

FEATURE ARTICLE



1988: The Year of Decision for Campaign Finance Reform and California Democracy

featuring comments by

Walter Zelman, Executive Director, California Common Cause
and Assemblymember Ross Johnson

INTRODUCTION

During the 1986 elections in California, 139 incumbents ran for reelection to legislative or executive posts. All 139 were reelected. Not a single challenger prevailed. And the margins were not close. Outside the visible challenge to Senator Cranston, the closest any challenger came to an incumbent was eight percentage points. The average margin of victory was almost 3-1. That is not a functioning democracy.

Incumbents have a natural advantage from their incumbency. But political scientists traditionally allocate no more than a 10% vote premium to the visibility and favor-dispensation opportunities of holding office. There is also outrageous gerrymandering in California. Districts are not drawn around natural communities, but are irresponsibly created in ink-spill fashion to accommodate political security.

But the most dangerous threat to a system of possible democratic challenge lies with campaign finance. In 1986, incumbents outraised their challengers by more than 30-1. And the trend grows worse as campaign costs continue to escalate at more than 30% per election. On the average, it now costs more than ten times the salary of a state senator or assemblymember to finance that position's election.

In 1987, state legislative candidates raised over \$25 million dollars, and 1987 was not even an election year! Of that \$25 million, a grand total of \$400,000, or under 2%, was raised by prospective challengers to incumbents. The rest was raised by incumbents. The amount of money to be spent in 1988, nearly all by incumbents, is projected at over \$100 million.

Over 94% of this money comes from contributions of over \$100; 80% comes in amounts over \$2,000; 92% comes from outside the candidates' district; and over 70% comes directly from special interest "political action committees" in Sacramento. California's associations of doctors, lawyers, insurance firms, bankers, etc., control the funding of our legis-

lators' campaigns. The legislators' resulting obligations give these interests an absolute ability to stop any legislation which might threaten their respective narrow interests. The continuing paralysis in the area of insurance reform is but one of many examples of the consequences of special interests' access to legislators due to enormous campaign contributions.

Our system of democracy—if it can still be called that—is in jeopardy. Two proposals to change the rules are before the people of California. What they provide and what happens to them may be one of the most important political decisions we make as a society in this decade.

The Center for Public Interest Law has invited comments from the organizations sponsoring two competing campaign finance reform initiatives which will appear on the June 1988 ballot. We present first a summary of the provisions of both initiatives, and then—in unedited form—those statements.

The Initiatives

The "Campaign Spending Limits Act" (hereinafter "the Gerken Initiative" or "Proposition 68") is based upon a proposal formulated by the California Commission on Campaign Financing in its 1985 publication entitled *The New Gold Rush: Financing California's Legislative Campaigns*. The initiative's primary proponent is Walter B. Gerken, chief executive officer of Pacific Mutual Life Insurance Company. A coalition of groups, including California Common Cause, the League of Women Voters of California, the California Newspaper Publishers Association, and Consumers Union, support the Gerken Initiative.

The "Campaign Contribution Limits Without Taxpayer Financing Initiative" (hereinafter "the Johnson Initiative" or "Proposition 73") is sponsored by Assemblymember Ross Johnson and Senators Joseph Montoya and Quentin Kopp. Supporters of the Johnson Initiative include the California Chamber of Commerce, the San Mateo County Taxpayers

Association, the Del Norte Taxpayers League, the Marin United Taxpayers Association, the Yolo County Board of Supervisors, and the Nevada County Board of Supervisors.

Primary Differences. While both initiatives contain contribution limitations, the Gerken Initiative establishes overall campaign expenditure limitations and a system of public financing for candidates who agree to the limitations. The concepts of voluntary campaign expenditure limitations and public financing are constitutionally linked, because the U.S. Supreme Court has ruled that the imposition of expenditure limits on a candidate for political office is constitutionally permissible only where the candidate voluntarily accepts some public campaign financing.¹

The Gerken Initiative applies only to candidates for state legislative office; the Johnson Initiative applies to candidates for state legislative office, statewide offices, and local government offices.

The Gerken Initiative prohibits what has come to be known as "off-year fundraising;" that is, legislators, legislative candidates, and their controlled committees are precluded from accepting contributions in any year other than the year in which the legislator/candidate is listed on the ballot as a candidate. The Johnson Initiative does not prohibit off-year fundraising.

Under the Gerken Initiative, candidates who qualify for public matching funds and who accept campaign expenditure limitations are restricted in the amount they are permitted to contribute to their own campaigns. The Johnson Initiative places no limits on the amount a candidate may contribute to his/her own campaign.

Contributions to Candidates: Limitations

Both initiatives set up a scheme of limitations on contributions to candidates from many types of contributors, including individuals, organizations, political action committees (PACs), political parties, legislative caucuses, the



candidate him/herself, and other entities described and defined in the initiatives. As described below, the Gerken Initiative sets contribution limits for specific types of elections (e.g., primary elections or general elections) or, alternatively, for the "two-year period" which comprises a legislative session (defined as the period commencing with January 1 of an odd-numbered year and ending with December 31 of an even-numbered year). The Johnson Initiative prescribes contribution limitations per fiscal year (defined as the period July 1 through June 30).

Individuals. Under the Gerken Initiative, an individual may contribute a maximum of \$1,000 to a legislative candidate and his/her controlled committee during each primary and each general election period (in other words, the Gerken Initiative permits individuals to contribute a maximum of \$2,000 to a legislative candidate—\$1,000 for the primary election, and an additional \$1,000 for the general election).²

The Johnson Initiative limits an individual's contribution to a candidate and his/her controlled committee to \$1,000 per fiscal year.

Organizations. Under the Gerken Initiative, "organizations" (defined in the initiative to include labor unions, partnerships, corporations, or committees which have 25 or more employees, shareholders, contributors, or members) are limited to contributing a maximum of \$2,500 to any legislative candidate per election period (again, \$2,500 for the primary election and \$2,500 for the general election).³

The Johnson Initiative defines the term "person" to include organizations such as partnerships, corporations, committees, and labor organizations, and restricts their contributions to candidates and their controlled committees to \$1,000 per fiscal year.

Political Action Committees. Under the Gerken Initiative, some political action committees may fall within the definition of "organization" described above, and would thus be subject to a maximum \$2,500-per-candidate-per-election-period limit. However, the Gerken Initiative also defines the term "small contributor political action committee," and raises the maximum contribution for such groups to \$5,000 to any legislative candidate per election. To qualify for such status, a group must meet all four of the following criteria: (1) all contributions it receives from any person in a twelve-month period total \$50 or less; (2) it has been in existence at least

six months; (3) it contributes to at least five candidates; and (4) it is not a candidate-controlled committee.

The Johnson Initiative defines the term "political committee" as "a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates." "Political committees," as defined, are limited to contributions of \$2,500 to any candidate in any fiscal year.

The Johnson Initiative also defines the term "broad based political committee" to mean a committee of persons which has been in existence for more than six months, receives contributions from 100 or more persons, and acting in concert makes contributions to five or more candidates. Such a committee is restricted to contributions of \$5,000 to any candidate in any fiscal year.⁴

Political Parties and Legislative Caucuses. The Gerken Initiative limits contributions from political parties and legislative caucuses to \$50,000 per Assembly candidate per general or special runoff election, and \$75,000 per Senate candidate per general or special runoff election.⁵

The Johnson Initiative limits political parties to contributions of no more than \$5,000 to a candidate in any fiscal year. With regard to contributions from legislative caucuses, the Johnson Initiative states that candidates may accept campaign contributions only from "persons, political committees, broad based political committees, and political parties." Thus, contributions to candidate from legislative caucuses are prohibited under the Johnson Initiative.

Other Contribution Limits

Individuals. Under the Gerken Initiative, individuals are prohibited from donating more than \$1,000 per year to any committee which supports or opposes any legislative candidate. Individuals are also precluded from contributing more than \$5,000 in a two-year period to any political party or legislative caucus. Finally, the Gerken Initiative limits an individual's aggregate contribution to legislative candidates or to committees supporting legislative candidate to \$25,000 in a two-year period.

The Johnson Initiative prohibits individuals from contributing more than \$2,500 per fiscal year to any particular political committee, broad based political committee, or political party; it contains no aggregate contribution limit.

Organizations. Under the Gerken Initiative, "organizations" (as defined

above) are prohibited from contributing more than \$2,500 per year to any committee which supports or opposes any legislative candidate. Nor may "organizations" donate more than \$5,000 in a two-year period to any political party or legislative caucus. Finally, an "organization's" aggregate contribution to legislative candidates must not exceed \$200,000 in a two-year period.

The Johnson Initiative prohibits organizations (other than political committees and broad based political committees) from contributing more than \$2,500 per fiscal year to any political committee, broad based political committee, or political party; it contains no aggregate contribution limit.

Political Action Committees. Under the Gerken Initiative, no "small contributor political action committee," as defined, may contribute more than \$5,000 in a two-year period to any committee supporting or opposing a legislative candidate. "Small contributor political action committees" are also precluded from donating more than \$5,000 in a two-year period to a political party or legislative caucus, and from making contributions aggregating more than \$200,000 in a two-year period to legislative candidate or to committees supporting legislative candidates.

"Political committees," as defined by the Johnson Initiative, are limited to a maximum of \$2,500 per candidate per fiscal year; "broad based political committees," as defined, may contribute no more than \$5,000 per candidate per fiscal year. The Johnson Initiative contains no aggregate contribution limit for political committees or broad based political committees.

Candidate-To-Candidate Transfers

Both initiatives prohibit the transfer of campaign contributions from one candidate/controlled committee to another candidate/controlled committee.⁶

Honoraria and Gifts

Under the Gerken Initiative, legislators and legislative candidates are prohibited from accepting more than \$2,000 in honoraria and gifts in a two-year period from any person other than a member of the candidate family.

The Johnson Initiative prohibits "elected officeholders" from accepting any honorarium or gift from a single source in excess of \$1,000 in any calendar year "for any speech, article, or published work on a subject relating to the governmental process."



Mass Mailings

The Johnson Initiative defines "mass mailing" to mean 200 or more substantially similar pieces of mail, *not* including "a form letter or other mail which is sent in response to an unsolicited request, letter, or other inquiry." The Johnson Initiative would amend existing section 89001 of the Government Code to provide that "no newsletter or other mass mailing shall be sent at public expense."

The Gerken Initiative retains current law, which allows elected officials to send mass mailings to voters at public expense, but prohibits them after the elected officer has declared candidacy for office. Proposition 68 also requires any person who makes an independent expenditure for a mass mailing which supports or opposes any candidate to identify him/herself on the envelope and on each page or fold of the mailing.

Campaign Expenditure Limitations

Unlike the Johnson Initiative, the Gerken Initiative establishes overall campaign expenditure limitations, upon which receipt of public financing is conditioned (see discussion *infra*). Under the Gerken Initiative, a legislative candidate must decide, upon filing a declaration of candidacy, whether to accept or reject limitations on the total amount he/she will spend in the primary and general elections. A candidate who accepts expenditure limitations is eligible to receive public financing from the Campaign Reform Fund created by the Gerken Initiative.

The maximum expenditure limits for Assembly candidates are \$150,000 for the primary election and \$225,000 for the general election, for a total of \$375,000. Senate candidates may spend up to \$250,000 for the primary election and \$350,000 for the general election, for a total of \$600,000.

These expenditure limitations are lifted for elections in which a legislative candidate who refused the expenditure limits exceeds the limits, or if an independent committee or committees spend more than \$50,000 in support of or in opposition to any candidate in that election. When the expenditure limits are lifted, candidates who originally accepted the limits remain eligible for public financing, and are also permitted to receive an additional \$35,000 free of contribution limitations.

Public Campaign Financing

The Johnson Initiative prohibits public officers from spending and candi-

dates for office from accepting "public moneys for the purpose of seeking office."⁷

The Gerken Initiative creates a Campaign Reform Fund, which would be financed through a voluntary \$3 income tax form check-off designation. That is, "[e]very individual whose income tax liability for any taxable year is three dollars (\$3) or more may designate an amount up to three dollars (\$3) of that tax liability to be deposited into the Campaign Reform Fund."⁸ The Fund would become the source of public financing for qualified legislative candidates.

In order to qualify for public financing from the Campaign Reform Fund, legislative candidates must agree to the applicable overall expenditure limitations set forth above, and must raise a threshold amount of \$1,000-or-less contributions. Assembly candidates must raise \$20,000 in contributions of \$1,000 or less; Senate candidates must raise \$30,000 in contributions of \$1,000 or less. The candidate must also agree to contribute no more than \$50,000 per election of his/her personal funds to the legislative campaign.

Even if a legislative candidate raises the threshold amount and agrees to the personal contribution limitation, he/she may not receive public financing unless his/her opponent has also qualified for public financing, or has raised, spent, or has cash on hand of at least \$35,000.

Candidates who qualify for public financing would receive funds from the Campaign Reform Fund based on a matching formula. Contributions of \$250 or less from a single source outside the candidate's district would be matched with public funds on a three-to-one basis. Contributions of \$250 or less from a single source within the candidate's district would be matched on a five-to-one basis. Contributions from candidates or members of their immediate families may not be matched with public funds.

Under the Gerken Initiative, qualified legislative candidates are restricted to receiving one-half of their overall campaign expenditure limitation in public matching funds. In other words, an Assembly candidate could receive a maximum of \$75,000 in matching funds for a primary election and \$112,500 in matching funds for a general election. Senate candidates would be limited to a maximum of \$125,000 in matching funds for a primary election and \$175,000 in matching funds for a general election.

Legislative candidates who have re-

ceived matching public funds and who have a surplus of campaign funds after the general election must return a portion of that surplus to the Campaign Reform Fund, based on a ratio of the public funds received by the candidate compared to the private funds raised by the candidate for each election. If more than \$100,000 remains after return of the prorated surplus to the Campaign Reform Fund, the candidate must either return all funds over \$100,000 to his/her contributors on a *pro rata* basis, or donate the surplus over \$100,000 to the Campaign Reform Fund. With respect to a surplus in the Campaign Reform Fund, all money over \$1 million remaining in the Campaign Reform Fund as of January 31 in the year following a general election must be refunded to the General Fund.

THE ARGUMENTS

The Campaign Spending Limits Act (Proposition 68)

by *Walter Zelman, Executive Director California Common Cause*

Campaign spending by candidates for the California state legislature has escalated 4,000% since 1958. Between 1984 and 1986 (the last two legislative elections), it rose 30%. In 1986, candidates for the state legislature spent over \$57 million—\$10.47 per vote. Without controls on spending, legislative candidates are expected to spend \$100 million during the 1990 races. That's \$100 million spent to fill 100 legislative seats.

Where does all this money come from? Increasingly, it comes from organized special interests, not from individual voters, and particularly, not from voters in the candidate's own district! In the recent elections, legislative candidates received, on average, only 13% of their money from individuals in amounts of \$100 or more; only 6% in contributions under \$100 each; and 92% from outside their home districts!

Clearly, the average voter and small contributor has little or no meaningful role in financing today's campaigns.

Is it possible for someone not an incumbent to be elected to the state legislature? The facts speak for themselves. In 1976, Assembly incumbents outspent their challengers 3-1 on average. Ten years later, Assembly incumbents outspent their challengers 30-1, and Senate incumbents did so by the incredible ratio of 62-1! In 1985, one of the most



recent nonelection years, before it was even known who the candidates would be in the 1986 election, incumbents added \$17 million to their war chests in contributions, compared to \$42,000 for challengers—a 400-1 advantage.

The result: in 1986, not one incumbent lost in either the primary or the general election. And more recently, during the 1987 nonelection year, incumbent legislators raised over \$25 million—a 48% jump over what they raised in 1985.

Thorough Bipartisan Study of the Problem

These alarming facts come from a careful study of the campaign spending problem in our state legislature conducted in 1984-85 (and supplemented in 1987) by a representative, private, nonpartisan, foundation-financed group of California citizens, none of whom represented any organization and none of whom had any axe to grind.

The product of the study was a report entitled *The New Gold Rush: Financing California's Legislative Campaigns*. The study found that by far the most serious problems existed in the state legislature. It concluded that "California is witnessing a new political gold rush. Candidates...are throwing themselves with increasing abandon into a fundraising arms race in which each tries to outraise and outspend all opponents. [This] fundraising fever is distorting many aspects of California's political process."

Others have put it more bluntly. To quote state Senator Ed Davis, "We have widespread corruption. We have had... the purchasing of votes...with campaign contributions...."

The study also found that California was out of step with the rest of the county in controlling campaign contributions and spending. Fourteen years ago, California adopted an excellent campaign disclosure law. But that is all we have. A majority of the fifty states have leapfrogged us, enacting laws regulating the size of contributions and/or the amount of spending. We are behind the times and the facts prove it.

What's To Be Done?

The study gave birth to the Campaign Spending Limits Act Initiative. The study unanimously recommended a new law which would deal in a comprehensive fashion with these very serious problems.

The primary feature is spending limits. Under decisions of the U.S. Supreme Court, spending limits must be voluntarily accepted: they cannot be imposed—

but candidates can agree to them in exchange for limited public matching funds. This is the basis for the spending limits now in effect in eight states and for federal presidential elections.

The proposed new law also includes contribution limits. It prohibits off-year campaign contributions (the incumbent's greatest advantage) and transfers of contributions from one candidate to another. It includes carefully-drafted provisions to limit the advantages possessed by wealthy candidates.

The study concluded that although simpler solutions—such as contribution limits alone—may appear more attractive, they will not solve the problem: witness the \$22 million Cranston-Zschau U.S. Senate race, which was run under contribution limits but without spending limits.

The Campaign Spending Limits Act Initiative, now Proposition 68 on the June ballot, is based on and includes each of the study's fundamental recommendations: first, the spending limits recommended by the study; second, contribution limits; third, a ban on off-year fundraising and transfers; and fourth, provisions to limit the advantages of wealthy candidates. Finally, to make the spending limits constitutionally effective, it includes limited public matching funds in a form which will encourage the solicitation of small givers, reduce reliance of candidates on large contributions from special interests, and ease the fundraising crunch for serious, viable candidates.

Why Limited Public Matching Funds?

The answer is simple: no spending limits are possible without public financing. And spending limits are vital. As a matter of fact, if you ban public financing (as other initiatives do), you prevent voters or any government body from enacting spending limits.

When the study began, its members were highly doubtful about any use of public moneys. At the end, the need for spending limits was felt to be so paramount that all members of the study agreed a matching funds program was vital.

Here's how it would work: Each state income taxpayer would have the opportunity each year to voluntarily check off a box on their state tax form. The tax check-off essentially earmarks a maximum of \$3 of the tax already owed for the "Campaign Reform Fund." This is the way it has been done for thirteen years in presidential elections on the federal tax forms—each taxpayer can choose whether or not to participate.

This choice would not increase the taxpayer's tax liability.

The public financing system has been designed to encourage candidates to seek more contributions from small contributors, particularly from the candidate's own district. Qualified candidates can receive up to 50% of the maximum spending limit from the matching public funds. Only contributions of \$250 or less are matched; for every \$1 a candidate raises from a registered voter in their district, they receive \$5 in matching funds; and for every \$1 the candidate raises from an organization, PAC, or individual who is not a registered voter in their district, they can receive \$3.

Only a serious candidate who has a serious opponent can receive any matching funds. First, a candidate must be opposed by another candidate who has raised or spent \$35,000. Second, a candidate wishing to receive matching public funds must raise a large portion of their first \$35,000 from contributions of \$1000 or less (\$20,000 of the first \$35,000 if they are an Assembly candidate and \$30,000 if a Senate candidate).

At the end of each general election, each candidate must return unspent public matching funds (on a ratio basis) to the state. All candidates taking public financing are audited each election, rather than the current 25% random audit the Fair Political Practices Commission carries out now. All money in excess of \$1 million held by the Campaign Reform Fund must be returned at that time to the State Treasury.

What Will It Cost?

The public financing part of the initiative is carefully limited to hold down the cost. Only money voluntarily checked-off by the taxpayers can be used. Estimates based on the last four elections show the cost of this matching funds program would average \$5.9 million per year, or 22 cents per Californian—the cost of one postage stamp per year!

Who Supports the Initiative?

A broad, bipartisan coalition of persons and organizations have lent their support:

Business and Labor: business groups such as the California Business Roundtable, and over 27 individual chief executive and senior officers of California-based corporations; and labor organizations such as the California Conference of Machinists—AFL-CIO, Laborers International Union of North America—AFL-CIO, the California Federation of Teachers—AFL-CIO, the



California Nurses Association, and the International Longshoreman's and Warehouseman's Union Legislative Council, among others.

Public Interest Groups: California Common Cause, League of Women Voters of California, Faculty Association of California Community Colleges; California Public Interest Research Group; American Association of University Women; Sierra Club; Planning and Conservation League; Urban League (Sacramento and Los Angeles); California Church Council; Congress of California Seniors; Consumers Union; and many others.

News Media: Proposition 68 was recently endorsed unanimously by the Board of Directors of the California Newspaper Publishers Association. The recommendations of the study on which the Initiative is based are supported by most of California's major newspapers, including the *Los Angeles Times*, the *San Francisco Chronicle*, the *Los Angeles Herald-Examiner*, the *Long Beach Press Telegram*, the *San Diego Union*, the *San Bernardino Sun*, the *Sacramento Bee*, the *San Diego Tribune*, and the *San Jose Mercury News*.

Opposition to the Initiative

Some incumbent legislators and big spending lobbying groups are supporting another initiative. The Johnson Initiative, Proposition 73 on the June ballot, is called "campaign finance reform," but it is so weak and so riddled with loopholes that it will only worsen the present situation. It will solve nothing. It was put on the ballot almost entirely by five of the largest, moneyed PACs in the state. Proposition 73 contains poorly designed contribution limits that would allow any moneyed PAC to get in over \$2 million during each election; does nothing about nonelection-year fundraising; has no spending limits; does not have aggregate contribution limits controlling how much contributors can give or how much candidates can receive from organizations and PACs; applies the same limits to all state and local elections—imposing the same limits on the Governor's election as on a local school board election; limits gifts and honoraria *only* for speeches "relating to the government process"; and bans all publicly financed newsletters and mass mailings in such a sloppy fashion as to likely limit the ability of various government departments from sending out information to California's citizens.

The startling increases in campaign spending in California legislative races

are threatening the health of democracy in California. Only the Campaign Spending Limits Act, Proposition 68, attacks this problem comprehensively and effectively.

Why An Initiative and Not A Bill in the Legislature?

The best answer was given by Fred Kline in the *Sacramento Daily Reporter*:

"Money is influencing and corrupting the political process here, and yet the people who should be the most concerned—the politicians—seem least inclined to do something about it. They act like alcoholics who know they have a problem but can't be helped until they really want to seek it. The politicians are drunk with money, staggering under the weight and impact of it, yet are unable to break the addiction."

Your Support is Vital

Only with the support of millions of concerned Californians can the initiative succeed this coming June. Please help!

Contributions should be sent to Taxpayers To Limit Campaign Spending, 10951 West Pico, 1st Floor, Los Angeles, CA 90064. For more information, call (213) 470-2444, (916) 443-1792, or (415) 441-3060.

The Best Way To Achieve Campaign Finance Reform— Proposition 73

by Assemblyman Ross Johnson

There is almost universal agreement that we must make changes in the way political campaigns are financed. However, there is strong disagreement as to how this should be accomplished.

Proposition 73, which has been put forward by Senators Quentin Kopp (I-San Francisco/San Mateo Counties), Joseph Montoya (D-Los Angeles County), and myself (R-Orange County), seeks to place limits on contributions as a way to achieve campaign finance reform. Proposition 68, on the other hand, seeks to enact public financing of campaigns as a means for reform.

There is documented evidence that limits on contributions do work as a means of reducing campaign expenditures.

Look at 1982: compare the gubernatorial race (Bradley vs. Deukmejian) with the U.S. Senate race (Wilson vs. Brown). The two candidates for Governor spent nearly twice as much money

as the two candidates in the Senate race (Bradley/Deukmejian spent \$19,321,442, while Wilson/Brown spent \$11,909,303.) No one would seriously contend that either Wilson or Brown didn't spend enough to get their message out to the voters. And no one in their right mind would contend that the Deukmejian/Bradley race was twice as informative or helpful to the voters of California. The main difference was that the Senate race was conducted under federal contribution limits.

The 1986 election proves this point even more. According to the Fair Political Practices Commission, Bradley/Deukmejian spent \$22,448,162 while Cranston/Zschau cost \$20,691,040. This is in spite of the fact that the Cranston/Zschau race was one of the most hotly-contested United States Senate races in the country, while Bradley/Deukmejian was regarded as a ho-hum affair with the outcome a foregone conclusion almost from the beginning.

You don't have to have expenditure limits and the tax-funded financing that goes with them to reduce the political arms race. Compare congressional races in California with legislative races. We have not seen the dramatic increases in the cost of California congressional races that we have in legislative races. In fact, between 1982 and 1984, the cost of California congressional campaigns actually decreased by about \$9 million, while in the same time period legislative races increased by more than \$10 million.

Obviously, it is impossible to discuss Proposition 73 without addressing Proposition 68 since both measures appear on the June ballot.

The proponents of Proposition 68 claim that true reform is only possible with public financing of campaigns, and have questioned the motives of Senators Kopp and Montoya and myself in putting Proposition 73 forward. All three of us have been very active in the area of campaign finance reform for a number of years. Senator Kopp was the author of an ordinance as a county supervisor in San Francisco to limit campaign contributions; Senator Montoya has authored numerous bills in the legislature in this subject area; and I authored Proposition 40 in 1984 which sought to drastically limit campaign contributions.

At the outset, it is important to point out that Proposition 68 was placed on the ballot with \$500,000 in contributions from California's largest corporations and other special interests, including insurance companies, banks, major developers, and other huge corporations that



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contribute hundreds of thousands of dollars to political campaigns.

These special interests did not contribute such large sums of money out of a sense of public-spirited benevolence. They did so because of their ability to multiply their contributions to campaigns with our tax money. Proposition 68 allows donations from corporations, labor unions and other special interests to be matched at a 3-1 ratio with public funds. In other words, businesses can have their \$250 contributions turned into \$1,000. This is welfare for large special interest contributors.

Another problem with the public financing provisions in Proposition 68 is that there is nothing to prevent tax dollars from going to extremist candidates, such as Ku Klux Klan or LaRouche candidates.

To understand an illustration of how this could work, you need to know several definitions from Proposition 68. First, a contribution is a check that you deposit in your campaign account and keep for at least fourteen days. Second, contributions of husbands and wives are presumed to be separate. Contributions of children over eighteen years of age are also presumed to be separate. In order to qualify for tax money, a candidate in an Assembly primary must raise a total of \$20,000. And finally, contributions up to \$250 from registered voters within the district are matched on a 5-1 basis with tax money.

If Proposition 68 were to pass, the leader of a small group of Neo-Nazis in one Assembly district could gather his thirty members and lay out a scheme like this:

"I am going to run for the State Assembly."

"I want each of you to write a \$250 check."

"I want each of you to tell your wife or husband and any children over the age of eighteen to do the same."

"We need a total of sixty \$250 checks. Don't worry, we won't actually spend your money—just hold it for fourteen days."

"Five of us will write checks for \$1,000."

See how it works? They raised \$20,000—\$15,000 of it matched on a 5-1 basis. They would instantly collect \$75,000 of your tax money.

Then the leader says, "I want each of you to distribute some brochures. I'm going to pay each of you \$250 to do that, except for those who wrote a check for \$1,000, and I'll pay you \$1,000."

The net result is that Proposition 68 would have given them \$75,000 to spread their propaganda and they wouldn't have actually raised a red cent.

And there is absolutely no way to correct this defect—either now or in the future. Moreover, this could apply to an extremist or a member of the Young Democrats or Young Republicans seeking to build name identification for a future political career.

In contrast, under Proposition 73 such abuse is not even theoretically possible since the use of tax money in campaigns is not allowed.

Now to some of the other defects in Proposition 68 and a comparison with Proposition 73. In its 1985 report, *The New Gold Rush*, the California Commission on Campaign Financing described the transfer of funds from one legislator's campaign committee to another candidate's committee as the "fastest growing source of campaign money in California." And yet, Proposition 68 fails to effectively eliminate transfers as a source of campaign contributions.

First of all, Proposition 68 specifically allows legislative caucus committees (as well as political parties) to contribute \$50,000 to Assembly candidates and \$75,000 to Senate candidates. An even more important failure of the transfer-ban language contained in Proposition 68 is that the proposal allows unlimited transfers of money from legislative candidates or officeholders to committees set up to oppose candidates.

To understand this point completely, it is important to point out that Proposition 68 only applies to legislative races and does not affect candidates for statewide or local offices, thus giving a loophole to legislative candidates and officeholders to circumvent the contribution limitations.

Proposition 68 allows legislative officeholders to set up local and/or statewide campaign accounts simultaneously with their own legislative campaign accounts. The local/statewide campaign would receive contributions in any amounts. There is nothing in Proposition 68 to prevent legislative officeholders from transferring funds in these accounts into committees set up to oppose legislative candidates. Again, it is important to note that there would be no limits whatsoever on how much money could be transferred. With absolutely no restrictions on funds going into committees opposing candidates, we can expect an enormous increase in negative campaigns.

Proposition 73, on the other hand, contains an inter-candidate transfer ban

that is absolute. It also prohibits contributions from legislative caucuses and only allows a \$5,000 contribution per fiscal year from political parties. Since the initiative covers all state and local races, it would be impossible for candidates and officeholders to find a way to circumvent the transfer prohibition.

Another key point about Proposition 73 is that the proposal also stops the so-called "shopping for office." It specifies that a candidate must raise funds for the office he has declared and cannot transfer those funds to his campaign for another office. For example, a state Senator cannot suddenly decide to run for a statewide office, such as Lieutenant Governor, and then use those funds raised for his state Senate race to run for Lieutenant Governor.

Another defect in Proposition 68 is the protection it gives to incumbents. Sponsors and supporters of Proposition 68 have indicated a desire to reduce many of the advantages that incumbents currently enjoy over challengers, and thus encourage more competitive races. In reality, Proposition 68 does just the opposite and actually increases the advantages of incumbents over challengers.

Proposition 68 specifically allows a candidate to retain up to \$100,000 surplus from the previous election. Thus, on January 1 of an even-numbered year, an incumbent could start with \$100,000 and a challenger would be starting with zero, unless that challenger had run in the previous election and also had a surplus.

This \$100,000 carryover takes on even greater importance because of the way the off-year contribution ban is written in Proposition 68. Two points must first be made about the off-year contribution ban. First, it is constitutionally suspect given the United States Supreme Court decisions in this area. Second, proponents of Proposition 68 claim that the prohibition on off-year contributions will benefit challengers because incumbents have a fundraising advantage in non-election years. If the sponsors were so concerned about this, then why is the off-year ban only on raising money, *not* on making expenditures?

Thus, incumbents would be able to spend money in the off-year, building up their name identification, maintaining a campaign office, and doing the preparatory work for raising large sums of money as of January 1 of the even-numbered year. Challengers, on the other hand, unless they have run before and have a surplus, would not be able to open a campaign office before January



1 of the even-numbered year. In addition, challengers would not be able to even consult with an accountant or an attorney about setting up their committees because that would be treated as an in-kind contribution. The initiative says that candidates cannot accept *any* contributions. It does not specify monetary contributions.

In contrast, Proposition 73 seeks to eliminate a key advantage currently available to most incumbents—mass mailings at public expense. Officeholders at all levels of government can use these tax-paid mailings to build up their name identification and make themselves look good to their constituents. And these are usually sent in the off-year when challengers, under Proposition 68, would be unable to send out similar mailings.

In addition, Proposition 73 seeks to deal with the off-year fundraising question in a constitutional way. Contributions are based on fiscal years from July 1 to June 30. A candidate who wants to run for election in 1988 would face the following scenario. That candidate would have been able to raise ten \$1,000 contributions from individuals in September 1987. Those same individuals would be unable to contribute any more money toward that candidate's primary race and would not be able to contribute again until July 1, 1988. If those ten individuals then contributed to the candidate's general election in November 1988, they would be unable to give any more money to that same candidate until after July 1, 1989. Thus, candidates, whether incumbents or challengers, who wanted to use the off-year for fundraising would not receive any unfair advantage since they would be limited to collecting any new money from those same contributors until well after the primary election.

The proponents of Proposition 68 like to point out that their proposal would definitely limit spending. That simply is untrue. In its decision in *Buckley v. Valeo*, the United States Supreme Court ruled that you cannot impose spending limits without providing public financing of campaigns. At the same time, however, the Court also ruled that you cannot force candidates to accept public financing for their campaigns. Thus, the whole system of spending limits contained in Proposition 68 is based on *voluntary* compliance.

Most legislative races would not approach the spending limit levels set in Proposition 68. However, in very hotly-contested races that Proposition 68 seeks to affect, you would see candidates choose not to take any public funds so

they would not have to adhere to any spending limits.

In contrast, Proposition 73 is mandatory and applies to all officeholders across the board. While it does not contain any direct expenditure limits, spending will be reduced because of the contribution limits making less money available to candidates. And these contribution limits are lower than the limits contained in Proposition 68.

And to re-emphasize another point, the mandatory limits contained in Proposition 73 apply to all local, legislative, and statewide candidates. Proposition 68 only applies to legislative candidates and does not deal with the escalating costs of running for Governor or other statewide or local races.

A last point to bring out about Proposition 68 is the cost. The proponents claim it would cost taxpayers around \$12 or \$15 million every two years. It is impossible to predict the costs. But one thing is for sure. With the availability of public funds, more candidates would be encouraged to run. They would have greater credibility in raising funds if they are able to tell a potential supporter that a \$250 contribution from an individual is really a \$1,500 contribution because it is matched on a 5-1 ratio. It is not inconceivable to see more contested primaries and at least three candidates in a general election, which would include a third party candidate. Given that assumption, the price tag would rise to \$70 million every two years for legislative races alone. That is money coming directly out of the state General Fund—money that would otherwise be used for police protection, fire protection, schools, and other needed services. Thus, there may not be a contested primary in every legislative district, but there would be multi-candidate contests with as many as four, five, or even six candidates in other races.

This year voters are faced with a clear choice between two proposals to reform the way political campaigns are financed. One applies to legislative races only and imposes an all-out system of public financing—Proposition 68. The other applies to all campaigns, from the Governor on down to the local library board, and imposes meaningful reform without taxpayer financing—Proposition 73.

FOOTNOTES

1. *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976).

2. Under the Gerken Initiative, this limitation on contributions to candidates

from individuals does not apply until the candidate has raised \$35,000 in the election year.

3. Like the limitation on contributions to candidates from individuals, the Gerken Initiative limitation on contributions from organizations does not apply until the candidate has raised \$35,000 in the election year.

4. The Johnson Initiative specifies that "[n]othing in this Chapter shall limit a person's ability to provide financial or other support to one or more political committees or broad based political committees provided the support is used for purposes other than making contributions directly to candidates for elective office."

5. The Gerken Initiative prohibits contributions from a political party or legislative caucus to a legislative candidate running in a primary election or special election.

6. Again, the Gerken Initiative applies only to candidates for legislative office; thus, it only prohibits transfers from one legislative candidate to another legislative candidate. The exact language of the Gerken Initiative regarding transfers is as follows: "No candidate and no committee controlled by a candidate or candidates for legislative office or controlled by a legislator or legislators, other than a legislative caucus or political party, shall make any contribution to a candidate running for legislative office or to any committee supporting such a candidate including a legislative caucus committee or party committee."

The Johnson Initiative provides as follows: "No candidate for elective office or committee controlled by that candidate or candidates for elective office shall transfer any contribution to any other candidate for elective office. Transfers of funds between candidates or their controlled committees are prohibited."

7. In so doing, the Johnson Initiative also prohibits the imposition of any overall campaign expenditure limitations. The U.S. Supreme Court has ruled that campaign expenditure limitations are permissible only as a condition for a benefit which the candidate accepts, such as public financing. *Buckley v. Valeo*, *supra* note 1.

8. Taxpayers filing a joint return may designate a maximum of \$6 (\$3 each) to the Campaign Reform Fund. The Gerken Initiative further provides that "taxpayer designations of funds shall not increase that taxpayer's tax liability."

