

## CAMPAIGN CONTRIBUTIONS AND EXPENDITURES IN CALIFORNIA

In 1926, a prominent scholar commented that since the Civil War, scarcely an election has taken place in the United States without producing some disparaging reference to the use of money in the political campaigning.<sup>1</sup> Nearly three decades have passed since that statement was made, but it is as applicable to American politics now as it was then. The 1952 presidential campaign was probably the costliest in our history,<sup>2</sup> and the exposure of the secret "funds" of Vice Presidential candidate Nixon and Presidential candidate Stevenson thoroughly aroused public interest.<sup>3</sup> In California, the Philbrick Report of 1938 described in detail hitherto unpublicized sources of campaign funds,<sup>4</sup> and more recently the nation was shocked to learn of the magnitude and extent of campaign contributions made by California lobbyists.<sup>5</sup> So important is the problem that it may be said that to discuss money in politics is to discuss democracy itself.<sup>6</sup>

In spite of almost continual exposure and publicity of the misuses of money in campaigns during the past half century,<sup>7</sup> the problem continues to recur, which is a strong indication that no effective legislative steps have been taken to rectify the situation. There are some signs, however, that the pendulum is beginning to swing in the other direction. At the federal level, Congressional committees have investigated money in the 1952 campaigns for national offices and recommended a thorough overhauling of the present federal statutes.<sup>8</sup> In California, an Assembly Subcommittee on Purity of Elections Laws has investigated the state situation and suggested several improvements.<sup>9</sup> In 1951 the legislatures of Florida and Texas adopted stringent provisions aimed at preventing misuses of money in campaigns.<sup>10</sup> The time is ripe to review the California history and authorities and re-appraise the need for regulating campaign contributions and expenditures in this state.

<sup>1</sup> POLLOCK, PARTY CAMPAIGN FUNDS 3 (1926).

<sup>2</sup> Senator Paul Douglas estimates the total cost to both parties to have been \$75 million. DOUGLAS, ETHICS IN GOVERNMENT 68 (1952).

<sup>3</sup> See e.g., San Francisco Chronicle: Behrens, *Nixon Says Nothing Improper in Fund*, Sept. 21, 1952, p.4; *Stevenson Will Explain Illinois Gifts*, Sept. 27, 1952, p.1; Editorial, *Let's Get Back to the Issues*, Sept. 30, 1952, p.16.

<sup>4</sup> PHILBRICK, LEGISLATIVE INVESTIGATIVE REPORT (1938).

<sup>5</sup> Velie, *The Secret Boss of California*, Colliers, Aug. 13, 20, 1949. See discussion in Comment, 38 CALIF. L. REV. 478 (1950).

<sup>6</sup> An Oregon state senator writing on the mounting expense of running for office and the influence exerted by large contributors was so alarmed by the problem that he titled his article "Democracy in Danger." Neuberger, *Democracy in Danger*, This Week, Sept. 28, 1952, p. 7.

<sup>7</sup> In addition to the more recent publications cited throughout this comment, see OVERACKER, MONEY IN ELECTIONS (1932), and the bibliography in ROCCA, CORRUPT PRACTICES LEGISLATION 34 (1928).

<sup>8</sup> *Report of the Special Committee to Investigate Campaign Expenditures*, H. R. REP. No. 2517, 82d Cong., 2d Sess. 57 (1953); *Report of the Subcommittee on Privileges and Elections on Proposed Amendments to Federal Corrupt Practices Act*, Subcommittee Print, 83d Cong., 1st Sess. (1953).

<sup>9</sup> Assembly Daily J. 539 (Jan. 14, 1953).

<sup>10</sup> Fla. Gen. Laws 1951, c. 26819, p. 631; TEX. ELEC. CODE §§ 237-246 (Tex. Gen. Laws 1951, c. 492, pp. 1188-1193).

## THE PROBLEM

The most obvious misuse of money in the election process is outright dishonesty and corruptness, manifested by the purchase of a vote, or the bribery of a candidate or elections official. Such conduct was early recognized as an evil and prohibited at common law.<sup>11</sup> Today all of the states have constitutional or legislative provisions against bribery.<sup>12</sup> It is also prohibited at the Federal level.<sup>13</sup> While such corruption is admittedly a serious problem, it is apparently recognized and adequately regulated throughout the United States, and a closer analysis is outside the scope of this discussion.

The two remaining misuses of money in political campaigns, "unfairness" and "secrecy," are more subtly manifested, but surely not less important than dishonesty as a means of perverting the expression of the voters. "Unfairness" in a campaign is the inequity which results when one candidate has a substantially greater sum of money at his disposal than his opponent, so that the latter has no real chance of competing in the race for the voters' attention. While this is not as obvious a "purchase" of votes as direct bribery, the candidate buys his way to victory simply because he has more money to spend on legitimate expenses than his rival.<sup>14</sup>

The other misuse of campaign money, which for the sake of brevity may be called "secrecy," arises when information is concealed from the public concerning campaign contributions and expenditures, or other financial relationships, which though not actually dishonest, may be considered politically detrimental to a candidate or ballot proposal. For example, the sources of financial support or opposition to a ballot proposal are often a truer indication of the interests which will be affected by the legislation than any of the campaign propaganda. As far as candidates are concerned, it is almost common knowledge that one who holds an elective office is obligated to some extent to those who helped finance his campaign.<sup>15</sup> The use of campaign funds in this manner is a factor which directly affects the

<sup>11</sup> Bottomly, *Corrupt Practices in Political Campaigns*, 30 B. U. L. REV. 331 (1950).

<sup>12</sup> *Id.* at 345. See CAL. CONST. ART. XX, § 11; CAL. ELEC. CODE §§ 4950-4963; *Bush v. Head*, 154 Cal. 277, 97 Pac. 512 (1908) (a promise by a candidate not to qualify for the office if elected, and thus save the taxpayers the expense of paying a salary, was held to violate § 19, Stats. 1893, p. 12, which made it unlawful to offer to pay money "or other valuable consideration" to induce a voter to vote in a particular way, and constituted a ground for contesting the election).

<sup>13</sup> *E.g.*, 18 U.S.C. § 599 (Supp. 1952).

<sup>14</sup> See DOUGLAS, *op. cit. supra* note 2, at 71.

<sup>15</sup> "... [T]he vast majority of the big donors want something in return for their money. Their gifts are in a sense investments. After election, if their candidates are victorious, they come around to collect. They will want contracts, insurance policies, jobs for friends and relatives, loans, subsidies, privileges, legislation, and so on. Woe betide the office-holders and the party who ignore their claims! For if they do, then next time the money is likely to be shut off and the office-holder will have to make his race for re-election largely stripped of funds." DOUGLAS, *op. cit. supra* note 2, at 70. In this respect, recall that after the United Mine Workers had donated \$469,000 to the Democrats in 1936, John L. Lewis sought more fervent support from President Roosevelt because he had "supped at labor's table." Quoted in Neuberger, *Campaign Spending in the United States*, *The English-Speaking World*, Jan. 1953, p. 26.

qualifications of a candidate or ballot proposal, and as such should be known by the voters. Secrecy is perhaps a more odious misuse of campaign money than unfairness, for it consists of withholding from the voters information which they have a right to know.

While dishonesty and corruptness in the use of election money were recognized and prohibited at common law, it was not until the end of the nineteenth century that secrecy and unfairness were exposed as evils in the elective process,<sup>16</sup> and since that time legislatures have experimented with various sanctions and regulations. In general, the legislative solution of the problem of secrecy has been to require disclosure and publicity of the contributions and expenditures made during a campaign. The underlying theory is that an informed electorate will vote against the candidate or proposal having financial alliances adverse to the public interest and thus such alliances will be discouraged. It has also been urged that disclosure and publicity may be utilized to combat unfairness, on the ground that informed public opinion will frown on the purchase of political support through excessive expenditures.<sup>17</sup> More commonly, however, legislatures have attempted to meet the problem of unfairness by the simple expedient of limiting the amount which may be spent in behalf of a candidate or proposal during a campaign. Various states have limited expenditures to an arbitrary lump sum, to a percentage of the salary of the office sought, or to a fixed amount per vote cast at the preceding election.<sup>18</sup>

Such legislation was enacted in California comparatively early, and its development and success will be considered in detail in the discussion which follows. Because of California's referendum and initiative procedure, legislation affecting campaign contributions and expenditures of candidates and committees will be discussed separately from that dealing with ballot proposals.

#### CANDIDATES AND COMMITTEES

The great-grandfather of all legislation regulating the use of money in political campaigns is the English Corrupt and Illegal Practices Act of 1833.<sup>19</sup> Briefly, this act provided that detailed accounts of expenditures made during the campaign were to be filed with a government official after the election; that no expenditure over a maximum statutory amount might be made; that expenditures might be made only for authorized purposes; and most important, that each candidate appoint an election agent through whom all money must be received and paid, so that responsibility for compliance with the act was fastened directly on the candidate. Violation of the act by the candidate or his agent carried the stringent penalty of rendering the candidate's election void.<sup>20</sup> The effect of this act and its suc-

<sup>16</sup> SIKES, CORRUPT PRACTICES LEGISLATION 104 (1928).

<sup>17</sup> See Note, 44 MICH. L. REV. 294, 295 (1945).

<sup>18</sup> Bottomly, *supra* note 11, app. A, 350.

<sup>19</sup> 46 & 47, VICT., c. 51.

<sup>20</sup> For a full discussion of the British corrupt practices legislation see Bottomly, *supra* note 11.

cessors, which embody practically the same provisions, has been to eliminate the indiscriminate use of money in British elections.<sup>21</sup>

### *California's Act of 1893*

Close on the heels of the British Act, several American states adopted corrupt practices legislation, and in 1893 California passed a Purity of Elections Law modeled on the English statute.<sup>22</sup> This forward step was lauded as combining the best of the English and American corrupt practices acts,<sup>23</sup> and, up to the time of its repeal, certainly placed California among those states which most effectively regulated campaign contributions and expenditures.

This law provided for appointment by the candidate of a committee of five persons to receive and expend all campaign funds, and the committee was given exclusive control of all money raised.<sup>24</sup> Within twenty-one days after the election the committee was required to file an itemized statement showing the names of contributors and the recipients of expenditures,<sup>25</sup> and within fifteen days the candidate was required to file a similar statement under oath.<sup>26</sup> Refusal or failure to file constituted forfeiture of any office to which the candidate might have been elected.<sup>27</sup> A list of lawful expenditures was set out, and a maximum amount which might be spent in any election was imposed, based upon percentages of the salaries of the offices sought.<sup>28</sup> It was also provided that expenditures made by persons other than the authorized committee or the candidate were void,<sup>29</sup> but an offense committed by a third person without the knowledge of the candidate did not impose a forfeiture.<sup>30</sup> Section 32 provided immunity for witnesses who testified in prosecutions for violations of the act.<sup>31</sup>

The Purity of Elections Law was severely limited in 1896 by the case of *People v. Cavanaugh* which held that the statute did not apply to primary elections.<sup>32</sup> Apparently to remedy this glaring defect in the coverage

<sup>21</sup> Statement of Dr. James K. Pollock, *Hearings before the Special Committee to Investigate Campaign Expenditures*, 82d Cong., 2d Sess. 118 (1952). See Bacon, *The Conduct of Elections in England*, 19 B. U. L. Rev. 175, 183 (1939).

<sup>22</sup> Cal. Stats. 1893, p. 12.

<sup>23</sup> Hutchinson, *Corrupt Practices Acts*, 27 AM. L. REV. 345, 359 (1893).

<sup>24</sup> Cal. Stats. 1893, p. 12, § 1.

<sup>25</sup> *Id.* § 2, at p. 13.

<sup>26</sup> *Id.* § 3; at p. 14.

<sup>27</sup> *Id.* § 4, at p. 15.

<sup>28</sup> *Id.* § 6, at p. 16.

<sup>29</sup> *Id.* § 8, at p. 18.

<sup>30</sup> *Id.* § 13, at p. 20.

<sup>31</sup> Four of the reported cases dealing with election laws violations concern this section or related issues in the law of evidence. They do not involve unfairness or secrecy and will not be discussed. *Rebstock v. Superior Court*, 146 Cal. 308, 80 Pac. 65 (1905); *People v. Buckley*, 116 Cal. 146, 47 Pac. 1009 (1897); *People v. Sternberg*, 111 Cal. 3, 43 Pac. 198 (1896); *Ex parte Cohen*, 104 Cal. 524, 38 Pac. 364 (1894).

<sup>32</sup> 112 Cal. 674, 44 Pac. 1057 (1896). The court said that the word "election" in the act of 1893 could not include primaries because "political parties are a law unto themselves as to the conduct of primary elections." *Cf. Marsh v. Supervisors of Los Angeles County*, 111 Cal. 368, 43 Pac. 975 (1896), where the same court held invalid the primary elections law of 1895 (Stats. 1895, p. 207) on a technicality, but did not intimate that the legislature could not regulate primaries as elections.

of the 1893 law, and also because the primary elections law of 1895 had been declared unconstitutional,<sup>33</sup> the legislature in 1897 passed the so-called "Purity of Primary Elections Law."<sup>34</sup> In addition to generally regulating the conduct of primary elections, this act provided that a candidate must file a statement of contributions and expenditures similar to that required in general elections by the law of 1893.<sup>35</sup> If the statement was not filed, a certificate of nomination was to be refused,<sup>36</sup> and the candidate's name was not to be placed on the ballot at the coming general election.<sup>37</sup> The act also contained a maximum expenditures provision limiting the amount a candidate could spend during the primary campaign.<sup>38</sup> A unique feature of the law was that the vote of each elector at the primary was declared to constitute an intent to vote for the nominees of that party at the following general election, and the right to vote at the primary could be withheld unless the voter signed an oath that he would vote for the nominee at the general election.<sup>39</sup> This "Purity of Primary Elections Law" was promptly held unconstitutional in 1898 in *Spier v. Baker*, on the ground that the title did not adequately describe the statute, and also that the oath required of the voters was unlawful.<sup>40</sup> The effect of the *Spier* case was to leave California without legislation regulating money in primary elections for the ensuing fifteen years. The short history of the Purity of Elections Law of 1893 was completed by two cases which arose out of the provisions requiring the filing of the campaign statement.<sup>41</sup>

### *Act of 1893 Repealed*

In 1907, the legislature passed "an act to regulate the conduct of election campaigns" which repealed the act of 1893.<sup>42</sup> The new law retained the

<sup>33</sup> *Marsh v. Supervisors of Los Angeles County*, *supra* note 32.

<sup>34</sup> Cal. Stats. 1897, p. 115.

<sup>35</sup> *Id.* § 34, at p. 131.

<sup>36</sup> *Id.* § 33, at p. 130.

<sup>37</sup> *Id.* § 35, at p. 132.

<sup>38</sup> *Id.* § 33, at p. 130.

<sup>39</sup> *Id.* § 17, at p. 124.

<sup>40</sup> 120 Cal. 370, 52 Pac. 659 (1898).

<sup>41</sup> In *Bradley v. Clark*, 133 Cal. 196, 65 Pac. 395 (1901), the mayor-elect of the city of Sacramento was charged with failing to file a statement of his election expenses supported by his sworn affidavit as required by Section 3 of the act. The court held that the oath requirement was a "qualification" for office and as such prohibited by CAL. CONST. ART. XX, § 3, which sets forth the oath of office and declares that "no other oath, declaration, or test shall be required as a qualification for any office or public trust." The court emphasized, however, that only the affidavit itself was objectionable. "The legislature would have the undoubted power to require an officer elect to file just such a statement as the law now prescribes, and to provide that for failure to do so he should forfeit his office . . ." *Id.* at 201, 65 Pac. at 396. In *Land v. Clark*, 132 Cal. 673, 64 Pac. 1071 (1901), the same defendant was charged with filing an incomplete expense statement because he failed to submit vouchers totalling \$22. The court upheld the discretion of the trial judge who found the defect in the statement too trivial to upset the election, in keeping with the principle that an election should be validated if possible. See *Rideout v. City of Los Angeles*, 185 Cal. 426, 430, 197 Pac. 74, 75 (1921); *People v. Prewett*, 124 Cal. 7, 10, 56 Pac. 619, 620 (1899).

The constitutionality of a similar corrupt practices act was upheld against a charge that it abridged freedom of speech. *State ex rel. LaFollette v. Kohler*, 200 Wis. 518, 228 N.W. 895 (1930), 29 HARV. L. REV. 228.

<sup>42</sup> Cal. Stats. 1907, p. 671, § 8.

list of lawful expenses and the maximum amounts which might be spent in a campaign.<sup>43</sup> It still required a candidate, or a committee working in his behalf, to file a statement of expenses after the election,<sup>44</sup> and like the act of 1893 did not cover primaries. It required bills to be presented within fifteen days after the election in order to be paid,<sup>45</sup> and exempted from prosecution witnesses who testified concerning violations.<sup>46</sup> The heart of the 1893 act, however, was cut out. The 1907 legislation did not fasten responsibility upon the candidate by requiring him to appoint agents through whom all campaign money was to pass, and in addition, the 1907 act contained no provision for forfeiture of office upon violation. The stiffest penalty was a simple misdemeanor conviction.<sup>47</sup>

In 1913 a weak effort was made to regulate contributions and expenditures in primary campaigns by the passage of the Direct Primary Law.<sup>48</sup> This act set forth a list of lawful expenditures at primary elections,<sup>49</sup> and provided for the filing of statements by candidates but not by committees.<sup>50</sup> As a sanction it was declared that no certificate of nomination was to be issued to a candidate until he filed his statement.<sup>51</sup>

The acts of 1907 and 1913, together with minor amendments in 1929,<sup>52</sup> formed the basis of the codification in 1938 of those sections of the Elections Code which concern candidates' and committees' campaign contributions and expenditures.<sup>53</sup> In 1945, Section 4536, which stated that no certificate of nomination would be issued until a candidate in a primary election filed his statement, was amended to provide that no certificate of nomination or election would be issued until a candidate filed his statement in a primary or general election,<sup>54</sup> and in 1949 the maximum limits on the amounts which might be spent in behalf of a candidate during campaigns were removed,<sup>55</sup> so that today the only limitation is upon the amount which

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<sup>43</sup> *Id.* § 3, at p. 672.

<sup>44</sup> *Id.* §§ 1, 2.

<sup>45</sup> *Id.* § 4, at p. 673.

<sup>46</sup> *Id.* § 10, at p. 675.

<sup>47</sup> *Id.* § 9, at p. 674. In an election contest in *Merrick v. Porter*, 122 Cal. App. 344, 10 P. 2d 138 (1932), plaintiff attempted in an ingenious manner to cause defendant to forfeit his office. He alleged that defendant, in failing to file a statement as required by § 1 of the 1907 act, had violated PEN. CODE § 41 which declared that every person who wilfully violates the elections laws is guilty of a felony. Plaintiff then brought his action under CODE CIV. PROC. § 1111 which provides that an elector can contest an election if a candidate violates the Penal Code. The court dismissed plaintiff's action on the ground that failing to file a statement is a misdemeanor only under § 9 of the act of 1907 and is not a violation of the Penal Code. The court stated that repeal of the 1893 statute showed legislative intent not to make violations of the elections laws pertaining to campaign contributions and expenditures result in forfeiture of office.

<sup>48</sup> Cal. Stats. 1913, p. 1379.

<sup>49</sup> *Id.* § 29, at p. 1411.

<sup>50</sup> *Id.* § 30.

<sup>51</sup> *Id.* § 30; see § 31.

<sup>52</sup> Cal. Stats. 1929, pp. 187, 188.

<sup>53</sup> CAL. ELEC. CODE §§ 4500-4949.

<sup>54</sup> Cal. Stats. 1945, p. 1120.

<sup>55</sup> Cal. Stats. 1949, p. 425. The former maximum limits were so low that they have been characterized as ridiculous. CROUCH AND MCHENRY, CALIFORNIA GOVERNMENT: POLITICS AND ADMINISTRATION 65 (1949).

may be spent for a candidate's incidental expenses, such as the cost of travel and hotel lodgings.<sup>56</sup>

There are no reported cases of any criminal actions arising out of the elections laws since 1907, and only one case involving failure to file a campaign statement.<sup>57</sup> The remaining few cases are from intermediate courts and are concerned solely with attempts to enforce contracts for goods and services rendered to candidates and committees where the time limit for presentment of campaign bills had passed,<sup>58</sup> or where the maximum amount expendable under the law as it then existed would have been exceeded if the contract were paid.<sup>59</sup>

### *Criticism and Suggestions for Improvement*

From the vantage point of history, the repeal of the act of 1893 is lamentable. The reason for it seems to have been objection to the forfeiture of office provision, and apparently no opposition was offered.<sup>60</sup> The generally careful draftsmanship and rigorous standards of the 1893 act, coupled with the fact that it was based upon a British statute which has been eminently successful, suggest that continuation of the law would have had a salutary effect upon elections in California. In addition, the case law which was established during the relatively short time that the 1893 act was in force indicates that the statute was used as an active tool for the purpose of eliminating unfairness and secrecy from political campaigns.

By contrast, the present California legislation has undergone close scrutiny and been found wanting. A leading reference work on California government has termed the law hopelessly inadequate.<sup>61</sup> A study in 1950 disclosed that one-third of the losing candidates fail to file statements,<sup>62</sup> and the Philbrick report revealed other glaring violations.<sup>63</sup> The paucity of case law emphatically points up the lack of enforcement. The recent investigation by the Assembly Subcommittee on Purity of Elections Laws led the committee to state flatly that the present California law is so defective that it is worthless as an instrument for achieving fair and honest elections in this state.<sup>64</sup> An analysis of the statutes in question will make their ineffectiveness readily apparent.

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<sup>56</sup> CAL. ELEC. CODE § 4571. A candidate may spend \$100 and a committee \$1000 for the candidate's incidental expenses.

<sup>57</sup> *Merrick v. Porter*, *supra* note 47.

<sup>58</sup> *Luckenbach v. Lissner*, 44 Cal. App. 375, 186 Pac. 629 (1919).

<sup>59</sup> *Mathewson v. Bcan*, 114 Cal. App. 519, 300 Pac. 57 (1931). (The court cannot compel a candidate to pay an election expense where to do so would cause the candidate's total expenses to exceed the statutory maximum.); *Hicks v. Frazer*, 118 Cal. App. (Supp.) 777, 1 P. 2d 1096 (1931) (plaintiff cannot evade the *Mathewson* rule by attempting to deal personally with a campaign manager. The fact that the expense was incurred on behalf of a candidate is controlling); *MacDonald v. Neuner*, 5 Cal. App. 2d 751, 43 P. 2d 813 (1935) (*Mathewson* does not apply to primaries).

<sup>60</sup> CAREY, *THE REGULATION OF CAMPAIGN EXPENDITURES IN CALIFORNIA* 41 (unpublished thesis in the University of California Library, 1950).

<sup>61</sup> CROUCH AND MCHENRY, *op. cit. supra* note 55 at 63.

<sup>62</sup> CAREY, *op. cit. supra* note 60 at 77.

<sup>63</sup> PHILBRICK, *op. cit. supra* note 4.

<sup>64</sup> Assembly Daily J. 541 (Jan. 14, 1953).

*Centralized responsibility.*—One of the most glaring defects of the present California law is that much of the financial aid furnished a candidate is simply not reported.<sup>65</sup> Many committees fail to file statements, and often expenditures made on behalf of a candidate are not brought to his attention. At first blush this appears to be a problem of enforcement, but basically it stems from a lack of centralized responsibility. As the law is now written, a candidate need only close his eyes and ears to the conduct of others working in his behalf, and even though it be of the most questionable sort, so long as he complies with those provisions dealing directly with candidates, he and any office to which he may be elected stand impervious to attack. It is submitted that a person seeking public office has a greater responsibility than this. He owes to the public the duty of supervising the conduct of his campaign so that it is honest and fair. It should not be possible for him to evade this duty simply by delegating the conduct of the campaign to others, or by ignoring the questionable practices of committees formed to support him. The public interest demands that a candidate be responsible for the conduct of those working in his behalf, and the law should aid him in the performance of this duty by making it impossible for assistance to be given him except with his knowledge and consent.

Centralized responsibility is the backbone of the highly successful English legislation, and was also part of the California act of 1893. In 1951 it became the law of Florida in a statute which is worthy of comment because it is the most recent and most comprehensive state legislation dealing with the subject.<sup>66</sup> The pertinent sections of the Florida act provide for appointment of campaign treasurers and then state that:<sup>67</sup>

No contribution or expenditure of money or other thing of value, nor obligation therefor, shall be made, received, or incurred, directly or indirectly, in furtherance of the candidacy of any candidate for public office in the State of Florida except through the duly appointed campaign treasurer or deputy campaign treasurers of the candidate.

The act further provides that all funds collected shall be placed in a campaign depository,<sup>68</sup> from which they may be expended only upon written order of a campaign treasurer,<sup>69</sup> and expenses may be incurred only to the extent that there is credit in the campaign depository.<sup>70</sup> Reports are required to be filed by the campaign treasurers before and after every election.<sup>71</sup> The teeth of the law are contained in Section 12, which provides that upon a knowing violation by the candidate or his campaign treasurer the nomination or election of the candidate shall be automatically vacated. Though it is too early to tell whether the Florida statute will prove effec-

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<sup>65</sup> See discussion in *CAREX*, *op. cit. supra* note 60 at 103-107.

<sup>66</sup> Fla. Gen. Laws 1951, c. 26819, p. 631.

<sup>67</sup> *Id.* § 4, at p. 633.

<sup>68</sup> *Id.* § 5, at p. 634.

<sup>69</sup> *Id.* § 7.

<sup>70</sup> *Id.* § 6.

<sup>71</sup> *Id.* § 8, at p. 635.



tive in centralizing responsibility, if it should be successful, it might well be the model for future legislation in California.<sup>72</sup>

*Disclosure.*—In order that the public be fully informed of the sources of a candidate's support, all financial transactions should be disclosed. Full disclosure is not achieved under the present California law for several reasons:

1). Aid rendered to a candidate in forms other than cash is not required to be reported.<sup>73</sup> It is apparent that goods and services furnished in support of a campaign are as valuable as money, and it seems fundamental that their value should be included in expense statements. A caveat is necessary, however, concerning such items as newspaper articles and editorials. Although they have undoubted value to a candidate, any attempt to evaluate or otherwise regulate them must be drafted with extreme care to avoid a possible restriction on freedom of speech.

2). There is no standard reporting form, and many of the statements on file are meaningless. No two contain the same information, and some are nothing more than an acknowledgment by the candidate of an expenditure for his filing fee.<sup>74</sup> A standard form should be printed by the state and furnished to each candidate and committee.

3). Committees are not required to file a statement of expenses in primary elections.<sup>75</sup> In view of California's unique cross-filing procedure which makes it possible for a candidate to win both party nominations and thus the election, the need for statements of committees in primary elections becomes doubly important. It would seem that in general the same regulations should be applied to primary elections as to general elections.

4). Statements are required to be filed only after an election, at which time they cannot possibly have any effect upon the outcome.<sup>76</sup> The obvious solution is to require one or several pre-election statements, and many states have done so,<sup>77</sup> but such a procedure must be undertaken with caution. If the statement is filed too long a period prior to the election there is the risk that immense contributions and expenditures will be made immediately before the election which will be unknown to the electorate at the time of voting. To overcome this defect an estimate of the amount expected to be spent between the time of filing and the election might be required of candidates and committees, but a more realistic solution would be to advance the time of filing as close to the election as possible. Most of the states providing for pre-election statements require them between 5 and 15 days before the election, but at least one state requires filing three

<sup>72</sup> The Subcommittee on Purity of Elections Laws recommends in its report that similar legislation be adopted in California. *Supra* note 9 at 540.

<sup>73</sup> See CAL. ELEC. CODE §§ 4501, 4502.

<sup>74</sup> CAREY, *op. cit.* *supra* note 60 at 79.

<sup>75</sup> CAL. ELEC. CODE § 4538. An amendment to this section which would have required committees to file statements in primary elections was proposed in the January Session of the 1953 Legislature, but it died in committee. Assembly B. No. 63.

<sup>76</sup> See CAL. ELEC. CODE §§ 4532, 4538.

<sup>77</sup> See Bottomly, *supra* note 11, app. B, at 354.

days prior to the election.<sup>78</sup> It is submitted that a period of between three and five days would be sufficiently short to minimize the danger of last minute spending described above, while still giving the voter adequate time to consider the information before casting his ballot.

*Publicity.*—Full disclosure demands not only that candidates make a full accounting of their funds, but also that this information receive sufficient publicity to reach the voters. Under the present California law, the statements on file are open to the public and available for publication by any newspaper that may be interested,<sup>79</sup> but such voluntary publication seems not to have been effective.<sup>80</sup> A suggested alternative is compulsory publication, either in the press at the expense of the candidate or the state, or in a pamphlet compiled and published by the state and mailed to the voters. A state-sponsored pamphlet has the advantage of insuring that every voter will receive the information, but would be costly, and if pre-election statements were required, would have the further disadvantage of being so time-consuming to prepare that the purpose of filing pre-election statements would be defeated. Publication in newspapers of widespread circulation, which is presently required in two states,<sup>81</sup> would meet both of these objections, and the information so published would be available to practically all of the voters.

*Lawful expenditures.*—California, like most states, enumerates the lawful expenses which may be incurred by a candidate or committee. These include official fees, traveling expenses, rent for quarters, printing and announcements, postage and telephoning, compensation for various employees, and expenses of conveying disabled voters to the polls.<sup>82</sup> Violation of these provisions constitutes a misdemeanor,<sup>83</sup> and furnishing of entertainment to the voters is specifically forbidden.<sup>84</sup> Although the listing of lawful expenditures has been criticized,<sup>85</sup> it is probable that they have some effect in discouraging expenditures not enumerated, and should be retained. The list of lawful expenses in California, however, should be brought up to date, for it will be noted that motion picture advertising and radio and television time are not included. At present, the use of such contemporary communication media is generally reported as "announcements" in the campaign statements.<sup>86</sup>

*Contributions.*—The names of persons and organizations which contribute money to a candidate are required to be reported in campaign state-

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<sup>78</sup> N. H. REV. LAWS, c. 42, § 20 (1942).

<sup>79</sup> CAL. ELEC. CODE § 4832.

<sup>80</sup> CAREY, *op. cit. supra* note 60 at 92-94.

<sup>81</sup> GA. CODE § 34-2001 (1933); N. H. REV. LAWS, c. 42, § 20 (1942).

<sup>82</sup> CAL. ELEC. CODE § 4502.

<sup>83</sup> *Id.* § 5007.

<sup>84</sup> *Id.* § 5000.

<sup>85</sup> CROUCH AND MCHENRY, *op. cit. supra* note 55 at 64.

<sup>86</sup> CAREY, *op. cit. supra* note 60 at 108. The lawful expenditures provision was amended by the January Session of the 1953 Legislature to include radio and television time. Assembly B. No. 1118, approved by the Governor on June 5, 1953 (Cal. Stats. 1953, c. 1044). Assembly Weekly History 423 (June 10, 1953).

ments by the Elections Code,<sup>87</sup> but there is no safeguard against a donation being given under a name other than that of the actual donor. Such an obvious defect should certainly be remedied, and a suggested solution can be found in the elections laws of New York, where it is provided that no contribution may be made nor accepted, directly or indirectly, except in the real name of the person by whom it was made.<sup>88</sup>

Whether the amount which may be contributed by a person or organization should be limited is a problem not so easy of solution. At present there is no limit on the amount that may be contributed by a single donor in California, but several states have legislation limiting donations to sums from \$1000 to \$5000.<sup>89</sup> Good reasons may be advanced for the adoption of such legislation. An elected official is most obligated to those who contribute the largest amounts, and the presence of large donations tends to de-emphasize the need for small donations from rank and file party members. It is the opinion of one prominent political figure that widely distributed sources of campaign funds would lead to fuller independence of the candidate and make the game of politics more decent, through greater public participation.<sup>90</sup> The adoption of limits on individual contributions would help to achieve this goal, for the lack of money in large single amounts would emphasize the need and importance of small donations and volunteer workers. In addition, such limits would alleviate the problem of unfairness, for all candidates would be similarly limited in the amount which could be collected in their behalf. Indirectly, it would have the desirable effect of decreasing the exorbitantly high cost of recent elections, for candidates and committees would be forced to operate within smaller budgets.

Another difficult problem is whether some persons or organizations, for reasons of public policy, should be prohibited from making any contributions whatsoever. Under the existing California law there are no such provisions, except in the case of certain persons who are licensed by the state.<sup>91</sup> Many states, however, recognizing the evil effects of patronage, prohibit government employees from contributing, and Florida bars persons holding racing permits or liquor licenses from donating, in an effort to free state politics from the influence of these groups.<sup>92</sup> Most of the states prohibit profit-making corporations from donating, on the ground that they possess economic strength disproportionate to their political importance. Implied in such legislation is the factor of diversified political belief of the membership and the realization that a contribution made by the governing body of the organization may be contrary to the political sympathies of segments of the membership, with the result that those segments are forced to make

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<sup>87</sup> CAL. ELEC. CODE § 4501(c).

<sup>88</sup> N. Y. ELEC. LAW § 326.

<sup>89</sup> Bottomly, *supra* note 11, app. A, at 350.

<sup>90</sup> See DOUGLAS, *op. cit. supra* note 2 at 69.

<sup>91</sup> A licensee may not contribute to the campaign of a candidate running for the office, board, or agency from which the licensee receives his license. CAL. ELEC. CODE § 5002.6.

<sup>92</sup> Fla. Gen. Laws 1951, c. 26819, § 1, p. 632.

political donations against their will.<sup>93</sup> It is obvious that many organizations other than corporations come within one or both of the above considerations, and the legislation in some states reflects this reasoning. Labor unions are prohibited from contributing in several jurisdictions, and Texas has imposed a criminal penalty on employees or agents of charitable, religious, and eleemosynary organizations who make donations from the funds of such groups.<sup>94</sup>

*Maximum expenditures.*—As pointed out earlier, the commonest means of combating the problem of unfairness has been to impose maximum limits on the amount which may be spent in behalf of a candidate. However, the growing tendency seems to be away from the setting of any upper limit, with an increased reliance on disclosure and publicity to expose and diminish the evil. The removal of maximum expenditures in 1949, except those limiting the candidate's personal expenses, indicates that maximum limits based on a percentage of the salary of the expected office were not successful in California. Notwithstanding the seeming ineffectiveness of such legislation, Senator Paul Douglas is convinced that it is necessary,<sup>95</sup> and a close analysis of the reasons for the failure of maximum expenditure provisions bears him out. The defect is not in the concept but in the standards used to set the upper limits. Most states today provide that a lump sum may not be exceeded, or tie the limit in some way to the salary of the office sought. Both standards are unrealistic. The lump sums are arbitrary, often out of date, and bear no relation to the actual costs of a campaign.<sup>96</sup> The attempt to tie expenses to an expected salary rests on a misconception of the election process, namely, that a candidate should not spend more than he can recoup from the office. Running for office, however, is not a one-man process, but is rather a group effort. A campaign is not an investment by the candidate designed to yield a salary if successful, but is an instrument used by a group or groups for the purpose of informing voters of the qualifications of their chosen candidate. A realistic maximum limit, then, should be based on the actual cost of communicating with the voters in the area covered by the office a reasonable number of times through modern media, expressed as a flat sum per voter with provisions for revising the sum upon changing conditions. To further insure realism, it is submitted that a thorough investigation of costs of a representative campaign should be undertaken before the establishment of any maximum limits, for experience has shown that legislation which sets limits inconsistent with actual costs is honored only in the breach.

<sup>93</sup> See *DeMille v. American Federation of Radio Artists*, 31 Cal.2d 139, 187 P.2d 769, 175 A.L.R. 382 (1947), where Cecil B. DeMille was forced to pay a \$1 assessment levied by the union for political purposes which he opposed.

<sup>94</sup> TEX. ELEC. CODE § 243(e) (Tex. Gen. Laws 1951, c. 492, p. 1190). It should also be noted that under the Federal Corrupt Practices Act, corporations and labor unions are prohibited from making contributions or expenditures in any election for the office of President, Vice-President, Senator, or Representative. 18 U.S.C. § 610 (Supp. 1952).

<sup>95</sup> DOUGLAS, *op. cit. supra* note 2 at 73. See Sait, *Campaign Expenditures*, 23 AM. POL. SCI. REV. 47 (1929).

<sup>96</sup> For example, the reason for selecting \$3 million as the Federal limit on the expenditures of political parties seems shrouded in mystery. Note, 44 MICH. L. REV. 294, 296 (1945).

Indirectly involved in the problem of maximum expenditures are other suggested solutions for minimizing the problem of unfairness. The most consistently recurring recommendation is that candidates be supported partially or wholly out of tax money on the ground that it would be cheaper in the long run, and candidates would not be obligated to large contributors.<sup>97</sup> Aside from a shortlived experiment in Colorado in 1909, this procedure has not been adopted by any legislature.<sup>98</sup> Another recommendation frequently made is that candidates be granted limited franking privileges, and here the British have set a precedent by permitting each candidate to send some literature through the mails free of charge.<sup>99</sup> This procedure was utilized in modified form in California in 1927 when a pamphlet was prepared by the state and mailed to the voters containing the names of the sponsors of candidates running for the offices of United States Senator and Representative, and major state offices excluding state Senator, Assemblyman, and delegate to the state convention.<sup>100</sup> This provision was repealed such a short time later that its effectiveness cannot be ascertained.<sup>101</sup> However, a similar pamphlet containing arguments for and against ballot proposals has been used with apparent success in California for many years, and it seems probable that the inclusion of material concerning candidates would aid voters in making their selection, and help materially to decrease the cost of running for office in this state.<sup>102</sup> A proposal also worthy of notice is that each candidate be granted free time on radio and television networks, so that all are guaranteed at least a minimum contact with the voters.<sup>103</sup> Because such regulation must necessarily occur at the Federal level, however, further consideration is not undertaken here.

*Enforcement.*—There are no special provisions for securing compliance with the California elections laws, with the result that they are enforced by the District Attorney in the same manner as are violations of any other penal statute. This procedure has not proved effective. Although violations are commonplace,<sup>104</sup> there have been no prosecutions, and the testimony of law enforcement officers indicates that the present law is difficult to enforce.<sup>105</sup> The most apparent loophole in the enforcement procedure is

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<sup>97</sup> DOUGLAS, *op. cit. supra* note 2 at 77.

<sup>98</sup> Bottomly, *supra* note 11 at 380. In the January Session of the 1953 California Legislature Assembly B. No. 1733 was introduced, calling for payment of 25 cents per registered party member to the party chairman out of state funds. This bill was reported out of committee with a "do pass" recommendation, but the next day it was referred back to committee, where it died. Assembly Daily J. 3576 (May 6, 1953); *id.* at 3663 (May 7, 1953).

<sup>99</sup> Bottomly, *supra* note 11 at 339.

<sup>100</sup> Cal. Stats. 1927, p. 1692, § 1(k).

<sup>101</sup> Cal. Stats. 1933, p. 358.

<sup>102</sup> Two states at present mail publicity pamphlets containing the candidate's platform and his picture to the voters, but make a nominal charge to the candidate. N. D. REV. CODE, §§ 16-1901 to 16-1908 (1943); ORE. COMP. LAWS, §§ 81-2503 to 81-2507 (1940).

<sup>103</sup> DOUGLAS, *op. cit. supra* note 2 at 82.

<sup>104</sup> See text *supra* at notes 62, 63.

<sup>105</sup> In answer to a question as to whether the present law is enforceable, Mr. Don Mays, District Attorney of Merced County, replied: "I think it is unenforceable. As a District Attorney, of course, I would be very glad to enforce any violations that I have a chance to find

the absence of any method for checking the veracity of the campaign statements which are filed. The Secretary of State is not obligated to audit them, and no one has the duty of determining whether a candidate or committee actually reports all contributions and expenditures. Ordinary citizens have no means of discovering whether violations are being committed, and the lack of compliance by candidates generally makes it unlikely that any candidate will cast the first stone.

These obstacles to enforcement serve to emphasize that the basic weakness of the present system is the absence of a centralized authority primarily interested in securing compliance with the elections laws. As a partial step in this direction, the Assembly Subcommittee on Purity of Elections Laws has recommended that the Secretary of State be required to check each statement and refer apparent violations to the Attorney General for investigation.<sup>106</sup> Undoubtedly such a procedure would help to insure accuracy in the statements submitted, but it is to be noted that it does not assure that a statement will be filed, or that all contributions and expenditures will be included. It has been suggested that some sort of board under the supervision of a nonpartisan director be created to enforce elections laws.<sup>107</sup> The creation of such a board, with the power to audit reports, investigate campaign conduct in the field, and initiate actions against violators would solve most of the problems of enforcement. In addition, if publication of campaign statements were to become mandatory, such a board could serve to prepare the material for publication. No state at present has an independent body to supervise the conduct of elections, and it is unlikely that the California legislature will create one. It is likely, however, that the legislature will take some action in the future to improve the regulations concerning money in elections,<sup>108</sup> and it should be stressed here that tightening of the law in other areas will be of no avail unless something is done to improve enforcement, even if it be only to alert grand juries and district attorneys to their responsibility.

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out about, but the way the present law is worked out, who knows whether there are violations or not, and it is so obscure as to whether there are violations or not, it would be very difficult to make any prosecutions of violations of it." Testimony before the Assembly Subcommittee on Purity of Elections Laws, contained in unpublished transcript of hearing (1952).

<sup>106</sup> Assembly Daily J. 541 (Jan. 14, 1953).

<sup>107</sup> Emory, *A Corrupt Practices Act for Maryland*, 4 MD. L. REV. 248, 254 (1940).

<sup>108</sup> In the January Session of the 1953 California Legislature, 18 bills were introduced touching upon campaign contributions and expenditures. *Interim Subject List* 98, Jan. Sess. of Calif. Legislature, 1953 Reg. Sess. Most of them contained minor amendments to the Elections Code, but seven of the bills contemplated substantial changes in the existing law. Three of these have been mentioned earlier. *Supra* notes 75, 86, 98. Of the remaining four, Assembly B. No. 927 would have required everyone who spends more than \$50 in behalf of a candidate to file a campaign statement. Assembly B. No. 2082 would have made it unlawful to expend or promise to expend anything of value for any candidate without written authorization from the candidate. Assembly B. No. 2579 would have imposed a misdemeanor penalty upon any person or organization which contributed funds or services to a candidate with the intention of causing his defeat by creating the appearance that such person or organization is supporting the candidate. Senate B. No. 1939 would have required every person soliciting funds for any purpose to get a clearance from the appropriate central committee. All of these bills died in committee when the Legislature adjourned on June 10, 1953.

*Penalties.*—The penalties contained in the present law, even if enforced, are inadequate to deter violations. The threat of a misdemeanor conviction is a risk that a candidate can well afford to take, for the payment of a fine can be considered simply an additional campaign expense, and if a jail sentence were imposed, which is improbable, it would not result in forfeiture of office.<sup>109</sup> The provision that no certificate of nomination or election will be issued to a winning candidate until he files his campaign statement is laudatory, but assures only that a statement of his personal expenses will be filed, a simple enough undertaking. Suggested solutions are not wanting, and they range from civil penalties recoverable by the opposing candidate to treatment of the offense as a felony, but it seems almost elementary that the most effective deterrent, and the one most suited to the offense, is disqualification to hold the office to which the candidate seeks to be elected. Such is the law in Britain and many states.<sup>110</sup> It was once the law in California, and the *Bradley* case made it clear that the legislature has the power to impose such a penalty.<sup>111</sup> It is the law of California today in regard to the offense of bribery,<sup>112</sup> and there would seem to be no distinction in reason between bribery and other misuses of campaign money. An office procured by either method constitutes a fraud on the voters.

It must be admitted, however, that forfeiture of office holds no threat for the losing candidate, and due to the lack of centralized responsibility in California it would not affect the activities of a committee acting in behalf of a candidate. For this reason the more customary sanctions must be retained, but they should certainly be improved. Suggested improvements would include more stringent fines and jail sentences, but great caution must be exercised here, for experience in other fields has shown that when punishment, and especially incarceration, for any crime seems excessively harsh in the public eye it becomes increasingly difficult to convince a jury to convict, even on the strongest evidence.<sup>113</sup> Texas has recently experimented with civil penalties which permit opposing candidates to recover double the amount of any unlawful expenditure made by any candidate or campaign manager,<sup>114</sup> but such legislation is of doubtful value, for even if liability were extended to permit recovery for any unreported contribution or expenditure, and even if a citizen were permitted to recover in addition to the opposing candidate, civil penalties in general are subject to the criticism advanced earlier that citizens and candidates are not likely to initiate actions. The difficulty of enacting sanctions which are apt to deter violations of corrupt practices legislation by campaign committees, through

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<sup>109</sup> See *Merrick v. Porter*, *supra* note 47.

<sup>110</sup> Bottomly, *supra* note 11, app. C, at 357.

<sup>111</sup> *Supra* note 41.

<sup>112</sup> CAL. ELEC. CODE §§ 4950-4963 state that giving or taking certain bribes is a felony. CAL. GOV. CODE § 1770(h) provides for vacation of office upon conviction of a felony.

<sup>113</sup> See e.g., Report of the American Bar Association Commission on Organized Crime, *Organized Crime and Law Enforcement* 55 (1952).

<sup>114</sup> TEX. ELEC. CODE § 241 (Tex. Gen. Laws 1951, c. 492, p. 1189).

whom the bulk of all money passes, emphasizes the need for fastening on the candidate the responsibility of supervising the conduct of his campaign.

#### INITIATIVE AND REFERENDUM

In 1911 the constitution of California was amended to provide for initiative and referendum procedures.<sup>115</sup> By definition the initiative is to be used by citizens who wish to initiate legislation which the legislature either refused to pass or could not agree upon, while the referendum is used to subject the acts of the legislature to public scrutiny. The history of the use of the initiative in California shows that it has truly been employed by the people as a means of self government.<sup>116</sup> The list of propositions which have been subjected to a statewide ballot includes such widely divergent topics as the use of the Bible in schools, administrative control of chiropractors, and income and gasoline taxes.<sup>117</sup> But while the initiative and referendum have often been used to secure the passage of legislation which is undoubtedly in the public interest, it cannot be denied that money, together with its possible abuses, plays as important a part in the passage or defeat of ballot proposals as it does in other campaigns. It is estimated that the cost of securing the necessary signatures to place an initiative measure on the ballot is \$21,000, while the cost of placing a referendum on the ballot is \$13,000.<sup>118</sup> For the period 1921-1949 the campaign expenditures for and against a measure exceeded \$25,000 in 63 per cent of the cases.<sup>119</sup> From this it is apparent that the passage or defeat of popular legislation is to a great degree a problem of financing, and recital of the large sums necessary serves to emphasize the conclusion that the initiative and referendum "... can be used at will by those business corporations which have large war chests for political purposes but can be used only on very rare occasions by citizens generally."<sup>120</sup>

From 1911 to 1921 no attempt was made to regulate the expenses of campaigns for or against ballot proposals. The reason for this is probably historical. The enactment of the initiative and referendum provisions in the constitution came with the tide of the Progressive government in California, which was headed by Hiram Johnson's overthrow of the Southern Pacific regime. The legislature of the time was extremely public spirited and enacted legislation concerning most of the problems which might have necessitated popular action. When Johnson ceased being governor in 1917, the elements which had controlled the state prior to his election reformed their lines, and there followed a number of attacks on the initiative and referendum procedure designed to nullify their effectiveness.<sup>121</sup> Progres-

<sup>115</sup> CAL. CONST. ART. IV, § 1.

<sup>116</sup> See generally Radin, *Popular Legislation in California*, 23 MINN. L. REV. 559 (1939), *Popular Legislation in California 1936-1946*, 35 CALIF. L. REV. 171 (1947).

<sup>117</sup> A list of proposed initiated statutes and referenda from 1912 to 1949 is included in CROUCH, *INITIATIVE AND REFERENDUM IN CALIFORNIA* 44-49 (1950).

<sup>118</sup> ANDERSON, *CALIFORNIA STATE GOVERNMENT* 201 (1942).

<sup>119</sup> Computed from figures in CROUCH, *op. cit. supra* note 117, app. Table III, at 43.

<sup>120</sup> ANDERSON, *op. cit. supra* note 118 at 210.

<sup>121</sup> *Id.* at 201-203.



sives in the legislature retained strength enough to beat them down, however, and in 1921 the constitutional provisions were strengthened by the adoption of "An act providing for publicity of contributions and expenditures made for the purpose of influencing electors for or against any proposition voted upon throughout the state and providing penalties for the violation thereof."<sup>122</sup> This act designated as an "association" any person or group which collected over \$1000 for the payment of expenses in a ballot measure campaign,<sup>123</sup> and declared that each association must file a statement with the Secretary of State between five and ten days prior to the election and within twenty days thereafter, indicating the source and amount of the money collected and the recipients of the expenditures.<sup>124</sup> The statements were to be kept on file and open to the public in Sacramento, San Francisco, and Los Angeles.<sup>125</sup> A criminal penalty of a misdemeanor and a civil penalty of \$1000 recoverable by any citizen of the state were provided for violation of the act.<sup>126</sup>

### *The Jones Report*

The act of 1921 had scarcely become law before there were charges that it was being violated, and because of these charges the California Senate resolved to investigate receipts and expenses in connection with measures on the ballot in the election of November 7, 1922.<sup>127</sup> The ensuing investigation, headed by Senator Herbert C. Jones, is one of the first legislative probings into the subject of money in political campaigns in this state, and even today the findings of the committee remain one of the primary sources of information in this field.<sup>128</sup> The Jones Report disclosed two outstanding features of ballot measure campaigns. The first of these was that startlingly large expenditures were being made by interested bodies, and the information compiled led the committee to make its oft quoted remark that, "Victory is on the side of the biggest purse.' The winning of the election by the side that spent the most money in the foregoing contests was too universal to be attributed merely to chance or accident."<sup>129</sup> The second outstanding feature of the campaigns was the employment of misleading and deceptive campaign methods, the most prominent of which were the use of patriotic and high sounding names for committees under which the real identity of the interested parties was disguised, and the payment of workers in civic groups to disseminate propaganda on electoral matters, under the guise of honest and disinterested service. The committee affirmed its confidence in full publicity of these matters as a sufficient safeguard for the voters and

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<sup>122</sup> Cal. Stats. 1921, p. 983.

<sup>123</sup> *Id.* § 1(1).

<sup>124</sup> *Id.* §§ 2, 3, at p. 984.

<sup>125</sup> *Id.* § 4.

<sup>126</sup> *Id.* §§ 5, 6.

<sup>127</sup> Senate Daily J. 127 (Jan. 17, 1923); *id.* at 133 (Jan. 18, 1923).

<sup>128</sup> *Report of the Senate Committee Appointed to Investigate Expenditures For and Against Measures on the Ballot at the General Election Held on November 7, 1922*, Senate Daily J. 1780 (May 14, 1923).

<sup>129</sup> *Id.* at 1783.

advised that a maximum limit on expenditures not be imposed. It concluded that clarification of the act of 1921 was necessary, and recommended that the law be extended to cover persons or groups who did not collect money, but expended substantial sums of their own in support of a campaign. The Report also recommended the filing of an earlier and additional statement before the election, and the imposition of a jail sentence for violation.

In 1923 the legislature amended the act of 1921, adopting many of the recommendations of the Jones Report.<sup>130</sup> An "association" was defined to include any person or group which expends over \$1000 out of its own funds,<sup>131</sup> and two pre-election statements were required, one between forty and forty-five days prior to the election, and the other between seven and twelve days.<sup>132</sup> A jail sentence not to exceed one year became an added penalty.<sup>133</sup> The 1921 act, as amended in 1923, formed the basis of those sections of the Elections Code dealing with contributions and expenditures in initiative and referendum campaigns.<sup>134</sup> To date, there have been no reported cases arising under these provisions of the code.

#### *Criticism and Suggestions for Improvement*

Criticism of the regulations governing expenses in ballot proposal campaigns is in many respects similar to that levelled against the provisions concerning candidates and committees. Full disclosure is not achieved because aid in any manner other than money is not required to be reported, and the statements are to a great extent meaningless because there is no standard form. The mandatory pre-election statements are a great step forward, but the length of time between the last statement and the election is so large that last minute spending can render them valueless or misleading. Publicity is inadequate, and the lawful expenditures should be revised to include modern media. There is no safeguard against anonymity of contributors, and enforcement of the law against those associations which do not file is nonexistent. Although a civil penalty is provided it has apparently not been used, and the remaining sanctions are inadequate. In other respects, the regulations governing ballot proposals must of necessity differ from those affecting candidates, and these will be considered separately.

*Centralized responsibility.*—It cannot be said that any individual or association supporting or opposing measures on the ballot should have the right or the duty of supervising the conduct of that campaign. A ballot proposal is a creature of the public. No person or group has a vested or paramount interest in its passage or defeat, and there is no standard by which it may be determined who is best qualified to organize the campaign. But

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<sup>130</sup> Cal. Stats. 1923, p. 847.

<sup>131</sup> *Id.* § 1.

<sup>132</sup> *Id.* §§ 2, 3, at p. 848.

<sup>133</sup> *Id.* § 6, at p. 849.

<sup>134</sup> CAL. ELEC. CODE §§ 4750-4862.

while it is not feasible to limit the autonomy of the associations in a ballot proposal campaign, there must be some repository where information concerning all those who support or oppose such legislation is centralized. To some extent this is accomplished by the present statutes which require the filing of pre- and post-election statements, but it is apparent that many associations do not file and frequently expenditures are not reported.<sup>135</sup> To curb such failure to report, and in lieu of centralized responsibility, it is submitted that each association or individual intending to solicit or expend money in a ballot measure campaign be required to register with the Secretary of State or other public official or board, and that it be made unlawful to solicit contributions or make expenditures unless the association or individual is so registered.<sup>136</sup>

*Maximum contributions and expenditures.*—There is ample evidence that expenditures in many California ballot measure campaigns are tremendous, and it is also true that generally the side which spends the most wins.<sup>137</sup> Yet this problem of unfairness cannot be solved by the imposition of maximum total expenditures for two reasons, either of which alone is sufficient. The first is that ballot proposals vary greatly in their importance and public interest, and there is no standard by which it may be determined beforehand how much reasonably may be spent in any given campaign. Secondly, because centralized responsibility is impossible, and associations may be formed and dissolved at will and may vary in size and in their motive for supporting or opposing measures, any attempt to apportion a maximum amount among them, or set an identical maximum limitation on each group, would result in hopeless confusion and wholesale evasion of the law.

The problem of unfairness may be met, however, by limitations on individual contributions and expenditures, for such a statutory maximum is subject to none of the criticisms of a limit on total expenditures, and in addition is supported by public policy. The arguments advanced earlier favoring limitation, and in some cases prohibition, of individual contributions on behalf of a candidate apply with even more vigor here, for money spent in ballot campaigns is a direct purchase of the passage of favorable legislation, or the defeat of unfavorable legislation, by those interests making the large donations or expenditures.

#### CONCLUSIONS

These is almost nothing new under the sun in the field of regulating campaign contributions and expenditures. Perceptive students of law, politics, and history have analyzed the problems of secrecy and unfairness in Anglo-American elections for three-quarters of a century, and most of the foregoing suggested solutions have been voiced repeatedly over the years,

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<sup>135</sup> See the Jones Report, *supra* note 128.

<sup>136</sup> This proposal was suggested by CAL. ELEC. CODE § 5301, which makes it unlawful to solicit funds in the name of a political party unless previous written consent of certain party officers has been obtained.

<sup>137</sup> CROUCH, *op. cit.* *supra* note 117 at 30-32.

or discussed more fully in other places. Some are law today in Britain or in sister states. The justification for summarizing and restating them at this time lies in the importance of the problem to Californians. The Jones Report, the Philbrick Report, the Carey study, and the report of the Subcommittee on Purity of Elections Laws have disclosed facts which show that violation of the law is the rule rather than the exception in California campaigns. Analysis of the California statutes indicates that even if they were fully complied with or enforced, they are inadequate to secure to the voters full disclosure of the support behind candidates and ballot measures, and they are inadequate to prevent the "purchase" of an office or the "purchase" of desired legislation.

It has been suggested that there are three stages in the enactment of legislation. The first is investigation and reporting; the second is discussion, suggestions, and recommendations; the third is action by the legislature.<sup>138</sup> California has passed the first two stages in regard to the problem of money in politics. As to the third, the words of Dr. James K. Pollock before a Congressional investigating committee have equal application to the California legislature:<sup>139</sup>

The question is—is Congress interested? Can it find the time to do something effective in a field which affects the very foundation of clean politics. After all these years I should think Congress would feel a little contrite about its long period of inaction.

*Bruce A. Thompson*

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<sup>138</sup> Statement of Dr. James K. Pollock, *supra* note 21 at 120.

<sup>139</sup> *Id.* at 117.