

On the Brink of Clean:

Launching San Francisco's New Campaign Finance Reforms



a report by the
Center for Governmental Studies

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Foreword

This report by the Center for Governmental Studies is the result of a six month study of campaign finance laws and practices in San Francisco. The report draws on a detailed textual analysis of San Francisco's new law, interviews with government administrators and political experts, relevant literature, experience from other jurisdictions and constitutional law court decisions.

This report on San Francisco will be incorporated into a longer forthcoming study of publicly funded campaign finance systems in other cities and counties throughout the nation. Jurisdictions under study for this report will include Los Angeles, New York City, Tucson, and Long Beach. The Center plans to publish a second major report on publicly funded campaign financing systems in other states. This second study will examine "clean money" laws in Arizona, Maine and Vermont and traditional matching funds programs in New Jersey, Minnesota and Wisconsin, among other states.

The Center has issued a number of reports on campaign financing. Its first report, *The New Gold Rush: Financing California's Legislative Campaigns* (1985), examined problems of campaign financing in the California State Legislature and drafted two model laws to remedy them. The 353-page report served as the model for statewide Proposition 68 in the June 1988 election. The Center's second report, an *Update to the New Gold Rush*, was published in 1987.

The Center's third report, *Money and Politics in the Golden State: Financing California's Local Elections* (1989), focused on campaign financing in California city and county elections. The Center also published a fourth report, *Money and Politics in Local Elections: The Los Angeles Area* (1989). These reports were the basis for the Los Angeles City campaign finance ordinance that was the subject of the Center's most recent report, *Eleven Years of Reform: Many Successes—More to be Done, Campaign Financing in the City of Los Angeles* (2001). The Center's earlier reports provided the foundation for multiple San Francisco campaign finance reforms, including Proposition O—the subject of this report. Local campaign finance laws throughout the nation have been based on the Center's work, including the laws of Los Angeles County, Long Beach, Oakland, Miami-Dade County, Florida, and Suffolk County, New York.

The Center wishes to thank its Project Director, Paul Ryan, who prepared this report. The Center's President, Bob Stern, and Vice Chairman and CEO, Tracy Westen, supervised the study. Bill Boyarsky, the Center's Senior Consultant and Center Project Director Emmett Berg participated in the drafting and review of the report. Rebecca Schwaner designed the cover. The Center is grateful for the time and help of the San Francisco Ethics Commission and numerous political experts who were interviewed or provided information for the preparation of this report. The Center also thanks Carnegie Corporation of New York and the Penney Family Fund, which funded this study. The views in the study do not necessarily reflect the opinions of these foundations, and they do not take any responsibility for any of the statements or views in the report.

Executive Summary

This report by the Center for Governmental Studies closely examines San Francisco's new campaign finance law, which will create the first publicly financed elections in the city's history in November 2002. Based on six months of study, including detailed legal analysis and interviews with government administrators, political experts and community activists, the report proposes a series of reforms to close loopholes in the law and preserve the intent of voters who approved San Francisco's public financing system through passage of Proposition O in 2000.

The adoption of Proposition O by San Francisco voters brings San Francisco to the brink of clean, open and honest elections. San Francisco's new law limits the size of contributions to candidates, offers partial public matching funds to board of supervisors candidates who voluntarily agree to limit their spending and empowers an Ethics Commission to administer, supervise and enforce the law. The Center's report finds that this law has potential to change the face of San Francisco politics for the better.

Public matching funds will provide qualifying candidates with the ability to wage competitive campaigns without excessive dependence on large donors. Matching funds will also enable supervisors to spend less time fundraising and more time addressing official city business. Supervisorial candidates agreeing to voluntary spending limits will slow the campaign spending arms race. These factors will amplify the political voice of individuals unable to make large campaign contributions and increase the representation of traditionally underrepresented communities.

The report also finds, however, that the law must be amended to close loopholes and respond to changing political practices which threaten to thwart the objectives of reform. The uncertainty of adequate funding is a major concern. The mayor's fiscal year 2001-02 budget allocation for the public financing program fell far short of the Ethics Commission's request. Without sufficient funding in the 2002-03 budget, the public financing program will undoubtedly fail.

San Francisco's campaign finance disclosure requirements must also be strengthened. San Francisco must require all political committees to disclose their independent spending intended to influence city elections according to the city's, not the state's reporting timeline. Their disclosure should extend to California's new breed of campaign spending, member communication expenditures by political parties. Without this, the Ethics Commission will not know when to lift spending limits in races with substantial independent spending—a vital provision of the public financing program.

The report recommends that San Francisco amend its charter to guarantee a specified level of annual funding to a trust fund, as is done in Los Angeles. The Ethics Commission should release public funds to candidates more than three months before the election, which is the current earliest release date. Finally, all spending limits, contribution limits and public financing amounts should be adjusted annually for changes in the cost of living.

I. Introduction

San Francisco's colorful history of campaign finance reform dates back to 1878, when the state legislature passed its first campaign finance law affecting only San Francisco. The purpose of the law was to prevent powerful political organizations from "extorting" money from candidates—an interesting reversal of what is commonly perceived to be the practice today.¹ More than 100 years later, campaign finance reform is still at the top of San Francisco's political agenda. Campaign spending has spiraled out of control in the past decade. Candidates and political committees set a new record this year by spending more than \$1 million dollars in San Francisco's public defender race.² The adoption of a public campaign financing ballot measure by San Francisco voters in 2000 brings San Francisco to the brink of clean, open and honest elections. For the first time in the city's history, public financing will be available in the November 2002 elections to candidates for the board of supervisors, San Francisco's legislative body, although not to candidates for mayor or other offices. Campaign finance reform advocates hope to expand the program to other offices.

The success of San Francisco's nascent public financing program will depend on two critical factors—the willingness to fund the program adequately and the Ethics Commission's ability to require disclosure of vital campaign finance information from political committees active in San Francisco's elections.

In the program's first year of operation, fiscal year 2001-02, the Ethics Commission requested a budget of more than \$300,000 to begin implementation. The mayor's budget contained an allocation of \$30,000—one-tenth of the amount requested by the Ethics Commission. With the first scheduled publicly financed elections to be held in fiscal year 2002-03, the success of the program hinges on the Spring 2002 budgeting process. Without sufficient funding, the public financing program will undoubtedly fail.

Political committees have played an increasingly active role in recent San Francisco elections. Committees raise large sums of money, make contributions to candidates' campaigns and spend large sums of money on campaign advertisements independently from candidates' campaigns. The state Democratic Party committee spent more than \$500,000 on San Francisco's March 2002 public defender race—an office with a \$175,000 spending limit for candidates.³ It is still unclear who made contributions to this state committee and exactly how much the committee spent to influence San Francisco elections. San Francisco has struggled to obtain timely and accurate disclosure of the financial activities of committees. Disclosure of independent spending is vital to the enforcement of public financing program spending limits. Without improving the city's disclosure laws and vigorously enforcing those laws, voters and candidates will find San Francisco's public financing program dead on arrival this fall.

This report begins with a brief history of campaign finance reform in San Francisco, followed by a summary of the city's campaign finance laws. The report ends with a set of recommendations to strengthen San Francisco's public financing program.

II. Background and Summary of the Law

A. Backdrop to Reform

San Francisco, home to approximately 776,000 residents, has a unique form of government in California.⁴ The City and County of San Francisco were consolidated into a single government by the state legislature in 1856. The people of San Francisco elect a mayor, an eleven member board of supervisors (from single member districts), a city attorney, a district attorney, an assessor, a public defender, a treasurer and a sheriff in nonpartisan elections.

San Francisco has historically used the common two-stage election process but recently adopted a unique “instant runoff” system. In a two-stage election, if no candidate receives a majority of the votes cast in the general election, the two candidates receiving the most votes compete in a separate runoff election to determine the winner. On March 5, 2002, San Francisco voters approved Proposition A—a charter amendment that replaced the two-stage election process with an instant runoff system. In an instant runoff system, the voter ranks candidates for a single office in order of the voter’s preference. If no candidate receives a majority of the votes cast, the last-place finisher is eliminated and that candidate’s ballots are redistributed to the voters’ second choice candidate. This process is repeated until one candidate accumulates a majority of the votes cast, eliminating the need for a separate runoff election. Though Proposition A was intended to take effect immediately, San Francisco’s Department of Elections has announced that it may not have the necessary equipment by November 2002 to conduct instant runoff elections. The instant runoff system requires the city to purchase new vote-counting computer software—software that hasn’t yet been developed by the city’s elections equipment vendor.⁵ Consequently, the fall 2002 elections will likely be conducted using this two-stage system, with the instant runoff system being implemented in 2003.

The history of modern campaign finance regulation in San Francisco dates back to 1983, when the city adopted campaign contribution limits. Since then, the law has been amended many times to address the ever-changing role of money in politics. San Francisco voters created an Ethics Commission in 1993, with approval of Proposition K. In that same election, voters abolished elected officials’ officeholder accounts by approving Proposition X. Not satisfied with previous reforms, the board of supervisors enacted a system of voluntary spending limits in March of 1995, based on recommendations by the Center for Governmental Studies. A variable contribution limit served as the incentive for candidates to accept the spending limits. Candidates who agreed to the spending limits in a general election could accept contributions up to \$500, while candidates who did not accept the spending limits could only accept contributions up to \$150.

The spending limits ordinance enacted by the supervisors in 1995 never took effect. In an effort to free his reelection campaign from the restraints of the new campaign finance regulations, then-Mayor Jordan brought a lawsuit against the city.

Jordan successfully argued that the campaign finance ordinance enacted by the board illegally overrode the 1993 campaign finance reforms adopted by voters, and the court enjoined the ordinance.⁶ Both Jordan and the board of supervisors then put competing campaign finance reform measures on the November 1995 ballot.⁷ Voters approved the board of supervisors' more stringent Proposition N by a margin of 61% to 39%.⁸ Jordan went zero for two in 1995: his ballot proposition lost to Proposition N in the general election and he lost his reelection bid to Willie Brown in the December runoff. The board of supervisors' measure was nearly identical to the spending limits law enjoined earlier in 1995. Proposition N, however, was not subject to legal challenge on the grounds that led to the injunction earlier in 1995 because it was enacted by the voters, not the board of supervisors.

The new law operated smoothly for three years, with nearly all candidates agreeing to limit their spending. The 1999 elections were a different story. Clint Reilly, the Republican political consultant who teamed up with Mayor Jordan in support of the 1995 ballot measure competing with Proposition N, entered the 1999 mayoral race intending to spend millions of dollars in personal wealth in his effort to unseat incumbent Willie Brown. In September 1999, Reilly filed a lawsuit in federal court challenging the \$150 contribution limit for candidates who did not accept the spending limits. Also in the fall of 1999, the pro-business organization San Franciscans for Sensible Government also filed a lawsuit in federal court, challenging the city's \$500 limit on contributions to political committees that make independent expenditures. U.S. District Judge Claudia Wilken suspended the enforcement of both provisions.⁹

With critical provisions of the campaign finance law declared unenforceable, the 1999 mayoral race ballooned into the most expensive election in the city's history. Reilly, who failed to advance to the runoff election, spent more than \$4 million of his own money, causing the spending limits to be lifted for other candidates in the mayoral race. Incumbent Mayor Willie Brown received more than \$3.4 million in campaign contributions and benefited from an additional \$2.6 million in independent expenditures.¹⁰

The demise of critical campaign finance regulations, combined with unprecedented increased spending by candidates and independent political committees in the 1999 elections, prompted the Ethics Commission, local activists and elected officials to begin work on a new plan for reform. The Center for Governmental Studies assisted the Ethics Commission in drafting a public financing ordinance. The Ethics Commission submitted the proposal to the board of supervisors, but the board voted it down 10-1, with only Board President Tom Ammiano supporting the proposal. Balked by the supervisors, the Ethics Commission used its unique authority to place ordinance proposals directly on the ballot for voter approval.¹¹ This public financing ballot measure, Proposition O, was adopted at the November 2000 election.

The Ethics Commission faced another obstacle. San Francisco's law prohibits the commission from campaigning for candidates and ballot measures, even for measures the commission itself places on the ballot. Help came from another quarter. California

Common Cause hired a full-time organizer, Mike Mooney, to spearhead the campaign. In less than one month, Mooney had assembled a coalition of 30 community leaders and grassroots organizations to endorse Proposition O with statements in the city's voter guide.¹²

The "Yes on Prop O" campaign faced little organized opposition, in part because there were two competing city planning initiatives on the ballot. According to Charles Marsteller, former coordinator of San Francisco Common Cause, one initiative, Proposition L,

was such a threat to the developers and to the mayor and to the establishment, that they marshaled \$2.5 million to fight it. [Proposition L] was really a check on the mayor's power, because he has had runaway authority over the permitting process, over permit appeals, over the port authority, over a lot of developmental issues.¹³

Marsteller contends that campaign contributors were so focused on Proposition L that little money was raised in opposition to Proposition O. The "No on Prop O" campaign raised \$67,000 and sent a mail piece to registered voters throughout the city, with admonitions against Proposition O written by an odd couple—the San Francisco Central Labor Council and the San Francisco Chamber of Commerce. The "Yes on Prop O" committee raised \$43,000, which paid the organizer's salary, printed some brochures and paid for the campaign's inclusion on multiple slate mailers. On November 7, 2000 the voters of San Francisco passed Proposition O—adopting public financing for the board of supervisors—by a margin of 52.7% to 47.3%.

B. Current Law

Proposition O enhanced an existing system of campaign finance and ethics laws with the addition of a voluntary public campaign financing program for candidates running for the board of supervisors. The public financing program combines public matching funds with small lump-sum grants of public funds as incentives for candidates to agree to spending limits. The San Francisco Campaign Finance Reform Ordinance, as amended by Proposition O, lists the following as its goals:

- Ensure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes.
- Create an incentive to limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war chests for defensive purposes beyond the amount necessary to communicate reasonably with voters.
- Reduce the advantage of incumbents and thus encourage competition for elective office.
- Allow candidates and officeholders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents' community.

- Ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of the important issues involved in political campaigns.
- Limit contributions to candidates and committees, including committees that make independent expenditures, to eliminate or reduce the appearance or reality that large contributors may exert undue influence over elected officials.
- Help restore public trust in governmental and electoral institutions.¹⁴

One year after the voters approved Proposition O, they went back to the ballot box to approve Proposition E. Proposition E, a charter amendment placed on the November 6, 2001 ballot by the board of supervisors, passed with nearly 63% of the vote. Proposition E was intended to address the widespread perception among San Francisco voters that the Department of Elections has for many years been under undue influence from the mayor. In the words of Supervisor Tony Hall, one of Proposition E's authors, "Prop. E is the first step to ensuring honest and independent elections in San Francisco for the first time in 25 years."¹⁵

In addition to overhauling the structure of Department of Elections, Proposition E significantly impacted the Ethics Commission. Proposition E extinguished the terms of all five ethics commissioners on February 1, 2002, and extended the term of future ethics commissioners from four to six years.¹⁶ Proponents of the measure argued that the Ethics Commission was "in the mayor's pocket" and needed to be replaced. Others claimed the commissioners were fired precisely because they asserted their independence and refused to support ethics reform proposals put forth by members of the board of supervisors. Proposition E also repealed a charter provision that prohibited the Ethics Commission from investigating allegations of wrongdoing until the city attorney and district attorney notified the commission that no investigations would be undertaken by their offices. With the passage of Proposition E, the Ethics Commission may promptly investigate allegations of wrongdoing, rather than waiting weeks or months for the city attorney or district attorney to respond to such allegations.

Proposition E was met with mixed reviews by the campaign finance reform community. Long-time San Francisco activist and former San Francisco Common Cause Coordinator Charles Marsteller stated, "They overreached when they fired the Ethics Commission."¹⁷ Proposition O campaign director Mike Mooney echoed Marsteller's sentiments, lamenting the fact that the new Ethics Commission will lack familiarity with the city's campaign finance and ethics laws that takes years to develop.¹⁸

Most troubling is the precedent established by this charter amendment. The supposedly independent Ethics Commission can in effect be fired at will by the board of supervisors through the ballot measure process. Nevertheless, Proposition E's overhaul of the Department of Elections and grant of greater investigatory power to the Ethics Commission should be applauded.

1. Matching Funds Program for Board of Supervisor Candidates

a. Offices Covered

Public financing is available only to candidates seeking election to the board of supervisors. Public financing is *not* available to candidates for mayor, city attorney, district attorney or any other elective office in San Francisco.

b. Funding the Program

Proposition O provides for the creation of the San Francisco Election Campaign Fund, into which the City and County of San Francisco must appropriate in each fiscal year “an amount sufficient to provide funding for election campaigns . . . [of] all candidates for the Board of Supervisors who may be eligible to receive such funds.”¹⁹ The Ethics Commission is required to assist the mayor and the board of supervisors in estimating the amount required. “If at any time the amount appropriated is insufficient to fund all eligible candidates, the Ethics Commission shall notify the Mayor and the Board of Supervisors, and the City and County shall appropriate additional funds.”²⁰ Proposition O imposes a maximum limit of \$2 per resident on annual appropriations to the Election Campaign Fund.²¹ Based on figures from the U.S. Census Bureau’s Census 2000, the maximum annual allocation to the Election Campaign Fund would be \$1.553 million.²²

c. Written Certification

In order to be eligible for public financing, a candidate must file a statement with the Department of Elections indicating acceptance of the spending limits and participation in the public financing program no later than the deadline for filing nomination papers with the department. The candidate’s decision to participate or not participate in the public financing program is binding for both the general election and the runoff election. Once filed, this statement may not be withdrawn.²³ Upon meeting all of the public financing program eligibility requirements detailed below, a participating candidate must file with the Ethics Commission a declaration that the candidate has met the requirements, along with any supporting material requested by the commission. This declaration must be filed no earlier than June 1 of the election year and no later than the Department of Elections nomination papers filing deadline.²⁴

d. Fundraising Threshold

To be eligible for public financing, a board of supervisors candidate must receive contributions between \$10 and \$100 from at least 75 individuals who are residents of San Francisco, totaling at least \$7,500.²⁵ An eligible candidate must also be opposed by someone who is eligible to receive public financing, or who has received or spent \$7,500 or more.²⁶

e. Spending Limits

Candidates accepting spending limits must abide by them even if they do not qualify to receive matching funds. The general election spending limit for board of

supervisors candidates is \$75,000. The runoff election spending limit is \$20,000.²⁷ The Ethics Commission is authorized to adjust these limits for changes in the cost of living but has never done so.²⁸

f. Mandatory Debates

In order to be eligible for public financing, a candidate must agree to participate in at least one debate with the candidate's opponents.²⁹

g. Public Matching Funds

A general election candidate for the board of supervisors who is certified by the Ethics Commission to have met all of the program eligibility requirements (detailed above) receives a lump sum payment of \$5,000 in public funds. The candidate then receives \$4 in public funds for each of the first \$5,000 in contributions from individuals who reside in San Francisco. Thereafter the candidate receives \$1 in public funds for every \$1 in matchable contributions raised. The \$7,500 in qualifying contributions raised by a candidate is *not* matchable.³⁰ The maximum amount of public funds a candidate may receive for a general election is \$43,750.³¹ The first payment of public funds may not occur earlier than the day following the deadline for filing nomination papers with the department of elections.³²

A participating candidate who meets the eligibility requirements for the general election and advances to a runoff election is automatically eligible to receive public funding for the runoff. The candidate receives a lump sum payment of \$5,000 in public funds and then receives \$4 in public funds for every \$1 in matchable contributions raised. The maximum amount of public funds a candidate may receive for a runoff election is \$17,000.³³

h. Lifting the Spending Limits

If a candidate chooses not to participate in the matching funds program and either receives contributions or spends more than 100% of the spending limit, the spending limit is no longer binding on any candidate running in the same supervisorial district.³⁴

If a political committee or committees in the aggregate make independent expenditures in support of or in opposition to a candidate in excess of 100% of the spending limit, the spending limit is no longer binding on any candidate running in the same supervisorial district as the candidate who was the subject of the independent expenditures.³⁵

In order to facilitate this lifting of the spending limits, a candidate who chooses not to participate in the matching funds program and receives contributions or makes campaign expenditures spends in excess of 75% of the spending limit (\$56,250 in a board of supervisors general election) must notify the Ethics Commission within 24 hours. If such candidate receives contributions or makes campaign expenditures in excess of 100% of the spending limit (\$75,000 in a board of supervisors general election), the candidate must again notify the commission within 24 hours.³⁶

A political committee that makes independent expenditures in support of or in opposition to a candidate for the board of supervisors that equal or exceed 5% of the spending limit (\$3,750 in a board of supervisors general election) must notify the Ethics Commission within 24 hours. Such a committee must again notify the Ethics Commission within 24 hours each time it makes independent expenditures in support of or in opposition to a candidate that equal or exceed 5% of the spending limit.³⁷

2. Contribution Limits

San Francisco's contribution limits apply to all candidates running for public office, including mayor and other city offices not eligible for public financing.

a. Contributions to Candidates

Campaign contributions from a single donor to a candidate in a general election may not exceed \$500.³⁸ Aggregate contributions from a single donor to all candidates in a general election may not exceed \$500 multiplied by the number of city elective offices to be voted on at the general election.³⁹

Campaign contributions from a single donor to a candidate in a runoff election may not exceed \$250.⁴⁰ Aggregate contributions from a single donor to all candidates in a runoff election may not exceed \$250 multiplied by the number of city elective offices to be voted on at the runoff election.⁴¹

b. Contributions to Political Committees

Campaign contributions from a single donor to a non-candidate political committee may not exceed \$500 per calendar year.⁴² Aggregate contributions from a single donor to all non-candidate political committees may not exceed \$3,000 per calendar year.⁴³ This limitation applies to any committee making expenditures to support or oppose a San Francisco candidate, including independent expenditures.⁴⁴ Some doubt exists, however, as to whether San Francisco will enforce this \$500 contribution limit against state political committees. The difficulties involved with enforcing this contribution limit are detailed in the "Recommendations" section below.

c. No Fundraising Time Restrictions

Prior to soliciting or accepting any campaign contribution, a candidate must file a declaration of intention to become a candidate for a specific office with the San Francisco Department of Elections.⁴⁵ However, there is no restriction on how early a candidate may file this declaration and, consequently, no restriction on how early a candidate may begin fundraising for the general election. Candidates are prohibited from fundraising for a runoff election until the day after the general election.⁴⁶

d. Contributor Information Required

If the cumulative amount of contributions received from a donor is \$100 or more, the recipient committee may not deposit the contribution unless the committee has

obtained: the contributor's full name, the contributor's address, the contributor's occupation and the name of the contributor's employer.⁴⁷ This provision goes one step beyond typical disclosure laws *by expressly prohibiting a committee from depositing a contribution* unless the above-stated information is obtained. A committee treasurer who violates this provision is subject to both criminal and civil penalties.⁴⁸

e. Loan Restrictions

Loans "of any kind or nature" are considered contributions and are subject to all of the contribution limits.⁴⁹ Furthermore, no candidate for the board of supervisors may have outstanding personal loans to his or her campaign committee of more than \$15,000 at any time.⁵⁰

f. Transfer Ban

Contributions accepted by a candidate may not be expended for the candidacy of another individual, nor in support of or opposition to any ballot measure.⁵¹

g. Contributions From Contractors Doing Business With The City Prohibited

A person who contracts with the city for the sale of goods or services, or for the leasing of any property to or from the city, whenever such transaction would require approval by any elective officer, is prohibited from making a contribution to such an officer or candidate for such an office between the commencement of negotiations and the completion or termination of negotiations for the contract.⁵²

3. Spending Limits for Offices Other Than Board of Supervisors

A system of voluntary spending limits for all candidates for San Francisco elective office was enacted by voter passage of Proposition N in 1995. Until 1999, candidates who chose to abide by the spending limits were allowed to accept contributions up to a \$500 limit, while candidates who did not accept the spending limits were subject to a \$150 contribution limit. Enforcement of this variable contribution limit was suspended as part of a lawsuit settlement, when a federal judge ruled that the \$150 limit was unconstitutionally low.⁵³ While board of supervisors candidates who agree to the spending limit are eligible for public financing, candidates for other offices who agree to the spending limits are rewarded only by a notice in the voter information pamphlet that they have agreed to the limits. The voter pamphlet candidate statement of candidates who accept the spending limits is followed by the notice, "The above candidate has agreed to voluntarily limit campaign spending." Candidates who do not accept the spending limits have no notice following their statement. The current spending limits are as follows:⁵⁴

- Mayor: \$600,000 (General), \$400,000 (Runoff)
- Other Citywide Office: \$175,000 (General); \$100,000 (Runoff)
- Bd. of Education: \$75,000
- Comm. College Dist.: \$75,000

The Ethics Commission is authorized to adjust these limits for changes in the cost of living but has never done so.⁵⁵

If a candidate does not accept the spending limit and then exceeds the applicable spending limit, or political committees in the aggregate make independent expenditures supporting or opposing a candidate that exceed the spending limit, the spending limit is no longer binding on any candidate in the race.⁵⁶

4. Campaign Finance Reporting and Disclosure

Campaign finance reporting and disclosure is the process by which the financial transactions of candidates and committees (*e.g.*, contributions received, expenditures made) are recorded, submitted to the Ethics Commission and/or the Secretary of State, and made available to the public for inspection. Accurate and timely disclosure of campaign finance information is essential to the enforcement of campaign finance laws. Campaign finance reporting and disclosure requirements for candidates and political committees in San Francisco are established by a combination of state and local law. This section provides an overview of state disclosure laws, followed by an explanation of the city's laws.

a. State Law Requirements

Under California state law, candidates for San Francisco office must file semiannual campaign finance disclosure reports by July 31 (for the period ending June 30) and by January 31 (for the period ending December 31).⁵⁷ In addition to the semiannual reports, San Francisco candidates must file two additional pre-election reports, one approximately 40 days before the election and one 12 days before the election.⁵⁸ Candidates for the board of supervisors must comply with additional city disclosure requirements related to the public financing program.

The filing requirements for non-candidate political committees are considerably more confusing. State law categorizes political committees according to the activities in which the committees engage. The most important categorization, with regard to campaign finance disclosure in San Francisco, is whether a non-candidate committee is determined to be a *city* general purpose committee, a *county* general purpose committee or a *state* general purpose committee. City general purpose committees are required by state law to file pre-election campaign finance reports according to San Francisco's election schedule.⁵⁹ County and state general purpose committees are required to file pre-election reports for San Francisco's even-year elections. County and state general purpose committees, however, are *not* required by state law to file pre-election reports for San Francisco's odd-year elections.⁶⁰ This anomaly, combined with the California Fair Political Practices Commission's determination that committees active in San Francisco elections are county committees (not city committees),⁶¹ allows non-candidate committees to make large expenditures related to odd-year elections without having to disclose the identity of the committee's contributors until months after the election.⁶² This campaign finance reporting loophole makes enforcement of San Francisco's limit on contributions to political committees extremely difficult.

b. Electronic Filing and Disclosure

Every elected city official, candidate or political committee that receives \$5,000 in annual contributions or makes \$5,000 of independent expenditures during a single year must file campaign finance disclosure reports with the Ethics Commission in an electronic manner prescribed by the commission (*e.g.*, diskette, email).⁶³ This campaign finance information is immediately made available to the public for inspection via the Ethics Commission's website. The Ethics Commission also conducts workshops to train the public in how to access and utilize this data.

c. Supplemental Reporting By Nonparticipating Candidates

A board of supervisors candidate who chooses not to participate in the public financing program must file a statement with the Ethics Commission, no later than the deadline for filing nomination papers with the Department of Elections, indicating whether the candidate's expenditures or campaign account balance in the aggregate equal or exceed \$7,500. If the nonparticipating candidate reaches the \$7,500 threshold after the nomination paper filing deadline, the candidate must file a statement with the Ethics Commission disclosing this fact within 24 hours.⁶⁴ This provision allows the commission to determine when the opponent of a participating candidate has met the monetary threshold that must be met before public funds are disbursed to the participating candidate.

A nonparticipating candidate must also notify the Ethics Commission within 24 hours of receiving contributions, making expenditures or having a campaign account balance that exceeds 75% of the spending limit. Such a candidate must again notify the commission within 24 hours of receiving contributions, making expenditures or having a campaign account balance that exceeds the spending limit.⁶⁵ This provision allows the commission to lift the spending limit for participating candidates faced by high-spending nonparticipating opponents.

d. Supplemental Reporting By Political Committees

Any political committee formed or existing primarily to support or oppose San Francisco candidates⁶⁶ that makes independent expenditures in support of or in opposition to a candidate that equal or exceed 5% of the spending limit in the case of a candidate for the board of supervisors,⁶⁷ or 25% of the spending limit in the case of a candidate for any other office,⁶⁸ must file a statement with the Ethics Commission disclosing this fact within 24 hours. Such a committee must file a supplemental statement with the Ethics Commission within 24 hours each time it makes independent expenditures which equal or exceed an additional 5% of the spending limit.⁶⁹ This provision allows the commission to lift the spending limits for participating candidates opposed by large independent expenditures.

Any political committee (including those not formed or existing primarily to support or oppose San Francisco candidates) that makes independent expenditures in support of or in opposition to a San Francisco candidate is regulated by state reporting

requirements. State law requires that such committees “file independent expenditure reports at the same time, covering the same periods, and in the same places where the . . . committee would be required to file . . . if it were formed or existing primarily to support or oppose the candidate”⁷⁰ This provision would seem to subject all political committees making independent expenditures supporting or opposing San Francisco candidates to San Francisco’s reporting requirements—even state general purpose committees.

e. Disclosure Requirements for Mass Mailings and Recorded Telephone Messages

San Francisco requires that each mass mailing paid for by a candidate for city office contain the statement, “paid for by _____,” followed by the candidate’s name and address in 14 point type. The candidate paying for such a mass mailing must file an original or a copy of the mailing with the Ethics Commission, which makes the mailing available to members of the public for inspection. The candidate must also file an itemized disclosure statement for the mailing, detailing the separate costs associated with the mailing such as photography, design, printing and postage.⁷¹

Any person who makes independent expenditures for a mass mailing or other campaign materials which support or oppose a candidate for city office must include the following statement on the materials in 14 point type:⁷²

Notice to Voters
(Required by City and County of San Francisco)
This mailing is not authorized or approved
by any candidate for City and County office
or by any election official.
It is paid for by (name and committee
identification number). (address, city, state).

Total cost of this mailing is (amount).

San Francisco law also requires that any recorded campaign telephone message include the statement, “paid for by _____,” followed by the name of the person who paid for the recorded telephone message.⁷³

5. Voters Guide

The city charter directs the board of supervisors to adopt ordinances for the creation and distribution of a voter information pamphlet to be delivered by mail to every voter at least ten days prior to each election.⁷⁴ The board of supervisors has adopted ordinances instructing the Director of Elections to prepare a comprehensive voter information pamphlet containing information regarding all candidates and measures on the ballot. In addition to mailing this pamphlet to each voter, the Department of Elections has made it available on its Web site. The Web version of the voter information pamphlet for the November 2001 election was 119 pages long. By law, the

pamphlet must include extensive ballot measure information, as well as the following candidate information:⁷⁵

- A summary of voters' rights.
- Definitions of terms appearing in the pamphlet.
- A sample ballot.
- A statement by each candidate.
- A notice informing voters whether the candidate has agreed to the voluntary spending limit.

The materials in the voter information pamphlet are produced by a coordinated effort between the director of elections and the Ballot Simplification Committee, a committee appointed by the mayor and board of supervisors to ensure that the voter pamphlet is written in language that can be understood by the average voter.⁷⁶

6. *San Francisco Ethics Commission*

The Ethics Commission was created by a charter amendment approved by the voters of San Francisco in 1993. The commission is composed of five part-time members, with one member appointed by each of the following: the mayor, the board of supervisors, the city attorney, the district attorney and the assessor. Members of the commission serve a single, staggered six-year term without compensation.⁷⁷ The commission's total budget for fiscal year 2001-02 was \$878,903, which was later reduced by \$29,000 at the mayor's request as a result of the city's projected budget shortfall for the fiscal year. The 2001-02 fiscal year budget allocation for the implementation of Proposition O was approximately \$95,000.⁷⁸ The commission employs eight full-time and one part-time staff, and it plans to hire four additional employees to implement the public financing program for the 2002 elections.⁷⁹

The Ethics Commission is charged with the administration and enforcement of a comprehensive scheme of ethics laws regulating officeholders, city employees, lobbyists, campaign consultants and candidates. The commission's duties include:

- Administration of the public financing program.
- Receipt of campaign finance disclosure forms from all candidates, regardless of their participation in the public financing program.
- Auditing candidates' disclosure reports, regardless of their participation in the matching funds program, in order to ensure compliance with state and local law.
- Conducting investigations of alleged violations of ethics and campaign finance law, including use of its subpoena power when necessary.
- Receiving statements of economic interest from city officials.
- Issuing advice letters regarding ethics and campaign finance regulations.
- Reporting to the mayor and board of supervisors annually concerning the effectiveness of city laws related to campaign finance and government

ethics, and making recommendations for adoption of new laws and revisions to existing laws.

- Developing an educational program for city officials and candidates regarding ethics and campaign finance laws, including printed materials that summarize the laws in simple, non-technical language.⁸⁰

By a four-fifths vote of all its members, the commission has the authority to place ordinances relating to government ethics, lobbying and campaign finance on the ballot for voter approval.⁸¹ This unique power for an ethics commission proved critical to the adoption of public financing in San Francisco. The board of supervisors refused to adopt the Ethics Commission's public financing proposal, but the voters supported the proposal when it was placed on the ballot as Proposition O.

III. Recommendations

San Francisco's public financing program will be implemented for the first time in November of 2002, when five members of the board of supervisors will be elected. Though a comprehensive analysis of the public financing program is premature at this time, our preliminary analysis has led to fourteen recommendations that would substantially strengthen the program.

San Francisco must dramatically improve its campaign finance disclosure provisions or risk failure of the public financing program in its first year of implementation. Funding for the public financing program must also be secured. Without a guaranteed source of annual funding, the program will be in constant jeopardy in years to come. These and other recommended reforms are detailed below.

A. Disclosure

1. Require All Committees to Disclose Independent Expenditures According to San Francisco, Not State Filing Deadlines

Any political committee formed or existing primarily to support or oppose San Francisco candidates that makes independent expenditures in support of or in opposition to a candidate that equal or exceed 5% of the spending limit in the case of a candidate for the board of supervisors,⁸² or 25% of the spending limit in the case of a candidate for any other office,⁸³ must file a statement with the Ethics Commission within 24 hours disclosing this fact.

Any political committee (including those *not* formed or existing primarily to support or oppose San Francisco candidates) that makes independent expenditures in support of or in opposition to a San Francisco candidate is regulated by state reporting requirements. State law requires that such committees "file independent expenditure reports at the same time, covering the same periods, and in the same places where the . . . committee would be required to file . . . if it were formed or existing primarily to support

or oppose the candidate⁸⁴ This state law provision would seem to require a county or state general purpose committee to report independent expenditures according to San Francisco's reporting timeline. However, San Francisco's city attorney office has interpreted state law to prohibit San Francisco from requiring state and county general purpose committees to file independent expenditure reports according to San Francisco's filing deadlines.⁸⁵

San Francisco's interpretation of state law is based on numerous California State Fair Political Practices Commission ("FPPC") advisory opinions to San Francisco Deputy City Attorney Julia Moll. Although no FPPC advisory opinion to San Francisco has specifically addressed independent expenditure reporting, several have addressed campaign finance reporting more generally. In 1996, the FPPC advised Moll that San Francisco was prohibited by state law from designating its Ethics Commission, rather than the Director of Elections, as the exclusive filing officer for all campaign finance reports.⁸⁶ Again in 1997, the FPPC advised Moll that San Francisco was prohibited by state law from requiring a county or state general purpose committee to file with the Ethics Commission unless the committee was "active only in" San Francisco. The FPPC clarified the phrase "active only in," advising that a general purpose committee which conducts more than *de minimis* activity outside the county is *not* a committee which is "active only in" San Francisco. Activity considered to be *de minimis* depends on the overall activity and history of the committee, though a contribution of \$100 by a local committee to a state candidate might be considered more than *de minimis* activity in some circumstances.⁸⁷

The FPPC based its advice on a state law provision that prohibits local jurisdictions from imposing filing requirements additional to those imposed by state law on a general purpose committee, unless the committee is active only in the local jurisdiction.⁸⁸ The FPPC failed to mention the conflicting state law that orders any committee making independent expenditures totaling \$1,000 or more to file the campaign finance reports required by the jurisdiction of the candidate supported or opposed by that independent expenditure.⁸⁹ The conflicting independent expenditure reporting requirement likely went unmentioned because the question posed to the FPPC by San Francisco related to more general reporting requirements (*e.g.*, semi-annual reports, pre-election reports) and not independent expenditure reporting specifically.

San Francisco should enforce its independent expenditure reporting provision as authorized by state law. San Francisco's administration of its public financing program depends on the timely disclosure of all independent spending. Candidates who agree to San Francisco's spending limits depend on the trigger provision that lifts those spending limits when independent expenditures in the race exceed the spending limit. To facilitate this trigger provision, city law requires committees that make independent expenditures exceeding 5% of the spending limit for supervisorial candidates, or 25% for any other candidate, to report the expenditure within 24 hours. In contrast, under state disclosure laws, independent expenditures supporting or opposing state candidates need only be reported by the next campaign finance report filing deadline, unless the independent

expenditure is made within 16 days prior to an election, in which case it must be reported within 24 hours.⁹⁰

If state filing deadlines are enforced rather than city filing deadlines, the impact on San Francisco candidates could be substantial. For example, the county central committee of a political party, which is characterized as a county general purpose committee, could make \$100,000 in independent expenditures supporting a candidate for the San Francisco Board of Supervisors 44 days before an election. The next state-imposed filing deadline for such a committee would be 12 days before the election, at which point the Ethics Commission would first learn of the independent expenditures. Consequently, the spending limits on other candidates in the race would not be lifted until 12 days before the election. If the same independent expenditure were made with the city's filing deadlines imposed, the expenditure would have been disclosed—and the spending limits lifted—43 days before the election.

San Francisco should interpret state law to authorize the imposition of the city's 24 hour independent expenditure disclosure requirement on any committee that makes such expenditures supporting or opposing a candidate for city office.

2. Require All Committees to Disclose Member Communications According to San Francisco Filing Deadlines

California voters adopted Proposition 34 in November 2000. Proposition 34 amended state campaign finance law so as to remove payments by a member organization for communication with its members from the state's definition of "independent expenditure."⁹¹ As a result, a state political party may spend hundreds of thousands of dollars mailing literature that supports a candidate for San Francisco office without having to report the expenditure to the San Francisco Ethics Commission or to the California Secretary of State before the election. In fact, it is unclear at this point whether the expenditure would *ever* have to be reported under state law, because payments for such member communications are no longer characterized by state law as either contributions or expenditures.⁹²

The integrity of San Francisco's public financing program depends on the timely disclosure of all campaign spending—including member communications. Member communications have the same impact on a public financing program as independent expenditures. If a candidate who agrees to abide by a spending limit is opposed by either independent expenditures or member communications which in combination exceed the independent expenditure trigger provision threshold, the participating candidate should be freed from the spending limit.

Immediately after passage of Proposition 34 the California Democratic Party, considered by many to have single-handedly placed Proposition 34 on the 2000 ballot, began exploiting the disclosure loophole it had purportedly created. Member communications have appeared in Los Angeles and San Francisco elections during the past year, and were identical to campaign advertisements formerly characterized as independent expenditures. The California Democratic Party most recently funded

member communication mail pieces to registered Democrats in San Francisco urging voters to support public defender candidate Kimiko Burton and assessor candidate Doris Ward in the March 2002 election. The cost of these member communications has not yet been disclosed. The California Democratic Party spent more than \$690,000 on member communications in the Los Angeles 2001 elections.⁹³

Disclosure of the California Democratic Party's member communication expenditures in Los Angeles was made possible by impressively swift action on the part of the Los Angeles City Ethics Commission and the city council. At the urging of the Ethics Commission, the city council adopted an emergency ordinance in the middle of the election cycle requiring member organizations to disclose payments for member communications according to the city's independent expenditure reporting requirements. Though the FPPC has determined that the City of Los Angeles does not have the legal authority to require such disclosure, the city is determined to require disclosure of member communication payments in future elections.⁹⁴

San Francisco should likewise require timely disclosure of payments by member organizations for member communications. San Francisco's authority to require such disclosure is derived from its status as a consolidated charter city and county. A consolidated charter city and county is deemed by the state constitution to be both a charter city and a charter county, with charter city powers superseding conflicting charter county powers.⁹⁵ The constitution empowers charter cities to regulate all municipal affairs, including the conduct of elections.⁹⁶

A local law requiring state general purpose committees to disclose payments for member communications would conflict with state law. However, there is no statewide interest which overrides San Francisco's interest in regulating elections—a core municipal affair. Furthermore, the state's blanket ban on a charter city's imposition of disclosure requirements on committees active in San Francisco elections is by no means narrowly tailored and does unnecessarily invade a legitimate area of local concern. For these reasons, San Francisco should impose a disclosure requirement upon all member organizations active in San Francisco elections.

3. Require the Date of Expenditures to be Reported

San Francisco should require political committees to disclose the date on which an expenditure was made. State law does not require disclosure of the date on which an expenditure was made, and San Francisco has not added such a requirement to its campaign finance ordinance. Without such a requirement, timely enforcement of the city's spending limits is near impossible. At best, the city can only determine through its post-election audit whether a candidate has abided by the limits.

Likewise, enforcement of San Francisco's provision that lifts the spending limit for candidates facing opponents who exceed the spending limit will be difficult. Though candidates who do not accept the spending limit are required by San Francisco law to notify the Ethics Commission within 24 hours of exceeding the spending limit, lack of an expenditure date disclosure requirement forces the Ethics Commission to rely completely

on the honesty of candidates and their treasurers. No pre-election audits are conducted, and only a small percentage of non-publicly financed candidates will be subject to a post-election audit.

B. Public Financing

4. Guarantee Program Funding

The adequacy and prompt availability of funding is the single factor that can make or break a public financing program. Public financing programs with guaranteed funding sources thrive, while programs that leave appropriations to the discretion of the legislative or executive branches have typically struggled. The public financing program of the City of Los Angeles provides a funding model to be emulated, while the funding mechanism in Suffolk County, NY serves as recipe for failure.

The Los Angeles City Charter requires an automatic annual appropriation of \$2 million into a public financing trust fund.⁹⁷ This funding mechanism leaves no discretion to the city council or mayor. At the other end of the spectrum, Suffolk County's program relies entirely on voluntary taxpayer donations which have proven to be severely inadequate.⁹⁸

San Francisco's public financing program funding mechanism lies between these two extremes. San Francisco's campaign finance ordinance instructs the mayor and board of supervisors to appropriate "an amount sufficient to provide funding for election campaigns . . . [of] all candidates for the Board of Supervisors who may be eligible to receive such funds."⁹⁹ However, unlike the mandatory appropriation provision in the Los Angeles City Charter, San Francisco's ordinance subjects the appropriation to the standard budgetary process and potential disputes as to whether amounts are "sufficient." The San Francisco Ethics Commission submits a budget estimate to the mayor. The mayor then determines what appropriation will be made in the mayor's executive budget that is sent to the board of supervisors for approval. The board of supervisor's authority to amend the mayor's executive budget is extremely limited. The board controls approximately \$20 million of discretionary funds in a total city budget that exceeds \$5 billion.¹⁰⁰ The board uses the discretionary funds to add money back to departmental budgets that were cut by the mayor, though the discretionary funding available for add-backs is typically far less than the mayor's budget cuts.

The implementation of the public financing program was scheduled to begin during the 2001-02 fiscal year. The Ethics Commission had originally estimated public financing program implementation costs for fiscal year 2001-02 at approximately \$400,000. The commission ended up with a \$30,000 allocation in the mayor's executive budget and an additional \$100,000 that was added back to the mayor's budget by the board of supervisors. Due to shortages in other line items in the Ethics Commission's budget, the commission diverted approximately \$35,000 of public financing program implementation funds to campaign finance investigations during the fall 2001 elections. Consequently, approximately \$95,000 remained in the 2001-02 budget for the implementation of the public financing program.¹⁰¹

Less than one year before the first scheduled publicly financed elections, the Ethics Commission staff had fallen behind its implementation timeline due to funding shortages.¹⁰² Nevertheless, the Ethics Commission is optimistic. When asked about the next fiscal year's budget, Ethics Commission Executive Director Ginny Vida stated, "The head of the mayor's legislative office said at a public meeting a few months ago that it was the mayor's intent to appropriate the full \$1.6 million that's authorized in the legislation—\$2 per person—[in the 2002-03 budget]." ¹⁰³ However, if the 2001-02 budget process resulted in dramatic cuts to the commission's budget estimate, the 2002-03 budget process could very well be worse. With the economy lagging nationwide and San Francisco facing a budget shortfall of at least \$175 million for fiscal year 2002-03, Mayor Brown has instructed all departments to cut their budget estimates by 10%.¹⁰⁴

The Ethics Commission is seeking a fiscal year 2002-03 appropriation of \$375,000 for administration of the public financing program and an additional \$1 million in public funds for distribution to candidates participating in the public financing program.¹⁰⁵ Only time will tell if the mayor and board of supervisors will enable the commission to implement the public financing program for the November 2002 elections.

The City and County of San Francisco should consider amending its charter to provide for an automatic annual appropriation to the public financing program, as is done in Los Angeles. Such a funding mechanism removes discretion from elected officials whose interest in reelection often conflicts with the public's interest in campaign finance reform. An annual appropriation mechanism also distributes public financing program costs evenly over the four-year election, reducing the fiscal burden in any single year.

5. Disburse Public Funds Earlier

Under current San Francisco law, the first payment of public funds may not occur earlier than the day following the deadline for filing nomination papers with the Department of Elections.¹⁰⁶ The filing deadline for the November 2002 elections is August 9. This leaves candidates only three months to campaign with the assistance of public funds. In contrast, the City of Los Angeles allows candidates to begin raising matchable contributions 12 months before the election and submit a matching funds claim as soon as the candidate raises \$10,000 in matchable contributions. Because candidates lacking substantial name recognition may require more than three months to build a grassroots campaign, San Francisco should provide candidates with public funds at least six months before the election.

6. Extend Public Financing to All City Offices

Public financing is currently only available to candidates for the board of supervisors. Public campaign financing holds equal promise for reducing the undue influence of wealth and increasing competition among candidates for all other elected offices in San Francisco—including mayor, city attorney, district attorney and sheriff. We recommend that San Francisco utilize this year's publicly financed board of supervisors elections as a starting point for the expansion of the program to cover all of San Francisco's elective offices. Valuable lessons will undoubtedly be learned through

the Ethics Commission's inaugural administration of the program. Having worked out the most difficult aspects of administration on the smaller-scale board of supervisors races this fall, the commission should apply this knowledge to expand the public financing program to all city offices in time for the 2004 San Francisco elections.

C. Fundraising and Spending

7. Enforce Limit on Contributions to Non-Candidate Committees

San Francisco law limits to \$500 per calendar year campaign contributions from a single donor to a non-candidate political committee that makes expenditures to support or oppose a San Francisco candidate.¹⁰⁷ Aggregate contributions from a single donor to all non-candidate political committees are limited to \$3,000 per calendar year.¹⁰⁸ As described above in the section detailing state law campaign finance reporting and disclosure requirements, state law makes many distinctions between types of political committees. The most basic distinction is whether the committee is formed for political activity at the city, county or state level. While enforcement of this limit on contributions to San Francisco county committees should not pose great difficulty, the enforcement of this limit on contributions to state committees may be both difficult and controversial.

San Francisco's authority to enforce this contribution limit is derived from its charter city authority to regulate local elections, as described above with regard to member communications disclosure. San Francisco's authority to enforce this contribution limit is also supported by state law, which provides, "Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title."¹⁰⁹ San Francisco's \$500 limit on contributions to non-candidate committees in no way prevents any person from complying with state law. Furthermore, the U.S. Ninth Circuit Court of Appeals recently indicated that a limit on contributions to independent expenditure committees would be a constitutionally permissible means of avoiding corruption or the appearance of corruption.¹¹⁰

The most difficult obstacle to enforcing this limit is the fact that total contributions to state committees by an individual donor may legally far exceed San Francisco's \$500 limit, while contributions by an individual donor to the state committee for the purpose of influencing San Francisco elections are subject to the \$500 limit. To overcome this obstacle, San Francisco should require any committee making independent expenditures to demonstrate that it received a sufficient number of contributions of \$500 or less to equal the total amount of independent expenditures made by the committee for San Francisco candidates during the calendar year. For example, if a committee made \$150,000 in independent expenditures in a calendar year, the committee would be required to demonstrate that it had received contributions from at least 300 donors (\$150,000 / \$500 contribution limit) during the calendar year.

Enforcement of this provision with regard to state committees could be accomplished using semi-annual and pre-elections reports already required by state law to track contributions to the committees. Independent expenditures could be monitored

using the disclosure reports required by San Francisco and state law. Committees would not be required to allocate specific contributions for individual independent expenditures. Instead, an aggregate accounting approach would be used.

Although this method of implementation fails to ensure that a committee had raised sufficient funds within the contribution limits at the time the independent expenditure was made, it will ensure that a small number of wealthy donors are not funding massive independent expenditure campaigns through county or state general purpose committees. Furthermore, this enforcement method would require no additional campaign finance reporting by state committees.

Another difficult question is when the contribution limit begins to bind a committee that has never before made independent expenditures in a San Francisco election but suddenly chooses to do so. The simple answer is that the contribution limit has bound all political committees since the limit was first adopted by San Francisco voters. It is the legal duty of any committee wishing to influence San Francisco elections to be aware of San Francisco's campaign finance laws and to abide by them. San Francisco's \$500 contribution limit does not infringe on a state committee's right to raise contributions in excess of \$500. It merely regulates a committee's ability to raise large contributions for the purpose of influencing San Francisco elections.

8. Do Not Eliminate Spending Limit for Candidates Who Benefit from Independent Spending

Independent expenditures and member communication expenditures are skyrocketing in San Francisco elections and threaten the integrity of the campaign finance system. San Francisco must adopt policies to discourage independent spending and to assist matching funds candidates opposed by such spending.

Under current law, all candidates in a race are released from the spending limit when the independent expenditures exceed the spending limit.¹¹¹ We recommend that San Francisco amend the existing independent expenditure trigger provision to *maintain the spending limit for the candidate benefiting from the expenditure* while continuing to lift the spending limit for the beneficiary's opponents. This recommended reform is as much for the sake of fundamental fairness as it is to deter independent spenders. Under the current system, candidates supported by independent spending receive the added benefit of being released from the spending limit. As a result, matching funds candidates opposed by independent expenditures must combat both the independent expenditures and the increased spending capacity of their opponents. This seems fundamentally unfair.

The most significant challenge to implementing this recommendation would be the task of determining whether an independent expenditure was truly to a candidate's benefit. This finding would be necessary to determine whether the spending limit should be lifted for the other candidates. Under current law, the maker of an independent expenditure must disclose to the Ethics Commission which candidate the expenditure is intended to support or oppose. Under the current trigger provision, which lifts the

spending limit for all candidates in the race, such disclosure is sufficient. Such disclosure would likewise be sufficient for the majority of independent expenditures made under our proposed revision. There may be instances, however, when it is necessary to go beyond this face value determination of which candidate a particular expenditure supports or opposes.

The most likely difficult scenario would be one in which an unpopular organization sincerely wishes to advocate the election of a candidate, much to that candidate's dismay. Imagine an association of landlords and property owners choosing to "support" a progressive candidate with sizeable independent expenditures. The benefit of such expenditures to a progressive candidate in San Francisco would be doubtful at best, given the overwhelming number of politically progressive renters and the strong tenants' rights movement in the city. Under such a scenario, should the progressive candidate's spending limit be maintained while limits on the candidate's opponents are lifted?

The most practical solution to this potential problem is to vest decision making authority in the Ethics Commission, establishing a statutory requirement of "clear and convincing evidence" to rebut the presumption that an independent expenditure supports or opposes the candidate the spender claims. It seems highly unlikely that such incidents would occur with great frequency. After all, independent spenders are typically seeking political influence beyond that which is possible within the constraints of contribution limits. Presumably there are few organizations that would spend a substantial amount of money antagonizing a candidate with whom they sought influence.

This independent expenditure trigger recommendation holds great promise for enhancing San Francisco's public financing program. It will discourage independent spending and increase the ability of publicly financed candidates to compete despite large independent expenditures against them. Any potential difficulties implementing the recommendation would be outweighed by the improvement this provision would bring to the program. Furthermore, San Francisco should monitor independent expenditure activity closely during its first publicly financed elections in the fall of 2002. In the event that publicly financed candidates have difficulty competing effectively in the midst of large independent expenditures, San Francisco should consider providing additional public funds to candidates opposed by independent expenditures in future elections.

9. Extend Independent Expenditure Trigger Provision to Member Communication Expenditures

Prior to the passage of California's Proposition 34, money spent by member organizations such as political parties to support or oppose candidates for public office was legally characterized as an "independent expenditure" and subject to specific disclosure requirements. As noted in Recommendation #2, money spent by an organization to communicate with members through campaign mailings and phone banks is no longer subject to independent expenditure disclosure requirements. Recommendation #2 urges San Francisco to require complete and timely disclosure by committees making member communication expenditures to influence San Francisco

elections. We likewise urge San Francisco to extend its independent expenditure trigger provision, which lifts the spending limit in races with substantial independent spending, to include member communication expenditures. From the perspective of the voting public and candidates alike, member communication expenditures are indistinguishable from independent expenditures. San Francisco should lift the spending limit when combined independent expenditures and member communication expenditures exceed the spending limit in a particular race.

10. Limit Time Period for Fundraising

Proponents of public campaign financing often argue that public financing programs level the electoral “playing field” by substantially reducing the fundraising advantages enjoyed by incumbents. One typical advantage of an incumbent is the ability to raise money from special interests with business pending before the incumbent. It is widely believed that special interests contribute to an incumbent’s campaign account long before an election to obtain political influence, rather than to support the candidate’s future campaign efforts—raising the specter of corruption. Most challengers have difficulty raising money, particularly early in a campaign when their viability is largely unknown. For this reason, some jurisdictions with public financing programs limit the amount of time prior to an election that a candidate can begin fundraising. In Los Angeles, for example, a candidate for city council may not raise funds more than 18 months prior to an election.¹¹²

In addition to reducing incumbency advantage, it is reasonable to believe that fundraising time restrictions reduce the amount of time officeholders spend raising campaign money; consequently, they may increase the amount of time officeholders spend performing the duties of the office.

San Francisco has no limit on how early a candidate may begin fundraising for a general election. A candidate merely needs to file a statement with the Department of Elections declaring his or her intention to run for office before the candidate begins soliciting contributions and making campaign expenditures. San Francisco’s campaign finance laws would be substantially strengthened by restricting fundraising to certain periods of time.

11. Limit Personal Loans By Candidates for All Offices to \$15,000

Under San Francisco law, no candidate for the board of supervisors may have outstanding personal loans to his or her campaign committee of more than \$15,000 at any time.¹¹³ This regulation of personal loans reduces the advantage that a wealthy candidate has over less wealthy opponents. Furthermore, this regulation reduces the potential for corruption present when a candidate makes large personal loans to his or her campaign, wins the election and continues fundraising as an officeholder to repay this personal loan. In this scenario, the officeholder is pocketing campaign contributions from special interest donors seeking influence over the officeholder’s decision making—a practice which, at the very least, creates the appearance of corruption. San Francisco’s \$15,000 limit on personal loans currently applies only to board of supervisors candidates and should be extended to candidates for all elected offices.

D. Ethics Commission

12. Grant Ethics Commission Authority to Place Charter Amendments on Ballot

The San Francisco charter empowers the Ethics Commission to place an ordinance, but not a charter amendment, directly before city voters for approval in the form a ballot measure without approval by the mayor or board of supervisors.¹¹⁴ This authority to place an ordinance on the ballot is both rare and extremely valuable. The commission has used this authority on two occasions, most recently to place before the voters Proposition O, the public financing ordinance.¹¹⁵ In the words of Ethics Commission Executive Director Ginny Vida,

Putting Prop. O on the ballot was a significant step for San Francisco. Something that gets a little lost in the history here is that the commission initially went to the board of supervisors with this proposal and it was voted down ten to one. It was only then that the commission decided to place this on the ballot. The commission's authority to place measures on the ballot is extremely important. I don't think that San Francisco would have public financing if it weren't for that authority. It gives the commission some independence that it otherwise wouldn't have in the legislative process.¹¹⁶

Campaign finance reformers in other jurisdictions would be well advised to vest such authority in an independent ethics commission.

The Ethics Commission should also be granted the authority to place ethics and campaign finance related charter amendments on the ballot by a unanimous vote of commissioners. Adopting a law as a charter amendment insulates the law from repeal by the legislative branch of government, because repeal of a charter provision requires voter approval. Such political insulation is particularly important in the areas of ethics and campaign finance, where a conflict of interest often leads legislators to undercut campaign finance reforms and the independence of government ethics regulators. For example, the board of supervisors placed a charter amendment on the November 2001 ballot—Proposition E. Buried within this so-called elections and ethics reform measure, which passed with nearly 63% of the vote, was a provision to fire every member of the Ethics Commission. This attack on the Ethics Commission's independence clearly demonstrates the need to empower the commission to place charter amendments on the ballot. An Ethics Commission so empowered could have blocked Proposition E with a competing ballot measure. The Ethics Commission's independence will not be secure until the commission can place charter amendments directly before the voters for approval.

13. Permit Ethics Commission to Advocate for Ethics Related Ballot Measures

Although the San Francisco Ethics Commission's authority to place measures on the ballot is impressive, the charter provision that prohibits the commission from advocating for those measures is unnecessarily restrictive.¹¹⁷ An ethics commission is rightly prohibited from advocating the election or defeat of any candidate or any ballot measure unrelated to government ethics and campaign finance reform. However, policies promoting the impartiality of an ethics commission make much less sense when a ballot measure will directly impact the commission. Under such circumstances, an ethics commission is clearly partial and full public disclosure of this partiality makes more sense than feigned impartiality. Moreover, the public is entitled to hear from the chief proponent of a measure. As a safeguard to potential misconduct by the Ethics Commission in matters related to an ethics or campaign finance ballot measure, the charter could provide for the investigation of allegations of such misconduct by the district attorney or city attorney.¹¹⁸

14. Adjust Spending Limits, Contribution Limits and Public Financing Limits for Changes in the Cost of Living

San Francisco law authorizes the Ethics Commission to adjust spending limits,¹¹⁹ public financing eligibility thresholds¹²⁰ and supplemental campaign finance reporting thresholds¹²¹ for changes in the cost of living annually. The cost of living adjustment is intended to mitigate the effects of inflation and deflation of the economy over time, which dramatically impact the real value of the dollar amounts specified in a campaign finance ordinance. For example, the Federal Election Campaign Act ("FECA") passed by Congress in 1971 contained a \$1000 contribution limit with no periodic adjustment for inflation. The \$1000 limit is still enforced today and due to inflation is worth approximately \$200 in 1971 dollars. The FECA contribution limit has effectively been reduced to one-fifth of its intended size in just 30 years.

San Francisco's spending limits have been in effect since 1995 and have never been adjusted. The other limits noted above will be used for the first time in this year's publicly financed elections. We strongly recommend that the Ethics Commission begin adjusting all of these limits, from this year forward, for changes in the cost of living. We also recommend that, in addition to adjusting the spending limits, qualification thresholds and reporting thresholds as currently authorized by law, San Francisco adopt a cost of living adjustment for the maximum amount of public financing a candidate can receive and for the city's contribution limits. These adjustments are necessary to maintaining the program's integrity in years to come. Furthermore, any resulting increase in program costs will be much easier to absorb on a yearly basis than if delayed and then increased retroactively for a multiple year period.

Notes

¹ CALIFORNIA COMMISSION ON CAMPAIGN FINANCING, *THE NEW GOLD RUSH: FINANCING CALIFORNIA'S LEGISLATIVE CAMPAIGNS* 165 (1985).

² Lance Williams, *S.F. Public Defender: The State Senate Leader's Clout Seen in Huge Donations to Daughter's Campaign*, SAN FRANCISCO CHRONICLE, Mar. 3, 2002.

³ *Id.*

⁴ According to the U.S. Census Bureau, the population of San Francisco in 2000 was 776,733. See U.S. Census Bureau, *American Factfinder* (visited Jan. 24, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.

⁵ Ilene Lelchuk, *Run-in Over Runoffs: S.F.'s Prop. A Hits Snag—City Lacks High-Tech Solution*, SAN FRANCISCO CHRONICLE, Mar. 7, 2002.

⁶ Kandace Bender and Rachael Gordon, *Outside Sources Fuel S.F. Proposal; Campaign '95; Jordan-Backed Call to Unleash Spending*, SAN FRANCISCO EXAMINER, Aug. 4, 1995.

⁷ Rachael Gordon, *Campaign Spending on the Ballot; Voters to Decide Between Jordan's Version and the Board of Supervisors*, SAN FRANCISCO EXAMINER, Aug. 10, 1995.

⁸ Rachael Gordon, *Jordan, Brown Won't Have to Keep Caps On; Spending Limits Unlikely to Become Law for Runoff*, SAN FRANCISCO EXAMINER, Nov. 10, 1995.

⁹ Edward Epstein, *Judge Overturns Limits on Independent Campaign Spending*, SAN FRANCISCO CHRONICLE, Sept. 10, 1999. See also Ilene Lelchuk, *Judge lifts S.F. Election Cash Cap; Ruling Lets Reilly Collect \$500 Gifts in Mayor's Race*, SAN FRANCISCO EXAMINER, Oct. 14, 1999.

¹⁰ Savannah Blackwell and Bob Porterfield, *The Best Mayor Money Can Buy*, SAN FRANCISCO BAY GUARDIAN, Feb. 16, 2000.

¹¹ San Francisco, Cal., Charter § 15.102 (2001).

¹² Interview with Mike Mooney, Campaign Director of Proposition O, Nov. 20, 2001.

¹³ Interview with Charles Marsteller, Former Coordinator of San Francisco Common Cause, Nov. 20, 2001.

¹⁴ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.100 (2001).

¹⁵ Ilene Lelchuk, *Count Uproar Eclipses S.F. Election Reform*, SAN FRANCISCO CHRONICLE, Nov. 16, 2001.

¹⁶ San Francisco, Cal., Charter § 15.100 (2001).

¹⁷ Interview with Charles Marsteller, Former Coordinator of San Francisco Common Cause, Nov. 20, 2001.

¹⁸ Interview with Mike Mooney, Campaign Director of Proposition O, Nov. 20, 2001.

¹⁹ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.138(b) (2001).

²⁰ *Id.*

²¹ *Id.* at § 1.138(d).

²² According to the U.S. Census Bureau, the population of San Francisco in 2000 was 776,733. See U.S. Census Bureau, *American Factfinder* (visited Jan. 24, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.

²³ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.128 (2001). See also San Francisco, Cal., Ethics Commission Regulation 1.142(a)-1 (2001).

²⁴ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.142(a) (2001). See also San Francisco, Cal., Ethics Commission Regulation 1.142(a)-3 (2001).

²⁵ San Francisco, Cal., Campaign and Governmental Conduct Code §§ 1.104(o) and 1.140(a)(2) (2001).

²⁶ *Id.* at § 1.140(a)(3).

²⁷ *Id.* at § 1.130(d).

²⁸ *Id.* at § 1.130(f).

²⁹ *Id.* at § 1.140(a)(4)(D).

³⁰ *Id.* at § 1.104(k).

³¹ *Id.* at § 1.144(c).

³² *Id.* at § 1.144(a).

³³ *Id.* at § 1.144(d).

³⁴ *Id.* at § 1.146(a)(1).

³⁵ *Id.* at § 1.146(a)(2).

³⁶ *Id.* at § 1.152(a)(3).

³⁷ *Id.* at § 1.152(b)(2).

³⁸ *Id.* at § 1.114(a)(1).

³⁹ *Id.* at § 1.114(a)(2).

⁴⁰ *Id.* at § 1.114(b)(1).

⁴¹ *Id.* at § 1.114(b)(2).

⁴² *Id.* at § 1.114(c)(1).

⁴³ *Id.* at § 1.114(c)(2).

⁴⁴ *Id.* at § 1.114(c)(3).

⁴⁵ *Id.* at § 1.122.

⁴⁶ *Id.* at § 1.118(a).

⁴⁷ *Id.* at § 1.114(d).

⁴⁸ *Id.* at § 1.170.

⁴⁹ *Id.* at § 1.104(d).

⁵⁰ *Id.* at § 1.116.

⁵¹ *Id.* at § 1.22.

⁵² *Id.* at § 1.26.

⁵³ Ilene Lelchuk, *Judge lifts S.F. Election Cash Cap; Ruling Lets Reilly Collect \$500 Gifts in Mayor's Race*, SAN FRANCISCO EXAMINER, Oct. 14, 1999.

⁵⁴ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.30 (2001). The ordinance authorizes the Ethics Commission to adjust the limits annually for changes in the cost of living.

⁵⁵ *Id.* at § 1.130(f).

⁵⁶ *Id.* at § 1.134(a).

⁵⁷ Cal. Gov't Code § 84200.7(a) (2001).

⁵⁸ Actual filing deadlines for San Francisco candidates vary slightly depending on whether the candidate is on the ballot in an even year or an odd year, and whether the candidate is on the ballot in the spring or in the fall. *See* Cal. Gov't Code §§ 84200.5(b) and (c) (2001). *See also* Cal. Gov't Code §§ 84200.7 and 84200.8 (2001).

⁵⁹ Cal. Gov't Code § 84200.5(f) (2001).

⁶⁰ *Id.* at §§ 84200.5(d) and (e).

⁶¹ California Fair Political Practices Commission, *Ramirez Advice Letter*, No. I-97-146, May 6, 1997.

⁶² The intersection of numerous state law provisions and San Francisco law makes interpretation of this substantive area quite complicated. Both San Francisco law and state law include provisions that would require some disclosure by county and state general purpose committees engaged in odd-year electioneering. Specifically, state law requires a committee that makes independent expenditures totaling \$1,000 or more in a calendar year supporting a single candidate or ballot measure in San Francisco to file a "Supplemental Independent Expenditure Report" (California Form 465) in San Francisco. However, this report may not contain any information regarding contributions to the committee that makes the independent expenditure. State law requires that previously undisclosed contributions be reported along with the independent expenditure. *See* Cal Gov't Code § 84204(b) (2001). However, a San Francisco general purpose committee could evade timely disclosure in San Francisco using the following scenario: (1) raise \$1,001,000; (2) make a \$1,000 independent expenditure in a Bakersfield dog catcher election; (3) report that expenditure, along with all previously undisclosed contributions, to the Bakersfield department of elections; (4) then make a \$1 million independent expenditure supporting a San Francisco mayoral candidate without having to disclose the identity of the committee's contributors. Therefore a county general purpose committee would be required to report that it had made the independent expenditure, but would not be required to disclose who made contributions to fund the expenditure until months after the election.

⁶³ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.310 (2001).

⁶⁴ *Id.* at § 1.152(a).

⁶⁵ *Id.*

⁶⁶ Cal. Gov't Code § 81009.5 (2001).

⁶⁷ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.152(b) (2001).

⁶⁸ *Id.* at § 1.134(c).

⁶⁹ *Id.* at §§ 1.134(c) and 1.152(b).

⁷⁰ Cal Gov't Code § 84203.5(a) (2001).

⁷¹ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.161 (2001).

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- ⁷² *Id.* at § 1.162.
- ⁷³ *Id.* at § 1.163.
- ⁷⁴ San Francisco, Cal., Charter § 13.107 (2001).
- ⁷⁵ San Francisco, Cal., Elections Code § 500 (2001).
- ⁷⁶ *Id.* at §§ 600 and 610.
- ⁷⁷ San Francisco, Cal., Charter § 15.100 (2001).
- ⁷⁸ Interview with Virginia Vida, Executive Director of the San Francisco Ethics Commission, Nov. 20, 2001.
- ⁷⁹ Interview with Mabel Ng, Deputy Executive Director of the San Francisco Ethics Commission, February 4, 2002.
- ⁸⁰ San Francisco, Cal., Charter Appendix C3.699-11 (2001).
- ⁸¹ San Francisco, Cal., Charter § 15.102 (2001).
- ⁸² San Francisco, Cal., Campaign and Governmental Conduct Code § 1.152(b) (2001).
- ⁸³ *Id.* at § 1.134(c).
- ⁸⁴ Cal Gov't Code § 84203.5(a) (2001).
- ⁸⁵ San Francisco Deputy City Attorney Claire Sylvia informed me, in a telephone conversation on March 15, 2002, that the city attorney's office interprets state law to prohibit San Francisco from requiring state general purpose committees and county general purpose committees active outside of San Francisco to abide by San Francisco's independent expenditure reporting requirements. The city bases its interpretation on FPPC advice letters and numerous FPPC verbal advisements.
- ⁸⁶ California Fair Political Practices Commission, *Moll Advice Letter*, No.A-96-315, Dec. 17, 1996.
- ⁸⁷ California Fair Political Practices Commission, *Moll Advice Letter*, No.A-97-080, April 22, 1997.
- ⁸⁸ Cal Gov't Code § 81009.5(b) (2001).
- ⁸⁹ *Id.* at § 84203.5(a).
- ⁹⁰ *Id.* at §§ 84200.7 and 84200.8.
- ⁹¹ *Id.* at § 85312. The typical member organization is a political party or labor union. A typical member communication is a campaign advertisement mailed to every party or union member in the jurisdiction.
- ⁹² Interview with Kevin Moen, Fair Political Practices Commission Consultant, March 1, 2002. Less than one week before the March 2002 election, FPPC consultant Kevin Moen admitted that, though the FPPC would advise political parties to report payments for member communications in their next scheduled campaign finance report, the FPPC has yet to define what constitutes a member organization or which form should be used by such an organization to report payments for member communications that are technically neither contributions nor expenditures.
- ⁹³ Center for Governmental Studies, *Eleven Years of Reform: Campaign Financing in the City of Los Angeles*, 14 (2001).
- ⁹⁴ For the FPPC position, see California Fair Political Practices Commission, *In re Olson*, No. O-01-112, July 9, 2001. For the position of the City of Los Angeles, multiple memos from the Ethics Commission and the City Attorney's office are available from the Ethics Commission.
- ⁹⁵ Cal. Const. art. XI, § 6 (2001).
- ⁹⁶ *Id.* at § 5 (2001). An opponent of such exercise of legislative authority by San Francisco might argue that a local law requiring disclosure of payments for member communications is preempted by the state law that purports to prohibit a local government agency from imposing filing requirements on county and state general purpose committees. See Cal Gov't Code § 81009.5 (b) (2001). However, when a state law conflicts with a charter city law, the charter city law prevails if it regulates a "municipal affair," rather than a matter of "statewide concern." The California Supreme Court, in upholding the Los Angeles public financing program despite the existence of a state law prohibiting the use of public funds to finance elections, recognized the regulation of local elections as one of the "core categories that are, by definition, municipal affairs." See *Johnson v. Bradley*, 4 Cal. 4th 389, 398 (1992). The Court ruled that a local law regulating a municipal affair is not preempted by state law unless the state can show that (1) there is a genuine conflict with state law; (2) there is an interest of statewide concern which overrides the city's municipal interests; (3) that the state law is reasonably related to the statewide interest; and (4) that the state law is narrowly tailored to avoid unnecessary incursion into legitimate areas of local concern. See *Johnson v. Bradley*, 4 Cal. 4th 389, 399 and 411 (1992).
- ⁹⁷ Los Angeles City Charter, Art. IV §§ 471(c)(1) and (2) (2000).
- ⁹⁸ Suffolk County, N.Y., Charter § C41-8(J) (2001).

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- ⁹⁹ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.138(b) (2001).
- ¹⁰⁰ Interview with Charles Marsteller, Former Coordinator of San Francisco Common Cause, Nov. 20, 2001.
- ¹⁰¹ Interview with Virginia Vida, Executive Director of the San Francisco Ethics Commission, Nov. 20, 2001.
- ¹⁰² *Id.*
- ¹⁰³ *Id.*
- ¹⁰⁴ Ilene Lechuk, *S.F. Prepares Cuts of 10% in Budgets; Dot-com Bust, Tourism Slowdown Hurt City*, SAN FRANCISCO CHRONICLE, Dec. 13, 2001.
- ¹⁰⁵ Interview with Mabel Ng, Deputy Executive Director of the San Francisco Ethics Commission, February 4, 2002.
- ¹⁰⁶ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.144(a) (2001).
- ¹⁰⁷ *Id.* at § 1.114(c)(1).
- ¹⁰⁸ *Id.* at § 1.114(c)(2).
- ¹⁰⁹ Cal Gov't Code § 81013 (2001).
- ¹¹⁰ In *Lincoln Club of Orange County v. City of Irvine*, 274 F.3d 1262, 1269 (9th Cir. 2001), Irvine's \$320 limit on contributions to independent expenditure committees was challenged. The district court granted the Lincoln Club's motion for summary judgment. The Ninth Circuit Court of Appeals reversed the summary judgment and remanded the case to the district court to determine the city's purpose for enacting the contribution limit. The Lincoln Club argued that the city's purpose was to "level the playing field," whereas the city argued its purpose was to avoid corruption or the appearance of corruption. The Ninth Circuit recognized that the purpose of "leveling the playing field" was insufficient to justify the contribution limit. The Court reasoned, however, that if Irvine's purpose was to avoid corruption or the appearance of corruption, then the contribution limit would likely be constitutionally permissible.
- ¹¹¹ San Francisco, Cal., Campaign and Governmental Conduct Code §§ 1.146(a)(2) and 1.134(a) (2001).
- ¹¹² Los Angeles, Cal., Municipal Code § 49.7.7 (2001).
- ¹¹³ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.116 (2001).
- ¹¹⁴ San Francisco, Cal., Charter § 15.102 (2001).
- ¹¹⁵ Interview with Virginia Vida, Executive Director of the San Francisco Ethics Commission, Nov. 20, 2001.
- ¹¹⁶ *Id.*
- ¹¹⁷ San Francisco, Cal., Charter § 15.100 (2001).
- ¹¹⁸ Current law requires the commission to forward complaints to the district attorney and city attorney only if the commission "has reason to believe that a violation of [the] charter or city ordinances . . . has occurred." This language could be amended to require the commission to forward all related to a measure placed on the ballot by the commission. *See* San Francisco, Cal., Charter Appendix C3.699-13(a) (2001).
- ¹¹⁹ San Francisco, Cal., Campaign and Governmental Conduct Code § 1.130(f) (2001).
- ¹²⁰ *Id.* at § 1.140(b).
- ¹²¹ *Id.* at §§ 1.140(b) and 1.152(a).