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Joint Hearing on Propositions 68 and 73

Senate Committee on Elections

Assembly Committee on Elections, Reapportionment and Constitutional Amendments

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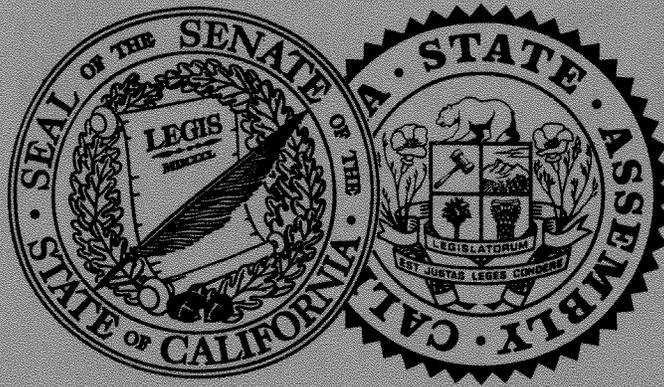
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CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON ELECTIONS
MILTON MARKS, CHAIRMAN
AND
ASSEMBLY COMMITTEE ON ELECTIONS,
REAPPORTIONMENT AND
CONSTITUTIONAL AMENDMENTS
PETER CHACON, CHAIRMAN



Joint Hearing on
PROPOSITIONS 68 AND 73

State Capitol, Room 447
Sacramento, California

April 21, 1988 - 2:00 p.m.

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ASSEMBLYMAN PETER CHACON (ASSEMBLY CHAIR): We're going to start the meeting of the Joint Committee of Senate Elections and Assembly Elections and Reapportionment Committee on Propositions 73 and 68. Senator Milton Marks has an opening statement.

SENATOR MILTON MARKS (SENATE CHAIR): Thank you very much. I'm glad to be here and I welcome you to this joint hearing, which is held pursuant to the requirements of Section 3523.1 of the Elections Code which states that the committee which has jurisdiction over the subject matter must have hearings upon the propositions which are placed upon the ballot.

For example, if there was a matter involving the Revenue and Taxation Code, it probably would be heard by the Revenue and Taxation Committee. Therefore, as members of the Elections Committee, we are required to have this hearing.

The question of judging the Gerken and the Johnson Campaign Reform proposals is no longer up to the Legislature. That task is now with the voters and I have absolutely no doubt that given adequate information, the voters will make the right decision.

The sole purpose of this hearing is to help provide information about these initiatives. In particular, it is our intention and our hope to give the proponents of each measure an opportunity to address the variety of questions which have arisen regarding the interpretation of the provisions and language of the initiatives.

Let me say parenthetically, I have a series of questions about the initiatives. It's not expressing an opinion upon them but it's just questions which I hope that those who are speaking in support of the initiatives will answer. They're in the packet which you have.

These questions are important to acknowledge and to address because, as the Chinese proverb observes, and I have a large Chinese community in my district, "If the language is incorrect, then what is said is not what was intended; and if what is said is not what was intended, then what ought to be done remains undone."

That's the end of my statement. I'm delighted to be here with you, Assemblyman Chacon.

ASSEMBLYMAN CHACON: Thank you, Senator Marks. I'm pleased to be here as well to address a topic of great importance -- campaign finance reform. We're all painfully aware that the current system of campaign financing has many problems. Most elected officials would prefer to spend their time on legislative duties without having to be concerned about raising campaign contributions. We know that many of our contributors would not mind it at all if there was some easier way to conduct campaigns.

In short, almost everyone agrees there is a problem. However, solutions have not been as easy to agree upon. That's why we're here today, to consider these two initiatives. Each of these initiatives has some good points and some points that seem problematic. I hope that the witnesses will be able to resolve the questions that have arisen about the initiatives.

Before I call the first witness, I'd like to make sure that the consultants on the committees, a

very important staff that helps Senator and I with the work, are introduced. To my left is Mike Reyna on that corner, the principal consultant on the Assembly committee. Barbara Milman, chief consultant of the committee. To my right, Tim Hodson, the chief consultant on the Senate committee, and Darren Chesin, a consultant with the Senate committee also.

SENATOR MARKS: Secretary of our committee, Deborah Mitten.

ASSEMBLYMAN CHACON: Thank you, Senator. All right, without further adieu, the first witness on the Gerken Initiative will be the President of Common Cause, Mr. Archibald Cox.

MR. ARCHIBALD COX: Thank you, Mr. Chairman. I greatly appreciate your courtesy and that of the entire committee in inviting me to appear this morning. I come to speak not essentially or as an expert with respect to the problem of California, the laws of California or the competing propositions, although I'm greatly interested. But I do want to emphasize, if I may, the relationship between the action of the California voters on Proposition 68 and the national interest, as I see it, of the adoption of Proposition 68 because of the impact that will have on what's a nationwide problem.

Many distinguished representatives -- Senators Barry Goldwater, John Stennis, former Chairman of the House Rules Committee, Dick Boling, and others -- have identified the problem to which you refer -- the rush to spend and spend and spend to get elected, and the consequent drive which I know, again as you say, Mr. Chairman, worries all members of the legislative body to raise more and more and more money. It distorts the entire process. It really, as former Senator Goldwater said, presents a crisis of liberty: Can we keep our present representative system of government, or will we substitute government by and for campaign contributors or government by and for people?

The example you set here will have a tremendous impact in Washington. As I say, I think this in many ways is the No. 1 national problem.

The essence of any solution has three main components. One, setting ceilings on campaign expenditures. To do that, it is necessary and it is also constitutional to offer some inducement to voluntary acceptance of the ceilings. An effective inducement is at least partial public financing such as the matching system offered in Proposition 68.

The third necessary ingredient is that a cap be put, in the national scene, on the amount, the total amount of PAC contributions that any one candidate may accept.

The ceiling on the contributions that a single PAC can make isn't enough because, as I certainly don't need to tell you, ladies and gentlemen, many of the PACs are alive. So you have not just one medical PAC but on the national scene scores of medical PACs, finance PACs, real estate PACs, used car dealers PACs the same. The only thing that will check that is the third element we're seeing on the overall acceptance of PAC contributions.

Proposition 68 commends itself to me, in my judgment, as a matter of substance because it embodies those three restrictions. I also would say that those three restrictions are quite plainly valid from the standpoint of the federal constitution.

I think those are the key thoughts that I wished to express, Mr. Chairman. Thank you, again, for your courtesy in having me here.

ASSEMBLYMAN CHACON: Thank you very much, Mr. Cox, for taking the time to make your

testimony. I know that you have a speaking engagement. Mr. Johnson, I guess, has a question or a comment to make.

ASSEMBLYMAN ROSS JOHNSON: I'm pleased to have you here today as well, but I do have a number of questions that I'd like to pose to you. Just so that I'm playing very fair with you, I want you to know I'm Ross Johnson and I am involved with a competing initiative on the ballot in attempting to analyze and react to Proposition 68. And those of us who have questions face, I guess, what could be called a fundamental dilemma, whether to question Proposition 68 in terms of the constitutionality, the legal theories behind many of its provisions, or to accept at face value that the proponents can legally and constitutionally do what they say they can do, and then talk about the practical implications of that. Since you are, I think, generally recognized around the country as a legal scholar, I think I'd like to try the former, at least initially.

You referred to the need to limit overall PAC contributions and overall aggregate limit on the amount of funds that can be contributed from non-individuals. That's the provision that's contained in Prop. 68. An overall limitation, for example, in Assembly races, I believe it's \$50,000 that can be accepted from non-individual sources. Imagine if you will, the following situation.

You and I live on the same street in Sacramento. You live on the east side of the street, I live on the west side of the street. Our neighbors are similarly situated in terms of their economic interests, their education level, their interest in the community. You organize the neighbors on your side of the street into a small political action committee. I organize the neighbors on my side of the street into a political action committee. We each raise a total of \$500, which we want to contribute to a candidate for the Assembly from our area.

We walk into the Assembly candidate's headquarters ten minutes apart. I present the check for \$500 and that puts the candidate at the \$50,000 aggregate limit contained in the initiative. You walk in ten minutes later, attempt to make a contribution of \$500 and you are denied that opportunity because the candidate has received more than the \$50,000 aggregate limit.

Now, could you tell me constitutionally how you get there?

MR. COX: I think the constitutional justification of the limit is that PAC contributions, which are rarely of the character that you describe, Assemblyman, usually come from an organization that has a specific economic interest, have certainly the appearance of exerting undue influence on the course of legislation. I think in some cases, without intending to suggest that there's any direct bribe, but they have in fact an undue influence, a money influence on the course of legislation, and the Supreme Court has made it plain that one can limit the amount of contributions in order to guard against either or both the reality of undue financial influence or the appearance of undue financial influence. And the fact that one group got there first doesn't seem to me to rise to constitutional dimensions.

ASSEMBLYMAN JOHNSON: Oh, I see. Then you're advocating a race to contribute.

MR. COX: No, either go in and in due course or contribute. Those who came late would be prohibited from contributing. That's the reality of it, yes.

ASSEMBLYMAN JOHNSON: A race to contribute. Let me...

MR. STEVE BARROW: Steve Barrow with Common Cause...

ASSEMBLYMAN JOHNSON: Thank you. I'd like to continue asking questions of the witness, if I may.

ASSEMBLYMAN CHACON: Well, maybe he wants to help Mr. Cox. The important thing is that your question is answered, Mr. Johnson, not whether one individual or another answers.

MR. BARROW: With all due respect, I'm representing Common Cause, the California chapter, which is the main proponent within the large group of organizations pushing for Proposition 68. We had invited -- our chair had graciously accepted to come out and speak and we thought it would be a good idea to have him testify, but in all fairness to the chair, and my boss, we had not told him that in his testimony that he would be speaking as the legal authority for the initiative, which he did not help write, as the proponents Common Cause is one group within a very large coalition. So I...

ASSEMBLYMAN JOHNSON: All right. Fine. Let me then ask another question of Mr. Cox. Mr. Cox, you are here in support of Proposition 68. Have you taken a position on Proposition 73, the competing measure?

MR. COX: I have spoken as an interested observer concerned with the national...

ASSEMBLYMAN JOHNSON: Have you taken a position on Proposition...

MR. COX: I'm trying to answer you, Assemblyman. I've spoken as an interested...

ASSEMBLYMAN CHACON: Obviously, Mr. Johnson, Mr. Cox, as Chairman of Common Cause, is supporting his initiative just as you support your bills and I my bills. I don't think it's fair to...

ASSEMBLYMAN JOHNSON: Mr. Chairman, I'm not in any way attempting to badger the witness. I have the greatest respect for him, his record, and for the organization which he is here representing. On the other hand, clearly, he is here lending his name and considerable national reputation on a matter that is to be decided by the voters of California. If he's unprepared to answer simple, direct questions about the two initiatives, then I would suggest...

SENATOR MARKS: Mr. Chairman, may I say something?

ASSEMBLYMAN JOHNSON: ... that perhaps he should not have made the trip.

ASSEMBLYMAN CHACON: Senator Marks.

SENATOR MARKS: Mr. Chairman, I think -- Mr. Johnson, I think you're being unfair to the witness. He came here to testify in support of Proposition 68, which is a proposition that has been brought forth by Common Cause. He's the President of Common Cause. I don't think it's correct that you should ask him a series of questions about 73. I have no idea what his opinion is, but he should not be asked to testify as a witness on those propositions.

ASSEMBLYMAN JOHNSON: All right. Can I proceed then, Mr. Chairman, and ask a few more questions of this witness with respect to Proposition 68?

ASSEMBLYMAN CHACON: Not before I give Mr. Cox an opportunity to leave. He has, Mr. Johnson -- he's got to...

MR. COX: I'd be glad to answer the Assemblyman's question.

ASSEMBLYMAN CHACON: All right. Why don't you go ahead.

MR. COX: First, that as a resident and voter in Massachusetts, I feel some diffidence about

coming to California and lecturing Californians about what they should do. I think it is proper for me to tell them what I think the national implications of what they do are, and I just wanted to make that clear, since I was speaking in that context.

ASSEMBLYMAN JOHNSON: I think that's fine, sir.

ASSEMBLYMAN CHACON: Let me thank you, Mr. Cox, and thank you very much for being here. I'm sure we can address the questions very appropriately to the staff of Common Cause who have come here with expertise on the issue to respond specifically to the questions Mr. Johnson or anybody else may have.

MR. COX: I would simply add -- I hope that it's permissible, Mr. Chairman -- that I do think Proposition 68 follows the correct lines of the vote in demand to this problem and in that sense, if it were in Massachusetts I would vote for it. I suppose that implies that I prefer it to others but I'm in no position to testify about their details. I might even make mistakes.

ASSEMBLYMAN CHACON: Thank you very much, Mr. Cox. Thank you again for taking time to be here.

Okay. Would you please give your name again?

MR. BARROW: My name is Steve Barrow and I'm on the staff of Common Cause. I was asked to come here today to answer as best as I can a few questions that I was given prior to coming here about Proposition 68.

ASSEMBLYMAN CHACON: Okay. Before you do, I want to indicate that Senator Leroy Greene, a member of the Senate Elections Committee, is now here.

SENATOR MARKS: Are you referring to the questions that I've asked?

MR. BARROW: Actually...

SENATOR MARKS: I had a sheet of questions which I'd like to have you answer.

MR. BARROW: I'll do my best, sir.

SENATOR MARKS: Is that the ones you're talking about then?

MR. BARROW: I was given three questions but I was given right before -- when I sat down, was given by your staff a few more. I probably could answer, if not specifically -- technically, I could get us in the right direction and then would be very happy to bring in other technical people if that's necessary.

SENATOR MARKS: Let me assure you these questions are not being asked nor are the questions that I'm going to ask -- that I've asked for 73 are not being asked to express an opinion on either proposition, but just to raise some questions.

MR. BARROW: I appreciate that. We understand, and our support of Prop. 68 is under the realization that there's no panacea in these complex issues. This is a very comprehensive proposal. It is knitted and put together over a long period of time with a number of legal and elections scholars. I am not going to purport to be an absolute expert to be able to answer definitively today your technical questions, but I'll do the best I can. Unfortunately, because of the fog situation and also other situations in our office, our director was not able to be here today, but we can answer questions later.

ASSEMBLYMAN CHACON: Thank you very much. Mr. Johnson has a question.

ASSEMBLYMAN JOHNSON: Well, I had a whole series of questions I wanted to propound to Mr. Cox. You've volunteered that you'd be willing to try and answer them, so if I could, Mr. Chairman, I'd like to go on with that line of questioning.

Given the fact that decisions of the United States Supreme Court, principally Buckley v. Vallejo, indicate that it is appropriate and constitutional to establish contribution limitations to avoid the possibility of undue influence over the candidate or officeholder, and to date, that's the only rationale that has been accepted by the United States Supreme Court, how can you justify constitutionally the \$35,000 seed money provision contained in Proposition 68? Specifically, if a contribution on January 1st of the election year from a single source of \$35,000 to a candidate is not undue influence, how can a contribution of \$1,001 the following day from a single contributor be unacceptable as an undue influence?

MR. BARROW: The whole idea of the seed money, the concept was derived to provide the opportunity for the challenger...

ASSEMBLYMAN JOHNSON: I understand. I understand the impact of what you're trying to do. I'm focusing in on how can you constitutionally do that, and I wish you'd...

MR. BARROW: I'm not a constitutional authority, sir.

ASSEMBLYMAN JOHNSON: All right.

MR. COX: May I make a suggestion, and that is that that provision is parallel, isn't it, in the provision of the 1974 legislation applicable to presidential elections which the Supreme Court and the Republican National Committee case indicated in a general way -- I can't say that your specific question was raised, Assemblyman -- indicated in a general way it was constitutional and it indicated that qualifying limits in a general way was constitutional.

ASSEMBLYMAN JOHNSON: Mr. Cox, I think it would be very, very helpful and very instructive in the debate now going on in California over Proposition 68 and Proposition 73 if the proponents of Proposition 68 would make any effort whatever to lay out the constitutional framework, the legal theories under which they are attempting to accomplish these things. What we have had to date, frankly, is a lot of talk about the general problem. And I agree, believe me. I have devoted much of the last eight years of my life to this issue. We absolutely agree on the problem; we absolutely agree on the dimensions of the problem; we absolutely agree that something has to be done. But we can't simply wave a wand and suspend the Constitution. We can't ignore the decisions of the United States Supreme Court in these areas. We've got to devise a system that will withstand that kind of constitutional scrutiny, and to date in the discussions around Proposition 68, there has been none of that.

MR. BARROW: I can say that if you would like to have a summary from us on our constitutional judgment from our legal people within our coalition, we can work on that and get it to you if that's what you're asking for. I think you'll find some of that in the Gold Rush which we based a lot of our proposal on, which was a two-year study by the California Commission on Campaign Financing.

ASSEMBLYMAN JOHNSON: I'm probably one of the few people in California that read both volumes of that, plus the supplemental report that came out recently. I would hope that you would also address the \$35,000 bonus situation. If ever there is an opportunity for undue influence, it would seem to me it would come in the latter days of a campaign when a candidate is opposed by a candidate who has chosen not to abide by the expenditure limits. Proposition 68 in effect suspends those contribution limitations and you're allowed to raise an additional \$35,000 free of any contribution limitations. If ever there were an opportunity for undue influence, it would come at that precise moment in time. Again, I'm interested in the constitutional justification for that.

SENATOR MARKS: Mr. Chairman, can I just make a comment, just one comment? Again, I'm not taking a position at this moment on 68 or 73, but I understand that the Common Cause has submitted already a series of justifications from a constitutional standpoint relating to this proposition. You may not agree with them, but they've done that.

ASSEMBLYMAN JOHNSON: Senator, they've not provided me with that, and to my knowledge, they've not provided the Fair Political Practices Commission with such an analysis. Many of these questions that I'm raising have also been raised by the staff of the Fair Political Practices Commission.

MR. COX: Senator, your last question surely suspending restrictions on spending and giving cannot be unconstitutional.

ASSEMBLYMAN JOHNSON: You want to run that by me again, sir? How can a contribution of \$1,001 yesterday be unconstitutional, unacceptable, as an undue influence, and a \$35,000 check from you today is perfectly acceptable?

MR. COX: The question whether it will be unconstitutional, whether it adds an opportunity for undue influence are two wholly different questions. I don't see how myself, just putting this aside, I don't see how the elimination of a previous restriction declaring something to be unregulated can run afoul of the constitutional limitations on restrictions or regulations.

So as to whether it's undue influence, it seems to me that it's whatever influence there will be, will be neither greater nor less than the influence on the candidate who didn't accept ceilings in the first place of the contributions he gets. It'd be better not to have them at all. It'd be better to have both candidates accept the ceilings. It doesn't seem to me it'll be any greater on that person who gets that last amount.

ASSEMBLYMAN CHACON: Okay. Gentlemen, I'm not going to allow a discussion to continue if it's just going to be argumentative. We're not here to listen to opinions. We want to get facts, and in terms of that, let me ask you this question which I think you ought to be able to answer. It's a rather mundane question but I think it's still very significant. The initiative says that the effective date of the initiative is January 1, 1987 but we're now in 1988. What is going to be the effective date of the initiative?

MR. BARROW: The effective date was -- when the thing was circulated, which was the spring of 1986, the intention of the proponents was to have it on the ballot in June -- or November 1986. It would go into effect at the top of -- it was always meant to go into effect at the very start of an

election cycle, two-year cycle, starting January 1 of the odd-numbered year. The date of 1987 is obviously not applicable at this point because we're past that date. Our intention and the components of this reasonably do not take -- cannot go into effect until the top of odd-number year, which is the start of an election cycle. We believe and our intent is that the thing should start January 1, 1989 if passed this June 7th. That was our intention and the intention of -- or the FPPC has come out with its findings regarding the effective date which concur with that, and there is some very common-sensical reasons why that, besides technical reasons, why that is true.

The common-sensical ones I think are the things I'd like to speak to very briefly, and that is, if you have this go into effect, or it's passed by the voters June 7th, there is no money in a Fair Political Practice Fund which the whole thing works on. The enforcement mechanism is dependent on the funding that is voluntarily collected through a voluntary tax checkoff from the taxpayers of California. You cannot have spending limits without some form of public financing. There will not be any public financing available until there is a time in which the taxpayers have an opportunity to check off and provide money for a fund for enforcement and for the public financing portion.

The whole thing knits together around becoming effective at the same time the taxpayers have the opportunity to provide voluntarily the funds to make the structure, the enforcement structure, and the spending limits and the public financing structure of it take place.

ASSEMBLYMAN CHACON: Well, I would agree that that's probably common sense and probably a court would look that way, too.

MR. BARROW: The FPPC agreed with that and in their finding and their release of -- I don't have the exact date here -- it was recently found by the FPPC and ruled on by the full Commission that the effective date would be January 1, 1989.

ASSEMBLYMAN CHACON: Let me ask this question. How would the provision for adjusting contribution limits work?

MR. BARROW: Provisions for...?

ASSEMBLYMAN CHACON: For adjusting contribution limits. There's a provision in the initiative to adjust contribution limits. How's that going to work?

MR. BARROW: They're to be adjusted -- the FPPC has the oversight of that. Bob Leidigh's here from the FPPC and can correct me on this, but they're to be adjusted by the FPPC, and according to the cost-of-living increase index.

ASSEMBLYMAN CHACON: Well, I suppose the contribution limits adjustments will be subject to the Administrative Procedures Act in all likelihood.

MR. BARROW: As far as that overrides the administrative procedures within the Fair Political Practice -- or the Political Reform Act and whether or not they have authority over their regulation or whether the APA has authority.

ASSEMBLYMAN CHACON: Okay. Senator Marks?

SENATOR MARKS: Let me ask you one of the questions there set forth in this list here. It's number 7 on page 3 of the -- you each have copies of it. "What would be the status of campaign funds in existence on the effective date of the measure?" Let me just give you the example.

"Proposition 68 does not contain any specific reference to existing funds."

MR. BARROW: Right.

SENATOR MARKS: "Thus there would appear to be four possible ways of dealing with existing funds:

"One, the pre-68 committee holding the funds can be viewed as a committee or a small contributor PAC and thus be allowed to contribute either \$2,500 or \$5,000 respectively to the candidate's post-68 committee and possibly to other candidates.

"Two, the candidate with existing funds could invoke the seed money provision (Section 85304) and transfer up to \$35,000 to the post-68 committee.

"Three, the candidate would be prohibited from using any pre-68 funds. And

"Four, the candidate would be prohibited from using any pre-68 funds unless the funds were, prior to the effective date of Proposition 68, transferred to a new committee which will become the candidate's post-68 committee.

"Which, if any, of these options would be permissible under Proposition 68?"

MR. BARROW: As far as I understand it, number 4 sounds closer to what I have been -- in discussions that we've had of where the money that exists, prior to the rules of Proposition 68 going into effect, would have to be put into, since you will be restricted in the type of account you can have under Prop. 68, and then the effectiveness of the reduction of excess money after the first election cycle that you go through as a candidate, and then having to reduce your money down to the \$100,000 limit takes place, creates the starting point of what happens to that money.

So as far as I know, and what I have in our discussions within our folks, that number 4 sounds much closer to what our interpretation of what happens.

SENATOR MARKS: It's your interpretation that if this proposition passes in June of this year, it will not become effective until January of next year?

MR. BARROW: January 1, 1989.

SENATOR MARKS: Therefore, between June and January you can do anything. Anybody can do anything.

MR. BARROW: You can speed down the road at 150 miles an hour. I apologize. I did not mean to be flippant with that answer.

SENATOR MARKS: I understand that. Well, would you be able to -- will you or your staff be able to give us a reply to the questions I've propounded, not necessarily this moment because I think it'll take too long, but give us an answer to these questions?

MR. BARROW: Yes.

SENATOR MARKS: You'll do that.

MR. BARROW: Yes.

SENATOR MARKS: All right. Thank you.

ASSEMBLYMAN CHACON: Mr. Barrow, the initiative does not make any provision for the use of existing campaign funds. Can campaign funds existing on the effective date of the initiative be used for future campaigns by the candidate under this initiative?

MR. BARROW: As far as I understand the language, that we're silent on what to do with the current funds, unlike Proposition 73.

ASSEMBLYMAN CHACON: I see. Okay. Mr. Johnson?

ASSEMBLYMAN JOHNSON: On that point, I understand your answer to be yes, they could be used in a future campaign?

MR. BARROW: Yes. Again, you have to have a starting point for this to take effect. The first cycle, at the end of the first cycle, everyone has to reduce the amount they have in their fund that they carry over to the off-year down to \$100,000. So basically if you have money now before this goes into effect that you raised under the current rules and the current laws, this is silent on what happens to that money, but it does affect that money once you've gone through a cycle.

ASSEMBLYMAN JOHNSON: Okay. Question. Again, constitutionally, how do you get there? How do you allow a current incumbent officeholder who's raised funds without limitation in terms of the source of those contributions or the amount of individual contributions? That individual finds themselves facing an opponent who can't raise money, any money, under Proposition 68 until January 1st of the election year. That candidate goes into superior court and says I have been handcuffed, I have to raise all of my money under the new contribution limitations but my opponent has \$100,000 in his or her war chest that they raised without limitation -- you are placing me at a total disadvantage. Why wouldn't that candidate, that challenger, win in court?

MR. BARROW: I don't know why they wouldn't win in court but I can't imagine a law not having a starting point, and what I...

ASSEMBLYMAN JOHNSON: No, but that's really the point, isn't it? It has to have a starting point. You can't have some of the players standing with one foot in the old system and one in the new and some of the players forced to have both feet in the new system. There has to come a point in time when it is totally the new system for all candidates.

MR. BARROW: I guess I can...

ASSEMBLYMAN JOHNSON: And Mr. Cox is shaking his head no, and I'd be delighted to hear your explanation of why that's wrong.

MR. COX: I don't think the Constitution requires that before a law that comes into effect and treats people equally after it comes into effect, the Constitution doesn't require that they all be put on an even plane with respect to what has happened in the past. The Constitution doesn't prohibit putting ceilings on individual contributions to two opposing candidates where one of them is a very, very wealthy man and the other is a poor man...(cross talking)...

ASSEMBLYMAN JOHNSON: So that if...

MR. COX: ...they don't operate exactly the same way because the people weren't similarly...

ASSEMBLYMAN JOHNSON: So if Proposition 68...

MR. COX: Let me finish!

ASSEMBLYMAN JOHNSON: Well, all right.

MR. COX: They don't, uh...

ASSEMBLYMAN JOHNSON: I thought you had a point.

ASSEMBLYMAN CHACON: Let him finish, please.

MR. COX: There are many laws that don't operate exactly the same on people who are differently situated. This would seem -- I shook my head because it would seem to me to be that that principle applied here.

ASSEMBLYMAN JOHNSON: All right, thank you. Then would you say that a wealthy individual or an incumbent legislator would be well advised, given the fact that testimony has indicated that Proposition 68 would not take effect until January 1st of 1989, a candidate, an officeholder, a present officeholder who has no funds in their account in November or December of this year, would be well advised to get a single special interest contributor to write a check for \$100,000, keep that in their account, and that challenger couldn't raise anything until 1990 and then would be limited to a \$1,000 contribution.

MR. COX: The difficulty is they could give out effective dates, as far as I'm concerned, as I don't know enough California law and particularly referendum law to speak about is a proper effective date, why is it a proper effective date. Perhaps I should have suppressed the temptation to shake my head.

ASSEMBLYMAN CHACON: Well, I think there are probably lots of laws going into effect that affect people differently simply because of the way some of the people who are affected are situated.

ASSEMBLYMAN JOHNSON: Mr. Chacon, it is a fundamental kind of issue. That challenger who goes into court and says listen, I am forced to raise all of my money under these contribution limitations, you are placing me at a terrible disadvantage vis-a-vis my opponent, who raised these funds without limitation, is able to use them against me, and they're absolutely going to win.

ASSEMBLYMAN CHACON: Well, sure. I can understand, Mr. Johnson. In fact, if I was the challenger and I was so situated, I would challenge it in court.

MR. BARROW: You are still subject to the...

ASSEMBLYMAN CHACON: That's the only answer, I mean.

MR. BARROW: That's why we have expenditure limits. That's why we want to reduce the expending side, so if you do have a giant war chest, we want to provide the opportunity for a challenger to have an effective way to raise money that they may not have the opportunity to now, which is the public financing, and also why the expenditure limits reduces the amount of money that will be spent, whether you have a million dollars or not.

ASSEMBLYMAN CHACON: Thank you. Senator Marks and then Senator Greene.

SENATOR MARKS: Let me just make a suggestion. Since several members I believe have to leave, since we are not allowed to change the propositions, either one, by our action -- we've spent a lot of time on 68 -- I think it'd be appropriate at this time to end our discussion on 68 and hear on 73.

ASSEMBLYMAN CHACON: Senator Greene.

SENATOR LEROY GREENE: Yes, thank you, Mr. Chairman. In all of the discussion here has related to issues regarding money, of course, and the thing about it is, in thinking about where the level playing field is and constitutionalities, I was reflecting on the fact that well, but suppose that

one candidate is a millionaire and has his own money and so on and the other one has no money but on the other hand is an official or a member of a very large union or some other large organization — teacher, you know, something like that — and has something that money can't buy, that kind of support -- well, you can try to buy it with money, we understand that -- so that there's another source of inequities that we have no way of handling and we don't even attempt to. You know, that is to say how many troops you got on your side, how many do I have on my side, and we reflect it all back in money.

But there was a couple of things that I would like to ask about, and this is in the one that we're talking about right now, in 68, Section 85305, the limit on total contributions from non-individuals. I was wondering what the definition of a non-individual was as to whether it did or did not include a corporation. Is a corporation an individual or a non-individual in this sense? Can you tell us?

MR. BARROW: The definition of individual, and I apologise -- we must leave. Archibold Cox has to give a lecture in Davis. But the definition of individual in 68 was meant to -- actually, the definition of organization was to...

SENATOR GREENE: I have a very simple question. Does it include or exclude corporations?

MR. BARROW: Corporations are called an organization if they have above a certain number of shareholders or individuals involved. Otherwise, they are defined as persons, and the reason that is is to prevent the situation where you have...

SENATOR GREENE: All right. So your answer is yes and no, I guess. Now, on Section 85306, it says, "No person can make contributions to legislative candidates," using the word plurally, candidates, "or committees," again using the word plurally, "supporting such candidates totally more than \$125,000 in a two-year period." Then the next section, 307, says, "No organization or small contributor PAC can make contributions to," again "candidates" plurally. What I wanted to know, when you were talking about these limitations, is that the total amount of money that can come from this source no matter how many candidates there are, or is this the total amount of money that can come from this source per candidate?

MR. BARROW: The aggregate -- you're speaking -- the aggregate limit on -- if I'm defined as an individual, and I can give \$25,000, I can give twenty-five \$1,000 contributions.

SENATOR GREENE: All right, but you can't give \$25,000 to two different people. Your gross is for the plural, the total number of candidates that there are. Is there any suspect thing about that constitutionally of my saying -- or what I'm being told, in effect, is well, if I want to give \$1,000, I can't give it to 26 candidates but I can to 25, and I'm eliminated -- yet I'm prevented from supporting the 26 financially. Is that what that means?

MR. BARROW: My apologies that I cannot answer that question right now.

MR. COX: To the best of my recollection, there is no Supreme Court decision that rules upon that question. I would also say that in trying to express an impartial judgment with a certain general knowledge of constitutional law, that I see no serious doubt, no substantial doubt even, about its constitutionality.

SENATOR GREENE: I'd like to ask you two other brief questions, and do it quickly, cognizant

of your compressed time here. You say in -- this measure says in 85308 that transfers between candidate legislators are prohibited. Are they prohibited between committees?

MR. BARROW: The transfers between -- a candidate-controlled committee would be the same thing as a candidate. A contributing candidate can contribute as an individual and has limits.

SENATOR GREENE: Well, then you're saying that the same requirement lends to any committee that's controlled by the candidate, but then apparently there is no control over a committee that is not controlled by the candidate.

MR. BARROW: They're under the contribution limits of how the source of their money...

SENATOR GREENE: No, we're talking about transfers, you know. I'm just talking about transfers.

MR. BARROW: Is the question -- I was given a question before I came in here, a question about the transferability, if I was a candidate, can I transfer -- or a committee -- can I transfer to an independent committee? Is that the question that you're...

SENATOR GREENE: No, I'm just looking at the definition here of 85308 which simply reads here, as a synopsis of it, "...that transfers between candidates/legislators are prohibited." I was wondering if that prohibition applies to committees as well as to candidates.

MR. BARROW: If it's a candidate-controlled committee.

SENATOR GREENE: All right. And if it is not, then it does not apply. It is not a candidate-controlled committee.

The last thing I would like to ask you for is, again, the constitutional viability of saying in 85310 that the legislators and candidates there are prohibited from accepting gifts and honoraria over a certain amount with the exception that gifts from family members are exempted. You don't -- apparently you find no problem with that constitutionally of saying that if the money comes from this source it's okay, but if it comes from any other source it's not okay.

MR. BARROW: The family member is, except for the immediate spouse, is under the same contribution limits as anyone else. So a gift of -- I would assume this is talking if I give my son a car and my son happens to be running for the State Legislature.

SENATOR GREENE: Well, I know that, but I want to know about -- it says that legislators and candidates and so on are prohibited from accepting gifts and honoraria totally more than \$2,000 per person for a two-year period, and I wonder if a gift can be a gift of money. Stocks, bonds, whatever, you know, and dollars.

MR. BARROW: I would imagine.

SENATOR GREENE: Then the question is, that if the gift comes from a family member, does that mean that somehow or other that I, who am not a member of that family, can make a gift to a family member who in turn can make a gift to a candidate and exceed these limits?

MR. BARROW: Well, if you're -- I mean, if you're trying to circumvent the law...

SENATOR GREENE: Yes, exactly. That's what I'm talking about.

MR. BARROW: Then I would imagine that if you were caught at that and...

SENATOR GREENE: Well, in other words, you'd have to determine that that was its purpose.

If you didn't determine that purpose, it's okay.

MR. BARROW: I would imagine, but then you have to look at the expenditure side and also what the candidate can spend on themselves and what kind of limits they're under. If they spend over a certain amount, they're not qualified for public financing. If they declared for public financing and they take such a gift, then they're going to...

SENATOR GREENE: Well, but you see, there may be a limit of 75,000, whatever the numbers are, there may be that kind of a limit, but I can't raise that kind of money but I have somebody who will give some money to a member of my family who might give it to me, and that way I can get up to this limit.

ASSEMBLYMAN CHACON: Very likely I would suppose that the FPPC will probably draft regulations covering that particular aspect.

MR. BARROW: I would imagine so.

SENATOR GREENE: Gee, all the effort we're going to have to make when we got all done with this is circumvent these laws.

ASSEMBLYMAN CHACON: One final question, if I may, just a very short one. Mr. Lewis.

ASSEMBLYMAN JOHN LEWIS: Mr. Barrow, I have a question about your financing mechanism. You're using tax checkoff funds to pay for the matching funds provision. What happens if there aren't sufficient tax checkoff funds to meet the needs of the matching funds provision?

MR. BARROW: If the FPPC determines that there's not enough money in the fund, which is highly unlikely, there are provisions to prorate the amount of money that candidates receive for the matching funds that they qualify for.

ASSEMBLYMAN LEWIS: Has there been an estimate yet of how much money they anticipate raising off the checkoff provision?

MR. BARROW: Yeah. At the presidential level and in other states that have similar type of checkoff indicators, it's going to -- more than likely there'll be around 25% of the taxpayers, not many more, not many less, checking off. It's a \$3 tax checkoff in California. That means there'll be about \$11 million per year. And our estimate and the Commission's estimate agree, and we think it's going to be between \$5-6 million per annum cost, and the Leg Analyst puts the cost at \$9 million and \$1.8 million for administrative costs. And in that range, there appears that there will be plenty of money in the formula to pay for the system and plenty of checkoff. If there's not that many people checking off, and that's the only money that can be used, if there's not that many people checking off and there is less money than is absolutely necessary for 100% on the matching fund, then it'll have to be prorated by the FPPC.

SENATOR GREENE: Mr. Chairman, I'd like to -- through Assemblyman Lewis, they've indicated that, you know, the experience in others states and so on, but we have several different checkoff items here. Question: In those other states, do they have more than this checkoff? Do they have other checkoffs too? We have checkoffs for several different reasons, so you know.

MR. BARROW: You're talking about -- on the tax form, there are checkoffs that is the amount of money you want to donate of your rebate or money you would like to donate back to the state

beyond your tax liability. The checkoff that this entails is a checkoff of -- essentially, it's earmarking \$3 of the money that you owe in taxes, you check that box. (Cross talking.)

SENATOR GREENE: Yeah, but don't we have the equivalent here, don't we have several different items that check off that way?

MR. BARROW: We have the wildlife fund, the senior citizen fund. We have the Alzheimer's...

SENATOR GREENE: Well, but the question then would be would you expect to get the same take as -- you know, would it be the equivalent experience to some other state?

MR. BARROW: No. It shows up differently on the tax form and is treated differently...

ASSEMBLYMAN CHACON: Mr. Lewis for a question.

ASSEMBLYMAN LEWIS: Thank you. The fundamental concern we have, Steve, is first of all, we disagree with those estimates. You know, we computed out that we think that the amount of public financing required could be \$25-50 million. But even if it's somewhat lower than that, what happens if there aren't sufficient funds and then the proration takes place? What happens if I or the other incumbents in this Legislature rush out and we gobble up all of the dollars for matching fund purposes -- because of our incumbancy we have the ability to go out and raise money faster and then all of a sudden that pot of available money for the rest of the people is very, very low -- what are you going to do? Give us all our \$100,000 in public financing money and then let everybody else split up \$100,000? And what makes up the shortfall if that doesn't take place?

MR. BARROW: When you're talking about the practical regulations of how this will be carried out, and then of course those things will have to be carried out, you also have to look at the effective date when people declare their candidacy and when tax forms come in and the flow of tax forms coming in and the experience from the prior years. The first couple of years will be a little bit more rockier than the years following when we have experience and we know basically how much is going to come in every year. And for me to guess, or to say that the very first year everything will be peachy-keen and we'll know exactly how much money will be there, that would be a mistake. But you must acknowledge that after this has been in effect for a couple of years, we will know how many taxpayers are checking off, we'll know generally the size of the fund, and they will know generally whether or not there's going to be need for proration. We do not think that'll be even the situation, but if it is, the first year will be the rockiest year and after that I think you can acknowledge that we'll have the experience to determine how many will check off.

ASSEMBLYMAN CHACON: Thank you very much for testifying on behalf of the rocky initiative. I appreciate, Mr. Cox, your being here. Sorry that you have to go but I understand you have an engagement.

MR. COX: Thank you. Sorry I have to rush off.

ASSEMBLYMAN CHACON: That's all right. We understand. All right, we had two initiatives. The next one is Mr. Johnson's, Assemblyman Johnson's initiative. Mr. Johnson, would you like to go forward and introduce your initiative -- expose it to, you know?

ASSEMBLYMAN JOHNSON: Mr. Chacon, Senator Marks, and members. First of all, let me say that I think that although these committees are discharging a statutory responsibility in having these

hearings, that nevertheless, you are to be congratulated because frankly, up to this point in time, this has been the first, even, attempt to look at some of the serious legal and constitutional issues, let alone the practical considerations of the two very distinct approaches that will be before the voters of California this June.

We have on the one hand Proposition 68, which I believe is needlessly complicated, is seriously constitutionally flawed, is replete with numerous very practical problems, and above all, is unnecessarily expensive.

In contrast, we have Proposition 73, which is I think -- while I am the last person who would maintain that it is perfect, that is the best law that could be drafted -- is, in my judgment, clearly constitutional, is simple, based on well-established law, and reforms the way in which political campaigns are funded in California without the use of taxpayer money.

With that, I'd be happy to entertain any questions from the members.

SENATOR MARKS: Let me ask you a couple of questions, if I may. In the first place, you have the copy of the -- it's somewhere in your file.

ASSEMBLYMAN JOHNSON: Somewhere in this pack in front of me I have it, yes.

SENATOR MARKS: There's a list of a series of questions that we have propounded which, if you cannot answer them now, we would appreciate your response to these questions at some time.

ASSEMBLYMAN JOHNSON: Certainly.

SENATOR MARKS: Let me ask you one. Let's take on page 2 of it number 5 under Mass Mailings. "Section 82041.5 and 89001 would prohibit the mailing, at public expense, of any newsletter and (and this is a quotation) '200 or more substantially similar pieces of mail'." What is the definition of "substantially similar"? Would these sections ban the mailing of unsolicited notices of classes scheduled by an adult education program, extension or a community college district? Would it prohibit the sending out of mailings regarding PG&E or the Southern California Edison?

ASSEMBLYMAN JOHNSON: Good question, Senator, and the answer is no, it would not affect such mailings at all.

SENATOR MARKS: Why?

ASSEMBLYMAN JOHNSON: We are amending the existing provisions of Prop. 9 relating to officeholders. So a mailing by a local community college district that didn't prominently feature the elected members of the board, that was simply informational about the class structure, it had a message from the president of the college as opposed to the president of the board of trustees of that college, would be totally permissible. Moreover, an elected official would be able to send out as many mailings as he or she can produce if they're in response to a specific request from a constituent and not just some puff piece that that officeholder is putting out as a tax supported adjunct to their political campaigns.

SENATOR MARKS: Suppose you were to change -- an elected official were to want to send out more than 200 pieces of the same literature and he made it -- he changed the page number, which could be done...

ASSEMBLYMAN JOHNSON: Yeah.

SENATOR MARKS: ...and so each time he wanted to send -- he sent out 10,000 of them, a series of them, and changed the page numbers. Now, they would not be similar because the numbers would be different.

ASSEMBLYMAN JOHNSON: No, that's precisely why we have that language is to avoid that possibility. We are amending language with respect to the definition of mass mailing that heretofore has said 200 or more identical pieces of mail. We are amending it to read substantially similar just to avoid that possibility, and that would be a determination of the Fair Political Practices Commission, looking at the face of the mailing how this is essentially an identical piece of mail but they've simply changed the page number or they've changed a comma, the placement of a semicolon or whatever, but it's the same piece of mail basically. They couldn't do that unless it was in response to a constituent request.

SENATOR MARKS: Let me ask another question if I can. I mean, I realize that you've not seen these questions but I would like an answer.

ASSEMBLYMAN JOHNSON: Thank you, Senator.

SENATOR MARKS: Would this ban prohibit -- "Section 85300 would prohibit the public financing" -- this is question number 4 -- "of elections for any state or local elective office in California." Now, "would this ban prohibit a charter city or a charter county from enacting, either by ordinance or local initiative, a campaign reform measure which includes public financing?"

ASSEMBLYMAN JOHNSON: I believe it would, Senator, and that clearly was our intention, but your subsequent question relating to the Constitution, the question of home rule, to be honest, I don't know what the impact of that would be. Clearly, our intention was to prohibit public financing of political campaigns at all levels in California to establish ceilings for contributions but to allow local jurisdictions to establish lower contribution limits if they chose.

SENATOR MARKS: Well now, Sacramento, which we're in, has a proposition right now. If adopted by the voters, would this section negate existing local public financing measures such as the initiative adopted by Sacramento County?

ASSEMBLYMAN JOHNSON: Yes, sir, it would. Sacramento County is the only such example that I'm aware of in California, but yes, the impact of this initiative, Proposition 73 if passed, would be to negate the public financing portions of the Sacramento initiative.

SENATOR MARKS: Well, I won't take the time here to ask you these questions. I would appreciate your response to the questions I have not asked.

ASSEMBLYMAN JOHNSON: I'd be happy to do that, Senator.

SENATOR MARKS: Thank you.

ASSEMBLYMAN CHACON: On that question, Mr. Johnson. Would this initiative prohibit a city or a county from adopting a public financing system?

ASSEMBLYMAN JOHNSON: Yes, yes. That clearly is our intention, although Senator Marks' question raised the issue of whether statutorily we can do that with respect to charter cities and counties. My curbside opinion is yes, we can, but it is an issue of, frankly, first impression and I don't know.

SENATOR MARKS: San Francisco, for example, is a charter city.

ASSEMBLYMAN JOHNSON: Charter city and county, yes, sir.

SENATOR MARKS: City and county. Therefore, I would be curious to know whether or not, and most of the propositions which we've passed in the Legislature in the hundred years I've been here do not relate to charter cities or counties, and therefore I would be interested to know whether or not this could -- I mean, unless it specifically relates to them.

ASSEMBLYMAN JOHNSON: Yes, I understand the question. My feeling is, Senator, that it would apply to candidates in charter cities and charter counties since what we are talking about is candidates for public office rather than the operation of the city or county, but I'll be happy to get a more detailed opinion for you.

ASSEMBLYMAN CHACON: Mr. Johnson, this question is similar to the one you asked Mr. Barrow earlier on Proposition 68. Would the initiative prohibit the Republican or Democratic party from using existing campaign funds to support candidates after the effective date?

ASSEMBLYMAN JOHNSON: I'm sorry? Would it prohibit...

UNIDENTIFIED: If you've got existing money.

ASSEMBLYMAN CHACON: Existing money. Would this initiative prohibit a party, Republican or Democratic party, the State Central Committees, from using campaign funds after the effective date of this?

ASSEMBLYMAN JOHNSON: Yes, in my judgment it would. It would prohibit the use of any campaign funds in hand as of the effective date, which is January 1st of 1989, and it's because I believe that, as I've said to the earlier witness, you can't stand with one foot in the old system and one in the new. There has to be a cutoff point in time when you are -- when everyone is in the new system.

ASSEMBLYMAN CHACON: In that event, what does a party or a candidate or an incumbent do with existing campaign funds?

ASSEMBLYMAN JOHNSON: Well, with respect to candidates, Mr. Chacon, they can use those funds, and the initiative states, for any lawful purpose except a campaign for a public office. You could, for example, use those funds for expenses associated with holding the office. If you wanted to purchase a piece of office equipment or augment an individual's salary, if you want to use it for travel funds and so on, if you wanted to return it to the contributors, contribute it to charity, if you wanted to contribute it to a ballot initiative like Proposition 73, you'd be free to do that as well.

With respect to the political parties, they could use those funds for all of the traditional things that political parties do -- voter registration, generic advertising, get-out-the-vote drives, party-building activities. They just couldn't use those funds for contributions to support of specific candidates for office.

ASSEMBLYMAN CHACON: Senator Marks.

SENATOR MARKS: What about -- the Republican party and the Democratic party often put out, they call, party mailers, party things which they do for candidates under the auspices of Republican party, Democrat...

ASSEMBLYMAN JOHNSON: Slate mailers.

SENATOR MARKS: ...slate mailer type things. You're telling me that if this were to pass, they would be prohibited from doing that?

ASSEMBLYMAN JOHNSON: No, they would not be prohibited from doing that, Senator.

SENATOR MARKS: The candidate. I mean, the Republican party felt that you were a good candidate and they wanted to reelect you. Could they do that?

ASSEMBLYMAN JOHNSON: Absolutely, Senator, to the limits, the contribution limits, contained in the initiative. Under existing law, if the Republican party of California puts out a slate mailing in my area that includes me, and let's say it has Governor Deukmejian and a whole slate of Republican candidates, they put me in that slate mailing, that today is an in-kind contribution to the amount of my prorata share of that mailing and that has to be reported today under...

SENATOR MARKS: No, I'm asking if this proposition passes.

ASSEMBLYMAN JOHNSON: No, I'm just taking it one step further. They would be absolutely permitted to do that to the limitations, up to the level of the limitations contained in the initiative. I assume that any qualified political party in California is also going to qualify as a broad-based Political Action Committee, so the limitation would be \$5,000 that they could put into such a mailing.

SENATOR MARKS: So in other words, they could spend \$5,000 on you.

ASSEMBLYMAN JOHNSON: That's correct.

SENATOR MARKS: That's all.

ASSEMBLYMAN JOHNSON: That's correct.

ASSEMBLYMAN CHACON: Mr. Johnson, there's no provision in this initiative about related or coordinated committees. Could a group of friends form a number of different committees with two of the friends on each committee and thus funnel more than \$1,000 each to a particular candidate?

MR. JOHNSON: Can you give me an example of how that would work, Mr. Chacon? I mean, how would they coordinate those activities? I mean, yes, the short form answer to your question is yes, there would be the possibility for some...

ASSEMBLYMAN CHACON: Well, there can be even today, there can be a number of committees with mutual friends on each committee and all intended to help one candidate and they tap different sources of money but they all contribute to the one candidate. So my question is whether under your initiative that can still occur.

ASSEMBLYMAN JOHNSON: Yeah, there's no question that potential is there, but what I have, you know, responded is how does the mathematics work out? How do two people advantage themselves in terms of their ability to participate in the process that way?

ASSEMBLYMAN CHACON: Well, I suppose what happens is that they come to a mutual agreement to help a particular candidate, and in addition to the thousands of friends they have other members of committees who are not necessarily on the other committee but they have a thing going, kind of like a chain of committees, to help a candidate.

ASSEMBLYMAN JOHNSON: Presumably, though, they would be doing that to have some dollar

advantage, to increase the amount of money that -- and the specter's been raised that you'll have a couple of people who'll put in large amounts of money to a Political Action Committee and then they'll have a whole number of people contributing \$5, but if you run through the mathematics, it just really doesn't work out.

ASSEMBLYMAN CHACON: Mr. Johnson, how does the definition of a political committee in this initiative differ from the definition of a committee in the Political Reform Act? Is there a difference?

ASSEMBLYMAN JOHNSON: How does the definition of political...?

ASSEMBLYMAN CHACON: Of a political committee in this initiative differ from the definition of a committee in the Political Reform Act? There's a difference -- the staff felt that there was a difference.

MS. BARBARA MILMAN: Well, you have a separate definition of political committee...

ASSEMBLYMAN JOHNSON: That's correct.

MS. MILMAN: ...(inaudible)...receive contributions or make the contributions is not part of your definition. Do you intend to have there be something which is a political committee under your initiative which does not necessarily...

ASSEMBLYMAN JOHNSON: In the existing laundry list of persons contained in the...

MS. MILMAN: (Inaudible.)

ASSEMBLYMAN JOHNSON: I'm sorry, I can't answer the question. We clearly intended to create a new class of broad-based Political Action Committees but recognize a larger group that contributes to more than one candidate to five candidates in existence for a period of time, but with respect to how we are changing the current definition of a Political Action Committee, I'm sorry, I just don't know.

ASSEMBLYMAN CHACON: All right, we have other witnesses, Mr. Johnson.

SENATOR MARKS: Just one more question.

ASSEMBLYMAN CHACON: Senator Marks.

SENATOR MARKS: I'm going to give you an opportunity to respond to this as something that you agree with. Why are you cutting out mailings by incumbents?

ASSEMBLYMAN JOHNSON: Well...

SENATOR MARKS: I mean, it gives you an opportunity to say what you want to say.

ASSEMBLYMAN JOHNSON: Thank you, Senator. I appreciate that. I think if -- in our more candid moments, all of us would agree that basically the mailings that we do are an enormous advantage that we as incumbents enjoy. It is a part of a sincere effort to at least -- you can never eliminate the advantage of incumbency, but it's taking away one of the advantages that we enjoy as incumbents. And the reality is that while some of us may try and be useful and informative with those newsletters that we all put out, the fact is that they're a mighty nice addition to our ongoing political campaigns paid for by taxpayers, and as I have said in debate with some of my colleagues on this point who say no, mine is intended merely to inform my constituents, I'll believe that when one of us -- 120 of us -- puts in our newsletters the opportunity for the presentation of opposing points of

view, or when any one of us in one of our newsletters say, "Boy did I screw up last week. I cast a vote that is just terrible. It's going to hurt the people of my district for years to come." The fact is, they are self-serving puff pieces. We all do it. It's an advantage that we enjoy as incumbents. It's an advantage that we ought not to have.

SENATOR MARKS: I wanted to give you a chance to respond.

ASSEMBLYMAN JOHNSON: Thank you, Senator. I appreciate it.

ASSEMBLYMAN CHACON: All right, umm...

ASSEMBLYMAN JOHNSON: Mr. Chacon, if I just may in 30 seconds of summary, again, I indicate that I do appreciate the opportunity to appear before you today. I do think the people of California have a very clear choice this June. They can vote for a responsible reform that is clearly constitutional, based on well-settled law, and that does something concrete about solving the problem without the use of taxpayers' money or a needlessly complicated, needlessly expensive and constitutionally suspect proposal.

Thank you.

ASSEMBLYMAN CHACON: Thank you, Mr. Johnson. There are two witnesses that were scheduled to appear and testify for the committee. I'd like to call the representative of the FPPC if he or she is here? (Staff consultation.) Would you mind if I call on the League of Women Voters to testify first of all? We appreciate your courtesy. They were first on the schedule.

MS. ROBYN PRUD'HOMME-BAUER: Thank you. My name is Robyn Prud'Homme-Bauer from the League of Women Voters of California, and I appreciate the opportunity to speak before you today. I know you have a lot of questions for the FPPC so I will keep my statements very brief, but I think it is important that you hear from the public interest groups for Proposition 68. That's the League of Women of Voters.

Since the early 1970s, we as an organization have consistently lobbied for effective campaign finance reform. As an organization, we support comprehensive campaign finance reform that would place realistic limits on contributions to candidates by individuals and groups, place realistic limits on the amounts candidates can spend on campaigns, and reform that would include public financing of campaigns through an income tax checkoff system. These goals are embodied in Proposition 68.

We all know why we need Proposition 68 -- at least the League does. Campaign spending has gotten out of hand. Expenditures are rising 20-30%, and by 1990, it is expected it will cost approximately \$1 million to run for a seat in the Legislature.

Because campaigns are more costly, candidates need larger sums of money; thus, candidates are being forced to depend heavily on large contributions from special interest groups outside their constituency and the grass roots small contributor is being shoved aside.

This Proposition 68 would put a stop to the escalating costs of campaigning. It would restore a balance by placing limitations on the amount the candidate could raise from large groups, and by matching smaller contributions with public funds at a higher ratio. This effectively makes the smaller contributions more worthwhile.

Another reason we need this proposition is that the Legislature has demonstrated over the last

14 years its inability to pass comprehensive campaign finance reform legislation. What became apparent to many grass roots organizations was that to have comprehensive reform, it would have to be done in the form of an initiative. This initiative, Prop. 68, is based on a model campaign finance law developed by the objective bipartisan campaign commission -- the California Commission on Campaign Financing.

There can be no effective campaign finance reform without spending limits. When people realize this, they are willing to accept public financing as a part of campaign reform.

The matching public funding component of Prop. 68, I wish to reiterate, is a voluntary income tax checkoff. Those who are truly opposed to public funding have the option of not participating. Also, these matching funds would not be available unless a candidate has demonstrated significant support by raising a threshold amount and faces a viable candidate.

Proposition 68 is a reasonable and balanced measure which enables candidates to compete more equitably for public office, and for my organization, promotes citizen participation in the election process.

Thank you. That's the end of my statement and I will take any questions about the League's position on this issue.

ASSEMBLYMAN CHACON: Mr. Johnson.

ASSEMBLYMAN JOHNSON: I gather that the thrust of why your organization -- and by the way, I just -- on a point of personal privilege, you know, you listed all those reasons as being reasons for Proposition 68. Those are also reasons for Proposition 73. We don't disagree at all on the nature of the problem and we certainly don't disagree on the fact that if we're going to have a solution, it's going to come through the initiative process. I just think it's unfortunate the League didn't take a look at the concepts embodied in Proposition 73.

MS. PRUD'HOMME-BAUER: We did.

ASSEMBLYMAN JOHNSON: I take it that you're interested in reducing the influence, or the perceived influence, of special interests in political races in California. Is that a fair statement?

MS. PRUD'HOMME-BAUER: The legislators' abilities to go -- to need larger contributions as they need more money to spend.

ASSEMBLYMAN JOHNSON: Is it a problem today that we have large corporations and labor unions, trade associations, the California Medical Association, California Beer Wholesalers and others making contributions, large contributions, to legislative candidates?

MS. PRUD'HOMME-BAUER: I would say it's a problem that the small contributors giving to campaigns has been lessened by the large sum of money...

ASSEMBLYMAN JOHNSON: All right. Let me ask the question another way. Would you say it's not a problem then that these large special interest contributors are contributing to legislative...

MS. PRUD'HOMME-BAUER: We think it is a problem.

ASSEMBLYMAN JOHNSON: All right. Then what sense does it make to match those special interest contributions on a 3 to 1 basis with tax money?

MS. PRUD'HOMME-BAUER: For the small contributor -- I am not a technician on this and so...

ASSEMBLYMAN JOHNSON: You're here testifying in favor of this measure. Don't you realize that Proposition 68 would match a contribution from any of these special interest contributors on a 3 to 1 basis with your tax money? Did you realize that?

MS. PRUD'HOMME-BAUER: Yes, I did realize that.

ASSEMBLYMAN JOHNSON: Now then, the question was, why do that?

MS. PRUD'HOMME-BAUER: I think I'll defer to Marg Herman, our legislative advocate, who can answer that question better.

MS. MARGARET HERMAN: I'm Margaret Herman representing the League of Women Voters. Everybody has a right to contribute to the candidate of their choice up to certain limits. We would not say that groups, labor unions, corporations, or anyone cannot contribute and...

ASSEMBLYMAN JOHNSON: They can't contribute on a federal level, can they?

MS. HERMAN: There is a limit to the amount that is matched, and the whole point of the matching contributions, the whole point of the public funding, is to give everybody a chance to run a viable campaign, and by matching the contributions at a higher ratio for the smaller contributions, it's one of the features of the bill that we happen to like because we feel that it will encourage candidates to look for contributions from their constituents and from smaller contributions.

ASSEMBLYMAN JOHNSON: Okay. I understand that point, but I still haven't heard a question as to why you match with tax money the special interest contributors. Could it have anything to do with who paid for the qualification of Proposition 68?

SENATOR MARKS: May I ask you a question?

ASSEMBLYMAN CHACON: Senator Marks.

SENATOR MARKS: If the people, the taxpayer, is willing to spend tax money, public money, they're willing to do it, why shouldn't they be able to do it?

ASSEMBLYMAN JOHNSON: Oh, thank you. I'm glad you asked that question because that refers back to a comment that the witness made, that this is a voluntary choice. But that's simply not true. What in effect this voluntary checkoff is is a draw on the State General Fund. The initiative prescribes a form that will appear on your income tax form that indicates that if you check off the \$3 as an individual or \$6 as a married couple filing a joint return that it will neither affect your tax obligation nor any refund to which you're entitled. That means it's a draw directly out of the State General Fund -- money that would otherwise be available for police protection or fire protection or emergency medical services, schools, transportation, you name it. It's coming straight out of the General Fund. It is not voluntary in the sense of that individual taxpayer reaching into his or her wallet. What they're doing is reaching into the wallet of every other taxpayer in California.

MS. HERMAN: Incidentally, I would like to correct one statement, Mr. Johnson, that you made earlier. Well, a comment that you made you wished that the League had looked at Proposition 73. We did, sir, and decided to oppose it on the basis...

ASSEMBLYMAN JOHNSON: Oh, fine.

MS. HERMAN: ...that it doesn't...

ASSEMBLYMAN JOHNSON: I couldn't get Mr. Cox to say what he had decided to do.

MS. HERMAN: Well, he may not have made a decision. The League has.

ASSEMBLYMAN JOHNSON: Okay. Mr. Chairman, if I could try and get one more time an answer to the basic question why in the world should we be matching with tax money the contributions of special interest contributors? You've made a plausible case for matching small individual contributors but I haven't heard an answer yet to why the California Medical Association, or Walter Gerken and Pacific Mutual Insurance, or the Del Gorgio Corporation, or any other of the major California corporations that contributed nearly \$300,000 to the qualification of this initiative should have their contributions matched with tax money?

SENATOR MARKS: Umm, may I ask another question?

MS. HERMAN: We believe that...

SENATOR MARKS: Of you?

ASSEMBLYMAN CHACON: Senator Marks.

SENATOR MARKS: You're opposed to all the money that George Bush is getting from the national treasury? Are you opposed to it?

ASSEMBLYMAN JOHNSON: As a matter of philosophy, I am but...

SENATOR MARKS: I mean, others are getting it too but are you opposed to that?

ASSEMBLYMAN JOHNSON: Yes, I am, but let me say that -- and that raises a very good point, and that is how you can devise a system that provides public funds to candidates at an Assembly district or State Senate district level in California, to provide those funds to serious candidates that doesn't also provide it to the splinter extremists -- the Lyndon LaRouche's, the Ku Klux Klansmen, the Neo-Nazis and so on. At the federal system, you may recall a few weeks ago, Lyndon LaRouche qualified under a much more stringent system at the federal level, qualified and has received tax money. That to me, Senator, is frankly an abomination. The problem will be far greater at an Assembly district level in California. I am convinced you cannot devise a system that an Assembly district level will provide those tax funds to that serious candidate without simultaneously making them available to the extremists.

SENATOR MARKS: But if you were in Congress, you would vote to repeal the law allowing George Bush to get any money.

ASSEMBLYMAN JOHNSON: Yes, sir, I would, and that raises again another interesting question, since the witnesses all have, in favor of 68, have indicated that they don't think that simply applying limitations on contributions is enough, that you must have a limitation on expenditures and provide the public financing, or I gather what the witnesses are saying is the problem will be made all the worse. Is that a fair statement, that if you don't have the complete...

MS. HERMAN: Contribution limits. Only what we perceive is that candidates will simply spend a great deal more of the time than they do now trying to raise the necessary funds, these exorbitant amount of funds, and will simply spend more time trying to raise the money than they have to do now. And of course one of the other problems is the fact that you can have a proliferation of PACs and there are really no effective contribution limits in 73 as...

ASSEMBLYMAN JOHNSON: All right. Then that being the case, why wouldn't you be

advocating the repeal of the limitations on congressional campaigns at the federal level?

MS. HERMAN: We feel...(cross talking by Assemblyman Johnson)...step-by-step process. We don't feel that the contribution limits are, alone, effective and we would like...

ASSEMBLYMAN JOHNSON: Well, but wait a moment.

ASSEMBLYMAN CHACON: Mr. Johnson, let's stick to this initiative, not what...

ASSEMBLYMAN JOHNSON: She just said, Mr. Chairman, that Proposition 73 would not solve the problem, that it would create a greater problem than we have today, and yet, what we're proposing in Proposition 73 is essentially the same as at the congressional level.

ASSEMBLYMAN CHACON: Mr. Greene.

MS. HERMAN: What I said was we don't think that that's adequate either.

ASSEMBLYMAN JOHNSON: Well, then why not advocate its repeal?

ASSEMBLYMAN CHACON: Mr. Johnson, I called on Mr. Greene. Mr. Greene, I called on you.

SENATOR GREENE: Well, you know, what I see here is proponents and opponents going at it as proponents and opponents. (Laughter.)

MS. HERMAN: Incidentally, the reverse. We have a member of the committee, in his privileged committee position...

SENATOR GREENE: Well, again...

ASSEMBLYMAN CHACON: He's here at my invitation.

SENATOR GREENE: The difficulty is that we're in the mode of a typical hearing where we have witnesses and we have a piece of legislation before us and we're going to decide whether we vote for it or not and perhaps you're trying to persuade our colleagues to take our point of view, you know, as we consider a piece of legislation. But I didn't think that that was quite the purpose here. I thought that it was more informative to all of us, ourselves, and to try to dig out the technology here, the technical things that are in these bills and will they work or won't they fit together, you know, and will this clock work when you wind it up or won't it because the wheels don't fit.

ASSEMBLYMAN CHACON: Well, I'll ask Mr. Johnson to restrict his comments.

SENATOR GREENE: Well, I have no arguments with Assemblyman Johnson or anyone else. I'm just observing here that the fallout of anything you do, you know, there is no perfect solution. I think Ross would agree with that, too. There isn't going to be one. I, in my own mind, prefer a different imperfect solution, stating first that it is very imperfect, and that would be to move the primary date as close to the general as I could get it...

ASSEMBLYMAN JOHNSON: I have a bill to do that.

SENATOR GREENE: ...and to decrease the length of time in which you could spend money. I would wish that there would be about six weeks between the two elections. We've never been able to work that out. We've always had a problem with our presidential primaries and things like that which gives us a pain in the neck anyway for other reasons.

But there is merit obviously, and demerit in my mind, in both of these measures. I wonder about when you try, for example, to do away with newsletters and the likes, and you give a reason for that of course, but then the effort here is to decrease the communication between the elective

representative and the constituency and stating these reasons as why you should do that. In a way, it's sort of like taking the fastest horse and then saying you've got to carry so much weight to slow you down because we have to have an equal competition among these horses that are in this race, and that apparently is sort of a fair example of a similar situation.

But the incumbent, whoever he or she is, is that. The other side of the coin to me, Assemblyman Johnson, is that I feel that there should be a maximum effort at communication between the representative and the electors who elected the representative rather than saying well no, but the more you communicate with them the better they know you, you know, and you have these advantages; just as you may have advantages of being the one that's invited to be in the Fourth of July parade or whatever it is because your opponent is not known at that time. That's simply the way it is. It's simply the way it is.

ASSEMBLYMAN JOHNSON: And you can never take that away, I know.

SENATOR GREENE: No. But the way I see it in the sense that there's a champion in prizefighting or whatever it might, you know, or tennis or whatever, and then there's the challengers; and the incumbent in that sense is the champion, you know. That's the person that was selected. There may be much better people around but this was the one that was selected. And I don't know of this concentration on trying to diminish that role in the sense of saying I got to take -- you have an advantage; I've got to make you carry more weight than someone else, because you do have the advantage. There is no question about that. But isn't it a matter then of proving, apart from anybody else, of saying yeah, but I'm better for this role than he or she is -- you know, that's what it's about -- and then you get into the difficult argument because there's that philosophy, such as I'm sure some of our Republican colleagues would agree to, that don't want any public financing.

You see, if I had my way, Ross, I'd go the opposite way. I would say 100% financing from the public -- I know what to do in the Primary; we're talking about General now -- 100% public financing and you're not allowed to spend one damn thin dime of yours or anybody else's in the race. No other money can go in the race. Because when you get here, you're going to be dealing with public and public money only. And I'm saying okay, if that's -- you know, the public will not go with what I'm proposing. I don't have any question in my mind about that.

But I would suggest to you that in talking about fairness and equity, it might be if you said, for example, in an Assembly race or a Senate race there's "X" dollars available; we've got two newspapers in town; we've got a reporter from each one, they can pick a third; you've got to appear on the ballot with your opponent and so on; we've bought so much radio, so much television; and you've got to go through these things that would put everybody on an equal footing. There's only one problem that I can see with my proposal. It's unconstitutional.

Thank you, Mr. Chairman.

ASSEMBLYMAN CHACON: Our witnesses are the League of Women Voters, and I have one final question for you.

In view of the fact that Proposition 40, also authored by Mr. Johnson, was defeated primarily on the basis that there was public financing as a part of it, do you really feel that the public's going to

support this initiative this time with public financing in it? A poll that was taken not too long ago indicated the public still rejects public financing of campaigns.

MS. HERMAN: Mr. Chairman, we have every expectation that the public will. There have been a number of polls and it depends a great deal on the way the question is worded in the first place. If you say that, you know, do you want public money, your tax money, to go for candidates, they'll probably say no because to be perfectly honest, there's not a very high regard. But on the other hand, if you tell them that by offering public money to encourage a candidate to voluntarily limit expenditures, then people do tend to approve of using a limited amount of public funding.

I might also point to the recent overwhelming vote in Sacramento County in favor of public funding. I think that there has been a significant shift, and I might say too that we feel that it's unfair of Proposition 73 to prohibit local voters from voting in an ordinance that they want locally.

ASSEMBLYMAN CHACON: Well, speaking neither for nor against 68, it seems to me that once the public learns that the contributions on the checkoff system will come under the Gann limit and that those could result in the reduction of services because of the cap in -- or it will be with the Gann limit, is probably a weak point in the initiative.

ASSEMBLYMAN LEWIS: Mr. Chairman?

ASSEMBLYMAN CHACON: Mr. Lewis. And then we're going to call on FPPC and Leg Counsel.

ASSEMBLYMAN LEWIS: I still have a problem with the funding mechanism because I believe that monies that are estimated that are going to be collected from the checkoff are going to be very insufficient to cover all the matching funds provision of this measure. What would the League's position be, or what would your position be if that account runs blank, would the League consider lobbying the Legislature for a General Fund augmentation to pick up the rest of that program?

MS. HERMAN: We have not considered that question, sir, so I can't give you an answer.

ASSEMBLYMAN JOHNSON: Mr. Chairman, if I may, just before these witnesses step down, Ms. Herman, I want you to know that anytime you want to ask me any questions along a similar line -- I mean, if I can't stand the heat, I ought to get out of the kitchen, and I'm certainly more than willing to address any questions that you or any other representative of the League have with respect to Proposition 73. I in no way was attempting to intimidate you or discourage you or the League from taking a position for or against any measure. To the contrary, you're to be congratulated for doing that. I am sincerely interested in answers to the questions that I posed, not only to you but to the other witnesses as well.

SENATOR GREENE: Mr. Johnson, I'm sure you can take the heat but there are times I wish you were in some other room in the house. (Laughter.)

ASSEMBLYMAN CHACON: Thank you very much, ladies. I'd now like to call on a representative from the FPPC and from Leg Counsel. Let's remember, members, that they are neither for nor against these initiatives. We should ask them technical questions with regard to the two initiatives.

MR. ROBERT LEIDIGH: Chairman Marks, Chairman Chacon, members of the committees, my name is Robert Leidigh. I'm staff counsel with the Fair Political Practices Commission.

MS. KATHRYN DONOVAN: My name is Kathryn Donovan. I'm staff counsel for the Fair Political Practices Commission.

MR. LEIDIGH: We're here today, as the Chair indicated, not in support or opposition to either of these measures. As the committees are well aware, the Commission is prohibited by law from taking any position on either of the matters. We have...

SENATOR MARKS: May I ask you a question while I'm thinking of it?

MR. LEIDIGH: Certainly, Mr. Chairman.

ASSEMBLYMAN CHACON: Mr. Marks.

SENATOR MARKS: You may recall I asked a question of Mr. Johnson relating to mass mailings, asked him because I read the language to say, the way you say, 200 or more substantially similar pieces of mail. I asked him the question of whether or not a college class schedule, which is 200 or more, would be covered by this proposition. In your opinion, would this proposition inhibit a college class from mailing out 200 or more mailings?

MR. LEIDIGH: Mr. Chairman, we have done a legal analysis. The Commission has not taken a position on that legal analysis so it simply is a staff legal opinion that the changes made in this...

SENATOR GREENE: Excuse me. Senator Marks, I'd like to understand that question a little better. Are you talking about in college there is a class and that members of that class are sending a mailing out?

SENATOR MARKS: No. I'm saying that -- if you read the language of the Proposition 73, it says, "to prohibit the mailing at public expense of any newsletter and" (and this is a quote) "two or more substantially similar pieces of mail." If a college...

SENATOR GREENE: But isn't that tied to the candidate?

SENATOR MARKS: No. Well, that's my question.

SENATOR GREENE: I see.

SENATOR MARKS: Because it says substantially -- you cannot mail out more than 200 similar pieces of mail.

SENATOR GREENE: And it doesn't say that that's limited to anybody. You think it includes any public agency or...

SENATOR MARKS: I don't think it's limited to anybody. I think it prohibits the mailing out of 200 or more pieces of mail.

ASSEMBLYMAN CHACON: Why don't I ask staff to read the language.

MS. MILMAN: There are two provisions in the initiative which are...

SENATOR GREENE: Which one are we on now?

MS. MILMAN: We're on 73.

SENATOR GREENE: Thank you.

MS. MILMAN: The first provision says, "Mass mailing means 200 or more substantially...

SENATOR GREENE: Can you refer me to that section number?

MS. MILMAN: It's Section 82041.5 of the initiative. It's near the end.

UNIDENTIFIED: It's near the end because it's an amendment.

MS. MILMAN: Right. Okay, it's near the end. It says, "Mass mailing is 200 or more substantially similar pieces of mail but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." And the second section that's involved is Section 89001 which says, "No newsletter or other mass mailing shall be sent at public expense", period.

SENATOR GREENE: And you're saying that it's vague as to who it's referring to who's making this mailing.

MS. MILMAN: Right. What it does is it takes out of the Political Reform Act language which used to be there which said no mass mailing can be sent at public expense by or on behalf of a public official after the official has declared his candidacy. It takes that part of the section out and just says, "No newsletter or other mass mailings shall be sent at public expense."

ASSEMBLYMAN CHACON: So the question is I guess whether any mass mailing on the part of the DMV and the part of the Department of Finance, any — PG&E...

SENATOR GREENE: But don't you find this statement, in the middle of a whole series of things that relate to candidates for public office, isn't there a matter of the logic of its position within a group of statements...(cross talking)...

ASSEMBLYMAN CHACON: How do you see it?

MR. LEIDIGH: Again, the staff has done a legal analysis that has not been adopted by the Commission, so it does not represent the Commission's position. Looking at the initiative which your consultant has just read to you, and given the fact that it explicitly strikes out the language that says currently by or on behalf of any elected officer, etc., etc., it certainly raises a serious question of whether it is in any way tied to the elected officer.

Senator Greene made reference to the fact that the provision in 89001 appears in a chapter of the Political Reform Act which is entitled "Incumbency." An argument has been advanced by Assemblyman Johnson, and it's one he's made in front of my Commission so I don't feel bad about making it even though he has departed, that somehow we should read that chapter title back into this section and recognize that somehow it's supposed to relate to incumbency.

Under the current statute, the Commission has long had a regulation which you here are all familiar with. We've just recently amended it to apply to local officials, but you're all familiar with the practice. You send out your newsletters before you file your papers and when you file your papers then you don't. The Commission has had a regulation that has defined when something is sent by or on behalf of an elected officeholder and has said that certain kinds of routine governmental mailings, welfare checks going out, all those kinds of things, things which don't make mention of any elected officeholder, are not sent by or on behalf of that elected officeholder or that incumbent even if sent at public expense.

With this language being stricken, it raises again a serious legal question of how that is to apply. If you simply try to read in the word incumbency and somehow relate it to an incumbent, an example that comes to my mind is a mailing made at the behest of the Board of Supervisors in Sacramento County to landholders who have property within 300 feet of a parcel that's coming up for a rezone

and there's more than 200 of them and they send out 200 substantially similar pieces of mail and it's sent out at the direction of the Board of Supervisors which has five incumbents. Now, how do we read that under this provision? Do we read incumbency or not? Those are questions we're going to have to wrestle with.

SENATOR MARKS: You don't know the answer.

MR. LEIDIGH: Yes.

SENATOR MARKS: Thank you.

SENATOR GREENE: Gee, when I think of all the junk mail I can't get rid of.

ASSEMBLYMAN CHACON: I have another question for you. When do you reap in the effective date? I asked that question earlier. You know, the effective date is '87 and here we are in '88. How are you going to interpret that?

MS. DONOVAN: The Commission has issued a legal memorandum on that issue and the position taken in that memorandum was adopted formally by the Commission as its official position. The basic point is that the effective date in Proposition 68, that expressly provides for a January 1, 1987 effective date, would be invalid, and that, instead, the initiative, if adopted by the voters, would become effective on June 8th, the day after the election. Now, certain provisions -- the main provisions of the initiative however would not be practical to become operative at that point, and so they would have a delayed operative date of January 1, 1989.

ASSEMBLYMAN CHACON: You mean certain provisions will be operable the day after the election and others will not?

MS. DONOVAN: Well, that's correct. The main provisions of the initiative -- the contribution limits and the expenditures limits -- would not be operative or enforceable until January 1, 1989. Because of the way that the initiative is structured, it's based on a two-year election cycle and it really does violence to its provision to have it take effect...

SENATOR MARKS: Does that mean that the provision -- we're talking about 73 right now, are we?

MS. DONOVAN: No, we're talking about Proposition 68 right now. Proposition 73...

SENATOR MARKS: When will that become effective?

MS. DONOVAN: January 1, 1989 is its effective date. We have no reason to question the validity of that provision.

ASSEMBLYMAN CHACON: I'd like to ask Leg Counsel to come forward and respond to that question. That's a very critical question, the operative date of the initiative. Have you looked at this and what have you determined?

MR. JACK HORTON: Mr. Chairman, members, I'm Jack Horton, Chief Deputy, Legislative Counsel. We have addressed this issue and although we're in some conformance with the FPPC with respect to their views on it, we differ to some extent. We believe that Proposition 68 would become effective and operative -- be effective immediately after adoption, the day after the adoption of the measure if it's adopted. Except for the checkoff provision, which would also be operative the day after the election, the remaining provisions, all of the remaining provisions of that proposition we

believe will become operative on January 1, 1989.

ASSEMBLYMAN CHACON: Thank you very much.

SENATOR GREENE: So in other words, we go from the ballot box to the courtroom.

MR. HORTON: I'm sure we'll do that.

SENATOR GREENE: There's going to be litigation no matter what, should it pass.

MR. HORTON: I don't think there's much question about that.

ASSEMBLYMAN CHACON: Okay. Unless there's any further questions, I want to thank you for testifying.

MR. LEIDIGH: I would indicate, Chairman Chacon and Chairman Marks and the committee members, we have a chart that we prepared. I see, with the materials that we received when we got here today, that your staff has also prepared a chart that compares the measures' provisions. I will make that available. We will be publishing it in our bulletin next week along with a written description of the two measures that compares them and hopefully will help the voters to understand what the two measures do.

Thank you very much.

ASSEMBLYMAN CHACON: Thank you very much. This will be very helpful. All right. This hearing is adjourned.

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