyist, thereby making these payments attributable to the lobbyist for purposes of the prohibition against a lobbyist making a contribution to specified candidates and elected officers.

SB 1442 (Lara), of 2014. Vetoed. Required the SOS to develop a new Internet-based campaign filing and public display system. Required state candidates and campaign committees to file periodic campaign reports every calendar quarter, instead of semi-annually.

AB 990 (Bonilla), Chapter 747 of 2015. Imposes new requirements regarding font size, font style, and location, for disclosure statements on specified political advertisements, including advertisements supporting or opposing a candidate that is paid for by an independent expenditure.

AB 1431 (Gonzalez), of 2014. Vetoed. Would have prohibited a school or community college district administrator from soliciting campaign contributions for district board members and candidates for the district board, except as specified.

AB 1728 (Garcia), of 2014. Vetoed. Would have made all officials who are elected to local water boards subject to existing provisions of state law limiting contributions to officials from entities with business before the agency involving a license, permit, or other entitlement for use.

AB 2320 (Fong), Chapter 902 of 2014. Prohibited a spouse or domestic partner of an elected officer or a candidate for elective office from receiving, in exchange for services rendered, compensation from campaign funds held by a controlled committee of the elected officer or candidate for elective office.

HR 37 (Wieckowski), of 2014. Adopted. Stated the Assembly's disagreement with the United States Supreme Court's 2014 decision in McCutcheon v. Federal Election Commission.