Elections

University of the Pacific; McGeorge School of Law

Elections

Elections; campaign financing limits

Government Code §§ 83122.5, 84106, 84302.5, 85100, 85101, 85102, 85103, 85104, 85200, 85201, 85202, 85203, 85204, 85205, 85206, 85300, 85301, 85302, 85303, 85304, 85305, 85306, 85307, 85308, 85309, 85310, 85311, 85312, 85313, 85314, 85315, 85316, 85317, 85400, 85401, 85402, 85403, 85404, 85405, 85500, 85501, 85502, 85503, 85504, 85505, 85506, 85600, 85601, 85602, 85603, 85604, 85700, 85701(new); §§ 82041.5, 83116, 89001, 91000, 91005 (amended); Revenue and Taxation Code; §§ 18775, 18776 (new).
Proposition 68 (*Effective January 1, 1987*)*
Proposition 73 (*Effective January 1, 1989*)

On June 7, 1988, the California electorate approved two initiatives,[1] Propositions 68 and 73, that limit campaign financing.[2] Certain provisions of the two initiatives conflict.[3] The California Constitution provides that, in the event the voters approve propositions containing conflicting provisions, the provisions of the initiative receiving the greatest number of affirmative votes prevail.[4]

Under existing law, candidates for public office in California are required to report campaign contributions and expenditures.[5]

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* The initiative measure which became Proposition 68 was originally intended to appear on the general election ballot of November 1986, but due to a controversy during the qualification procedures, the measure was not placed on a ballot until it qualified for the primary election ballot of June 1988. *See generally Campaign Spending Limits Act of 1986: Effective Date,* OP. LEGIS. COUNSEL No. 6203 (April 28, 1988) (concluding effective date of Prop. 68 should be January 1, 1989). Revenue and Taxation Code sections 18775 and 18776 added by Proposition 68 became effective June 8, 1988. 1988 Cal. Stat. sec. 13, at ____ (sections to be effective upon adoption by voters).

1. CAL. CONST. art. II, § 8 (reserving the power of the people to legislate via initiative measures).

2. 1988 Cal. Stat. at ____ (adoption by voters of Prop. 68); *id.* at ____ (adoption by voters of Prop. 73). These are not the first attempts by the voters to control campaign financing. *See* 1977 Cal. Stat. ch. 1095, at 3509. (repealing CAL. GOV'T CODE §§ 85100-85305) (provisions were adopted by initiative measure). *See also* Comment, *Expenditure Limitations in Campaigns for Statewide Office in California,* 6 PAC. L.J. 631, 633 (1975).

3. *See infra* notes 67-80 and accompanying text.

4. CAL. CONST. art. II, § 10(b).

5. CAL. GOV'T CODE § 84211.

Proposition 73 (Prop. 73) prohibits public financing of election campaigns, limits campaign contributions for all state and local elective offices, adopts certain candidacy procedures, and prohibits expenditure of public funds for newsletters and mass mailings.[6] Proposition 68 (Prop. 68) limits campaign contributions for state legislative offices, provides for partial public funding of legislative election campaigns conditioned on a candidate's agreement to stay within certain expenditure limits, expands the responsibilities of the Fair Political Practices Commission (Commission),[7] and provides for criminal and civil penalties for violation of its provisions.[8]

This review is divided into three parts. The first part discusses the major provisions of Prop. 73.[9] The second part discusses the major provisions of Prop. 68.[10] The third part analyzes the conflicts between the two propositions and suggests how these conflicts should be resolved.[11]

PROPOSITION 73

A. Candidacy Procedures

Under Prop. 73, individuals who intend to be a candidate for elective office must file with the Commission a statement of their intention before soliciting or receiving contributions or loans.[12] Each candidate must then open one campaign account at a financial

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6. *See infra* notes 12-33 and accompanying text.
7. *See generally* CAL. GOV'T CODE § 83100 (establishing the Fair Political Practices Commission).
8. *See infra* notes 34-56 and accompanying text.
9. *See infra* notes 11-33 and accompanying text.
10. *See infra* notes 34-56 and accompanying text.
11. *See infra* notes 57-110 and accompanying text. The Legislative Counsel's Office, which drafted Prop. 73, is of the opinion that none of Prop. 68's provisions are operable. *Propositions 68 and 73* OP. LEGIS. COUNSEL, No. 16427 (July 22, 1988) (on file at the *Pacific Law Journal*). *But see* Letter from Robert Felemeth, Director, Center for Public Interest Law, University of San Diego to John Larson, Chairman, Fair Political Practices Commission (August 25, 1988) (on file at the Pacific Law Journal) (analysis of conflicts between Prop. 68 and Prop. 73); Letter from Fredric Woocher, Center for Law in the Public Interest, to John Larson (July 1, 1988) (on file at the *Pacific Law Journal*) (analysis of conflicts between Prop. 68 and Prop. 73). The Fair Political Practices Commission plans to consider a draft opinion on the issue of conflicts between Props. 68 and 73 in December 1988. Minutes of the Fair Political Practices Commission, September 22, 1988 (unapproved and subject to change) (on file at the *Pacific Law Journal*).
12. 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85200) (where both propositions adopt the same section numbers for their additions to the codes, the parenthetical following the citation will include "adopting Prop. _____'s version of. . .," where there is no such duplication the parenthetical will be "Prop. _____, adopting. . ."). The statement of intention must be signed, and declare under penalty of perjury the individual's intention to be a candidate for a specific office. *Id.*

institution located within the state.[13] Prop. 73 prohibits candidates from accepting contributions from any source other than persons,[14] political committees,[15] broad based political committees (BBPCs),[16] and political parties.[17] The contributions deposited in the campaign account are held in trust for expenses associated with the election to, or the holding of, the office specified in the candidate's statement of intention.[18] All contributions and loans made to the candidate, the candidate's controlled committees,[19] and to persons on behalf of the candidate, must be deposited in this account, along with any of the candidate's personal funds that are to be used to promote the candidate's election.[20] All campaign expenditures must be made from the account.[21]

B. Contribution Limitations

Prop. 73 prohibits public officers from expending, and candidates from accepting, public moneys[22] for campaign expenditures.[23] Furthermore, Prop. 73 expands existing limitations on the sending of mass mailings at public expense into a blanket prohibition on the expenditure of public funds on mass mailings and newsletters.[24]

Prop. 73 sets a $1,000 per fiscal year[25] limit on campaign contri-

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13. *Id.* at ____(adopting Prop. 73's version of CAL. GOV'T CODE § 85201(a)). The candidate must file with the Commission the name of the institution, its specific location, and the account number within 24 hours of opening the account. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85201(b)).

14. *See id.* at ____(adopting Prop. 73's version of CAL. GOV'T CODE § 85102(b)) (definition of person includes any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or labor organization).

15. *See id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85102(c)) (definition of political committee).

16. *See id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85102(d)) (definition of broad based political committee).

17. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85202(a)).

18. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85202(b)).

19. CAL. GOV'T CODE § 82016 (definition of controlled committee).

20. 1988 Cal. Stat., sec. 1, at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85201(c), (d)).

21. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85201(e)).

22. CAL. PENAL CODE §426 (definition of public moneys).

23. 1988 Cal. Stat., sec. 1, at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85300).

24. *Compare* 1988 Cal. Stat., sec. 3, at ____ (Prop. 73, amending CAL. GOV'T CODE § 89001) *with* 1987 Cal. Stat. ch. 230, sec. 2 at ____ (enacting CAL. GOV'T CODE § 89001) (elected officers cannot send mass mailings at public expense to constituents after filing nomination documents for any state or local elective office).

25. 1988 Cal. Stat., sec. 1, at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85102(a)) (defining fiscal year as July 1 through June 30). During special elections the applicable time period of the contribution limitations is the period from the creation of the vacancy necessitating the special election until the date of the special election, and the applicable period

butions or loans[26] by a person to a candidate and the candidate's controlled committees.[27] Prop. 73 also sets a $2,500 per fiscal year limit on personal loans or contributions to a political committee, BBPC, or political party for use as contributions to candidates.[28]

Prop. 73 prohibits a political committee from loaning or contributing more than $2,500 per fiscal year to a candidate or the candidate's controlled committees.[29] Contributions and loans from BBPCs and political parties are restricted to $5,000 per fiscal year per candidate or committee controlled by the candidate.[30] Under Prop. 73, separate limitations apply to contributions to candidates for special elections and special runoff elections.[31]

Prop. 73 also limits the amount state and local elected officials can receive as gifts and honoraria from any one source per year to $1,000,[32] and prohibits the transfer of funds between candidates or candidate-controlled committees.[33]

PROPOSITION 68

A. *Contribution Limitations*

Prop. 68 provides a $1,000 per election limit on personal contributions to a state legislative candidate and the candidate's controlled committees,[34] and a $1,000 per year limit on personal contributions to any committee which supports or opposes a legislative candidate.[35]

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during a special runoff election is from the day after the special election until the day of the special runoff election. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85305(b)(1), (2)).

26. *See generally id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85307) (provisions concerning loans include extensions of credit, but not loans made by a commercial lender to a candidate made in the lender's normal course of business, on terms available to the general public, and for which the candidate is personally liable).

27. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85301(a)). The $1,000 limit does not apply to the contribution by candidates of personal funds to their own campaign accounts. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85301(b)).

28. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85302). *But cf. id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85303(c)) (no limitation on financial or other support a person can supply to political committees and BBPCs, provided the support is not used for direct contributions to candidates).

29. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85303(a)).

30. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85303(b)).

31. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85305). The monetary levels remain the same, but are calculated per special election cycle and special runoff election cycle rather than per fiscal year. *Id.*

32. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85400) (exception for travel and subsistence expenses).

33. *Id.* at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85304).

34. 1988 Cal. Stat., sec. 1, at ____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85300(a)).

35. *Id.* at ____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85300(c)).

Prop. 68 sets a $2,500 per election limit on contributions by an organization[36] to a legislative candidate and the candidate's controlled committees.[37] Prop. 68 also sets a two year limit of $5,000 dollars on contributions by a Small Contributor Political Action Committee (SCPAC)[38] to a committee supporting or opposing a legislative candidate,[39] and a $5,000 per-election limit on SCPAC contributions to a legislative candidate and the candidate's controlled committees.[40] Prop. 68 sets a $25,000 limit on the total amount a person may contribute over a two-year period to legislative candidates and to committees supporting legislative candidates.[41] The limits on contributions by a person, organization, or SCPAC do not apply until the candidate raises $35,000 in the election year.[42]

Prop. 68 prohibits persons, organizations, and SCPACs from contributing more than $5,000 in a two-year period to any legislative caucus or political party committee supporting or opposing legislative candidates.[43] Prop. 68 also limits the total amount legislative candidates may accept from legislative and political party committees[44] and other non-individuals.[45] Prop. 68 allows a candidate to accept contributions only during years in which the candidate's name appears on the ballot.[46]

Under Prop. 68, a legislative candidate may not accept more than $2,000 in gifts and honoraria per two year period from a single source.[47] Prop. 68 prevents legislative candidates and their committees from transferring contributions to other legislative candidates or

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36. *Id.* at ___ (Prop. 68, adopting CAL. GOV'T CODE § 85206) (defining organization to include any proprietorship, labor union, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, or committee which has 25 or more employees, shareholders, contributors, or members).

37. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85300(b), (d)).

38. *See generally id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85202) (definition of small contributor political action committee).

39. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85301(b)).

40. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85301(a)).

41. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85306).

42. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85304).

43. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85302).

44. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85303) (setting limits of $50,000 for Assembly and $75,000 for Senate candidates in general or special elections; legislative caucus committees and political parties are prohibited from making contributions to legislative candidates in primary or special elections).

45. *Id.* at ___ (adopting Prop. 68's version of CAL. GOV'T CODE § 85305) (Assembly candidates cannot accept more than a total of $50,000, and Senate candidates more than a total of $75,000, from non-individuals in a two year period; contributions from political parties and legislative caucuses are excluded from this limit).

46. *Id.* at ___ (Prop. 68, adopting CAL. GOV'T CODE § 85309(a)).

47. *Id.* at ___ (Prop. 68, adopting CAL. GOV'T CODE § 85310) (family members excepted).

committees that support them.[48] Prop. 68 also treats certain aggregates of entities as single persons for purposes of the contribution limits.[49]

B. *Expenditure Limitations and Public Funding*

Prop. 68 creates the Campaign Reform Fund (Fund),[50] and allows taxpayers to designate on their personal tax returns that up to three dollars of their income tax liability be deposited into the Fund.[51] The Fund would provide up to $175,000 in proportional funding[52] to legislative candidates who agree to maintain the proposition's voluntary limits on campaign expenditures.[53] Prop. 68's voluntary limit for State Assembly candidates is $150,000 per primary, and $250,000 per general, special, or special runoff election;[54] the limit for Senate candidates is $250,000 per primary, and $350,000 per general, special, or special runoff election.[55] Under certain conditions, these expenditure limits will be lifted, and candidates receiving payments from the fund may receive an additional $35,000.[56]

CONFLICT ANALYSIS

A. *Interpretive Guidelines*

Article II, section 10(b) of the California Constitution provides that the provisions of the initiative receiving the most affirmative votes will prevail over any conflicting provisions of another initiative approved at the same election.[57] The propositions are to be read

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48. *Id.* at _____ (Prop. 68, adopting CAL. GOV'T CODE § 85308(a)). However, a candidate may make personal contributions to his or her own candidacy, or to other candidates. *Id.* at ____ (Prop. 68, adopting CAL. GOV'T CODE § 85308(b)).

49. *Id.* at _____ (Prop. 68, adopting CAL. GOV'T CODE § 85312(a)) (all payments made by a person, organization, or SCPAC whose payments are financed, maintained or controlled by another entity must be considered as being made by a single person, organization, or SCPAC). Two or more entities will be treated as a single person if: (1) They share at least two officers; (2) they share a majority of the members of their boards of directors; (3) they are owned or controlled by the same majority shareholders; or (4) they have a parent-subsidiary relationship. *Id.* at _____ (Prop. 68, adopting CAL. GOV'T CODE § 85312(b)(1)-(4)). An individual and any general partnership in which the individual is a partner are to be treated as cne person, as are an individual and any corporation in which the individual owns a controlling interest. *Id.* at _____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85312(c)).

50. *Id.*, sec. 2, at _____ (Prop. 68, adopting CAL. REV. & TAX CODE § 18775).

51. *Id.* (tax checkoff).

52. *See generally id.*, sec. 1, at _____ (Prop.68, adopting CAL. GOV'T CODE §§ 85502, 85504) (formulas for determining amount of public funding; maximum funds available).

53. *Id.* at _____ (Prop. 68, adopting CAL. GOV'T CODE § 85500).

54. *Id.* at _____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85400).

55. *Id.* at _____ (Prop. 68, adopting CAL. GOV'T CODE § 85401).

56. *Id.* at _____ (adopting Prop. 68's version of CAL. GOV'T CODE §§ 85402, 85403).

57. CAL. CONST. art II, § 10(b). *See also* Estate of Gibson, 139 Cal. App. 3d 733, 736,

together, and reconciled if possible; if the conflict is irreconcilable, then Article II section 10(b) will apply.[58] Because Prop. 73 received the greater number of affirmative votes, its provisions will prevail over any conflicting provisions of Prop. 68.[59] Since Prop. 68 contains a severability clause,[60] any provisions that are not severed should stand.[61]

In *People's Advocate, Inc. v. Superior Court*,[62] the Court of Appeal for the Third Appelate District set forth a three part test to determine the severability of initiative provisions.[63] Under the first part of the test, the invalid language of the measure must be grammatically severable from the other provisions.[64] Under the second part, the provisions must be capable of application independent of the invalid provisions.[65] The third part is reached after the first two parts are met, and requires "that it can be said with confidence that the electorate's attention was sufficiently focused upon the provisions sought to be severed so that it would have separately considered and adopted them in the absence of the invalid portions."[66]

B. Conflicts

Prop. 68 permits taxpayers to designate that a portion of their income tax liability be placed in the Campaign Reform Fund, and authorizes the Controller to disburse the funds to legislative candidates in amounts certified by the Commission.[67] Prop. 73 bars the expenditure of public funds to finance election campaigns.[68] The funds in the Campaign Reform Fund meet the appropriate definition of public funds;[69] therefore, the provisions conflict resulting in Prop.

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189 Cal. Rptr. 201, 204 (1983) (conflict between effective dates of initiative measures repealing gift and inheritance tax adopted in same election).

58. *Gibson*, 39 Cal. App. 3d 733, 736, 189 Cal. Rptr. 201, 203-204 (1983).

59. CAL. CONST. art II, § 10(b).

60. 1988 Cal. Stat., sec. 10, at ____ (Prop. 68, severability clause).

61. *Id.* (any provisions or applications of Prop. 68 that are held invalid are severable, and will not affect the validity of the other provisions).

62. 181 Cal. App. 3d 316, 226 Cal. Rptr. 640 (1986).

63. *People's Advocate*, 181 Cal. App. 3d at 330-333, 226 Cal. Rptr. at 648-650.

64. *Id.* at 330, 226 Cal. Rptr. at 648 (the severability may be by any grammatical unit).

65. *Id.* at 331-332, 226 Cal. Rptr. at 649.

66. *Id.* at 333, 226 Cal. Rptr at 650.

67. 1988 Cal. Stat. ____, at sec. 1 (Prop. 68, adopting CAL. GOV'T CODE §§ 85500-85505).

68. 1988 Cal. Stat., sec. 1, at ____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85300).

69. *See* 1988 Cal. Stat. ____, at sec 1 (adopting Prop. 68's version of CAL. GOV'T CODE § 85101(e)) (application of the Penal Code's definition of public funds); CAL. PENAL CODE § 426 (public funds are "monies belonging to the state, or any. . .public agency therein, and all monies. . .received or held by state. . .or public agency officers in their official capacity.").

73 prevailing, and the Campaign Reform Fund provisions of Prop. 68 becoming inoperative.[70]

Prop. 68 sets limits on contributions, relating to campaigns for state legislative office on a per election basis.[71] Prop. 73 sets different limits, applicable to campaigns for all elective offices, and on a fiscal year basis.[72] The limits and periods of calculation established by the propositions conflict, as do their categorizations of contributor groups.[73] Since Prop. 73 received the greater number of affirmative votes, its provisions prevail, and Prop. 68's contribution limits are therefore inoperative.[74]

Prop. 68's prohibition on transfers between candidates, and its limitations on the amount candidates may receive as gifts and honoraria conflict with Prop. 73's provisions relative to these areas.[75] Prop. 68's provision requiring one campaign bank account conflicts with Prop. 73's provisions governing bank accounts.[76] These provisions of Prop. 68 are therefore inoperative.[77] Prop. 68's exemption from limitation of contributions to a legislative candidate's campaign for a non-legislative office conflicts with Prop. 73's coverage of all elective offices.[78] Prop. 68 exempts the first $35,000 raised by a candidate in an election year from the personal and SCPAC contribution limits.[79] Since Prop. 73 does not exempt any initial amount from its limitations, these provisions of Prop. 68 are in conflict with Prop. 73's exemptionless scheme, and, therefore, are inoperative.[80]

For an argument against the classification of Campaign Reform Fund monies as "public funds," *see generally* Letter from Robert Felemeth, *supra* note 11.

70. *See infra* notes 86-91 and accompanying text for discussion of whether the tax checkoff provisions of Prop. 68 remain operative.

71. 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 68's versions of CAL. GOV'T CODE §§ 85300-85317).

72. 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 73's versions of CAL. GOV'T CODE §§ 85300-85305).

73. *Compare* 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 68's version of CAL. GOV'T CODE §§ 85201-85204, 85206, 85300-85303) *and supra* notes 31-45 and accompanying text (discussing Prop. 68's contribution limits and contributor classifications) *with* 1988 Cal. Stat. at _____ (adopting Prop. 73's version of CAL. GOV'T CODE §§ 85300-85307) *and supra* notes 19-30 and accompanying text (discussing Prop. 73's contribution limits and contributor classifications).

74. CAL. CONST., art. II § 10(b).

75. *Compare* 1988 Cal. Stat., sec. 1, at _____ (Prop. 68 adopting CAL. GOV'T CODE §§ 85308, 85310) *with* 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 73's version of CAL. GOV'T CODE §§ 85304, 85400).

76. *Compare* 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85316) *with* 1988 Cal. Stat., sec. 1, at _____ Prop. 73's version of CAL. GOV'T CODE § 85201(a)).

77. CAL. CONST., art. II, § 10(b).

78. *Compare* 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85315) *with* 1988 Cal. Stat., sec.1, at _____ (adopting Prop. 73).

79. 1988 Cal. Stat. at _____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85304).

80. CAL. CONST., art. II, § 10(b).

C. Non-Severable Provisions

Under Prop. 68, campaign expenditure limitations are voluntary; those candidates agreeing to stay within those limits are eligible to receive public financing from the Campaign Reform Fund.[81] Such voluntary limits do not directly conflict with the provisions of Prop. 73.[82] However, since the public financing provisions of Prop. 68 are rendered inoperative by virtue of their direct conflict with Prop. 73,[83] the campaign expenditure limitations of Prop. 68 will be inoperative unless they are determined to be severable from the public financing provisions.[84] Since the expenditure limitations are grammatically separable from those provisions of Prop. 68 that directly conflict with Prop. 73,[85] they should pass the first part of the three part severability test set forth in *People's Advocate*.[86] Because the expenditure limitation provisions are arguably capable of application independent of the invalid provisions, they should pass the second part of the *People's Advocate* test.[87] However, such an application would be fundamentally meaningless because, absent valid public funding provisions, candidates have no incentives to agree to the limitations. Since the electorate probably would not approve a meaningless provision, Prop. 68's expenditure limitations fail the third part of the *People's Advocate* test. If the limitations fail the test, they cannot be severed from the inoperative provisions, and are inoperative.[88]

The provisions of Prop. 68 establishing the Fund and authorizing the income tax checkoff[89] do not directly conflict with Prop. 73. Since the provisions are grammatically separable and capable of independent application, they should pass the first two parts of the *People's Advocate* test.[90] The primary purpose of the Fund is to

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81. 1988 Cal. Stat., sec. 1, at _____ (Prop. 68, adopting CAL. GOV'T CODE § 85500).

82. *Compare* 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 68's version of CAL. GOV'T CODE §§ 85400, 85401) *with* 1988 Cal. Stat. at _____ (Prop. 73).

83. *See supra* text accompanying notes 67-70.

84. CAL. CONST., art. II, § 10(b); People's Advocate, Inc. v. Superior Court, 181 Cal. App. 3d 316, 330, 226 Cal. Rptr. 640, 648 (1986).

85. *Compare* 1988 Cal. Stat., sec. 1, at _____ (adopting Prop. 68's version of CAL. GOV'T CODE §§ 85300-85304, 85500-85505) *with id.*, sec. 1, at _____ (adopting Prop. 68's version of CAL. GOV'T CODE §§ 85400-85405).

86. *People's Advocate*, 181 Cal. App. 3d at 330, 226 Cal. Rptr. at 648. *See also supra* text accompanying note 64.

87. *People's Advocate* at 331-332, 226 Cal. Rptr. at 649. *See also supra* text accompanying note 65.

88. *People's Advocate* at 333, 226 Cal. Rptr. at 650. *See also supra* text accompanying note 63.

89. 1988 Cal. Stat. sec. 1, at _____ (Prop. 68, adopting CAL GOV'T CODE § 85500); *id.*, sec. 2, at _____ (Prop. 68, adopting CAL. REV. & TAX CODE § 18775).

90. *See supra* notes 62-66 and accompanying text (discussion of *People's Advocate* tests).

facilitate public funding of legislative campaigns,[91] and Prop. 73 prohibits that purpose.[92] A secondary purpose of the Fund is to provide an appropriations base for the Commission to carry out the provisions of Prop. 68.[93] Since the ballot arguments and analysis do not discuss this appropriative purpose,[94] it is unlikely that the electorate adopted these provisions in order to finance the Commission. If this purpose of Prop. 68's appropriation provision was not sufficiently considered by the electorate, the provision would fail the final *People's Advocate* test, would not be severable, and would be inoperative.[95]

Likewise, Prop. 68's provisions amending existing criminal[96] and civil liabilities[97] for violation of the Political Reform Act,[98] Prop. 68's provisions concerning the identification of committees,[99] and Prop. 68's definition of an intermediary[100] are all likely to fail the final *People's Advocate* test because the ballot materials do not direct the attention of the electorate to these provisions.[101] Therefore, these provisions of Prop. 68 should be inoperable.

D. Comment: Potentially Operative Provisions of Proposition 68

Prop. 73 establishes a scheme of controls over campaign financing for all elective offices in California.[102] Prop. 68 establishes a scheme of controls over campaign financing only for state legislative of-

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91. 1988 Cal. Stat. at _____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85102(e)) (purposes of Prop. 68 includes providing a neutral source of campaign financing via tax checkoffs). *See also* CAL. BALLOT PAMP., June 7, 1988 Primary Election, at 14 (argument in favor of Prop. 68) (Prop. 68 allows taxpayers to earmark money "to fund campaign reform").

92. *Compare* 1988 Cal. Stat., sec. 1, at _____ (Prop. 68, adopting CAL. GOV'T CODE §§ 85500-85506) *with id.*, sec. 1, at _____ (adopting Prop. 73's version of CAL. GOV'T CODE § 85300).

93. *Id.*, sec. 4, at _____ (Prop. 68, adopting CAL. GOV'T CODE § 83122.5) ($500,000 per fiscal year appropriation from the Fund to the Commission; appropriation is to support the Commission's responsibilities under Prop. 68).

94. CAL. BALLOT PAMP., June 7, 1988 Primary Election, at 12-15 (arguments for and against Prop. 68); *id.* at 32-35 (arguments for and against Prop. 73).

95. CAL. CONST. art. II, § 10(b); People's Advocate Inc. v. Superior Court, 181 Cal. App. 316, 333, 226 Cal. Rptr. 640, 650.

96. 1988 Cal. Stat., sec. 5, at _____ (Prop. 68, amending CAL. GOV'T CODE § 91000) (criminal violations of the Political Reform Act).

97. 1988 Cal. Stat., sec. 6, at _____ (Prop. 68, amending CAL. GOV'T CODE § 91005) (civil liability for violations of the Political Reform Act).

98. *See generally* CAL. GOV'T CODE §§ 81000-91013.5 (Political Reform Act).

99. 1988 Cal. Stat., sec. 8, at _____ (Prop. 68, adopting CAL. GOV'T CODE § 84106).

100. *Id.*, sec. 9, at _____ (Prop. 68, adopting CAL. GOV'T CODE § 84302.5).

101. *See supra* note 94 and accompanying text.

102. *See generally* 1988 Cal. Stat. at _____ (Prop. 73); *supra* notes 11-33 and accompanying text (discussing provisions of Prop. 73).

fices.[103] If Prop. 73 precludes additional controls over subcategories of elective office, then Prop. 68's provisions that apply only to legislative candidates conflict with Prop. 73 and are inoperative. If, however, Prop. 73's scheme merely sets out minimal limitations that may be supplemented relative to particular classes of elective office, then those provisions of Prop. 68 that establish limitations that are additional to (rather exceptions to) those of Prop. 73 will remain operative, providing they are severable from provisions which do conflict. If Prop. 73 does not exclude supplemental limitations, then the provisions of Prop. 68 which should be operative include: Prop. 68's prohibition on legislative candidates' accepting contributions during non-election years;[104] Prop. 68's aggregate limits on contributions from non-individuals;[105] its aggregation of payments by related entities;[106] its treatment of contributions by members of a family;[107] its provisions covering total contribution limits for contributors;[108] the provisions for the return of surplus contributions;[109] and the provisions regarding independent expenditures.[110]

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103. *See generally* 1988 Cal. Stat. at ____ (Prop. 68); *supra* notes 34-56 and accompanying text (discussing provisions of Prop. 68).

104. 1988 Cal. Stat., sec. 1, at ____ (Prop. 68's adopting CAL. GOV'T CODE § 85309).

105. *Id.* at ____ (adopting Prop. 68's version of CAL. GOV'T CODE § 85305).

106. *Id.* at ____ (Prop. 68, adopting CAL. GOV'T CODE §§ 85312(a), (b)). *See also supra* note 49 (discussion of Prop. 68's aggregation provisions).

107. 1988 Cal. Stat., sec. 1, at ____ (Prop. 68, adopting CAL. GOV'T CODE § 85314).

108. *Id.*, sec. 1, at ____ (adopting Prop. 68's versions of Cal. Gov't Code §§ 85306, 85307).

109. *Id.* at ____ (Prop. 68, adopting CAL. GOV'T CODE § 85506(b)).

110. *Id.* at ____ (Prop. 68, adopting CAL. GOV'T CODE §§ 85600-85604).

Elections; campaign statements

Government Code § 82047.6 (new); §§ 84200, 84200.5, 84211, 87500 (amended).
AB 3454 (Johnson); 1988 STAT. Ch. 1281
(*Effective September 24, 1988*)
SB 2027 (Marks); 1988 STAT. Ch. 704
SB 2798 (Lockyer); 1988 STAT. Ch. 708
Sponsor: Fair Political Practices Commission
Support: California Judges Association; Los Angeles County Municipal Court Judges Association

Existing law requires candidates to file semiannual campaign

statements[1] and statements disclosing income, investments, and interests in real property.[2] Chapter 708 exempts certain judges who are not running for re-election from semiannual campaign statement filing requirements.[3] Chapter 708, however, subjects candidates for the office of judge to the income, investment, and interests in real property disclosure statement requirements applicable to incumbent judges and court commissioners.[4]

Existing law also requires the filing of an election statement that includes the filer's name and residential address.[5] Chapter 704 allows the filer of a campaign statement to use either a home or business address, thus ensuring the confidentiality of the filer's home address.[6] Chapter 704 also allows a specified committee filer to include any name by which the individual filer is commonly known to the public.[7]

Existing law requires committees whose primary purpose is supporting or opposing state ballot measures to file campaign statements.[8] Chapter 1281 decreases the time limit for filing such statements in order to ensure that ballot measure committees file campaign statements before arguments for and against the measure are written.[9]

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1. CAL. GOV'T CODE § 84200(a).
2. *Id.* §§ 87201 (listing the categories of candidates who must file statements), 87202 (listing which appointed and elected officials must file statements). *See id.* §§ 87206 (describing required contents of investment/real estate statement), 87207 (listing required contents of income statement).
3. CAL. GOV'T CODE § 84200(a)(3). Judges not listed on the ballot for election to or recall from any elective office during the the calendar year who have not received any contributions and whose total expenditures during the calendar year were contributions from the judge's personal funds to other candidates or committees which were less than $1,000 are exempt. *Id.* § 84200(a)(3)(A),(B).
4. *Id.* § 87500(i).
5. *Id.* §§ 84200-84204 (describing who must file and time for filing). *See generally id.* § 84211 (listing required contents of statement).
6. CAL. GOV'T CODE § 84211(o).
7. *Id.* A specified committee is one that makes independent expenditures totaling $1,000 or more or contributions totaling $10,000 or more in a calendar year to or for candidates. *Id.* § 82013.
8. CAL. GOV'T CODE § 84200.5(f). *See* CAL. ELEC. CODE § 3502 (definition of committee formed or existing primarily to support or oppose state ballot measure).
9. CAL. GOV'T CODE § 84200.5(f) (statement must be filed within 21 days after any petitions are filed or 21 days after the deadline for filing petitions, whichever is earlier). *See* 1988 Cal. Stat. ch. 1281, sec. 4, at   (declaring urgency of the measure to protect the electoral process).

Elections; deceased candidates

Elections Code §§ 6490.3, 6490.4 14005.5, 14205.5 (new); Government Code § 71603.5 (repealed and added).
AB 2582 (Duplissea); 1988 STAT. Ch. 391

Under existing law, when a candidate for elective office dies within fifty-nine days of the election, the votes for the decedent must be counted; the decedent is deemed elected if the decedent received a majority of votes, and the resulting vacancy is treated as if the decedent died after taking office.[1] Chapter 391 modifies existing law by providing that if a candidate dies after the eighty-eighth, but before the sixty-eighth day prior to an election for certain non-partisan offices[2] in which the incumbent and a challenger are the sole candidates,[3] filing of nomination papers must be reopened.[4] Chapter 391 provides that if a candidate dies sixty-eight days or less before such an election, the election must be cancelled,[5] and a special election must be called within fourteen days of the decedent's demise.[6] The special election must be held no more than eighty-eight days after the special election is called.[7] The procedures for nominating candidates in the special election are, with certain exceptions[8], the same as those for a direct primary.[9]

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1. CAL. ELEC. CODE 17113.
2. Chapter 391 applies to all non-judicial and non-partisan offices which are either statewide, countywide, citywide, or elected by district, area, or division. *Id.* §§ 6490.3(a), 6490.4(a).
3. When determining whether the incumbent is faced by a sole challenger, write-in candidates will not be counted. *Id.* § 6490.3(a), 6490.4(a).
4. *Id.* § 6490.4(a).
5. *Id.* § 6490.3(a). The death must occur after 12:01 a.m. of the 68th day before the election. *Id.*
6. *Id.* § 6490.3(b).
7. *Id.*
8. For exceptions, *compare id.* § 6490.3(b) (for special elections after candidate's death, forms for petitions in lieu of filling fees must be available within 15 days prior to the first day for circulating nomination papers, and filed within 7 days of the closing of the nomination period) *with id.* 6555(b) (for special elections due to vacancy of office, forms for petitions in lieu of filling fees must be available within 5 working days after creation of the vacancy and filed within 15 days of the closing of the nomination period). Any candidate who paid filing fees in connection with the cancelled election will not be required to pay additional fees, but the candidate must file new nomination papers. *Id.* § 6490.3(b).
9. *Id.* § 6490.3(b).

Elections; preprimary endorsement of candidates by political parties

Elections Code § 9280 (new); § 8710 (amended).
AB 4187 (Nolan); 1988 STAT. Ch. 1646

Prior law prohibited partisan preprimary endorsement of candidates by political parties.[1] Chapter 1646 repeals this ban with respect to the Republican Party.[2] Chapter 1646 also sets forth procedures for court challenges to the endorsement, support, or opposition of candidates.[3]

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1. 1976 Cal. Stat. ch. 1192, sec. 1, at 5431 (amending CAL. ELEC. CODE § 11702). Prior law banning preprimary endorsements by political parties has been ruled unconstitutional. San Francisco County Democratic Central Comm. v. Eu, 826 F.2d 814 (9th cir. 1987), *prob. juris. noted,* 108 S.Ct. 1466 (1988). The court held that banning partisan preprimary endorsements served no compelling state interest. *Id.* at 831.
2. CAL. ELEC. CODE § 9280(a) (allows the Republican state central committee to prohibit or limit the power of county central committees to endorse, support, or oppose Republican candidates for nomination for partisan office in direct primary elections).
3. *Id.* § 9280(b) (restraining orders and injunctions available against county central committees engaging in such activities in violation of bylaws or rules of the state central committee). Cases of this nature must be given preferred position on court calendars to assure speedy resolution. *Id.*

Elections; registration procedures

Elections Code §§ 1304.5, 1305.5, 24005 (new); §§ 308, 1202.1, 1300, 1301, 1306, 3502, 3520, 5350, 5354, 10219, 14810, 14811, 14820, 14821, 27210, 27211 (amended).
AB 3442 (Chacon); 1988 STAT. Ch. 915

Existing law prohibits discrimination based on race, creed, color, national origin, or ancestry by county clerks in deputizing any person to register voters.[1] Chapter 915 expands this prohibition to discrimination based on sex, marital status, disability, religious or political affiliation, or age.[2]

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1. CAL. ELEC. CODE § 308.
2. *Id.* In addition, Chapter 915 makes certain technical changes. *Id.* §§ 1202.1, 1300, 1301, 1304.5, 1305.5, 1306 (pertaining to absentee voters); 5354 (pertaining to withdrawal of local measures before petitions are filed); 24005 (pertaining to extensions of time for candidates in school and community college district and county board of education elections). Finally, Chapter 915 makes numerous other minor technical changes. *Id.* §§ 3502, 3520, 5350, 10219, 14810, 14811, 14820, 14821, 27210, 27211.