
# HISTORY OF THE POLITICAL REFORM ACT

## Purpose

This document is intended to provide Commissioners with easily accessible informational material regarding the history of the Political Reform Act. As new information and resources become available, legal staff will update this document and provide Commissioners with updated copies, along with an explanation of the changes.

Legal Division

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# History of the Political Reform Act

The Political Reform Act is the product of competing interests, which include the electorate's frustration with the political process and the court's zealous protection of fundamental constitutional rights. The third ingredient, legislative action, supplements these two divergent elements.

# Proposition 9 – "The Political Reform Act of 1974"

In 1974, during the fallout from Watergate, a coalition of political reformers presented a statewide ballot initiative that they claimed would "put an end to corruption in politics." These reform groups included Common Cause, the People's Lobby, and the Secretary of State/gubernatorial candidate Jerry Brown. These reform groups sought to end corruption by reducing the amount of money spent in elections and by eliminating secret or anonymous contributions. With the advent of the new law, the campaign activities and the personal financial affairs of state and local officials were subjected to greater public scrutiny than at any other time in California's history. And the initiative directed that the law be vigorously enforced by the newly created Fair Political Practices Commission. Proposition 9 had six main provisions.

- Proposition 9 imposed mandatory spending limits on candidates for statewide offices and statewide ballot measure committees. However, in the landmark case, *Buckley v. Valeo* (1976) 424 U.S. 1, the United States Supreme Court held that mandatory spending limits were unconstitutional.
- Proposition 9 imposed restrictions on lobbyists. It required lobbyists to register with the state and to file reports disclosing their activity expenses. It also imposed a $10 gift limit on lobbyists and prohibited lobbyists from making contributions.
- Proposition 9 imposed strict conflict of interest laws and required state and local agencies to establish conflict of interest codes, requiring agency officials who routinely participate in decisions to publicly disclose personal financial information.
- Proposition 9 banned anonymous contributions of $100 or more and established extensive campaign disclosure laws. The underlying theory behind campaign disclosure is that an informed electorate will vote against the candidate or proposal having financial alliances adverse to the public interest. In addition, candidates are less likely to accept a contribution from a source with whom they do not want to be identified.

- Proposition 9 enacted laws to curtail incumbent advantage, e.g., a prohibition on sending "mass mailings" at public expense. Many of these laws have been tailored significantly by regulatory or court action.
- Proposition 9 created an independent centralized authority to secure compliance with the Political Reform Act. Prior to the creation of the Fair Political Practices Commission ("FPPC"), campaign disclosure laws were rarely enforced.

In addition to creating the FPPC, Proposition 9 established strict auditing of campaign statements by the Franchise Tax Board. Prior to the Political Reform Act, no systematic method existed to determine whether a candidate or committee reported all contributions and expenditures.

# Legislative Activity

In cooperation with the FPPC, the Legislature added various provisions to the original Political Reform Act.

In 1977, the Legislature required candidates and committees to disclose their identities on campaign literature. This law was later challenged in the California Supreme Court and upheld. (*Griset v. Fair Political Practices Comm.* (1994) 8 Cal.4th 851.) A subsequent challenge based on the United States Supreme Court case, *McIntyre v. Ohio Elections Commission* (1995) 514 U.S. 334, 336, also failed. (*Griset v. Fair Political Practices Comm.* (2001) 25 Cal.4th 688.)

In 1980, the Legislature imposed restrictions on state employees who leave state service to join the private sector. These restrictions are commonly referred to as the "permanent ban" and prohibit state employees who work on specified proceedings such as procurements and lawsuits from being paid to "switch sides" after leaving state employment.

In 1982, the Legislature passed an important contribution limitation applicable to members of boards and commissions. Under Section 84308, an appointed official may not accept a contribution of $250 or more from an applicant until three months after his or her agency's decision on a matter is final. If the official has accepted a campaign contribution of $250 or more from an applicant within the preceding 12 months, the official is disqualified from participating in the decision. Before this new law was added to the Act, it was longstanding practice for appointed officials to solicit contributions from applicants and then vote favorably in a decision affecting the applicant.

In 1982, the Legislature provided funding to the Enforcement Division for the purpose of enforcing the Act at the local level.

In 1985, the Legislature passed a law that required sponsored committees to include the name of their sponsor on all political mailings sent by the committees.

In 1987, after the FPPC conducted extensive hearings on the matter, the Legislature passed laws imposing stricter identification and notification requirements on slate mailer organizations. The hearings held by the FPPC had identified four problems associated with slate mailers: 1) the mailers deceptively appeared to be official party documents; 2) candidates on each mailer erroneously appeared to be endorsing one another; 3) the mailer did not disclose which candidates or ballot measures paid to be included on the mailer; and 4) slate mailer organizations were not required to file campaign disclosure statements. The new law remedied these concerns by requiring a disclaimer to be placed on every slate mailer.

## Propositions 68 and 73

Voters simultaneously passed two political reform initiatives in 1988. Proposition 68, a measure sponsored by Common Cause, provided contribution limits with public financing for legislative election campaigns. Proposition 73, an initiative sponsored by members of the Legislature, was a more comprehensive campaign finance reform measure that did not include public financing. The electorate approved both ballot measures, with Proposition 73 receiving the most votes.

The California Supreme Court subsequently ruled that when two competing comprehensive reform schemes are enacted at the same time, it will not sort through the provisions to determine which parts are compatible after the election. (*Taxpayers to Limit Campaign Spending v. Fair Political Practices Comm.* (1990) 51 Cal.3d 744.) Only the ballot measure with the most votes will prevail--in this case, Proposition 73.

The contribution limits and the inter-candidate transfer ban in Proposition 73 were later invalidated in federal court on the basis that the limits were applied on a fiscal year basis, which favored incumbents. (*Service Employees Internat. Union v. Fair Political Practices Comm.* (9th Cir. 1992) 955 F.2d 1312.) Some provisions of Proposition 73 remain in effect (although many have been repealed by Proposition 34, discussed below).

Proposition 73 also prohibits the public financing of elections. However, this prohibition does not prevent a charter city from establishing a public financing

scheme. (*Johnson v. Bradley* (1992) 4 Cal.4th 389.) Finally, Proposition 73 requires candidates to have one campaign bank account for each election.

## Proposition 112 - Government Ethics Laws

In the 1980's, the FBI began a three-year sting operation to uncover corruption in the California Legislature. The FBI investigation resulted in the conviction of five legislators. The FBI probe began in 1985 when federal agents formed two fictitious seafood companies. During the investigation, the FBI gave $90,000 in campaign contributions and honoraria to various legislators and the Legislature approved two bills designed to give the sham companies business advantages, which were later vetoed by the Governor. Immediately following the investigation, a Los Angeles Times poll revealed that 53% of the voters surveyed thought that taking bribes was a common practice in Sacramento.

In June 1990, the Legislature placed Proposition 112 on the ballot. Proposition 112 was a constitutional amendment that directed the Legislature to pass new ethics laws. The new laws banned honoraria, imposed a gift limit of $250 (which is now $500) and restricted travel payments on state elected officers and officials who file financial disclosure statements (later extended in the mid-1990's to all state and local candidates for office, local elected officers and local officials who file financial disclosure statements). Proposition 112 also strengthened laws prohibiting a candidate's personal use of campaign funds.

## One-Year "Revolving Door"

In 1990, the legislature passed the Milton Marks Postgovernmental Employment Restrictions Act, which prohibits state elected officers and specified state agency officers and employees from being paid to represent another person before their former state agency for one year after leaving that agency. In 2005, a similar law was added applying to certain local officers.

## Online Disclosure Act

In 1997, the Legislature passed the Online Disclosure Act. This and subsequent amendments to the Act required specified candidates and committees to file their campaign finance reports electronically beginning in 2000. This information is available on the Internet. The following entities that spend or receive $25,000 or more are subject to the Online Disclosure Act: candidates for state elective office, committees supporting or opposing statewide ballot measures, general purpose committees and slate mailer organizations. Online disclosure was

a significant step toward reform for two reasons. First, other types of campaign finance laws are sometimes not favored by the courts. Second, increased public access to campaign information will lead to a better informed electorate. The Online Disclosure Act also applies to state lobbyists, lobbying firms and lobbyist employers when they make certain expenditures totaling a $2,500 or more in a calendar quarter.

## Proposition 208

In 1997, the voters passed Proposition 208, which again placed limits on campaign contributions to candidates but also added voluntary spending limits and imposed other restrictions aimed at supporting the contribution limits scheme. Before the measure was fully implemented, the federal district court issued a preliminary injunction against its enforcement. (*California Prolife Council Political Action Committee v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282). The court's preliminary injunction was upheld on appeal but the case was remanded for further proceedings by the trial court. Before the trial court could issue its ruling, the bulk of Proposition 208 was repealed by Proposition 34.

## Proposition 34

In the summer of 2000, concerned with the continued uncertainty over the fate of Proposition 208, the Legislature voted to place Proposition 34 on the November 2000 ballot. It passed by 59.9% of the vote.

Proposition 34 limited the amount of contributions an individual could directly contribute to a candidate, expanded financial disclosure requirements, and prohibited contributions from lobbyists. It increased the maximum penalty for a violation of the 'Act' to increase from $2,000 to $5,000, and allowed for the creation of independent expenditure committees.

## California Disclose Act

In 2017, the Legislature passed the California Disclose Act. Assembly Bill 249 amended the Political Reform Act to change the content and format of disclosure statements required on specified campaign advertisements in a manner that generally requires such disclosures to be more prominent. The Disclose Act includes disclosure requirements for various forms of campaign advertisements, including audio, video, print, and electronic media advertisements. AB 249 took effect on January 1, 2018.

In 2018, the Legislature passed Assembly Bill 2188, the Social Media Disclose Act, which extended the California Disclose Act's disclosure requirements to advertisements on social media and other online platforms. AB 2188 had a delayed implementation date and did not take effect until January 1, 2020.

In 2019, the Legislature further passed Assembly Bill 864, which made minor or clarifying changes to the Disclose Act and other provisions of state law governing the content and format of disclosure statements that are required to appear on communications disseminated by candidates and committees. AB 864 also took effect on January 1, 2020.