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CORPORATE CONTRIBUTIONS TO BALLOT-MEASURE CAMPAIGNS

On June 6, 1972, California voters defeated a ballot measure entitled the Clean Environment Act (Proposition Nine). Proponents had termed the vote "the great test between the people... and the business and industrial despoilers of our land, air and sea,"1 viewing their opponents as "corporate crooks" engaged in an intentional attempt to deceive the public.2 The campaign against the initiative was well financed, supported almost exclusively by corporate contributions,3 and by election day it had become as much an issue as the proposed legislation itself.4 The campaign raised many questions about the legitimacy of corporate participation in politics and stimulated new debate about the proper use of the substantial economic power of large corporations in initiative campaigns.

Echoing warnings sounded at the turn of the century, opponents of corporate involvement in politics fear that the integrity of the electoral process is threatened by such activity.5 They contend that the concentrated financial power of corporations jeopardizes individual freedom and responsibility for the successful functioning of the electoral process. This threat to the democratic process increases as campaign costs spiral, making the need for massive funding more imperative.6

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1 San Francisco Chronicle, June 2, 1972, at 22, col. 3.
2 Id., June 5, 1972, at 15, col. 4.
3 Of the $1,484,971.25 collected by Californians Against the Pollution Initiative, the group opposing Proposition Nine, approximately 92 percent was contributed by corporations. Statement of Receipts and Expenditures, on file with the Secretary of State, Sacramento, California.
4 See the paid advertisement by People for the Clean Environment Act, San Francisco Chronicle, June 2, 1972, at 22, col. 3. See also id., June 7, 1972, at 1, col. 4.
6 See generally E. Epstein, supra note 5, at 187-90; A. Heard, The Costs of
Federal law\(^7\) and the statutes of many states\(^8\) prohibit corporate contributions to political campaigns. These prohibitions are based on two considerations: a belief that the electoral process must be purified by destroying the influence over elections that corporations exercise through their financial contributions, and a desire to protect shareholders from the use of corporate funds for political purposes without their consent.\(^9\)

It is not clear, however, that the perceived dangers of corporate participation in politics are real dangers, or that outright prohibition of such participation is the best means of preserving the democratic character of the electoral process. Any controls on corporate spending in initiative campaigns should be firmly based upon articulated conceptions of the corporation's legitimate role in society. This article examines some of these conceptions and their relationship to the process of direct legislation and thereafter makes recommendations for workable controls in light of that analysis.

I. CURRENT STATUTORY PROVISIONS

During the Progressive Era many states enacted laws which still form the foundation for many electoral controls. Because traditional legislative machinery was universally felt to be inadequate,\(^10\) provisions permitting the popular enactment of legislation were adopted to make government more responsive to the will of the electorate. These provisions constitutionally established the electorate's rights to initiate legislation independently of the legislature and to review laws already enacted.\(^11\)

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\(^8\) For example, of the twenty-three states permitting referenda and initiatives, see note 12 infra. Ten prohibit corporate contributions of any kind to ballot-measure campaigns: ARIZ. REV. STAT. ANN. § 16-471 (1956); MASS. ANN. LAWS ch. 55, § 7 (Supp. 1972); MICH. COMP. LAWS ANN. § 168.919 (1967); MO. ANN. STAT. § 129.070 (1966) (Section 129.075 provides that a corporation may campaign in connection with any law directly affecting it.); MONT. REV. CODES ANN. § 94-1444 (1947); NEB. REV. STAT. § 32-1129 (1968); N.D. CENT. CODE § 16-20-08 (1971); ORE. REV. STAT. § 260.472 (1971); S.D. COMPiled LAWS ANN. § 12-25-2 (1967); WYO. STAT. ANN. § 22-356 (1959).


\(^11\) V.O. KEY & W. CROUCH, supra note 10, at 423.
states currently permit direct legislation by initiative and referendum.\textsuperscript{12}

Additionally, in order to "secure the freedom of elections from improper influences,"\textsuperscript{13} corrupt practices acts, modeled on the British act of 1883,\textsuperscript{14} were also enacted. Campaign finance controls on corporate contributions were included in the acts to combat the use for political purposes of large amounts of capital aggregated by shareholders for the production of goods and services. Early corrupt practices acts only applied to candidate campaigns,\textsuperscript{15} but as direct legislation provisions were enacted, some states extended finance controls to ballot-measure campaigns as well. The usual change was to add the words "political principle or measure" to the definition of a political committee.\textsuperscript{16} This made all the other provisions referring to duties of political committees to file expenditure and contribution statements applicable to ballot-measure campaigns. In spite of the simplicity of this change, in only fifteen of the twenty-three states permitting statewide direct legislation do campaign finance provisions apply to ballot-measure campaigns.\textsuperscript{17}

California enacted an entirely new provision specifically designed to control expenditures for or against ballot measures.\textsuperscript{18} The objective of the California provision is to arouse public interest in large campaign expenditures so that voters can react

\textsuperscript{12} The following twenty-three states permit initiatives and referenda: ALASKA CONST. art. XI, §§ 1–8; ARIZ. CONST. art. 4, pt. 1, § 1; ARK. CONST. amend. 7, § 1; CAL. CONST. ART. IV, §§ 22–24; COLO. CONST. art. V, § 1; IDAHO CONST. art. 3, § 1; ME. CONST. art. IV, pt. 3, §§ 17–18; MD. CONST. art. XVI (referendum only); MASS. CONST. §§ 150–177; MICH. CONST. art. 2, § 9; MO. CONST. art. 3, §§ 49 et seq.; MONT. CONST. art. V, § 1; NEB. CONST. art 3, §§ 1–4; NEV. REV. STAT. §§ 295.015–055 (1971); N.M. CONST. art. IV, § 1 (referendum only); N.D. CONST. art. 11, § 25; OHIO CONST. art. II, § 1; OKLA. CONST. art. 5, § 2; ORE. CONST. art. IV, § 1; S.D. CONST. art. III, § 1; UTAH CONST. art. VI, § 1; WASH. CONST. art. II, § 1; WY. CONST. art. 3, § 52.

\textsuperscript{13} E. Sikes, supra note 5, at 120, quoting Perry Belmont, one of the leading early advocates of campaign reform.


\textsuperscript{15} The California provision. Stats. 1893 ch. XVI, §§ 1–5, was typical.


\textsuperscript{17} ALASKA STAT. § 15.55.010 et seq. (1962); ARIZ. REV. STAT. ANN. § 16-452 (1956); CAL. ELECTIONS CODE §§ 11800–11834 (West 1972); ME. REV. STAT. ANN. tit. 21, § 1391 et seq. (1965); MD. ANN. CODE art. 33, § 26 (1971); MASS. ANN. LAWS ch. 55, §§ 6–15 (Supp. 1972); MICH. COMP. LAWS ANN. §§ 168.901–920 (1967); MO. ANN. STAT. §§ 129.200–270 (1966); MONT. REV. CODES ANN. §§ 94-1429 to -1434, 94-1444(1969); NEB. REV. STAT. §§ 32-119, 32-1119 et seq. (1943); N.M. STAT. ANN. § 3-19-1 et seq. (1970); OHIO REV. CODE ANN. § 3517.08 et seq. (1972); ORE. REV. STAT. § 260.005 et seq. (1971); S.D. COMPIL. LAWS ANN. § 12-25-1 et seq. (1967); WY. STAT. ANN. § 22-346 et seq. (1959).

appropriately at the ballot box. The California scheme does not regulate the total amount spent in initiative campaigns. Rather it is a disclosure law that seeks to assure that the voters know how much is spent, by whom, and for what purposes. Each group that collects or expends money in a campaign to influence the actions of voters in statewide ballot-measure elections is considered an association. Each association must select a treasurer responsible for collecting, managing, and expending the funds of the association. The treasurer must file verified statements of receipts and expenditures with the Secretary of State twice before and once after the election. While items for which amounts may be expended are specifically limited by the act, the law does not prohibit corporate contributions.

Of the remaining fourteen states which control expenditures in initiative campaigns, only four require statements of contributions and expenditures both before and after the election. The majority of the others requires such statements only after the

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19 E. Sikes, supra note 5, at 147, believes this to be the primary function of such statutes.

20 This was the intent of the Jones Committee of 1923 which investigated the effectiveness of the provision regulating ballot-measure expenditures. Its recommendation was that more thorough disclosure requirements were needed in order to improve the statute's effectiveness. Report of Special Committee, CAL. SEN. DAILY J., at 1780 et seq. (May 14, 1923); Brown v. Superior Court, 5 Cal. 3d 509, 520, 487 P.2d 1224 (1971); Comment, 41 CALIF. L. REV. 300, at 316–18 (1953).

21 CAL. ELECTIONS CODE § 11801 (West Supp. 1972) defines an association as

[A]ny person, committee, firm, association, public or private corporation, or other group of persons, whether incorporated or not, that for the payment of expenses in a campaign to influence the action of the voters for or against the circulation or adoption of any measures voted upon at a statewide, county, district or municipal election does either or both of the following:

(a) Collects, raises, or receives money or promises of money aggregating from all sources more than one thousand dollars ($1000).
(b) Expends more than one thousand dollars ($1000) of its own money or funds.

These organizations collect funds to support or oppose the measure and direct the campaigns. In other states such organizations are called political committees. E.g., MICH. COMP. LAWS § 168.901(2) (1967):

"Political committee" or "committee" shall apply to every combination of 2 or more persons who shall aid or promote the success or defeat of a candidate, or a political party or principle or measure . . . .

22 The first statement must be filed between forty and forty-five days prior to the election. the second, between seven and twelve days prior to the election, and the last one within thirty days after the election. Each statement must be itemized, detailed, and verified on blank forms supplied by the Secretary of State. They must list the name and address of each person, firm, or corporation that has contributed or loaned to the association any money or services worth twenty-five dollars or more and the amount contributed by each. Total figures of all funds used for campaign purposes must also be filed. There are similar provisions requiring disclosure of where the money is spent. CAL. ELECTIONS CODE, §§ 11803–11834 (West 1961), as amended, (West Supp. 1972).

23 Id. § 11801.

24 See note 17 and accompanying text supra.

25 MD. ANN. CODE art. 33, § 26 (1957); MASS. ANN. LAWS ch. 55, § 16 (1971); NEB. REV. STAT. §§ 32-1120, 1121 (1943); ORE. REV. STAT. § 260.072 (1971).
eletion. In view of the fact that disclosures made before the election allow the voter to formulate his position on the ballot measure on the basis of who advocates or opposes its adoption, states requiring disclosure only after the election defeat one of the major objectives of disclosure requirements.

Although the California law does not restrict corporate contributions to ballot-measure campaigns, ten states do absolutely prohibit contributions by corporations in any election campaign. Formulation of proper controls over campaign spending requires an awareness of the essential differences between candidate campaigns and initiative campaigns, and it also requires a realization that, because of these differences, corporations may have a more legitimate role to play in the latter than in the former. For example, the interest of a corporation in a ballot measure directly affecting its operations is presumably much greater than its interest in any particular candidate who might advocate policies affecting the corporation. Additionally, interest groups play a more important role in initiative campaigns than in candidate campaigns, and it would seem that corporations, as interest groups, should be allowed to participate. Prohibitions on corpo-

26 See note 8 supra.


30 See part II A infra.
rate political contributions generally reflect a fear that the future public official will be improperly beholden to his financial supporters, especially where resources as vast as those controlled by a modern corporation are involved.\(^{31}\) In initiative campaigns, however, this problem does not exist; such an election is more analogous to a vote in the legislature, where corporate lobbying is permitted.\(^{32}\) Thus the decreased dangers and increased benefits of corporate participation in initiative campaigns, as opposed to candidate campaigns, make it desirable that legislatures, in devising regulatory schemes, recognize the legitimate role of corporations in initiative campaigns.

**II. THE LEGITIMACY OF CORPORATE POLITICAL ACTIVITY**

**A. The Corporation as an Interest Group**

A pattern of association for political purposes pervades American politics. Theorists may point to individual participation in politics as a basic element of a pluralistic, democratic society, but individual values are successfully achieved in politics by group action.\(^{33}\) In initiative campaigns especially, interest group involvement is important to the proper functioning of the political process.\(^{34}\) Justice Frankfurter, in his concurring opinion in *United States v. CIO*,\(^{35}\) one of the few cases interpreting the Federal Corrupt Practices Act,\(^{36}\) noted, "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative process. They could hardly go on without it."\(^{37}\) Interest groups inform the electorate of how the enforcement of particular measures would affect them, allowing voters to balance competing claims.\(^{38}\)

\(^{31}\) See note 6 supra.


\(^{33}\) See E. Epstein, supra note 5, at 301-02, 323-24; See also V. O. Key, Politics, Parties, and Pressure Groups (4th ed. 1958); Baratz, Corporate Giants and the Power Structure, 9 WESTERN POL. Q. 406 (1956).

\(^{34}\) Since a ballot measure has no personality of its own and no necessary connection to established political parties, the campaign associations on both sides of the issue find it important to gain the backing of established interest groups. Many voters who have neither the time nor the inclination to familiarize themselves with complex issues involved in a ballot proposition may form their opinions on the measure according to the positions taken by organizations with which they are familiar. See note 27 supra.

\(^{35}\) 335 U.S. 106 (1948).


\(^{37}\) 335 U.S. at 143.

\(^{38}\) Because the legislature is avoided in ballot-measure campaigns, these proposals evade the close scrutiny that legislative measures may undergo. The normal legislative process is
Corporations have a vital role to play in this process when ballot measures affect them. In the California campaign on the Clean Environment Act, corporations financed and supported efforts to defeat the proposed measure, participating in the manner of any other political group striving to achieve its ends. There is a problem in viewing corporations as interest groups in that corporations may differ from traditional interest groups such as agricultural organizations or labor unions. Corporations generally are not organized primarily for political purposes. Despite any differences, however, it is the similarities between corporations and ordinary interest groups that prevail.

Direct affiliation of individuals with corporate interests and activities is more widespread than ever before. Numerous sociologists have recognized that the modern large corporation provides a sense of kindredness and common purpose for people. Corporations are not simply economic institutions, but arenas in which demands for security, justice, and esteem are made. In addition to social attachments, a significant portion of the population owns stock in corporations. There has also been a vast increase in institutional investment in recent years as a result of insurance and trust programs for the benefit of workers. The public currently accepts, indeed in some cases demands, broad corporate involvement in community affairs. As a result of this acceptance, corporations, or their managers, currently possess some lead-

characterized by a balancing of competing interests in order to play off the concerns of large groups of citizens. This balancing of interests must be done by the electorate itself in initiative campaigns. V. O. Key & W. Crouch, supra note 10, at 442–58.


40 Several very large corporations participated in the Proposition Nine campaign. The Pacific Gas and Electric Co. took a very strong stand on Proposition Nine, enclosing letters describing its opposition to the measure in each of its customers' bills. San Francisco Chronicle, May 9, 1972, at 11, col. 6; id., May 17, 1972, at 40, col. 7; id., May 23, 1972, at 16, col. 8. An action was filed before the Public Utilities Commission by the proponents of the measure to stop this activity but the Commission upheld the company's actions. The following statement by the Bank of America typifies corporate views:

After a thorough analysis of Proposition 9, the Bank of America was convinced that provisions of the proposed measure were not in the best interests of California. The proposed measure would have been harmful in one way or another to almost every citizen of the state. As an organization with expertise in economics and responsible concern for the well-being of California and its citizens, the bank felt and feels that its contribution toward the defeat of Proposition 9 was both legitimate and advisable.

Suit Won't Stop B of A Taking Public Stand, American Banker, Aug. 14, 1972, at 1, col. 2. See also note 3 supra.


44 Id.
ership in economic affairs. This was demonstrated in the Proposition Nine campaign when S. D. Bechtel, Sr. and Edgar F. Kaiser, two leading industrialists, signed a major advertisement opposing the measure. Businessmen realize their views are becoming more widely accepted and believe that they should involve themselves more actively in politics in order to promote their beliefs. Thus because many individuals see an identity between themselves and a major corporation or large corporations generally, they look to the corporations for guidance on political issues. Even where individuals see their interests as generally opposed to corporate interests, they may still find it helpful to know where corporations or their officers stand on particular issues.

Legislative and judicial recognition of the legitimate role of corporations in politics is reflected in litigation under the criminal provision of the Federal Corrupt Practices Act (Act). That provision would appear by its terms to prohibit all contributions by corporations in candidate campaigns, but the United States Supreme Court has construed the law so as to allow corporations a relatively broad range of political activity.

In United States v. CIO the Court held that it was not a violation of the Act for the CIO to publish and distribute in the Washington, D.C. area a copy of the CIO News urging members to vote for a particular candidate in a Maryland congressional race as long as the News was published as part of the union's normal activities. Justice Reed, writing the majority opinion noted:

If § 313 [now Section 610] were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to

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46 San Francisco Chronicle, June 5, 1972, at 20, col. 1.


49 335 U.S. 106 (1948).
their interests from the adoption of measures or the election
to office of men, espousing such measures, the gravest doubt
would arise in our minds as to its constitutionality.\textsuperscript{50}

In \textit{United States v. UAW}\textsuperscript{51} the union was charged with spend-
ing union dues in violation of the Act to sponsor a commercial
television broadcast designed to influence the electorate to select
certain candidates in a congressional election. Reviewing the legis-

tlative history of Section 610,\textsuperscript{52} Justice Frankfurter noted that

the Smith-Connally Act of 1943 \textsuperscript{53} put unions on exactly the same
basis as corporations with regard to the financing of political
activities and that the intended effect of the Act was to proscribe
the expenditure of union dues for commercial broadcasts designed
to urge the public to elect a certain candidate or to support a
particular party.\textsuperscript{54} The broadcast by the UAW seemed to be
objectionable on these grounds, but the Court found the in-
dictment invalid because it failed to allege specifically whether
dues money or money raised voluntarily was used to finance the
broadcast. Justice Frankfurter went on to suggest several issues
that the lower court should resolve in reconsidering the case. He
felt it was important to know whether the broadcast was paid for
out of general funds and whether it reached members only or the
public at large. Furthermore, Frankfurter believed a distinction
should be made between active electioneering and merely stating
the record of candidates on the issues, implying that the latter was
permissible. Frankfurter also thought that in order for there to be
a criminal violation under the Act the union must have intended
to affect election results.\textsuperscript{55}

The implication behind these criteria would seem to be that
corporations would be severely restricted in their campaigning
activities, apart from items they might carry in regular company
publications. If corporations could not use general corporate
funds, as opposed to money collected from voluntary contribu-
tions, and in any event were limited to merely "stating the
record," it is hard to imagine that they could function effectively
as political interest groups. In practice, however, corporations

\textsuperscript{50} Id. at 121.
\textsuperscript{51} 352 U.S. 567 (1957).
\textsuperscript{52} For legislative history of § 610, see 352 U.S. at 568-584; E. Epstein, Corpor-
ations, Contributions, and Political Campaigns: Federal Regulation in Per-
spective 12-14 (1968); Redish, Reflections on Federal Regulation of Corporate Political
\textsuperscript{53} Act of June 25, 1943, ch. 144, 57 Stat. 163, 167, repealed by Act of June 25, 1948,
\textsuperscript{54} 352 U.S. at 578-79, 587.
\textsuperscript{55} Id. at 592.
have not been so strictly limited, as illustrated by *United States v. Lewis Food Co.*, the only case in which these standards have actually been applied to a corporation. The company had spent $9,523.68 to publish an advertisement in many California newspapers entitled "Notice to Voters." The advertisement gave the voting records of each member of Congress from California and the California legislature based on the percentage of votes cast by each member in support of the "free enterprise system, our constitutional government and freedom under God." The court held this not to be active electioneering, characterizing it as merely stating the record of candidates on economic issues, despite the fact that the records were presented in a biased manner. The origin of the funds for the advertisement was also unclear.

When the statute is so interpreted, a great deal of room is left for corporate activities. Any publication within the corporate family is permissible, thus allowing letters to shareholders, employees, and consumers. If publications outside the corporation are circumscribed no more closely than was done in the *Lewis Food Co.* case, then corporations have a substantial range of political activity open to them. The judicial interpretation of the Act has now been explicitly recognized by Congress. The 1971 Federal Election Campaign Act amended Section 610 to permit such activities as communications to stockholders, nonpartisan get-out-the-vote drives, and promotion of special political funds. This affirms that a number of campaign activities, even in candidate campaigns, are legitimately open to corporations.

Although Section 610 applies only to candidate campaigns and not to initiative campaigns, its history in the courts and in Congress is instructive, as it illustrates the legitimation, at least to a

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57 Id. at 851–52.
58 Id.
59 Id. at 853–54.
60 Several states however have specific provisions prohibiting employers from placing political materials in paychecks or around the work area. See, e.g., COLO. REV. STAT. ANN. § 49-21-24 (1963); MICH. COMP. LAWS ANN. § 168.912 (1967); MONT. REV. CODES ANN. § 94.1424 (1947).
61 See E. Epstein, supra note 5; Garrett, Corporate Contributions for Political Purposes, 14 BUS. LAW 365 (1959); Gossett, The Role of the Corporation in Public Affairs, 15 BUS. LAW. 92 (1959); Wood, Corporate Political Activity, 15 BUS. LAW. 112 (1959).
63 It is interesting to note that although the Internal Revenue Service does not recognize such political expenditures as ordinary and necessary business expenses for the purpose of tax deductions, this is not because such payments are in any sense illegal. The Supreme Court in Cammarano v. United States, 358 U.S. 498 (1959), a case involving a contribution by wholesale beer distributors to defeat an initiative limiting wine and beer sales, noted that the tax law expresses
limited extent, of corporate participation in politics. It seems that
the role allowed to corporations in initiative campaigns should be
at least as active as that allowed in candidate campaigns, for in the
former there is no direct personal beneficiary of the corporation's
activities being elected to office.

B. The Corporation as Political Contributor

The primary objection to the expenditure of corporate funds for
political purposes has always been that corporate officials had no
right to use the corporation's funds for contributions to political
activities without the consent of the shareholders.64 This objec-
tion ignores, however, both the direct interest that modern large
corporations may have in political affairs and changing con-
ceptions of the stockholder's relationship to the corporation. Such
factors are matters of state corporation law and must be deter-
mised from a consideration of permissible corporate powers and
purposes.65

Older cases and commentators generally declared all corporate
political expenditures ultra vires and therefore open to attack by
dissenting shareholders in a derivative action.66 It was believed
that there was no relation between political activity and specific
statutory and charter authorizations of corporate purposes. How-
ever, where the law, like California's statute, recognizes that a
corporation may engage in any activity "incidental to the transac-
tion of its business... or expedient for the attainment of its
corporate purposes,"67 political expenditures today may avoid

64 United States v. CIO, 335 U.S. 106, 113 (1948).
65 Haley, Limitations on Political Activities of Corporations, 9 VILL. L. REV. 593,
611-13 (1964); Comment, supra note 6, at 842-55 (1961).
66 H. BALLANTINE, BALLANTINE ON CORPORATIONS § 85 (rev. ed. 1946); McConnell v.
Combination Mining & Mill Co., 30 Mont. 239, 76 P. 194 (1904); People v. Moss, 187
N.Y. 410, 80 N.E. 383 (1907).

The traditional position was that implied powers of corporations, powers other than
those specifically enumerated in the charter or state statute, extended only to things
reasonably necessary to enable the corporation to carry out its purposes. H. HENN, supra
note 43, at § 183. This was not viewed as including the right to make political or charitable
contributions. Illustrative of this view is People v. Gansley. 191 Mich. 357, 158 N.W. 195
(1916). The court specifically noted that corporations have no right to the elective fran-chise, and thus the privilege of influencing public sentiment at elections is not conferred
on corporations by the state. A federal court took the same position in United States v.
United States Brewers' Ass'n, 239 F. 163, 168 (W.D. Pa. 1916).
67 CAL. CORP. CODE § 802(b) (West 1955).
charges of being ultra vires because of the changed nature of business-government relations.

In his dissent in *International Association of Machinists v. Street*, Justice Frankfurter called the notion that economic and political concerns are separable “pre-Victorian.” Government is now industry’s regulator and its biggest customer, so that a corporation’s well-being often depends on political decisions. The Proposition Nine campaign aptly illustrates the direct economic interest of corporations in electoral results. Contributions to the campaign were economic investments in the corporations’ futures. It would be difficult to find any violation of corporate purpose where the economic interests of the corporation are so directly at stake.

Participation in initiative campaigns will nearly always be within proper corporate powers and purposes. Studies indicate that the amount given by corporations, or any other interest group, varies directly with the immediacy of their political concern. Corporations are unlikely to give large sums of money to initiative campaigns that do not directly affect their businesses. This was also confirmed in the Proposition Nine campaign where severely affected industries like power companies and trucking concerns gave more than banks.

Where, as in Proposition Nine, the relation between the election issue and the corporation’s business activities is clear, corporate contributions are not ultra vires even under traditional views of proper corporate activities. These political activities are not inconsistent with management’s fiduciary obligation to shareholders. Some initiative campaigns, however, may involve only issues of remote business interest to the corporation. In such cases, political activity may still be permissible under expanded views of what actions directly benefit corporations.

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69 Id. at 814.
71 If the proposition had passed, Pacific Gas & Electric could not have built the nuclear power plants it had planned. Chemical companies could not have sold many of their pesticide products. Oil companies could not have sold any inventory not meeting the new standards. Trucking companies would have had to stop operating their trucks until the new fuel could be developed. Consequently, banks would suffer because of the adverse cumulative economic impact.
72 A. Heard, supra note 6, at 119.
73 See notes 3 and 40 and accompanying text supra.
74 See note 66 supra.
Previously, corporate benefit meant only economic benefit because the only legitimate goal of management was profit maximization for shareholders. Modern theorists, however, view corporate benefit in much broader terms. They believe corporations should benefit consumers, employees, and suppliers as well as shareholders. Courts have essentially accepted this newer view by holding that anything which promotes the general good advances the corporate weal. Given this judicial attitude, political issues which are not even directly business-related may arguably be supported by corporations.

State law defining legitimate powers and purposes of corporations no longer poses a true obstacle to corporate political activity. Because of the dramatic change in the relationship between business and government, corporations can generally show a direct economic concern with the outcome of initiative elections. Expanded notions of corporate benefit may even permit corporate involvement in campaigns in which business interests relate only marginally to election issues. Nevertheless, this still leaves the problem of voluntariness of political expression, for shareholders who disagree with the management's political views may be forced to contribute against their will. Although this reasoning might apply as well to unions and their members, in which membership is often compulsory, it hardly seems applicable to large public corporations where ownership and control are separated and the shareholder is merely a passive property owner, able to invest and reinvest at will.

In the case of International Association of Machinists v. Street, the Supreme Court dealt with the problem of a union member in a union shop who objected to the use of his compulsory dues to finance campaigns of candidates he opposed and doctrines in which he did not believe. The fundamental concern of the Court was the compulsory nature of the member's association with the union. He had no choice other than to join if he wanted...
to work. The majority of the Court held that the Railway Labor Act, which compelled union membership, did not permit the union, over the employee’s objection, to use his exacted funds to support political causes which he opposed.

Justice Black in a dissenting opinion thought that the law was unconstitutional if it required a man to support the expression of points of view he opposed, but he drew a clear distinction between voluntary and compulsory organizations: “There...is no constitutional reason why a union or other private group may not spend its funds [politically] if its members voluntarily join it and can voluntarily get out of it.” A stockholder, unlike a union member in a union shop, may withdraw his funds anytime he does not like the way the corporation is doing business. As long as political activity is of direct benefit to the corporation, there is no reason for him to complain that the corporation is using his funds for political purposes with which he does not agree. The shareholder is not forced either legally or realistically to be a member of the group.

If the shareholder is viewed as a voluntary owner of passive property, and it is recognized that corporate participation in initiative campaigns is generally of direct economic benefit to corporations, the old objections to the expenditure of corporate funds for political purposes seem groundless.

III. NEW CONTROLS OF CORPORATE CAMPAIGN SPENDING

Because of unrealistic legislative assumptions about the political role of corporations, existing corporate campaign contribution controls have been ineffective. They tend to promote diffusion of responsibility, concealment, and evasion of the law. The goal of any system of regulation should be to minimize inhibition of political activities while shedding maximum light upon them. Current laws would better meet this goal if they allowed for the legitimate political role of corporations in initiative campaigns.

Initiative campaigns are unlike candidate campaigns where citizens fear that large contributions by corporations will bias future...
elected officials. In initiative campaigns, corporate political activity benefits the public by providing information on how proposed measures affect business interests. In this sense corporations act like any other political interest group. Furthermore, the old objection that corporate officials have no right to use the corporation's funds for contributions to political activities without the consent of shareholders is no longer valid in a world in which corporations can show a direct benefit from the outcome of elections. Shareholders are not compelled to associate with the corporation and its activities. Workable regulations of corporate contributions to initiative campaigns should be consistent with these new political realities.

Several frequent suggestions for reform may not work well in initiative campaign regulations. Absolute limits on corporate political involvement, either through contribution ceilings or outright prohibition, force businesses to give money through corporate officers and small front organizations when they deem it important to contribute despite prohibitions. This makes control difficult and weakens any hope of centralizing responsibility for keeping track of receipts and expenditures. Although California has neither an absolute prohibition of corporate contributions nor contribution ceilings, many firms still gave through associations like the Los Angeles Clearinghouse in the Proposition Nine campaign, making it difficult to determine the origin of funds. Some commentators believe that elections should be paid for with public funds or by large numbers of small contributors. To achieve these goals, direct appropriations and tax incentives have been proposed. Even if such plans are feasible in candidate campaigns, they might not work in initiative campaigns, assuming constitutional problems could be overcome. Because ballot measures arise so frequently and campaigns are controlled by ad hoc

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83 E. Epstein, supra note 5, at 305–06; Lobel, Federal Control of Campaign Contributions, 51 Minn. L. Rev. 1, 40–41 (1966); Lambert, Corporate Political Spending and Campaign Finance, 40 N.Y.U.L. Rev. 1033, 1038 (1965); Haley, supra note 65, at 614.


85 See Statement of Receipts and Expenditures, on file with the Secretary of State, Sacramento, California, supra note 3.

86 See Rosenthal, supra note 84, at 410.

87 Such tax incentives are now in force on the federal level. Int. Rev. Code of 1954, §§ 41, 218. However, a Massachusetts court has held that any direct appropriation of state funds to political parties to help finance campaigns would not be for a public purpose and thus is unconstitutional. Opinion of the Justices, 347 Mass. 797, 197 N.E.2d 691 (1964); Recent Cases, 78 Harv. L. Rev. 1260 (1965).

groups, subsidization in any form presents severe administrative problems.

Only strengthening publicity requirements holds real promise for reform. New laws should remove, not create, barriers to divergent group expression, and more positively, bare to public view the support and policy of the various groups. Publicity assures that a voter may make his decision on the basis of prior knowledge of each side's financial backers as well as allowing him to express his reaction to excessive expenditures. Analysts agreed after the vote on Proposition Nine that many people voted for the measure because of their disgust over heavy spending by the measure's corporate opponents, confirming the view that voters are concerned about excessive spending.

Several changes in current state provisions are necessary for effective publicity. Those states with no present regulations should enact comprehensive new programs. States currently prohibiting all corporate contributions should repeal such provisions as they apply to initiative campaigns. Publicity is needed before elections in order that voters have time to study the financial supporters of each campaign organization and react to excessive expenditures. States now requiring reports only after elections should amend their laws.

In order to permit comparison of the contributions and expenditures of the campaign organizations, statutes could require standardized accounting methods and readable filing forms. All advertisements published by the campaign organizations might be required to include the amount of contributions and expenditures they last reported.

The election official who received the statements, in most cases the secretary of state, could also be empowered to audit all of the statements and search for violations. If violations were discovered the case could be turned over to the attorney general for appropriate action. Since both the attorney general and secretary

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89 See E. Epstein, supra note 5; Bicks & Friedman, supra note 84, at 998.

90 Note. 66 Harv. L. Rev. 1259, 1262 (1953). One commentator has written, "The light of publicity thrown on too generous contributions would, or should, cause such a public reaction that they would do a party more harm than good. If the public isn't upset, there is little that any law can do about it." Norton-Taylor, How to Give Money to Politicians, Fortune, May, 1956, at 238.

91 See note 27 supra.

92 H. Alexander, supra note 27, at 7; H. Penniman & R. Winter, supra note 6, at 40; Bicks & Friedman, supra note 84, at 998; Norton-Taylor, supra note 90, at 238; Roady, Ten Years of Florida's "Who Gave It—Who Got It" Law, 27 Law & Contemp. Prob. 434 (1962); Secretary of State Leads Effort to Stiffen State Campaign Financing Reporting Laws, 3 Calif. J. at 116 (1972); Note. 66 Harv. L. Rev. 1259, 1262 (1953).

93 A special campaign reports committee might be set up to perform these functions as has been done in Maine. Me. Rev. Stat. Ann. tit. 21, § 1399 (1964).
of state are elected officials subject to political pressures, some commentators suggest that a central election commission should administer the entire regulatory program.⁹⁴ This too might promote more effective publicity.

The electoral system is of great value, and it is only through realistic controls, consistent with both the nature of initiative campaigns and the modern role of corporations in society, that it can be kept free from pernicious influences. The absolutist strictures and omissions of the past no longer adequately control corporate contributions to initiative campaigns.

—Gail L. Achterman

⁹⁴ See H. Alexander, supra note 27, at 73; Roady, supra note 92, at 445; see also note 90 supra.