

# Loopholes, Tricks and End Runs:

*Evasions of Campaign Finance Laws, and a Model Law to Block Them*



| by Molly Milligan



CENTER *for* GOVERNMENTAL STUDIES

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## Foreword:

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This report is the result of over one year of focused research on the many ways that politicians raise money through non-campaign entities. The Center for Governmental Studies (CGS) initiated this study as it has become increasingly obvious that the campaign finance reforms of the past 30 years are no longer always sufficient to control the money given to elected officials and candidates.

CGS has studied and provided solutions for campaign finance issues for over 25 years. CGS reports and other publications on campaign financing in California state and local elections as well as reports on ballot initiative reform, judicial elections and public campaign financing are available for download at [www.cgs.org](http://www.cgs.org).

“Loopholes, Tricks and End Runs” is the beginning of an ongoing, detailed investigation of the ways elected officials and candidates evade campaign finance laws, enabling them to raise sums of money that often significantly exceed the amounts allowed under applicable campaign finance laws. CGS will update this report periodically on its website to provide an ongoing, comprehensive and current view of these evasions.

“Loopholes, Tricks and End Runs” also offers a model law that, if adopted, would strengthen campaign finance laws and counter many of the loopholes identified by CGS. It assumes that any payment received from a donor, regardless of its receipt through a campaign or a non-campaign entity, can potentially influence a politician. The model law therefore requires that all contributions and payments from a particular donor be aggregated, subject to a single contribution limit (in most cases) and fully disclosed to allow citizens to know which individuals and entities are funding politicians. This transparency is at the heart of the proposed reforms and is a critical safeguard toward preserving democracy.

No law, of course, is perfect, and most can be improved. It is our hope, however, that this model law will provide a template to strengthen campaign finance laws.

We thank many persons, particularly the officials and administrators of the campaign

*foreword cont.*

finance and ethics commissions in the 50 states, who contributed their time and expertise in assisting CGS in gathering information for this report. Outstanding primary research was also provided by Jennifer Mishory, Nicole Perira, and Christie Bahna. Tracy Westen, Bob Stern and Jessica Levinson provided invaluable editorial insight and support.

CGS first presented this model law in December 2008 at the annual conference of the Council on Governmental Ethics Laws (COGEL) in Chicago, Illinois. “Loopholes, Tricks and End Runs” was made possible by generous grants from the James Irvine Foundation, the Rockefeller Brothers Fund and Carnegie Corporation of New York, although they are not responsible for the views expressed by CGS.

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## EXECUTIVE SUMMARY :

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Campaign finance reforms have significantly reduced the potentially negative influences of money on the electoral and governmental processes. Nonetheless, many elected officials and candidates have found lucrative ways to circumvent contribution limits, flout the laws that are in place, and often raise stunning amounts of money in ways not covered by campaign finance laws. Special interests continue to give generously to non-campaign entities to gain access to legislators.

The Center for Governmental Studies (CGS) has examined the growing number of loopholes, tricks and end runs that politicians use to evade the campaign finance laws and actively pursue large payments from special interests and moneyed donors, including:

- Candidate Controlled Ballot Measure Committees
- Legal Defense Funds
- Inaugural / Swearing-in Committees
- Conventions and Conferences
- Leadership PACs
- Political Parties
- Office Holder Accounts
- Administrative Accounts
- Charities
- Reimbursed Travel
- Personal Use of Campaign Funds

All these vehicles for non-campaign-related fundraising permit the fundraising engines of elected officials and candidates to race along despite state laws that limit contributions and require disclosure of money in politics.

To ameliorate this problem, CGS has developed a model law to plug loopholes and block the end runs. *It considers all money raised by politicians from any donor and through any entity to be raised for a political purpose, subject to contribution limits, aggregation and full disclosure.*

The model law would:

- Create a rebuttable presumption, with a standard of clear and convincing evidence, that all money received by an elected official or candidate is for a political purpose.
- Establish bright-line contribution limits on money received for political purposes that would track federal contribution limits and be indexed for inflation.
- Require disclosure of amounts of \$100 or more.
- Prohibit personal use of any money received for a political purpose.
- Require an official or political purpose for all expenditures.
- Treat legal defense funds separately.
- Limit reimbursement for politically-related travel.
- Require the disclosure of the sources of funding for political communications.

The proposed contribution limits would apply to all payments of any type to elected officials and candidates, as well as to their relatives, candidate committees, controlled committees or any other entities the actions of or decisions over which the elected official or candidate has significant influence, with some exceptions for legal defense funds and money raised for bona fide charities.

The contribution limits proposed in the model law include, per election cycle, the following\*:

- **\$2,300** from a person, elected official, candidate committee, political committee or other entity
- **\$10,000** in the aggregate from any of the above in contributions or payments to elected officials or candidates

\*The contribution limits suggested in the model law are illustrative. Some state and local governments may wish to lower them or otherwise tailor them to their particular needs.

- **\$4,600** to the totality of political party entities in the state from a person, elected official, candidate committee, controlled committee, political committee or entity
- **\$10,000** in the aggregate from the totality of political party entities in the state to an elected official or candidate, including those controlled committees or other entities over which the elected official or candidate has significant influence
- **\$2,300** from controlled committees or any other entity over which the elected official or candidate has significant influence, to that elected official or candidate

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## 01: INTRODUCTION

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Money is a necessary and legitimate part of the political process. Concerns about corruption or the appearance of corruption, have lead to regulation of campaign fundraising at every level of politics, both limiting contribution amounts and requiring disclosure of donors. Indeed, federal campaign fundraising restrictions started in 1867 with a law that prohibited federal officials from asking Navy yard workers for contributions.<sup>1</sup> Beginning over 30 years ago with *Buckley v. Valeo*,<sup>2</sup> courts have allowed government to impose reasonable contribution limits on campaign contributions, justified by the need of government to protect the integrity of elections from real or apparent corruption.

While campaign finance reforms have attempted to take the potentially negative influences of money out of electoral and governmental processes, they have not gone far enough. Scandals continue to show that some elected officials and candidates serve the interests of their large contributors and not their constituents. Special interests have given generously to non-campaign entities thereby gaining access to elected officials and candidates. Politicians have been fined and penalized for using campaign contributions for their personal use. Many have found lucrative ways to circumvent contribution limits, flout the laws that are in place and often raise stunning amounts of money in ways not covered by campaign finance laws.

The Center for Governmental Studies (CGS) has investigated many ways that elected officials and candidates raise money through non-campaign entities that are not always subject to existing campaign finance laws. These loopholes and end runs occur in every state, including those with systems of public funding for political campaigns. Not every state has all these problems, but no state is completely immune from these fundraising end runs by elected officials and candidates.

This report concludes that the proliferation of creative fundraising methods compels a redefinition of “contribution” so that all monies or other things of value received by elected officials or candidates are encompassed by the term. The proposed model law in this report is drafted to define political contributions broadly, so that payments to non-campaign entities would be included, and also to require that campaign expenditures by candidates have a clear political purpose.

<sup>1</sup>Federal Election Commission, “The Federal Campaign Laws: A Short History,” [www.fec.gov/info/appfour.htm](http://www.fec.gov/info/appfour.htm)

<sup>2</sup>424 U.S. 1 (1976).



## 02: THE LOOPHOLES

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When elected officials and candidates raise money through channels not subject to the campaign finance laws already on the books, it is for the most part invisible. But when uncovered it creates at least the perception that access to government decision makers -- from the smallest municipality to the office of the president -- is for sale to those able and willing to make significant payments.

CGS has uncovered myriad ways that politicians actively pursue big money from special interests and moneyed donors using entities other than candidate campaign committees, including:

- Candidate Controlled Ballot Measure Committees
- Legal Defense Funds
- Inaugural / Swearing-in Committees
- Conventions and Conferences
- Leadership PACs
- Political Parties
- Office Holder Accounts
- Administrative Accounts
- Charities
- Reimbursed Travel
- Personal Use of Campaign Funds

CGS has found that much of this fundraising by politicians has little to do with campaigns and does not serve a governmental purpose, let alone the public good. CGS drafted the model law that follows as a solution to this problem.

The first part of this report details examples of campaign finance loopholes and end runs. Some have observed, including the United States Supreme Court in *McConnell v. FEC*, that “[m]oney, like water, will always find an outlet.”<sup>3</sup> That statement is reflected in the loopholes, tricks and end runs included here. CGS will continue to investigate this issue and periodically update the online version of this report as other and perhaps even more creative methods emerge to funnel money to politicians.

<sup>3</sup>540 U.S. 93, 224 (2003).

## CANDIDATE CONTROLLED BALLOT MEASURES COMMITTEES

In California and some other states, elected officials and candidates can control committees that raise funds for ballot measures, whether or not there is or ever will be a ballot measure campaign funded by the monies raised. In other states, politicians can control and raise money through committees organized for some broad political purpose. In both cases, contributions generally have no limits but must be disclosed.

California only recently required elected officials and candidates to indicate that a controlled committee is devoted to a particular ballot measure.<sup>4</sup> A new Fair Political Practices Commission (FPPC) regulation addressed the situation in which controlled committees “operate[d] in a variety of forms without . . . clearly specified rules” unlike campaign committees, legal defense funds or officeholder accounts.<sup>5</sup> A controlled committee must now identify a specific measure or measures, or the purpose of the anticipated measure, in its statement of organization.<sup>6</sup>

The FPPC also tightened disclosure requirements on expenditures that confer a substantial personal benefit on the controlling elected official or candidate. The new guidelines require that all itemized expenditures must be detailed in the “description of payment,” so that the political, legislative or governmental purpose for the expense is clear. The controlled committee is required to keep a written record of the required information.<sup>7</sup>

California Governor Arnold Schwarzenegger has aggressively raised money through a controlled committee, “Schwarzenegger’s California Dream Team.” The lame-duck governor, who is termed out and will leave office in January 2011, raised more than \$6.5 million in just a six-month period, *between January 1, 2009, and June 30, 2009*.<sup>8</sup> In this non-election year, the committee received 8 contributions that each exceeded \$100,000, 15 contributions of \$100,000, 16 contributions between \$50,000 and \$100,000, and 44 contributions between \$25,000 and \$50,000.

California currently limits contributions to gubernatorial officeholders and candidates to \$25,900 per election. Despite this, large donors gave contributions that far exceeded

<sup>4</sup>California Code of Regulations Title 2, Section 18521.5 (new section operative March 1, 2009).

<sup>5</sup>[www.fppc.ca.gov](http://www.fppc.ca.gov), Interested Person Meeting, December 23, 2008.

<sup>6</sup>California Code of Regulations, section 18521.5 (new section operative March 1, 2009).

<sup>7</sup>[www.fppc.ca.gov](http://www.fppc.ca.gov), “Candidate Controlled Committees: New Requirements for Reporting Expenditures for Gifts, Meals, and Travel,” see Cal.Gov.Code sections 89510-89519.

<sup>8</sup>The data regarding Governor Schwarzenegger’s controlled committee is derived from campaign finance records maintained by the California Secretary of State, <http://cal-access.ss.ca.gov>.

that limit to Governor Schwarzenegger's ballot measure committee:

|  |            |
|--|------------|
| California Hospitals Committee                                     | \$ 500,000 |
| General Electric   | 350,000    |
| California Dental Association                                      | 250,000    |
| Cisco Systems  | 250,000    |
| Chevron  | 250,000    |
| Oracle   | 150,000    |
| William Powers   | 125,000    |
| (of Pacific Investment Management, a leading world-wide bond fund) |            |
| Carolyn Powers (his spouse)  | 125,000    |

Anthem Blue Cross, Eli Broad (the financial & real estate mogul), Farmers Insurance, Pacific Gas & Electric, Herbalife International, Blue Shield of California, Intuit, Intel and AT&T each gave \$100,000 to the "California Dream Team."

During this same six-month period, Schwarzenegger's ballot measure committee donated \$250,000 to "Yes on 11" (the redistricting ballot initiative that California voters approved in November 2008) and more than \$2.9 million, about 19% of the total amount raised by the recipient committee, to "Budget Reform Now," a coalition of business interests and teachers supporting the passage of the ballot measures championed by the governor that were defeated in a May 2009 statewide special election.

In 2007 and 2008, prior to the new regulation for reporting expenses by controlled committees, the "California Dream Team" committee paid just under \$1 million for "candidate travel, lodging and meals" (\$306,000 in 2007 for 3 trips and \$644,000 in 2008 for 12 trips), an amount which does not include other expenditures for "staff, spouse travel, lodging and meals." After the new regulations were adopted, only one candidate travel-related expenditure, for almost \$14,000, was reported by Schwarzenegger's committee for the first six months of 2009.

The amounts contributed to and expended by Governor Schwarzenegger's committee are staggering -- much larger in scale than those made to other committees controlled by politicians. Because the amounts are so massive, they vividly demonstrate the problem of ignoring the real affect of such large contributions on the politicians who receive them through non-campaign entities: large donors generally expect something, particularly access, in return for their investments. At best, permitting the unlimited donation of money to a committee controlled by a politician creates the appearance of undue influence by these large donors. At worst, public confidence in honest and accountable government is severely eroded by a system which treats these contributions as substantively different from regulated campaign

contributions.<sup>9</sup>

- *Section 5 of the model law would treat all payments received by an elected official or candidate as contributions. Contributions are defined by the model law as “anything of value” received by an elected official or candidate. Thus, all payments from any donor, including those made to a campaign committee as well as those made to non-campaign entities such as controlled committees and other entities described in this report, with very limited exceptions,<sup>10</sup> would be aggregated and subject to a single contribution limit. Elected officials and candidates could continue to raise a significant amount of money through campaign and non-campaign entities but the politician would not be able to receive unlimited or very large contributions or other payments in excess of the overall individual limit.*

## LEGAL DEFENSE FUNDS

Elected officials are often permitted to raise money for their legal defense, but some have simply used these funds for personal purposes and some have even continued to raise money for a legal defense fund long after any relevant legal matter was resolved. Whether or not they use the money for legal defenses or other unrelated purposes, these donations allow contributors to gain additional influence.

*The New York Times* reported that former New York State Senator Guy Velella (who had been charged with bribery) used some of the money he amassed in a legal defense fund on country club memberships, an expensive pool cover, expensive automobiles (some cars were listed as “mobile office”) and veterinary visits for office pets.<sup>11</sup> The New York State Board of Elections had ruled in 1989 that campaign funds could be used for a legal defense if the charges were related to the campaign or to holding public office. As a result, Velella used \$400,000 from his campaign as a legal defense fund based on the bribery indictment. New

<sup>9</sup> In Florida, lawmakers can maintain committees of continuing existence (Fla. Statutes, Title IX, Section I06.40) in addition to political committees. These committees of continuing existence function in much the same way as do controlled committees in California. Committees with the names “Preserve the American Dream,” “A Better Way for Florida,” and “Committee for Florida’s Future” are controlled by legislators and have been viewed by some as secret slush funds. See [www.tampabay.com](http://www.tampabay.com), “Donors’ Millions Fill Slush Funds,” March 14, 2009. Contributions to these committees are unlimited but must be disclosed. While the committees are required to state some broadly defined public purpose, there is no oversight of expenditures and legislators have spent substantial amounts on consultants, travel and meals not directly tied to the stated public purpose. *Id.*

<sup>10</sup>Section 5 of the model law creates a rebuttable presumption that all payments made to elected officials and candidates are for a political purpose and therefore subject to contribution limits, aggregation and disclosure. If it can be shown that a payment is made for other than a political purpose then the payment may be used by its recipient for any purpose. It also provides that an elected official or candidate may raise funds for a bona fide charity without those funds being subject to limitation and aggregation, so long as he or she receives no personal benefit from his or her involvement in the fundraising. Section 8 of the model law would permit elected officials and candidates to raise funds for a legal defense that are limited but not subject to an individual donor’s aggregation limit.

<sup>11</sup>*New York Times*, “The Velella Fund,” April 16, 2004.

York has virtually no limit for individual contributions,<sup>12</sup> and the *Times* noted that New York's loose regulations offered politicians "something close to a personal ATM."<sup>13</sup>

California State Senator Ronald Calderon continued to raise legal defense funds after the stated purpose for raising money for his legal defense fund was resolved: his opponent conceded in July 2006, two days after a recount of election results began.<sup>14</sup> Between the beginning of September 2006 and the end of that year, the "Calderon Legal Defense Fund Committee" raised more than \$165,000, only \$1,450 of which was raised from individuals; the rest was donated by businesses in and around his district. Calderon reported spending \$62,000 on "fundraising events" at various posh golf resorts, \$12,000 on American Express credit card payments and almost \$39,000 on "campaign consultants." In 2006 and 2007, the committee spent about \$35,000 on professional legal and accounting services.<sup>15</sup>

- *Donations to legal defense funds should be considered payments to elected officials subject to limits and disclosure. Section 8 of the model law would allow politicians to create separate funds for their legal defense with respect to a particular formal dispute that results from the official or political duties of the elected official or candidate, and it would prohibit expenditures for the personal use of the elected official or officeholder by requiring that expenditures be for "activities directly related to the formal dispute." The model law would require donations to be limited, disclosed and be made only by natural persons, but they would not be included in the aggregation limits that apply to other contributions by individuals.*

## INAUGURAL/SWEARING-IN FUNDS

Elected officials frequently create committees to raise funds for a ceremonial occasion with the stated purpose of relieving the taxpayers of the burden of paying for a public celebration.<sup>16</sup> Recent experience indicates that these committees often permit the officeholder to raise money in amounts that far exceed campaign contribution limits.

In Georgia, the Inaugural Committee of Governor Perdue accepted \$200,000 from AT&T in 2007, four times as much as any other donor and 20 times what the corporation could have donated directly to the governor's reelection campaign. AT&T later joined with Bell South to lobby for the passage of legislation to make competition with cable providers easier by revamping the process of granting cable franchises in Georgia. Governor Perdue signed

<sup>12</sup>New York State Board of Elections, [www.elections.state.ny.us](http://www.elections.state.ny.us), "Contributions and Receipt Limitations," annual aggregate contribution limit for individuals is \$150,000. Corporations there may contribute \$5,000 annually, but each subsidiary of a corporation has its own limit.

<sup>13</sup>*New York Times*, "The Vellella Fund," April 16, 2004.

<sup>14</sup>*Associated Press*, "California Regulators Propose Controls on Legal Defense Funds," October 4, 2007.

<sup>15</sup>The data regarding Senator Calderon's legal defense fund is derived from record maintained by the California Secretary of State, <http://cal-access.ss.ca.gov>.

<sup>16</sup>New Jersey Governor-elect Christie faces a decision with respect to certain donors to his January 2010 inaugural

the “Georgia Consumer Choice for Television Act” which became effective on January 1, 2008.<sup>17</sup>

In Alaska, post-election donations to Governor Palin’s inaugural committee came from four mining companies, including Northern Dynasty, a co-developer seeking to influence Palin to speak out against a state-wide measure that would have imposed costly environmental regulations on mining operations.<sup>18</sup> The mining interests did not play a major fundraising role in the 2006 gubernatorial campaign. Alaska Inaugural Committee, Inc., the nonprofit corporation that raised funds for the events surrounding the inauguration, was not required to publicly disclose the amounts donated to it for inaugural balls and travel for the governor and her family.

- *Under Section 5 of the model law, donations to this type of committee would be treated in the same way as any other payment to an elected official or candidate. Contributions to a non-campaign entity such as an inaugural fund from any source would be subject to limits and would be aggregated along with any other payments to that politician made by that donor.*

## **LEADERSHIP PACS/LEGISLATIVE CAUCUS COMMITTEES**

In many states the legislative leadership raises money to advance their party’s goals in the legislature. Donors give directly to the majority or minority leadership, or to those running for leadership positions, and the persons in leadership positions distribute the money to the members of their caucus. These contributions are rarely regulated in the same way as campaign contributions and indeed in most instances are considered, as are most of the end runs identified by CGS, to be entirely outside of established campaign finance restrictions.

An example of this end run exists in Maine, a state with a public campaign financing system, where money collected by legislative leaders is allowed because these contributions are not given directly to the elected officials but instead to PACs organized by legislators and party caucuses (if an official or candidate accepts the public financing program, he or she may not raise private contributions). Money raised by the legislative leadership through PACs is disclosed but not limited. Notwithstanding its “clean money” reputation, Maine legislators are permitted to raise money from private contributors for PACs organized by their legislative caucus, or even for their own PAC if that committee is organized to support a race for a leadership position. Legislators also are permitted to solicit donations on behalf of privately

celebration. Due to an oversight when New Jersey’s pay-to-play law was enacted, donors to the inauguration fund, who would be barred from seeking a state contract if the payment involved were a campaign contribution, would not be barred from seeking state contracts unless Christie voluntarily extends the ban. The Election Law Enforcement Commission has said that the pay-to-play restrictions are not in effect with respect to the inaugural fund. *The Star-Ledger* (New Jersey).

“Gov.-Elect Chris Christie Considers Pay-To-Play Rules for Inauguration Fundraising,” November 10, 2009.

<sup>17</sup>*The Associated Press-Atlanta*, “Perdue Signs New Laws, Vetoes 41 Bills,” May 30, 2007.

<sup>18</sup>*The Washington Post*, “Palin’s Intervention on Mine Issue Drew Controversy, Criticism,” September 28, 2008.

funded PACs from lobbyists, lawyers, bankers, oil dealers and union members, among others.<sup>19</sup>

In Illinois, the legislature approved a bill in the October 2009 veto session to limit campaign contributions to elected officials and candidates for the first time. The negotiated provisions of the bill include limits on transfers from legislative leaders and PACs to candidates. An investigation provided by CHANGE Illinois! revealed that in one recent legislative race a Democratic candidate received \$1.3 million in contributions, with 94% of the contributions coming from the legislative leaders, other candidate committees, party committees and interest groups. Just \$83,000 was contributed by individuals. His Republican opponent received \$929,000 in contributions, with only 1% donated by individuals and small contributors.<sup>20</sup>

- *The model law would presume that donations to legislators for their PACs, or from PACs to candidates, are made for a political purpose. Under Section 5 of the model law these payments would be considered contributions subject to limits and aggregation for each donor along with all other payments to the elected official or candidate by the same donor.*

## **PARTY FUNDRAISING**

Elected officials and candidates also raise money for political parties and their related entities. Contributions to political party committees are frequently subject to very high limits, if they are limited at all. Large donations generally assure donors access to those in power.

In New Jersey, large donors like the National Rifle Association and the National Education Association, along with law firms and others who do business with New Jersey, poured big money into the recent gubernatorial election without running afoul of contribution limits or pay-to-play rules<sup>21</sup> by giving generously to the Republican and Democratic parties through their governors' associations. The associations give money to candidates in many states and therefore it was difficult to draw links between a particular donor and a particular candidate.<sup>22</sup>

In California, Assemblyman Joel Anderson, who represents a district in San Diego, gave left over campaign money to the Republican Central Committees of three California counties hundreds of miles from his district. Additionally, four San Diego donors gave money to these

<sup>19</sup>[www.maine.gov/ethics/pdf/publications/2007\\_study\\_report.pdf](http://www.maine.gov/ethics/pdf/publications/2007_study_report.pdf), "2007 Study Report: Has Public Funding Improved Maine Elections?" pp. 41-48.

<sup>20</sup>[www.ChangeIL.org](http://www.ChangeIL.org), "Limits on Transfers from Legislative Leaders and PACs," by Kent D. Redfield, professor emeritus of Political Science, University of Illinois at Springfield.

<sup>21</sup>In New Jersey, big money donors are barred from receiving state contracts. N.J.A.C. 19.24-24.I et seq.

<sup>22</sup>*New York Times*, "Big Donors Make End Run in New Jersey Campaign," August 4, 2009.

committees in amounts far in excess of the individual contribution limit to a campaign committee. Those party committees then returned the money to Anderson's 2010 committee, deducting a comparatively nominal amount (for example: returning \$31,400 to the Anderson 2010 committee after receiving a contribution of \$32,400 from the candidate's left over campaign funds, and donating \$28,500 to the Anderson 2010 committee after receiving donations of \$10,000 from 3 related San Diego businessmen). All of the principals denied any coordination,<sup>23</sup> but an investigation into these donations was launched by the California Fair Political Practices Commission and Anderson returned over \$100,000 to the central committees in late October 2009.<sup>24</sup> Two members of the executive committee of the Republican Party in one of the counties later resigned their positions because they were uncomfortable with (and had initially voted against) making a donation to Anderson's committee. One of them, who had served as a second vice president to the Republican Central Committee in Placer County said, "It just didn't smell right to me because I had never heard of Joel Anderson before. I didn't even know the guy was an assemblyman."<sup>25</sup>

In Florida, Assemblyman Ray Sansom, who was Speaker of the House at the time, was reported to have charged about \$173,000 to a state Republican Party credit card funded by party donors, including a lavish family trip to Europe and other non-campaign expenses.<sup>26</sup> His spending opened inquiries into his influence as chairman of the Budget Committee to push for favors to his home-town college, including \$35 million in tax dollars funneled to it, and to favor a private developer (and large donor to his campaign) in a construction contract for an airport building.<sup>27</sup>

California Assembly Speaker Karen Bass sponsored the annual "Speaker's Cup" in May 2009. The "Speaker's Cup" is a significant annual Democratic Party golf fundraiser held at the Pebble Beach Country Club and Resort. Packages for donors started at \$20,000 and increased to \$60,000 for "the ultimate" package.<sup>28</sup>

A weekend conference at Google headquarters sponsored by the Democratic Senatorial Campaign Committee in November 2009 was not open to the public and required a \$5,000 per person donation to the committee. CEOs and other tech insiders, along with "A-list venture capitalists" participated on panels discussing health care, the environment, technology and other issues. Senators Barbara Boxer of California, Mark Warner of Virginia, Jeff Bingaman of New Mexico, Jeff Merkley of Oregon and Mark Begich of Alaska were listed on the invitation.<sup>29</sup>

<sup>23</sup>*San Diego Union*, "Assemblyman's Campaign Fund Transactions Raising Questions," October 1, 2009.

<sup>24</sup>*Fresno Bee*, "Fresno Co. GOP's Aid to SoCal Lawmaker Investigated," November 11, 2009.

<sup>25</sup>*San Diego Union*, "GOP Official Quits Over Anderson Transactions," November 18, 2009.

<sup>26</sup>*Miami Herald*, "Ousted Fla. Speaker Spent GOP's Funds Lavishly," August 21, 2009.

<sup>27</sup>*Miami Herald*, "Fate of Ray Sansom Prove on Agenda," November 5, 2009.

<sup>28</sup>*Los Angeles Times*, "Budget Crisis? Recession? Let's Go to Pebble Beach!" January 9, 2009.

<sup>29</sup>*New York Times*, "Consumer Watchdog Calls on Senators to Skip Fundraiser Set for Google Headquarters," Nov. 13, 2009.

The national party conventions in 2008 provided large donors with “singular access to the [presidential] campaign[s]” and “shap[ed] the endless chain of parties and events outside the convention hall.”<sup>30</sup> Special interests can similarly ingratiate themselves and gain access to state politicians by donating large amounts, which may be subject to very high limits or no limits at all, when that politician is featured at a party fundraising event. “Both Republicans and Democrats . . . solicit[ed] massive donations from corporations to help pay for the conventions and, in return, offer[ed] valuable access to high-ranking elected officials.”<sup>31</sup>

- *Section 7 of the model law would limit and aggregate the amount a donor could contribute to “the totality of political party entities in this state.” It additionally would provide limits for political parties that are significantly higher than those for individuals and other entities to encourage the parties as important participants in elections, but the limit would be below that currently permitted under many state campaign finance laws.*
- *Section 15 of the model law would provide that violations of the model law would be prima facie evidence of a breach of fiduciary duty and could be used to support state charges of fraud where there has been a material misrepresentation or omission with respect to political fundraising.*

## **PARTY HOUSEKEEPING, OFFICEHOLDER and ADMINISTRATIVE FUNDS**

In some states individual donors are permitted to exceed contribution limits to political parties by earmarking their contribution for special party accounts called “housekeeping,” “officeholder” or “administrative” funds.

In New York, such contributions have no limits and are not aggregated with other donations made by the contributor. A Common Cause study found that between 1999 and 2006 a total of \$53.2 million was funneled through political parties in New York by this kind of giving.<sup>32</sup> In August 2008, American International Group donated \$100,000 to the housekeeping fund of the state Democratic Committee in New York just before Governor Paterson launched a concerted effort to prop up the giant insurer. The donation was \$90,000 larger than any previous contribution made by AIG to either political party in New York. Paterson’s intervention was credited with helping AIG “strike a historic loan deal with the Federal Reserve to keep AIG afloat.”<sup>33</sup>

<sup>30</sup>*St. Paul Legal Ledger*, “Critics Call Convention Donations a Loophole for Influence Seekers,” June 9, 2008.

<sup>31</sup>*Id.*

<sup>32</sup>“The Life of the Party: Hard Facts on Soft Money in New York State,” A Common Cause/NY Report, August 2006.

<sup>33</sup>*Associated Press*, “AIG Gave \$100K to New York Democrats,” March 19, 2009.

- *The model law would consider these funds to be part of “the totality of political party entities” subject to donor limits and aggregation.*

## CHARITABLE FUNDRAISING

Behested contributions are donations made to a favorite project of, or a charitable organization favored, organized or controlled by a politician. These donations are not made for personal or campaign purposes. Because of contribution limits, elected officials and candidates cannot raise large amounts directly from special interests, but special interests seeking access to decision makers can donate generously to a favored project or charity organization at the request or suggestion of politicians.

Former Congressman and North Carolina State Senator Frank Balance was convicted of fraud in connection with a scheme to divert money for his own, his friends and his family's use from a charity he had formed and then funded largely with taxpayer money while serving as the co-chairman of the Senate Appropriations Committee. The federal prosecutor noted that, “He ran that foundation like a private piggy bank.”<sup>34</sup> The John A. Hyman Memorial Youth Foundation mission was to support anti-drug programs. The United States Attorney determined that of the \$2.1 million the foundation had received over a ten-year period, at least \$325,000 was spent on questionable purposes, including a \$20,000 SUV for Ballances' son, who was then a County District Court judge, and the diversion of more than \$100,000 to his mother, son, daughter, church and law firm.<sup>35</sup>

In California, there are no limits on behested contributions, but elected officials and candidates must disclose contributions of \$5,000 or more made at their behest. Through behested contributions Attorney General Jerry Brown has raised nearly \$10 million for two charter schools that he founded while serving as mayor of Oakland, California. The *Los Angeles Times* noted in November 2009 that “five Los Angeles-area card clubs showered more than \$100,000 on a Bay Area school for the arts some 400 miles away ... Each of the card rooms gave the legal maximum of \$12,000 last year to one of Brown's campaign accounts. None gave to the Oakland School for the Arts until Brown was attorney general.”<sup>36</sup> Brown's office oversees the Bureau of Gambling Control.

Others making large donations were Zenith Insurance, Pacific Gas & Electric, AT&T, Wal-Mart, Bank of America and Hollywood producer Stephen Bing, who alone donated more than

<sup>34</sup> [www.capitol-monitor.org](http://www.capitol-monitor.org), “Frank Balance: Your Money Was His Money,” July 8, 2009.

<sup>35</sup> *Id.*

<sup>36</sup> *Los Angeles Times*, “Card Clubs and Other Special Interests give to Jerry Brown Charities,” November 3, 2009.

\$1 million. One advisor to a major donor was quoted as saying that groups were giving to Brown “with hope that he will keep an open mind should you need to communicate with him in the future.”<sup>37</sup> Ellen Miller, of the Sunlight Foundation watchdog group, called these types of payments “another example of the many pockets of a politician’s coat.”<sup>38</sup>

The *San Francisco Chronicle* reported that an Indian tribe in California asked 16 of its favorite legislators to pick schools that would each receive a \$5,000 donation. The tribe was among those seeking a gambling compact with the state. The investigation further noted that Mervyn Dymally, a former California Lieutenant Governor who at the time was a member of the State Assembly, directed \$357,000 in contributions from special interest groups to the California Black Caucus, a group that he chaired. The caucus sponsors lavish retreats for legislators.<sup>39</sup>

- *Section 5 of the model law would include this type of donation in its definition of a contribution. It would require disclosure of any such contribution of \$100 or more.*
- *Section 7 of the model law would provide that no limits to these charitable contributions would apply, however, so long as the contribution is made to a bona fide charity and the elected official or candidate receives no personal benefit from the charity or foundation (including the use of his or her name or public office).*

## REIMBURSED TRAVEL

Trips by elected officials that are related to official duties are routine in American politics, and just as commonplace are stories of non-governmental entities paying for these sometimes extravagant trips in an effort to build cordial relationships and gain access to decision makers.

In Wisconsin, some Republican legislators attended a July 2008 meeting in Chicago of the American Legislative Exchange Council (ALEC) with their travel costs paid for through “travel scholarships” provided by private contributor membership dues to ALEC (ranging from \$7,000 to \$50,000). The Private Enterprise Board of the nonprofit corporation includes representatives from AT&T, UPS, Bayer, GlaxoSmithKline, Johnson & Johnson, PhRMA, Wal-Mart, Coca-Cola, Intuit, ExxonMobil, Pfizer and others.<sup>40</sup>

Then Speaker of the California Assembly, Fabian Nuñez, and chief of staff to Governor

<sup>37</sup>Id.

<sup>38</sup>*USA Today*, “Lobbyists Unlimited on Honoring Lawmakers,” June 9, 2009.

<sup>39</sup>*San Francisco Chronicle*, “How Special Interests Avoid Spending Limits,” February 11, 2008.

<sup>40</sup>*Milwaukee Journal-Sentinel*, “Who Pays for Convention Travel?,” July 11, 2008.

Schwarzenegger, Susan Kennedy, were among state officials (and some of their spouses or partners) to take a 2006 trip to South America sponsored by the California Foundation on the Environment and the Economy, a nonprofit funded largely by Chevron, Southern California Edison, mining giant BHP Billiton and power producer Calpine.<sup>38</sup> Energy and utility executives accompanied the group on the trip. Nuñez reported the \$12,500 trip as a “study travel project.”<sup>42</sup>

A public official, elected by the board of CalPERS, which oversees investments for the nation’s largest public employee retirement system, took a trip to a financial conference in Dubai in 2006 and then spent 3 days in Hong Kong. The trip evidently was paid for by Arvco, a private equity firm that acts as an intermediary agent between its clients and public pension funds. The state agency approved his participation at the conference, but the board member never filed a claim for the travel or expenses and has not disclosed the receipt of any travel-related gifts. He said, “I could have billed the system for that trip, but I decided not to. I didn’t want the system to pay for it.” He claimed to have reimbursed the Arvco placement agent \$13,000 for the “entire cost” of the trip. When told the airfare alone was more than \$15,000 he said, “then I paid him more.”<sup>43</sup>

- *Section 9 of the model law is designed to show the direct connection between a politician’s travel expenses and the entities funding the travel. Entities that would be permitted to reimburse elected officials and candidates for travel under the provisions of the model law include governmental agencies and bona fide educational and charitable institutions. Reimbursement for travel expenses could be supplemented by campaign funds. Such bona fide educational and charitable institutions would be required to disclose their major donors periodically. The model law further specifies that reimbursable expenditures be actual, necessary and reasonable as they relate to travel and its official or political purpose, and reimbursement guidelines would include the maximum per diem rates for government travel established by the state.*

## **PERSONAL USE OF CAMPAIGN FUNDS**

Most states prohibit personal use of campaign funds by elected officials or candidates, although the laws are very broadly construed to permit campaign funds to be used for almost any expense that has a reasonable connection to a political, legislative or governmental purpose. Voters equate lavish expenditures with abuse of the public trust because

<sup>41</sup>*Sacramento Bee*, “Energy Firms Help Pay for Regulators’ Far-Flung Trips,” July 26, 2009.

<sup>42</sup>*Los Angeles Times*, “Donor Money Talks, Often in a Whisper,” December 28, 2007.

<sup>43</sup>*Sacramento Bee*, “Who Paid for Dubai Trip by CalPERS Board Member?” November 5, 2009.

extravagant spending seems not clearly related to the job of the elected official or candidate, even when a specific expenditure is approved by the state campaign finance/ethics commission.

In Ohio, Attorney General Marc Dann resigned and was investigated for at least two dozen violations of Ohio campaign finance laws, most of which related to personal use of campaign funds. The violations included spending campaign money on an elaborate home security system, cell phone service for his family members, family trips and gifts for friends.<sup>44</sup> A former aide to Dann was quoted as saying, “I’ve never seen people go through money as fast as them [sic] two in my life.”<sup>45</sup>

In Massachusetts, state Senator Dianne Wilkerson admitted she routinely accepted large amounts of cash from friends and political supporters to help pay off her mortgage and her federal tax debt. The state ethics commission had advised her that she could accept gifts in excess of \$50 from close personal friends as long as the donors did not have business before the legislature, an interpretation of the law that created significant public outcry. Among the \$70,000 she admitted raising for her personal use, however, Wilkerson received \$10,000 from a developer who supported a controversial turnpike project. She later resigned after being indicted by a federal grand jury on eight counts of attempted extortion.<sup>46</sup>

In California, state Senator Gil Cedillo spent more than \$125,000 during six years on shopping excursions, meals at expensive restaurants, and swanky hotels around the state. Records show he spent more than \$7,000 at Nordstrom, over \$3,400 at Banana Republic and over \$1,400 at Ann Taylor. All told he spent about \$77,000 on restaurants, \$29,000 on hotels and \$21,000 on airline tickets as a state Senator. He insisted that, “None of it’s for me.”<sup>47</sup>

Also in California, former Assembly Speaker Fabian Nuñez was cleared, in an October 14, 2009, letter from the Fair Political Practices Commission, of misusing campaign funds. A complaint had alleged that Nuñez spent more than \$155,000 between 2005 and 2007 (including, among other expenditures, \$5,149 for what he reported as a meeting at Cave L’Avant Garde wine cellar in the Bordeaux region of France, \$2,562 for “office expenses” at Louis Vuitton in Paris, and \$848 for a “meeting” at the renowned French Laundry restaurant in Napa Valley) in violation of California’s personal use prohibition.

<sup>44</sup> *Cleveland Plain Dealer*, “Marc Dann Fined \$1,000 and Reprimanded For Campaign Violations,” March 19, 2009.

<sup>45</sup> *Columbus Dispatch*, “Report Says Ohio’s Former AG raided Campaign Cash,” December 28, 2008.

<sup>46</sup> *Boston Globe*, “Wilkerson Admits She Took at least \$70,000,” January 25, 2009.

<sup>47</sup> *Los Angeles Times*, “Cedillo Reports That His Campaign Donors Bankroll Lavish Meals, Travel and Shopping,” April 1, 2009.

“Based on our review, it appeared likely that the expenditures identified in the complaint were legitimate and would not violate the personal use laws,” the letter stated. “Expenditures for items such as florists, food, gifts, meetings, fundraising and travel are routinely made by many candidates and officeholders using campaign funds, and these expenditures are reasonably related to a political, legislative or governmental purpose. For expenditures that may have conferred a substantial personal benefit on you, we determined that it appeared likely or that you would be able to establish that these expenditures were directly related to a political, legislative or governmental purpose.”<sup>48</sup>

Nuñez, who since leaving office has become a public affairs consultant, said he regretted some of the ways he handled campaign money, including allowing staff members to use the funds as they saw fit. “I’m not going to say that if I had another crack at this I wouldn’t do things differently,” he said. “If I had entertained in a more modest fashion I would have been able to keep some of this from getting out of proportion. . . This was a huge blow to my image at a time when I was ascending as a strong political figure. This thing almost unilaterally put me on the sidelines.”<sup>49</sup>

- *Section 6 of the model law specifically prohibits personal use of contributions and payments by elected officials and candidates, including gifts that personally enrich a politician and his or her family.*

<sup>48</sup>California Fair Political Practices Commission (FPPC) letter of October 14, 2009, letter to Fabian Nuñez, Re: FPPC No. 07/65I, Fabian Nuñez, [www.fppc.org](http://www.fppc.org), October 2009 Enforcement Closure Letter, No Violation.

<sup>49</sup>*Los Angeles Times*, “Ex-Assembly Speaker Nuñez Did Not Misuse Campaign Funds, Board Rules,” October 27, 2009.

## 03: THE MODEL LAW

### INTRODUCTION

Elected officials and candidates have devised many ways to raise funds outside the reach of laws limiting contributions and requiring disclosure of money spent in campaigns. CGS has developed the following model law to limit these circumventions. Explanatory comments are included to clarify the intent of each section. The model law is designed to restore public confidence in honest and accountable elected officials and candidates.

The model law creates a presumption that all money raised by a politician is for a political purpose and should be fully disclosed. The model law also proposes reasonable, per election cycle contribution limits, with two narrow exceptions, that acknowledge the legitimate role of money in our political process. Limits range from \$2,300 for individuals, elected officials, controlled committees and political committees, to \$10,000 for state political parties, and they track federal contribution limits and would be indexed to reflect inflation. In the first exception to these limits, elected officials and candidates could raise limited money for legal defense funds which would not be included in the contribution amounts aggregated for individual contributions, provided that money for a legal defense fund is raised only from natural persons and expended only for purposes directly related to the specific legal matter in question. In the second, elected officials and candidates could fundraise for bona fide charities, provided that the elected official or candidate receives no personal benefit as a result of the fundraising and does not permit the use of his or her name or public office on a building, academic chair or similar situation.

In addition, the model law would require disclosure of amounts of \$100 or more, prohibit personal use of any money received for a political purpose, require an official or political purpose for all expenditures, limit reimbursement for politically-related travel and require the disclosure of the sources of funding for political communications. Politicians would be held strictly liable for the receipt of illegal contributions.

## **§ 1. The Political Contributions, Payments, & Expenditures Transparency Act**

### **§ 2. Findings**

A. Money is a necessary and legitimate part of the political process in our country.

Politicians need money to inform voters about themselves and their positions on the issues and for other campaign purposes. Elected officials need money to fund activities that serve a governmental purpose but are otherwise unfunded or under funded in modern government budgets. Politicians receive money through monetary contributions and payments from a variety of sources. Money in politics, from whatever source, should serve only governmental or political purposes.

B. In an effort to fight corruption and maintain the credibility of the political process, every state has enacted laws that require the public disclosure of contributions to political campaigns, and all but one require disclosure of campaign expenditures.

C. Most states place monetary limits on contributions to political campaigns by individuals, corporations, unions, and other groups because large contributions are seen to influence elected officials and candidates in an improper way. Further, limits encourage more individual contributors; a broader base of monetary contributions to a campaign indicates increased participation by citizens in the political process and promotes competition in elections.

D. Some states also limit gifts that may be received by politicians because the states acknowledge that gifts to politicians, particularly extravagant gifts, create an appearance that the politician is in some way beholden to the donor.

E. The public increasingly believes that fundraising by candidates and elected officials is time consuming and does not serve the public good. Moreover, campaigns are prolonged due to fundraising pressures, and some expenditures by candidates and elected officials seem not to serve constituents or the interests of governmental institutions. Some campaign expenditures seem to benefit individual politicians rather than the electoral or governmental process.

F. Elected officials and candidates are able to circumvent campaign disclosure laws and regulations by raising funds for causes unrelated to a campaign for public office. Large undisclosed payments to non-campaign entities may appear to have, or actually have, a corrupting influence on individual politicians and provide an unfair advantage to incumbent officeholders, who are often positioned to exploit the power and resources of government.

The entities through which politicians now more frequently raise money outside of the campaign finance system include, but are not limited to, legal defense funds, candidate-controlled ballot measure committees, reimbursed travel, political party fundraising, inaugural and swearing-in committees, convention and conference fundraising committees, officeholder accounts and booster funds, party administrative and housekeeping funds, leadership political action committees, foundations, charities, and other situations where a contribution or payment is made at the behest of the elected official or candidate.

G. All money given to or raised by elected officials and candidates, not only money already regulated by campaign finance laws, gives rise to apparent undue influence by large donors and possible corruption of elected officials and candidates. The money raised indirectly through non-campaign entities must be disclosed to the public with the goal of making transparent the individuals and entities are funding elected officials and candidates. Further, expenditures of this money made by elected officials and candidates must be fully disclosed in order to assure that they are being used for a governmental or other legitimate political purposes.

### **§ 3. Intent and purposes**

The people enact this title to accomplish the following purposes:

1. Contributions, payments, and expenditures that have an official or political purpose should be fully and truthfully disclosed to the public in order so that voters are informed and disclosure laws are not circumvented.
2. Personal use of contributions and payments received for an official or political purpose should be prohibited.
3. Communications made for political purposes should clearly disclose to the public the major sources of their funding.
4. Adequate enforcement mechanisms should be provided to public officials and the public so that this title will be vigorously enforced.

**§ 4. Definitions.** The definitions in this section apply throughout this Act.

A. “Accrued expense” means:

an expenditure that is not paid at the time the service is provided but is a debt owed by a campaign to a vendor or a subvendor for goods or services.

(§10).

B. "Actual and necessary expense" means:

an expense which are reasonable and that would be reimbursed by the state or approved by the state ethics/campaign finance entity. Such an expense does not include reimbursement for recreation or entertainment unless specifically permitted by a determination of the state ethics/campaign finance entity.  
(§9).

C. "Ballot measure" means:

an initiative, referendum, recall, or any proposition or question submitted to voters for their approval, or that is intended to be submitted to a vote at an election, whether or not it qualifies for the ballot.  
(§§2, 5 and 6).

D. "Campaign activity" means:

an action taken by an elected official, candidate, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence in connection with a primary, general, special, or recall election that promotes the election or defeat of a candidate to a public office or for the success or defeat of a ballot measure. Such activities include but are not limited to fundraising, advertising, holding meetings and rallies, maintaining a campaign office or offices, paying for staff, consultants, and polling services, organizing volunteers, identifying voters, and participating in get out the vote activities.  
(§§6, 13 and 14).

E. "Candidate" means:

an individual who seeks nomination or election to elected office. A person is a candidate when he or she:

(1) files a statement of candidacy or petition for nomination for office with the agency or appropriate filing officer,

(2) is nominated for office by:

- (a) party at a primary,
- (b) nominating convention, or
- (c) petition for nomination,

(3) receives and accepts contributions, makes expenditures or gives consent to a person, organization, political party, or political committee to solicit or receive and accept contributions or make expenditures to seek nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when:

- (a) the contribution is received and retained, or
- (b) the expenditure is made,

(4) is an elected official who is the subject of a recall election or campaign,

(5) qualifies to have write-in votes on his or her behalf counted by election officials,

(6) is a judge who is on a ballot for retention, or

(7) engages in exploratory activity, as defined by this Act.  
(§2, 5, 6, 7, 8, 9, 10, 11, 12, and 13, 14, and 15).

F. “Candidate committee” means:

the committee designated by a candidate to:

(1) promote the candidate’s candidacy, and

(2) serve as the recipient of contributions and the disburser of expenditures.  
(§§5, 6, and 7, and 11).

G. “Charitable entity” means:

an organization described in section 170(c) of the Internal Revenue Code of 1986. (26 U.S.C. 170(c).)  
(§§2, 7, and 9).

H. “Committee” means:

a candidate committee, controlled committee, legislative caucus committee, party committee, political committee, or exploratory committee.  
(§§2, 5, 6, 7, and 12).

I. "Contribution" means:

(1) a gift, payment, subscription, loan, guarantee or forgiveness of a loan, conveyance, advance, transfer, rendering of money, distribution, deposit of money, reimbursement, service, or anything else of value,

(2) a contract, promise, or agreement to make a payment for any purpose described in paragraph (1) of this subsection,

(3) the granting of a discount or rebate not extended to the public generally, and

(4) the receipt of tickets for travel, lodging, meals, receptions, conferences, and other hospitality or entertainment, or any reimbursement therefore.

The receipt of a contribution is presumed to be for a political purpose unless it can be shown by clear and convincing evidence that it is not.

A contribution shall not include:

(1) services provided without compensation by an individual volunteering personal time on behalf of an elected official, candidate, candidate committee, controlled committee, or any committee or entity the actions of or decisions over which the elected official or candidate has significant influence.

(2) a payment made by the occupant of a home or office for costs relating to a fundraising event or political meeting held in such home or office if the costs are \$500 or less, or

(3) payments made by an individual for his or her travel expenses if voluntarily made without any understanding or agreement that the payment would be directly or indirectly repaid.

(§§2, 5, 6, 7, 8, 9, 10, 12, 13 and 14).

J. "Controlled Committee" means:

a committee with respect to which an elected official or candidate, or his or her agent, has significant influence regarding its actions or decisions and which accepts contributions and makes expenditures.

(§§5, 6, and 11).

K. "Elected official" means:

a person elected to any office that is filled by means of a vote of the public or a

significant segment of the public, or a person who is appointed to fill a vacancy in such an office, whether or not the person has yet taken office. The offices include any state, judicial, county, municipal, or other district, ward, township, or other political subdivision office or any political party office that is filled by means of a vote. It also includes any leadership position within a legislative body and membership on a county central committee of a qualified political party if such a position is filled by means of a vote. (§§ 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 15).

L. “Election” means:

any primary, general, special, or recall election held in this state. The primary and general elections are separate elections for purposes of this Act. (§§5, 7, 8, 11, and 14).

M. “Entity” means:

an organization that has a distinct identity separate from those of its members and that in addition has legal rights and obligations. (§§2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16).

N. “Expenditure” means:

a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is can be shown by clear and convincing evidence that it is not made for a political purpose. (§§2, 9, 10, 11, and 12).

O. “Exploratory activity” means:

the actions taken by an individual to determine whether to undertake a campaign for public office including but not limited to fundraising, the conduct of opinion polls, or the creation of a committee to assist in such actions. (§4).

P. “Loan” means:

a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or in part. (§§4 and 7).

Q. “Market value” means:

the estimated amount at which property or services would change hands between a willing seller and a willing buyer when neither is under compulsion to sell or to buy and both have reasonable knowledge of the relevant facts.  
(§5).

R. “Official or political duties” means:

the activities of an elected official or candidate that are reasonably related to legislative activities, constituent services, or a political campaign.  
(§§6, 8, 9, and 10).

S. “Payment” means:

a distribution, transfer, loan, advance, deposit, gift, or other rendering of money, property, services, or anything else of value.  
(§§5, 6, 7, 8, 9, 10, 12, and 14).

T. “Person” means:

an individual, proprietorship, limited liability corporation, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, political committee, organization, federal, state, or local governmental entity or agency, or group of persons acting in concert.  
(§§5, 6, 7, 8, 11, 12, and 15).

U. “Personal hospitality” means:

hospitality, meals, beverages, transportation, lodging, and entertainment furnished but not commercially provided by an individual and motivated by a personal friendship that would have been given and received even if the recipient were not an elected official or candidate.  
(§5).

V. “Political committee” means:

a person, group of persons, or entity that communicates support for or opposition to a particular, candidate, party, interest, issue, or ballot measure and that directly or

indirectly does any of the following:

(1) receives and accepts contributions aggregating at least \$500 during a calendar year, or

(2) makes independent expenditures aggregating at least \$500 during a calendar year.

(§§2, 7, 8, and 11).

W. “Political communication” means:

a message, whether broadcast, written, or communicated by electronic or other means, with no commercial purpose that conveys information of any sort about an election or for a political purpose.

(§§11 and 12).

X. “Political party” means:

an organization or association of individuals under whose name candidates appear on a ballot for a partisan office, including state and county central committees and political clubs.

(§§2, 5, 7, 8, and 12).

Y. “Political purpose” means:

anything that influences

(1) the election or nomination for election of any individual to elected office,

(2) the recall or retention in office of an individual holding elected office,

(3) the qualification of or the vote on a ballot measure,

(4) the recount of an election concerning individual candidates or a ballot measure, or

(5) the official or political duties of or access to an elected official or candidate based on his or her position.

(§§2, 3, 5, 6, 7, 9, 11, 12, and 14).

Z. "Relative" means:

a spouse, dependent child, or any natural person who is a significant partner of the elected official or candidate and who lives with the elected official or candidate.  
(§§5, 6, 7 and 8).

AA. "Significant influence" means:

a level of involvement in a committee or a non-commercial entity by an elected official or candidate, or his or her agent, which includes, but is not limited to, allowing his or her name or his or her public office to be used in its name, attending its meetings not open to the general public, sitting as a member of the committee or on its board of directors, participating in any joint acts with it, directing, approving or disapproving any expenditure made by it, or participating substantially in its fundraising projects.  
(§§5, 6, and 7).

BB. "Subvendor" means:

a third party that makes one or more expenditures on behalf of an elected official, candidate or committee. It includes, but is not limited to, expenditures made by consultants and services and merchandise purchased using a credit card.  
(§10).

CC. "Transfer" means:

the movement or exchange of funds or anything of value between political committees, party committees, or candidate committees.  
(§§5, 7 and 8).

**§ 5. Contributions and Payments Presumed to have a Political Purpose**

A. It shall be presumed that any contribution or payment received by an elected official or candidate, including but not limited to anything of monetary value given to his or her relative, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence, from any source, is for a political purpose, unless it can be shown by clear and convincing evidence that such contribution or payment is not for a political purpose.

Items or payments received for a political purpose, include those raised through:

- legal defense funds,
- ballot measure committees,
- political party fundraising,
- reimbursed travel
- inaugural and swearing-in committees,
- convention and conference fundraising,
- officeholder accounts or booster funds,
- party administrative or housekeeping accounts
- leadership political action committees,
- foundations,
- charities,
- behested contributions, and
- other non-campaign-related entities.

Items or payments received for other than political purposes include, among others, the following:

- (1) anything for which fair market value is paid,
- (2) a gift from a relative,
- (3) anything, including personal hospitality, provided on the basis of a personal friendship unless it is reasonable to believe under the circumstances, such as the donor seeks a tax deduction or business reimbursement for the gift, that the basis of the gift is the political or official position of the recipient,

(4) wages, salary, dividends, or benefits received in the regular course of employment or business,

(5) bequests, inheritances, and other transfers at death,

(6) a plaque, trophy, or other item of a value no greater than \$250 that is substantially commemorative in nature and which is intended solely for presentation,

(7) an item of little intrinsic value, such as a greeting card, baseball cap, or t-shirt, or

(8) material such as reports, periodicals, pamphlets, and other publications or objects that serve an informational purpose and are provided in the ordinary course of business. No payment or reimbursement for travel or expenses shall be deemed for an informational purpose.

B. The presumption in subsection A of this section may be rebutted by application to and a ruling by the state ethics/campaign finance entity. Such agency is authorized to receive informal inquiries as to the particular circumstances of a contribution or payment, as well as to issue public advisory opinions regarding the nature and scope of the presumption and/or its application in particular circumstances.

C. Every contribution or payment of a value of \$100 or more per election, unless it shall have been determined to be for other than a political purpose, shall be disclosed to the public, including the name, address, occupation and employer of the donor, and the date and the amount of the contribution or payment, according to the regulations determined by the state ethics/campaign finance entity. For each donor of \$100 or more the required disclosure shall include his or her cumulative contributions or payments for that election as of the date of the report.

D. All contributions or payments disclosed according to subsection C shall be electronically filed with the state ethics/campaign finance entity and immediately posted and accessible to the public. Where no electronic filing system is operable, such disclosure reports shall be made available to the public on the state website within 72 hours of their receipt by the state ethics/campaign finance entity.

*Comment: With increasing frequency and much creativity, politicians seek to raise money or receive favors in ways that are not captured by campaign finance laws. These maneuvers around the system circumvent both contribution limits and disclosure provisions and flout laws that are intended to increase transparency in politics and permit citizens to know who is funding*

*candidates and elected officials. Politicians, even in states with “clean money” election laws, are continuing to benefit from money and favors that are all but invisible to state campaign finance officials and the public. The Act provides a broad definition of what constitutes a contribution, including payments to non-campaign entities. This section creates the presumption that all activities by politicians that relate to raising money or receiving favors are for a political purpose and consequently should be fully disclosed, unless they are determined by an objective body to be for other than a political purpose.*

*Examples of the loopholes which would be exposed by the blanket disclosure contemplated here abound. They include, among others, money raised by candidates and office holders through inaugural and swearing-in committees, candidate-controlled ballot measure committees, leadership PACs, office holder accounts and booster funds, party administrative and housekeeping accounts, exploratory activities, travel reimbursed by a private entity, convention and conference fundraising, political party fundraising, and foundation and other charitable fundraising. Legal defense funds are another problematic loophole but are addressed separately in §8. Taken together, these provisions would not seek to make such fundraising illegal but are intended rather to assure such fundraising is within limits and fully disclosed as part of the public record. In states without mandatory or voluntary electronic filing, the Act contemplates that PDF files of disclosure reports will be posted on the state website and publicly accessible no later than 72 hours after they are filed.*

*Further, this section is intended to specifically to support the efforts of candidates and elected officials to comply with the campaign finance laws by encouraging them to make informal inquiries of the state ethics/campaign finance entity as to their activities which might not be for a political purpose and therefore outside the scope of the Act.*

## **§ 6. Prohibition on Personal Use of Contributions and Payments**

An elected official or candidate, and his or her relatives, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence, shall use contributions and payments only for campaign activities and official or political duties of elected office and is prohibited from any personal use of contributions, unless the presumption of political purpose in §5 of this Act is rebutted. Payments made to a bona fide charity or a foundation with respect to which the elected official or candidate has significant influence may be used for other than campaign activities or political duties.

*Comment: When a politician, or a person or entity closely tied to the politician, is given a contribution or payment as defined by the Act a political purpose is presumed. Contributions to*

*candidates or other political campaigns should be used only for campaign, official, or political activities and not for the personal enrichment of the politician or his or her family. Activities and gifts not covered by this prohibition are those determined by the state ethics/campaign finance entity to be for a purpose other than a political purpose and may be personally used by the politician. The enumeration of such items in §5 is thus not definitive but should serve as a guide to the state ethics/campaign finance entity.*

**§ 7. Limitations on Contributions and Payments**

A. No person, elected official, candidate, candidate committee, political committee, or entity as defined by this Act, including a political committee, controlled committee, or any other entity the actions of or decisions over which an elected official or candidate has significant influence, including those committees or entities which are identified using an elected official's or candidate's name or public office, shall make contributions or payments which in the aggregate exceed \$2,300 per election to any elected official or candidate, including payments to his or her relatives, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence.

B. No person, elected official, candidate, candidate committee, political committee, or entity shall make contributions or payments to candidates or political committees which in the aggregate exceed \$10,000 per year.

C. No person, elected official, candidate, candidate committee, controlled committee, political committee, or entity shall make contributions or payments which in the aggregate exceed \$4,600 per election to the totality of political party entities in this state.

D. No political party, including the totality of political party entities established and maintained in this state, shall make contributions or payments, including but not limited to transfers, reimbursements, or loans, which in the aggregate exceed \$10,000 per election to any elected official or candidate, including payments to his or her relatives, candidate committee, controlled committee, or any other committee or entity the actions of or decisions over which the elected official or candidate has significant influence.

E. Nothing in this section shall prohibit a person or persons from being a host or co-host of a fundraising event that has a political purpose and from collecting contributions or payments, within the limits established by this section, from persons in attendance at such event and presenting the contributions or payments to an elected official, candidate, or candidate committee. Such collections, however, shall be attributed in full to each host,

and, in addition to being individually disclosed per individual donor, shall be fully disclosed as contributions or payments collected by a person, or persons, and identified by the name, address, occupation and employer of such person or persons, and the date of and the amount raised at the fundraising event. Such disclosure shall also include the names of and the total amounts raised for elected officials and candidates per election by such person or persons and any other information required by the state ethics/campaign finance entity.

F. The limits on contributions and payments contained in this section shall not apply to fundraising by an elected official or a candidate on behalf of a bona fide charity or a foundation provided that the elected official or candidate receives no benefit from or does not permit his or her name or his or her public office to be used by such charity or foundation.

G. The limits established by subsections A, B, C, and D of this section shall be adjusted to account for inflation in the same manner and on the same schedule as the limitations contained in 2 U.S.C. §441a(c).

*Comment: The Act acknowledges both that money is an indispensable ingredient of political campaigns and official activities and that there is a legitimate governmental purpose to limits on contributions and payments in the avoidance of the appearance of corruption of politicians. The Act thus provides limits for all participants, in addition to providing a much broader definition of what constitutes a contribution. It also extends the definition of candidate to include individuals engaged in exploratory activities.*

*The Act intends to allow significant amounts of money to be raised from individual contributors and other entities, including controlled committees and non-campaign entities. Politicians would be free to fundraise for these organizations but would not be free to receive contributions of money or other payments in excess of the limit from such committees. These entities are treated like individual contributors. This closes the loophole that allows money to flow to the politician in large, often undisclosed amounts, from entities outside the campaign finance system. By creating bright-line limits across the board the Act also seeks to reduce the appearance of undue influence that large contributors have resulting from their large donations to non-campaign entities favored by a politician. The exception for fundraising on behalf of a bona fide charity or a foundation would apply, unless the elected official or candidate receives some benefit from or lends his or her name or prestige to the organization as is the case, for example, when fundraising takes place to endow a public building or a university chair.*

*Contribution limits for political parties are significantly higher than those for individuals and other entities in order to encourage parties as participants, but the limit is below that currently permitted under many state campaign finance laws. In addition, the Act seeks to increase disclosure related to the practice of bundling of numerous contributions, to reflect more*

*accurately the impact of a group of contributions from a particular industry, corporation, or similarly-minded group of contributors, whether or not the bundler is a registered lobbyist.*

*The Act proposes limits that track federal contribution levels and like the federal limits, are periodically indexed to account for inflation.*

**§ 8. Legal Defense Funds**

A. An elected official or candidate shall be prohibited from establishing a legal defense fund until the commencement of a formal dispute in a judicial, legislative, or administrative forum, including investigations commenced pursuant to §15 of this Act, that result from the official or political duties of the elected official or candidate.

(1) Only one such fund shall be established with respect to a particular formal dispute.

(2) Each legal defense fund shall at all times have a treasurer, designated by the elected official or candidate, who shall accept the appointment in a written statement. The treasurer shall be a resident of this state.

(3) Funds constituting a legal defense fund shall be deposited in and expended from a bank account separate from any other bank account held by the elected official or candidate.

(4) A fund established under this section is presumed to cease ninety (90) days following a final judgment in the formal dispute, unless good cause is found by the state ethics/campaign finance entity to extend the termination date.

B. An elected official or candidate is permitted to receive contributions to be placed in a legal defense fund. For purposes of this section, contributions do not include:

(1) the provision of legal services to an elected officer by the state or any of its political subdivisions when those services are authorized or required by law,

(2) the provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed contributions, or

(3) payments made for legal advice or services made by the elected official or candidate, or his or her relative.

36 C. Contributions may be received from any natural person but no individual shall make

contributions to a legal defense fund that in the aggregate exceed \$500 per calendar year. No individual shall be prohibited from making contributions to a legal defense fund who has made contributions or payments to an elected official or candidate that in the aggregate total the limitation established in subsection A of §7 of this Act.

D. Contributions to a legal defense fund are subject to the personal use prohibitions in §6 of this Act and may be expended only for activities directly related to the formal dispute described in subsection A.

E. Every contribution of \$100 or more per calendar year made to a legal defense fund shall be disclosed to the public, including the name, address, occupation and employer of the donor, and the date and the amount of the contribution, according to regulations determined by the state ethics/campaign finance entity. For each donor of \$100 or more, the required disclosure shall include his or her cumulative contributions for that year as of the date of the report. The reporting period for such contributions shall be no fewer than four times per year.

F. All contributions disclosed according to subsection E shall be electronically filed with the state ethics/campaign finance entity and immediately posted and accessible to the public. Where no electronic filing system is operable, such disclosure reports shall be made available to the public on the state website within 72 hours of their receipt by the state ethics/campaign finance entity.

G. The limit established by subsection C shall be adjusted to account for inflation in the same manner and on the same schedule as the limitations established in §7 of this Act.

H. No elected official or candidate shall transfer funds from a legal defense fund to any candidate, candidate committee, political committee, or political party entity. Surplus funds shall be deposited in the general fund of the state.

*Comment: The Act contemplates special treatment of legal defense funds because every elected official or candidate who is faced with a legal challenge that arises from official or political duties is entitled to defend him- or herself. Such a defense could be difficult to finance where supporters already have given the maximum permitted campaign contribution or payment in the election. The Act intends that legal defense fund contributions shall be made by natural persons rather than corporations, political committees, civic organizations, or other entities, and that all contributions to a legal defense fund of \$100 or more will be disclosed in a timely manner, at least through the posting of PDF files, to the public.*

**§ 9. Reimbursement for Politically-Related Travel Expenses**

A. Expenditures for travel incurred by an elected official or candidate may be reimbursed to the elected official or candidate for public office by a governmental, bona fide public or private educational, or charitable entity or from campaign funds if the following requirements are satisfied:

(1) Such expenses

- (a) are the actual and necessary expenses of the cost of transportation, lodging, and meals while away from his or her residence or principal place of employment,
- (b) are incurred in travel within the state or beyond the boundary of the state if notice of such travel, including a report itemizing the actual expenses incurred and the identifying by name and address the entity making the reimbursement, is submitted to the state ethics/campaign finance entity for disclosure on its website,
- (c) are reasonably related to, as determined by the state ethics/campaign finance commission, the performance of the official or political duties of the elected official or candidate and limited to the day immediately preceding, the day(s) of, and the day immediately following the performance of official or political duties, and

(2) are fully and publicly disclosed as payments according to §5 of this Act and regulations promulgated by the state ethics/campaign finance entity, and that include

- (a) a reasonable connection between a trip and official or political duties,
- (b) the amount actually spent on the trip,
- (c) the maximum per diem rates for government travel established by the state, and
- (d) disclosure by the educational or charitable entity of its donors or employees or representatives of the donor of \$1,000 or more during the previous calendar year who accompany the elected official or candidate on the trip, including the name, address, occupation and employer of any such donor as well as the date, amount of the donation, and cumulative amount for the donor in the previous calendar year, and

(3) the disclosure of reimbursable expenses for out-of-state travel required by paragraph (1) of this subsection is made to the state ethics/campaign finance entity within thirty (30) days of the last day of such travel and made available to the public by the entity on its website within 72 hours of receipt of the disclosure report.

B. The presumption that all reimbursed travel is for a political purpose, and is thus a contribution or payment, can be rebutted by application to the state ethics committee/campaign finance entity, which shall review and disclose on a publicly accessible website the

travel, hospitality, or entertainment not paid for by the elected official or candidate out of his or her personal funds.

*Comment: Trips, even some that might be considered extravagant, are not necessarily prohibited by this provision. The intent is to assure that the entities funding the travel are identified in a way that is accessible to the general public. The Act would limit to governmental, bona fide educational, and bona fide charitable institutions the types of entities that could provide reimbursement. However the Act requires that such educational and charitable institutions disclose their large donors of the previous year in order to do so. The Act further requires that reimbursable expenditures be actual, necessary, and reasonable as they relate to the travel and its official or political purpose. For example, a foreign fact-finding trip (determined to be related to official duties) could be reimbursed by the state, by the foreign government, or by an educational institution or a charity, and a candidate could use campaign funds (from a broader base of contributors) to make up any difference as long as the expenditures involved are determined to be actual, necessary, and reasonable. The disclosure required by this section, however, would discourage extravagant travel because there would be accessible records to show the direct association between the expenditures and the donor(s). Travel expenditure reports are required to be disclosed in a timely manner, at least through the posting of PDF files, to the public.*

#### **§ 10. Expenditures of Contributions and Payments for Official or Political Duties**

A. The contributions and payments described in §5 of this Act may be expended only for activities that relate to official or political duties.

B. All expenditures of \$100 or more shall be disclosed to the public, including the name and address of the recipient, his or her business, the amount of the expenditure, the express purpose of the expenditure, and the date the obligation was incurred. The disclosure report required by this section shall include subvendor information and accrued expenses.

C. The state ethics/campaign finance entity shall issue regulations for the filing and review of the disclosure reports required by this section, including both routine and field audits, and shall be authorized to enforce the provisions of this Act.

D. All expenditures disclosed according to subsection B shall be electronically filed with the state ethics/campaign finance entity and immediately posted and made accessible to the public. Where no electronic filing system is operable, such disclosure reports shall be made available to the public on the state website within 72 hours of their receipt by the state ethics/campaign finance entity.

*Comment: Along with the prohibition against personal use of contributions and payments in §6, the Act requires that expenditures by elected officials and candidates be made only for activities that relate to official or political duties. In addition, disclosure of expended amounts of \$100 or more is required, including the identity of the recipient, the express purpose of the expenditure, and the date the obligation was incurred. The required disclosure of subvendor and accrued expenses information will increase accountability and reduce the extent to which the true purpose of an expenditure can be obscured. The provision also requires that these disclosure reports be reviewed and audited by the state ethics/campaign finance entity. Such audits further assure that to the greatest extent possible, information regarding all important expenditures will be made public.*

### **§ 11. Expenditures for Political Communications**

A. Any person or entity, except a candidate or candidate committee making an expenditure for a political communication related to his or her own campaign for elected office, who makes expenditures for any political communication capable of dissemination to 500 or more persons of a general public audience, shall identify within the political communication the three largest contributors to such expenditure, including the name and complete address of each contributor. If a political committee is one of the three largest contributors to such expenditure then the communication shall in addition contain identification information including the name and complete address of the three largest contributors to the political committee during the election cycle in which the communication is made. If such committee is a controlled committee the name of the elected official or candidate, in addition to the other required disclosure, shall be disclosed in the communication. This provision shall not apply to bumper stickers, pins, buttons, pens and similar small items.

B. In the case of an audio or video communication, such information as is required by subsection A shall be clearly spoken either at the beginning or at the end of the communication and for not less than three seconds per contributor being identified, or shall be written and displayed for not less than four seconds; in the case of a written communication, such information shall be contained in a printed or drawn box apart from any other graphic material in at least 10-point type. In the case of larger formats such as a billboard, poster or other public display, such information shall be contained in a printed or drawn box in type at least ten percent (10%) of the largest typeface otherwise used in the communication.

C. Communications covered by this section shall include any audio or video communications via broadcast, cable, satellite, telephonic, or electronic or other means and any written communication via advertisements, pamphlets, brochures, flyers, letterheads, or other printed materials. Communications exempted from the requirements of this section shall include editorials, commentary and news stories by any broadcasting station (including a

cable television operator, programmer or producer), web site, newspaper, magazine, or other periodical publication (including any electronic publication).

*Comment: The Act seeks to increase and make consistent disclosure of the people and interests who fund political communications. It provides a broad definition of political communication that is intended to cover all non-commercial communications that have a political purpose and that would treat all of them the same way. The goal is to require a clear identification for the viewing or reading public of the individuals and interests that are funding such messages as the messages are viewed, heard or read rather than weeks or months later as part of a disclosure report. This provision is designed to enable the public to determine when a communication is funded by interests from out of their state. The provision applies to all audio or visual communications regardless of their length and all written communications regardless of their size.*

## **§ 12. Prohibition on Evasion of Limits or Disclosure of Funding Source**

A. It shall be unlawful for a person or entity who makes contributions, payments, or expenditures for a political purpose to create or use any committee or other legal entity to evade the limits contained in §7 or §8 of this Act or to avoid disclosure of any person, committee, political party, industry, or business entity as the donor of a contribution or payment or the funding source of a political communication.

B. Two or more entities shall be treated as a single entity if the entities:

- (1) share the majority of members on their boards of directors,
- (2) share two or more officers,
- (3) are owned or controlled by the same majority shareholder or shareholders or persons,
- (4) are in a parent-subsiary relationship, or
- (5) have by-laws so stating.

*Comment: This provision is intended specifically to prohibit the creation of shell committees or other entities that would mask the true identity of individuals who donate to elected officials or candidates or who fund political communications.*

## **§ 13. Penalty for Receipt of Illegal Contributions**

Candidates and elected officials who receive any illegal contribution(s), as determined by the ethics/campaign finance entity with jurisdiction to investigate any such violation, shall forfeit the amount of such contribution or contributions to the state or appropriate municipal treasury in addition to other fines or penalties that might result from administrative or

criminal proceedings relating to such contribution(s).

*Comment: The Act intends for elected officials and candidates to be liable for the receipt of illegal contributions. Thus, the elected official or candidate who is determined to have received an illegal contribution must forfeit the illegal amount to the general fund of the state or political subdivision. This provision additionally requires the elected official or candidate who is found to have violated the Act to pay fines or penalties that might be levied by the appropriate ethics/campaign finance entity.*

#### **§ 14. Duration of Political Campaigns**

A. All campaign activity is presumed to cease no later than 180 days following the date of the general election. If a candidate is defeated in a primary election or otherwise permanently suspends his or her campaign, then all campaign activity with respect to that campaign is presumed to cease no later than 180 days following the date of the primary election or the date the candidate leaves the race.

B. The presumption in section A may be rebutted by application to and a ruling by the state ethics/campaign finance entity. Such application is timely made if received by the state ethics/campaign finance entity no later than 60 days following the date of the general election or the primary election or such date as the candidate leaves the race.

C. Campaign funds remaining at the end of the 180-day period shall be deposited in the general fund of the state.

*Comment: Political contributions and payments are presumed by the Act to be used only for official or political purposes and more specifically for the conduct of political campaigns. Excessive fundraising activities, particularly activities with non-campaign entities, gives support to the appearance of corruption, and frequently the money raised becomes a “war chest” because it greatly exceeds the amount of money expended by a candidate to wage a meaningful campaign. The Act contemplates, therefore, that surplus campaign funds will be deposited in the general fund of the state. This encourages campaign funds to be expended for purposes anticipated by donors and discourages fundraising for purposes unrelated to a specific campaign.*

#### **§ 15. Enforcement**

A. The state ethics/campaign finance entity shall investigate alleged violations of this Act. Complaints about alleged violations must be received by the state ethics/campaign finance entity no later than four years following the alleged violation.

B. Any such investigation shall be commenced promptly following an allegation that a violation of the Act has occurred. Investigation may be commenced internally, or shall commence within thirty (30) days of the receipt of a written complaint from another governmental entity or a citizen of the state. Notice of the alleged violation and that an investigation has commenced shall be given in writing and within twenty-four (24) hours of such commencement to the person or entity involved.

C. A person or entity shall have fifteen (15) business days following receipt of notice from the state ethics/campaign finance entity that an investigation has been commenced to answer the allegations.

D. The state ethics/campaign finance entity shall determine whether there is probable cause to believe that a violation of the Act has occurred. If probable cause is found, the state ethics/campaign finance entity shall notify the person or entity involved and schedule a public hearing within thirty (30) business days of such determination. All proceedings and actions concerning a complaint or investigation prior to a determination of probable cause shall be confidential. Public disclosure of any information involved in an investigation prior to a determination of probable cause shall be punishable as a misdemeanor. The state ethics/campaign finance entity shall make public findings within fifteen (15) business days after the conclusion of any public hearing held to investigate alleged violations of the Act.

E. In all matters regarding the Act, the state ethics/campaign finance entity shall have the power to issue subpoenas and cause them to be served. Failure to obey a subpoena shall be punishable as contempt by a trial court of this state.

F. The state ethics/campaign finance entity shall define the penalties that shall attach for violations of the Act, including civil and criminal penalties as provided by law, including referral to the local district attorney or the office of the state attorney general.

G. Violations of §§5, 6, or 7 of the Act shall be prima facie evidence of a breach of fiduciary duty between the elected official or candidate and the citizens who elected him or her.

*Comment: The Act creates an enforcement timeline that does not permit allegations to languish without resolution. The state ethics/campaign finance entity must act quickly to determine whether probable cause of a violation of the Act exists and it must do so by conducting a non-public investigation according to its regulations. Any public disclosure of information relating to this preliminary phase of the investigation is punishable as a misdemeanor. A public hearing follows within 30 business days of a determination of probable cause, and findings must be made public within 15 business days of its conclusion. At all times, the state ethics/campaign finance entity is armed with the power to issue and serve subpoenas.*

**§ 16. Regulations**

The state ethics/campaign finance entity shall issue regulations for the implementation of this Act.

**§ 17. Severability**

The provisions of this Act are severable. If any provision herein is determined to be invalid in a court of competent jurisdiction, the invalidity does not affect the other provisions of the Act that may be given effect without the invalid provision.

# Loopholes, Tricks and End Runs:

*Evasions of Campaign Finance Laws, and a Model Law to Block Them*



*Loopholes* describes the ways many politicians raise money in amounts that exceed the limits of applicable campaign finance laws—for inaugurations, officeholder accounts, legal defense funds, charities, travel expenses, ballot measures, legislative leadership committees and other funds. These circumventions often allow contributors to curry favor with politicians and damage the public’s regard for government integrity.

*Loopholes* proposes a model law to block these evasions. It would require candidates and officials to disclose publicly all monies they raise, including contributions to non-campaign entities, and it would treat all such monies as campaign contributions subject to contribution limits—with narrow exceptions for contributions to bona fide charities in certain situations. The model law also proposes limits on contribution amounts and on the aggregate amount of money that recipients can raise from any one donor.

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