Enforcing California's campaign finance laws: how much bark, how much bite for the political watchdog
ENFORCING CALIFORNIA'S CAMPAIGN FINANCE LAWS: HOW MUCH BARK, HOW MUCH BITE FOR THE POLITICAL WATCHDOG

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Enforcing California’s Campaign Finance Laws: How Much Bark, How Much Bite for the Political Watchdog?
Ray La Raja and Renée Dall

In November 1996, California voters considered two proposals aimed at reforming campaign finance. That Prop 208 passed with 61% of the vote and Prop 212 narrowly failed (49%) indicates that Californians think something is wrong with current campaign practices. But will voters be content with the most recent reform efforts? Much depends on how effectively the laws are enforced. Yet in the contentious debate over crafting new laws, enforcement has often been ignored. We address this neglected aspect of campaign finance reform by considering problems of enforcement and proposing recommendations.

We sought information about campaign finance enforcement directly from central players operating in the campaign environment: political consultants, journalists, staff and board members of ethics commissions, as well as other major participants in the electoral system. Much of this information was obtained from panel discussions at the Travers Conference on Campaign Finance Regulation at the University of California at Berkeley on May 9, 1997, and through personal interviews. In speaking with experts we found that three themes dominate discussions about the regulation of campaign finance laws: (1) the importance of consistency in enforcement practices, (2) the need for agreement on appropriate enforcement sanctions, and (3) the critical role of third party enforcement, e.g., political reporters.

This paper begins by describing the basic functions and enforcement procedures of the Fair Political Practices Commission (FPPC). Next, we review the issues raised by those inside and outside the agency that we believe are central to further efforts to improve campaign finance enforcement. After detailing the various perspectives, we propose recommendations that address common concerns and reconcile conflicting viewpoints. In the final section, we highlight lessons learned from our discussions with experts and consider further areas of inquiry.

The Fair Political Practices Commission (FPPC)

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1 Proposition 208 is entitled: Campaign Contributions and Spending Limits. Restricts Lobbyists. Initiative Statute. Proposition 212 is entitled: Campaign Contributions and Spending Limits. Repeals Gift and Honoraria Limits. Restricts Lobbyists. Initiative Statute. Proposition 208’s constitutionality is currently being decided by the courts.
The FPPC came into existence on January 7, 1975, the day that Proposition 9, better known as the Political Reform Act, went into effect. While critics of the Political Reform Act, including the ACLU, feared that provisions of the new law might infringe on privacy and free speech of political actors, public opinion in California favored an independent political watchdog that would guard against the undue influence of special interests and political insiders. 2 The Commission was charged with "primary responsibility for the impartial, effective administration and implementation" of the Political Reform Act, and specifically, with enforcing the statutes pertaining to disclosure of candidate finances, conflict of interest, and political activity of lobbyists and interest groups. The new law defined the structure and powers of the FPPC and mandated an annual minimum appropriation from the state general fund of one million dollars, adjusted to reflect yearly cost of living changes.

The FPPC is comprised of five Commissioners, no more than three of which can be from the same political party. Four constitutional officers make appointments to the Commission: the governor makes two appointments, one from each of the two major political parties, one of whom becomes the chairperson; the attorney general, secretary of state, and controller each appoint one Commissioner. The chair of the Commission is a full-time office paying $103,000 annually, while the other appointments are part-time with a $12.50 hourly wage for Commissioners' "study time." Commissioners also receive a $100 per diem for days on which the Commission convenes. The board meets one day a month to review complaints and hear recommendations from staff as to how to proceed. 3 Needless to say, the 82 full-time staff members, who work in either the legal, technical assistance, or enforcement divisions, do most of the work. 4

The FPPC performs a wide range of tasks in implementing the Political Reform Act. Its administrative chores include distributing forms for disclosure reports, publishing manuals, and providing general assistance to local agencies and officials administering the provisions of the campaign finance laws. The agency also provides advise upon request, issues opinions pertaining to the law, and may amend any rules or regulations in carrying out the provisions of the Political Reform Act. On the enforcement side, which is comprised of approximately one-third of FPPC staff, the agency audits financial reports (with the help of auditors at the Franchise Tax Board), investigates potential violations and holds hearings for considering probable cause. The Commission is the civil prosecutor for enforcement of civil penalties of the Act with respect to the state and state agencies. 5

A survey of 31 independent state agencies by the Center for Responsive Politics (CRP) shows that the FPPC is similar to other such regulatory agencies. Like most

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2 Proposition 9 was approved by 70 percent of California voters.
3 Linda Moureaux of the Enforcement Division at the FPPC, telephone interview by author, 29 January 1998.
4 Staff members conduct all investigations, hold advice clinics and counsel political staff and others on how to comply with the law, and essentially do everything else but decide on innocence or guilt, and if the latter, fines and other penalties.
5 Local district attorneys are the prosecutors with respect to any other agencies. The Attorney General is the civil prosecutor with respect to the FPPC, and also has criminal prosecution authority, which the FPPC does not.
agencies, the FPPC is authorized to investigate, conduct hearings, and impose fines (see Table 1 below). Another common feature is the ability to conduct random audits and render advisory opinions on the law. A unique feature of the FPPC is that the Chair of the Commission serves full-time while only three other state jurisdictions have full-time commission members. Unlike the Federal Elections Commission (FEC) and a few state agencies, the FPPC has an odd number of Commissioners, which prevents the kind of deadlocked decision-making that plagues the FEC.

Table 1.
Comparison of Independent State Agencies, the FEC and the FPPC

<table>
<thead>
<tr>
<th></th>
<th>Number of Independent State Agencies (31 total)</th>
<th>Federal Elections Commission (FEC)</th>
<th>California Fair Political Practices Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission Structure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>odd-number of commission members</td>
<td>26</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>commission members appointed by governor</td>
<td>17</td>
<td>Only 2 of 5</td>
<td></td>
</tr>
<tr>
<td>commission members in full time capacity</td>
<td>3</td>
<td>Yes</td>
<td>Only 1 of 5</td>
</tr>
<tr>
<td>Restrictions on Political Activity by Commissioners</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior to Serving</td>
<td>8</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>During term as member</td>
<td>23</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>After having served</td>
<td>7</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Enforcement Authority</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorized to investigate</td>
<td>27</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Authorized to conduct Hearings</td>
<td>22</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Authorized to impose fines</td>
<td>19</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Authorized to impose fees for late reports</td>
<td>13</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Authorized to audit randomly</td>
<td>19</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Authorized to render advisory opinions</td>
<td>24</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: Center for Responsive Politics

The FPPC serves several distinct constituencies: California’s elected officials, public interest groups, and lobbyists and political consultants, to name only a few. Each group has particular expectations of the agency, which are often at odds with one another. For instance, leaders of public interest groups tend to think the FPPC rarely uses enough of its enforcement powers to deter officials from breaking rules.

Political reporters, for the most part, share this perspective. They also fault the agency for what they see as lazy investigative efforts and a general failure to give "bite" to the statutes by imposing heavier fines across the board.6 When reporters personally

observe campaign violations that apparently go unnoticed by the FPPC, they wonder whether countless other infractions are taking place. Some veteran reporters attribute this problem to differences in power relations between the regulators and regulated. As evidence they point to the FPPC’s record of prosecuting local officials at a higher rate than state officials, who seem to be treated with “kid gloves” because they have more political clout and have final say over the FPPC’s budget (see box below).7 Reporters are also skeptical that Commissioners will go after the state executive officeholders who appointed them. To do so would be political suicide for those with future political ambitions. At the local level, Benjamin Bycel, former Executive Director of the Los Angeles City Ethics Commission, illustrates the pressure on agency officials to avoid enforcing the law on certain powerful officeholders. “In Los Angeles, all local officials are Democrats, and so one cannot rock the boat if they want a future career in public office, be it appointed or elected.”8

### FPPC Budget

A cursory review of FPPC annual budgets shows that the agency has experienced modest modulations in its resources. After years of significant increases, its budget dipped from 1990-1995, only to be restored to prior levels in 1996. The years of decline parallel a downturn in the California economy when other government agencies suffered cutbacks. However, some observers believe this trend reflected an effort by state legislators to punish the FPPC, which they viewed as overly aggressive. The impact of budget change is hard to assess given that the agency lacks performance criteria by which to measure outcomes. In any case, it appears that the agency received steady financial support for its expanding activities in its early years. Whether current budget levels are sufficient to maintain effective regulatory operations under accumulating layers of complex campaign finance laws (the most recent additions stemming from Prop 208) is worth considering.

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7 This view was expressed by Paul Jacobs of the Los Angeles Times. Other journalists we talked to expressed similar sentiments.
8 Benjamin Bycel, former Executive Director of the Los Angeles City Ethics Commission, interview by Jonathan Koppell, 14 August 1996.
On the other side of the debate, campaign advisors argue that the FPPC has too much “bite” in enforcing the law. They complain that enforcement not only seems arbitrary at times, but also works like a “hammer” that threatens First Amendment rights. In fact, the FPPC has not set guidelines for the imposition of penalties; each case is judged based on its own unique facts and issues, and the specifics of the case determine the fine or other penalties. Campaign advisors believe the FPPC abuses its authority to impose fines, especially under circumstances that do not permit a fair hearing. They are also concerned that overzealous regulation is having a “chilling effect” on electoral politics in California, discouraging talented individuals from running for office. Regulators, they say, do not understand the difficulties of running campaigns and impose sanctions naively for honest mistakes made in the heat of campaign battle.

Commissioners and staff at the FPPC believe they are caught somewhere in the middle. Though many government regulatory agencies operate in highly charged political environments, none confront the delicate task of regulating those who directly control their budget and commissioner appointments. Maintaining a sense of fairness is also difficult when political actors, especially during election campaigns, seek to use the agency as an electoral tool to impugn opponents. A common campaign practice is to find potential campaign violations by one’s opponent and report them to the FPPC to generate negative publicity. In such cases, the decisions (or non-decisions) of the FPPC can influence the outcome of elections.

While opinions diverge on whether the watchdog has “only bark” or “too much bite,” we were able to identify three common themes that merit closer scrutiny. The first of these themes is the importance of consistency. This includes having clear enforcement priorities and ensuring that statutes do not conflict with one another. The second theme is the need for agreement on appropriate penalties. Currently, the FPPC

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9 This view was expressed clearly by panelists Joe Remcho, a consultant with Remcho, Johansen & Purcell; and Chip Nielsen, a consultant at Merksam, Parrinello, Mueller & Naylor. These views were made at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
decides case-by-case the severity of the financial penalty, making the issuing of fines less effective as a deterrent, and opening the agency to charges of bias. The final theme we examine is the critical role of third party enforcement -- using the public and press to hold officials accountable -- and ways in which complaints from third parties can be dealt with more effectively. We hope that by highlighting these recurring themes we are pointing policymakers toward areas where continued dialogue and analysis might yield effective solutions to campaign enforcement problems.

Theme 1: The importance of consistency

Almost all members of the discussion panel on enforcement at the Travers Conference asserted that the FPPC has changed its policies too frequently or failed to apply the law consistently. Constancy is an essential, if often overlooked, factor in the analysis of campaign finance enforcement. If an agency does not consistently apply the law, it becomes vulnerable to charges that it is unfair, incompetent, or both. In any event, the agency loses legitimacy in the eyes of those with whom it must work. An important benefit of consistent application of the laws is that the regulated population learns how to conform to the laws more easily. Consistency creates stable expectations about “best practices” and reduces uncertainty about gray areas in the statute.

Outside observers complain that the FPPC commits two major sins of inconsistency. First, they switch enforcement priorities too often, and second, they enforce the priorities of the day differently. For instance, they fail to go after “big fish” at the state level, and instead opt to intensively pursue local officials. As an example of treating powerful elected officials favorably, Reporter Paul Jacobs cites the 1994 FPPC ruling that allowed Governor Wilson to use a $4,000-a-month condominium in Century City paid for through a private charitable foundation set up by the governor’s friends and sponsored in large measure by corporations. The FPPC declared that the donations were legal and that the governor did not violate laws against benefiting personally from contributions since the condominium was set up as a gift to the state.¹⁰

Frequent switching of enforcement priorities prompts concern from outsiders that the FPPC has failed to craft clearly defined enforcement criteria. Darryl East, chief of the FPPC enforcement division, says he primarily considers the “public harm that was created by the violation” in determining which violations to pursue and how heavily to penalize the violator. Even if this standard is used as a broad benchmark for case selection, it is not clear to outsiders what is meant by “public harm” and how staff

¹⁰ Paul Jacobs, "Democrats File Complaint Over Wilson's L. A. Condo" Los Angeles Times, July 31, 1994, A3. Wilson and his wife use the apartment whenever they are in Los Angeles. Wilson is not required to report the free housing in his personal income tax return nor on his annual statement of economic interest. The Democratic Party also charged that Wilson’s campaign committee illegally transferred more than $20,000 to the foundation despite the prohibitions using campaign funds for personal use. The FPPC exonerated Wilson saying the foundation continues to qualify as a charitable foundation and the leased condominium is a gift to the state. They also accepted the Governor’s explanation that the transfer of money from the campaign treasury represented a repayment of funds inadvertently charged to the foundation.
determine degrees of public harm.

East also says he considers whether the violation was an instance of benign neglect or corrupt intent. To do this he looks, in part, at the level of sophistication of the campaign. He is more likely to overlook local school board elections, a less sophisticated campaign, in which candidates probably lack resources or professional staff to understand the complexities of campaign regulations. He also tries to put the particular violation in the context of overall spending in the campaign. If the violation involves a significant amount of total campaign spending then East believes it is worth pursuing an investigation.  

Outside observers question whether the FPPC’s method of prioritizing produces good outcomes. By not energetically pursuing the minor violations of large political campaigns, the FPPC inadvertently shows favoritism toward more powerful elected officials who run for these offices. Political reporters such as Paul Grabowicz point out that the FPPC appears to go after the “little guy” more frequently than high profile state officials. A seasoned political consultant concludes that “the higher the office, the less they [FPPC staff] pay attention.”

Others question whether the FPPC truly pursues the cases that have caused the most public harm. For example, Dan Lowenstein, former Chairman of the FPPC, believes the agency has failed to set priorities that reflect the gravity of the offense. Instead, he says, they have taken “each case as it comes” in a misguided effort to appear even-handed. Lowenstein believes the FPPC’s unwillingness to assert clear priorities in enforcing the law has led to a terrible waste of resources and fueled the public perception that some candidates are getting away with serious violations of the law. He also suggests the current enforcement strategy appears unfair to those being regulated because investigators, once assigned to a case, scour a political committee’s records in search of other violations. The enforcement response gives the impression that an inadvertent mistake can bring on the cavalry.

Lowenstein argues that a greater number of minor violations should be dealt with routinely through letters requesting compliance, while the investigative arm of the agency focuses on the most serious cases, like money laundering. Using enforcement personnel to investigate a minor case wastes the time of skilled investigators and leaves more important work undone. Lowenstein contends that the FPPC’s enforcement

11 Darryl East, Chief Investigative Attorney at the FPPC, says the agency must retain a “high bar” for choosing which cases to pursue because of limited staff. In an internal agency survey, he found that the agency “closes” 88% of the “major findings” of violations, i.e., they settle with the violator, without pursuing further investigations. East was a panelist on the Enforcement Panel at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
12 Paul Grabowicz of the Oakland Tribune, telephone interview by author, 8 December 1996.
13 Dan Schnur, a Republican consultant who specializes in media and press relations, interview 19 June 1996.
14 Daniel Lowenstein, a professor of Law at the University of California, Los Angeles, chaired the panel entitled, “Issues of Enforcement: Over Regulation or Under regulation” at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
strategy “is like enforcing murder and speeding violations the same way.”

Another source of agency inconsistency stems from staff and commissioner turnover. When an organization lacks clear institutional priorities, there is a greater need for staff continuity to ensure institutional memory and standard operating procedures. But many observers remark that the FPPC undergoes frequent leadership and staff changes that further undermine institutional constancy.

Chip Nielsen, an attorney who often represents candidates, says that as new Commissioners join the agency the operational procedures sometimes change and different views on enforcement policies emerge. The Chief of Enforcement, Darryl East, concurs, explaining that “Two new Commissioners means two new votes that reflect new interests in pursuing certain cases.” East says he gets little direction from the Commissioners, who are not always familiar with the regulatory statutes or jargon in the field. Both East and Nielsen agree that there should be formal and practical educational programs for new Commissioners.

Nielsen has a greater concern about staff at the FPPC who lack practical political experience that could provide them with a perspective on enforcement priorities. He says, “Staff at enforcement agencies normally do not come from politics. They’ve either been in government or academics and they don’t know what a campaign environment is like.” Nielsen proposes that Commissioners and FPPC staff spend time interning on a campaign to close the gap between their knowledge of the statutes and the practical difficulties of complying with them. Members of the Commission have been reluctant to pursue this strategy, however, since it may create unnecessary legal quandaries for the FPPC and use up valuable staff time.

A third cause of inconsistency is the complexity and vagueness of the statutes guiding political activities. This leaves room for several interpretations on a case-by-case basis. Although most regulatory agencies confront this problem, the FPPC’s situation is particularly fraught with ambiguity because its domain intersects with the regulation of First Amendment rights. Campaign finance enforcement agencies need to balance rights of free speech against their primary mission of ensuring that political activities conform to campaign laws.

Campaign finance statute terms are open to broad interpretations precisely because

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15 Ibid.
16 Chip Nielsen made this comment at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
17 Darryl East made this comment at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
18 Darryl East says his ability to educate Commissioners sufficiently to the point that he can receive more guidance is hampered by the statute that disallows him to discuss cases with them prior to his investigation.
19 Chip Nielsen made this comment at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
20 Nielsen said Commissioners were concerned about FPPC staff who observed a violation of the statutes while serving as interns. Commissioners feared agency staff would be legally bound to inform the FPPC of violations they witnessed.
First Amendment activities have been interpreted broadly by the courts. Buckley v. Valeo, for instance, established a far-reaching precedent that generally equates expenditures of campaign funds with free speech. Or consider when a candidate spends money from the campaign that provides personal benefits to her as well, e.g., she buys an expensive new outfit, should this be allowed under the California statutes prohibiting personal use of campaign funds? Part of the problem in enforcing this law is deciding how to interpret the personal use clause in a political environment that encourages a personal style of politics as a way of communicating with the electorate. One might argue that the suit is a legitimate campaign expense because (1) under ordinary circumstances the candidate does not wear suits, and (2) the suit is a necessary means of conveying status and credibility to the voters in her district.

Complicating matters are the conflicting layers of statutes that accumulate over time. According to FPPC staff, an original statute can become altered by subsequent exceptions to the rule in later years. This occurred, for instance, with the statute prohibiting mass mailing with public funds and the statutes governing committee contributions. In other cases, ethics codes covering one group of officials do not mesh coherently with the larger body of statutes. This is true, for instance, of the Legislative Code of Ethics created in 1966 for the California Assembly and Senate. Portions of this code, especially regarding conflict of interest rules, are at odds with the 1990 Political Reform Act.

Finally, even if the statutes and ethics codes did not conflict, enforcers find it difficult to identify violations because information provided in financial disclosure reports remains inconclusive or vague. According to Kim Alexander, Executive Director of the California Voter Foundation, treasurers of political committees filling out expenditure reports typically “squeeze a lot” within broad budget categories. Those who review these reports cannot glean sufficiently detailed information to understand how campaign money was spent. For example, a reported expenditure of “$1,000 for Entertainment” might cover anything from season tickets to football games for the family (illegal) or costs incurred during fundraising (legal).

Recommendations to Improve Consistency

Establish Clear Enforcement Priorities. The FPPC should develop clearer policy criteria in deciding which cases to investigate. This would involve establishing organizational guidelines for case selection and workload performance benchmarks for incoming
Commissioners and staff. The FPPC should also establish management reporting procedures that track, for instance, the kinds of cases that are dismissed, settled, and pursued. This tracking system will help ensure policy criteria are reflected in agency activity and permit outsiders to hold the agency accountable.

*Clarify Reporting Categories for Financial Disclosure Documents.* It is often difficult for auditors to discern from broad spending categories how money is actually spent; these categories encourage campaign treasurers to be sloppy or covert in allocating finances in disclosure reports. The FPPC should develop a coding procedure that balances the agency's need to have key financial information -- especially for large expenditure items -- with the obligation not to overburden political committees that must comply with more detailed reporting requirements.

*Appoint Commissioners with Experience in Political Campaigns or Require Initial Training Program Prior to Appointment.* Appointees who lack sufficient knowledge about political finance prior to joining the Commission waste valuable agency resources while they learn the process on the job. This situation either destabilizes policy direction or leaves too much discretion to staff. While some observers believe that Commissioners should be nonpartisan - meaning that they have no connections to either party - we believe that the number of such individuals who will also have sufficient knowledge to perform enforcement tasks effectively will be rare. Knowledge about elections and campaigns usually comes through participating in the political system as partisans. The trade-off between having knowledgeable or nonpartisan Commissioners is an important one to consider.

*Recruit, Train, and Retain Skilled Staff.* There is little doubt that the FPPC needs qualified staff to review audits, pursue investigations, and argue cases. To this end, the agency should seek individuals with skills, confidence, and experience to enforce the laws effectively. Hiring professionals who retain high standards in the face of political pressure or uncertainty ensures stable interpretation of the statutes. The FPPC should also consider mechanisms to improve training of staff, career advancement, and other forms of increasing morale. This is especially important for an organization that is frequently criticized by powerful individuals and organizations in the political environment.

*Establish Budgets that Reflect Increasing Responsibilities of FPPC.* Current debates appear to focus on keeping agency resources in line with past budgets. Yet the amount of political information the agency manages and complexity of statutes is considerably greater than when the FPPC was first established. To prevent the agency from changing priorities based on scarce resources, the FPPC needs sufficient budget appropriations to keep pace with growing obligations.

25 In making this recommendation we are not claiming that such staff do not already exist at the FPPC. Since staff turnover has been cited as a problem we believe that this point should be reaffirmed.
Create a Temporary Commission to Reconcile Conflicting Statutes. Perhaps the time is ripe for a comprehensive review of statutes, ethics codes, and other rules governing campaign activities at the state level to ensure consistency. This temporary commission could then present its findings and make recommendations to the FPPC and state legislature.
Theme 2: The Need for Agreement on Appropriate Penalties

A pivotal point in the debate at the Travers Conference centered on the appropriateness of penalties assessed by the FPPC. There was little agreement among experts regarding the question, “what is an adequate penalty to ensure compliance?” Advisors to political committees argued that the FPPC pursued excessive fines as a way of showing the public that it is a good watchdog, regardless of the appropriateness of the sanction. Some experienced political advisors expressed concern that a candidate could not fight charges once they were made public. Even worse, they believed the strong arm of enforcement was having a chilling effect on prospective candidates' decisions to run for office.

Table 2 illustrates that the FPPC consistently awards some of the highest penalties among campaign enforcement agencies.\textsuperscript{26}

\textsuperscript{26} It should be noted, of course, that campaign costs for most offices in California are significantly higher than in any other state, and so the amount of money in the political system is much greater. Thus, it is likely that financial penalties in California will be higher than in other states.
<table>
<thead>
<tr>
<th>Agency</th>
<th>Defendant and Violation</th>
<th>Year</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>California FPPC</td>
<td>California Against Corruption (disclosure violations)</td>
<td>1995</td>
<td>$808,000</td>
</tr>
<tr>
<td>California FPPC</td>
<td>William Dallas (money laundering)</td>
<td>1993</td>
<td>$772,000</td>
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<tr>
<td>California FPPC and</td>
<td>Evergreen America Corporation (money laundering)</td>
<td>1993</td>
<td>$447,500</td>
</tr>
<tr>
<td>Los Angeles CEC</td>
<td></td>
<td></td>
<td>and $447,500</td>
</tr>
<tr>
<td>California FPPC</td>
<td>William Bryan/ Bryan for Supervisor (disclosure violations)</td>
<td>1988</td>
<td>$292,500</td>
</tr>
<tr>
<td>New York City CFB</td>
<td>David Dinkins for Mayor (spending over limit)</td>
<td>1993</td>
<td>$250,000</td>
</tr>
<tr>
<td>California FPPC and</td>
<td>Los Angeles Marathon/ George Beasly (disclosure violations; money laundering)</td>
<td>1994</td>
<td>$236,250</td>
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<tr>
<td>Los Angeles CEC</td>
<td></td>
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<td>and $200,000</td>
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<td>California FPPC</td>
<td>Gresham, Varner, Savage, Nolan, &amp; Tilden/ Mark Ostoich, Robertson (money laundering)</td>
<td>1996</td>
<td>$228,000</td>
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<tr>
<td>New York City CFB</td>
<td>Mayor Rudolph Giuliani's Re-election Campaign (illegal contributions)</td>
<td>1997</td>
<td>$220,000</td>
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<td>L.A. Co. District</td>
<td>Arthur Snyder (conspiracy and money laundering)</td>
<td>1996</td>
<td>$216,000</td>
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<td></td>
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<td>California FPPC</td>
<td>Gatlin Development Co. and Frank Gatlin (money laundering)</td>
<td>1996</td>
<td>$192,000</td>
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<td>California FPPC</td>
<td>Dianne Feinstein/ Feinstein for Governor Committee/ Henry Berman, treasurer (disclosure violations)</td>
<td>1992</td>
<td>$190,000</td>
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<td>California FPPC</td>
<td>Kenneth Ordua/ Ordua for City Council/ Lonnie Sanders, treasurer (money laundering and disclosure violations)</td>
<td>1991</td>
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<td>California FPPC</td>
<td>James T. Hawthorne (disclosure violations)</td>
<td>1991</td>
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<td>Oak Creek Realty/ Cedar Valley Holding Co. (money laundering)</td>
<td>1995</td>
<td>$158,900</td>
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<td>New York City CFB</td>
<td>Parker, Chapin, Plat tua and Klimpl (exceeding contribution limit and money laundering)</td>
<td>1992</td>
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<td>California FPPC</td>
<td>Louis Laramore (money laundering)</td>
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<td>Michigan SECST</td>
<td>Consumers Power Co. / Detroit Edison Co. / Michigan Consolidated Gas Co. (exceeding contribution limit)</td>
<td>1983</td>
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<td>California FPPC</td>
<td>Californians Against Unfair Tax Increases/ No on Proposition 99, and Phillip Morris, USA (late filing)</td>
<td>1992</td>
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<td>California FPPC</td>
<td>Pete Wilson/ Pete Wilson for Governor (reporting violations)</td>
<td>1992</td>
<td>$100,000</td>
</tr>
<tr>
<td>Alaska POC</td>
<td>John Ellsworth et al (disclosure violations)</td>
<td>1995</td>
<td>$98,500</td>
</tr>
<tr>
<td>California FPPC</td>
<td>Yarmouth Group (money laundering)</td>
<td>1994</td>
<td>$92,000</td>
</tr>
<tr>
<td>California FPPC</td>
<td>Grand Sunrise/ Asia Pacific Inv. &amp; Dev. Corp./ Asia Pacific Realty (money laundering)</td>
<td>1995</td>
<td>$85,000</td>
</tr>
<tr>
<td>Michigan SECST</td>
<td>Mayor Coleman Young's Re-election Committee(expenditures for other candidates)</td>
<td>1993</td>
<td>$80,000</td>
</tr>
<tr>
<td>California FPPC</td>
<td>Lia Belli (money laundering)</td>
<td>1988</td>
<td>$75,000</td>
</tr>
<tr>
<td>California FPPC</td>
<td>Devcon Construction (money laundering)</td>
<td>1996</td>
<td>$68,000</td>
</tr>
<tr>
<td>Seattle Ethics and</td>
<td>Stewart, Riggs, Cozzetti, Brunhaver, Wakley, Kita, Rembe, Benton (concealing true source contribution)</td>
<td>1996</td>
<td>$62,750</td>
</tr>
<tr>
<td>Elec. Commission</td>
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<td></td>
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<tr>
<td>California FPPC</td>
<td>Douglas Offenhartz (money laundering)</td>
<td>1995</td>
<td>$62,000</td>
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<tr>
<td>California FPPC</td>
<td>Cox Communications (money laundering)</td>
<td>1996</td>
<td>$53,000</td>
</tr>
<tr>
<td>Washington PDC</td>
<td>Pete Taggares, Sr. (money laundering)</td>
<td>1997</td>
<td>$52,500</td>
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</table>
The key concern among experts is whether these financial penalties deter violations. Darryl East of the FPPC acknowledges that his background as a prosecutor compels him to believe heavy sanctions work as a deterrent to future violations. He has less faith in the kind of remedial education that has been the guiding philosophy of political regulation for the first twenty year of the Reform Act. Even though he holds this view, he says, “two-thirds of agency staff is still devoted to educating and giving advice.”

Fines are supposed to have a deterrent effect on potential violators. A deterrent strategy is critical when an agency has resources to investigate a fraction of the violations it uncovers through random audits and complaints. East says the FPPC’s investigative unit probably pursues only 5% of violations it has the authority to pursue, and he argues that sanctions need to be sufficiently intimidating to prevent potential violators from even thinking about breaking the law. East believes the amount of fines imposed is high relative to other state agencies (and based on past performance) because the FPPC pursues more serious violations such as money laundering, conflict of interest, and personal use.

Two clearly defined camps emerge on the issue of sanctions. Political reporters and representatives from public interest groups tend to think the fines are not high enough. They concur with East that some political committees consider the fines negligible. East says, “some campaigns see civil penalties as a cost of doing business. That’s why I would sometimes rather use criminal powers and put people in jail for a weekend. That would change their behavior.”

The groups favoring harsher penalties also believe that the length of investigations makes swift justice almost impossible. By the time the FPPC makes its findings public the candidate has won the election. Therefore, the FPPC needs to “hit ‘em where it hurts” with large fines or even criminal penalties.

On the other side of the debate, Joe Remcho, speaking on behalf of candidate committees, argues that existing enforcement practices discourage talented people from running for office. The FPPC, he says, wields an enormous hammer that does not exist in other regulated fields. The businessperson may ask, for instance, how culpable am I, how much will it cost to defend myself, and what will be the likely results of dealing with the administrative agency? By contrast, in the political world, the candidate asks, “how big will the press hit be?” The politician must consider, guilty or not, if she is willing to receive bad publicity because of an accusation that she failed to comply with campaign finance laws. Most politicians will want to put the issue behind them as soon as possible to prevent it from undermining their campaign. The pressure to settle a case, whether the defendant is guilty or not, gives ample power to the FPPC.

Having an agency with so much influence over the perception of a candidate’s credibility may have significant consequences for electoral politics. Remcho offers this

27 Darryl East made this comment at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
hypothetical scenario for someone contemplating a run for local office:

Why should I want to run for school board? I am currently well-respected in the community, and I have good friends. But I may be the subject of investigations by the FPPC because no campaign consultant worth his or her salt is going to let any opportunity go by where they can file a complaint with the FPPC and at least try to get a modest press hit.

Nielsen, who represents candidates on the Republican side, seems to agree that the FPPC is prone to throwing its weight around for minor problems and not keeping violations in perspective. Nielsen:

[The FPPC] doesn’t see campaigns as being utterly chaotic in the last two or three weeks before an election. People are doing their best trying to survive...and then they make a mistake and two weeks later, maybe 6 months later, someone [at the FPPC] says, ‘well, you didn’t put the right address on the envelope.’

Political consultants generally concur that the biggest deterrent for making mistakes or intentionally violating the statutes is public shame. A negative “press hit” is more painful to a candidate than paying the fine. Remcho says the reason why the FPPC’s decisions are rarely challenged is because candidates want to put the issue behind them so it does not affect their campaign. “Roll over and play dead,” is the best strategy, he suggests, because the FPPC has the lever of public humiliation in their enforcement arsenal.

For this reason, political advisors and some academics think giving the FPPC criminal enforcement powers is overkill. Criminal powers would give the FPPC expanded authority to investigate and increase the scope of penalties, including putting offenders in jail. Lowenstein, former FPPC chairman and law professor at UCLA, says that if the FPPC’s powers are “like a hammer now, they become an assault weapon,” with these added powers of criminal investigation. East replies that he would use these new powers sparingly, and only when Commissioners approved unanimously.

Much of what motivates the staff at the FPPC is their impression of what the public wants. East and others at the FPPC speculate that the public wants harsh penalties, and they want them yesterday. At the same time, they admit that their appraisal of public opinion comes mostly from a few public interest groups in Sacramento. They are not quite sure who the public is and what the public wants.

Given the extreme differences between the two camps on the issue of sanctions, we are still far from finding common ground. To start on the path toward consensus, we propose the following:

Recommendations to Establish Appropriate Sanctions

Appoint a Blue Ribbon Committee. The main purpose of the committee would be to develop criteria for penalties and a schedule of fines. Currently, the FPPC decides sanctions case by case. While this strategy gives the agency needed flexibility and discretion in a complex regulatory arena, it leaves the FPPC vulnerable to charges of
being arbitrary and unfair. Since the premise of a deterrence strategy is that potential violators know what is in store for them if they choose to ignore the rules, then sanctions should not seem so “hit or miss.”

Establishing a Blue Ribbon Committee brings together the perspectives of different political actors, including members from the major political parties, public interest groups, academics, and experts in enforcement practices from around the country. Committee members can then develop a consensus on appropriate sanctions that gains legitimacy across the political spectrum. They would need to consider how to balance an effective deterrence strategy with the importance of providing due process for the accused. And to promote consistency, the committee could recommend appropriate fines or other penalties for each category of offense.

**Develop Appropriate Management Performance Criteria.** Currently, the accepted standard for measuring agency success appears to be the amount of fines levied. But using fines as a measure of success may not only distort the enforcement incentives of the FPPC (e.g., staff chase mostly “cash rich” cases), but it may also misrepresent the true state of affairs in campaign practices. For instance, does the fact that in recent years the FPPC has issued heavy fines against a few political committees indicate that campaign practices are improving because the agency is rooting out a few bad apples or getting worse? We cannot tell using the current method of evaluation.

We also need to ask whether public focus on violations that incur large fines encourages the FPPC to ignore the lesser transgressions that may be as pernicious to the overall campaign finance system in the long run. We argue for a management reporting system that includes a richer mix of performance criteria through which the Commissioners and public can hold the agency accountable. Examples of such criteria include tabulating the percentage of the caseload that is resolved within a reasonable timeframe, as well as counting how many potential findings from audits in each violation category are not pursued annually.

**Consider Changing the Adjudication Proceedings.** Campaigners believe fines are too high and they have no recourse to due process during a public campaign. While we take no position on the adequacy of levels of fines, we believe the issue of due process is important, especially if to avoid a chilling effect on potential candidates choosing to run for office.

We recommend that the FPPC review its current adjudication proceedings to consider whether the process ensures that candidates have adequate means of challenging a finding of probable cause given the political circumstances of a campaign. One alternative to the current procedure is to allow a campaign, under certain circumstances, to pay its fine immediately yet acknowledge it was done “under protest.” Once the campaign is over, the committee would be allowed an administrative hearing to review the case. This method would address the candidate’s problem of not having the ability to fight, when each day under scrutiny means bad publicity, while still permitting the FPPC to use its sanctioning strategy to deter violators.
Theme 3: The Critical Role of Third Party Enforcement

The FPPC pursues investigations in two ways. First, FPPC staff review audits conducted by the Franchise Tax Board for potential campaign violations. Accounting specialists at the FPPC then make recommendations to the chief investigator at the agency to pursue intensive inquiries for potential major violations. For most minor violations the agency simply asks the respondent by letter to make necessary changes as required by the statutes.

The second method of investigation begins with a complaint from the public. Two staff members at the FPPC are responsible for receiving complaints and determining whether the FPPC has legal jurisdiction for the alleged violation. They then may recommend that the chief investigator pursue the matter further. Public complaints typically come from political opponents, and occasionally from public interest groups and political reporters. The FPPC is required to respond to these complaints, in writing or by telephone, within 14 days.

Incorporating public complaints into the regulatory process, called third party enforcement, can be an effective and efficient way of regulating campaigns. Since the FPPC cannot possibly review all political committees and public officials -- nearly one million in California -- any efforts by outside groups to review campaign practices provides “free” enforcement resources to the agency. Using third parties permits the FPPC to expand its “first level” surveillance of campaign practices without adding auditors to the bureaucracy.

Some third parties have a strong incentive to pay close attention to the activities of political actors. Candidate campaigns, for instance, often fulfill this role for self-serving reasons. Hoping to benefit from the missteps of their opponents, they hire staff to perform intensive “opposition research” to ferret out violations of campaign laws and other iniquities. Members of political teams that investigate opponents probably utilize campaign finance data more than any other group. Almost all the consultants we interviewed said investigating opponents’ financial records was standard operating practice because they frequently found information that could hurt the credibility of the opposition. As one consultant put it: “I look through the files at the FPPC very carefully...Trips, perks, junkets, paying for a limo, chauffeur, anything the average working person would find gratuitous.”

Another benefit of having third party enforcement is that the regulatory agency is itself held accountable. By generating complaints the public compels the FPPC to pursue infractions that might otherwise go unreported. At the very least, the agency must explain to the complainant why it will not pursue an investigation. Citizens have a right to private action if the FPPC does not act on the complaint. In other words, if there is no action from the FPPC within 40 days of filing a complaint, the plaintiff can pursue civil action independently and receive 50 percent of the assessed fine.

One problem that hinders effective third party enforcement is the inaccessibility of

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28 Billy Barry, President of William Barry Campaigns, telephone interview by Christine Trost, 19 August 1996.
financial data. Researchers need to visit the FPPC or Secretary of State’s offices in Sacramento and plow through stacks of dense reports. Unless the researcher is experienced and knows what she is looking for, the utility of these reports can be quite limited. As mentioned earlier, the reports contain broad and vaguely defined financial categories that hardly reveal the nature of campaign transactions in many instances. Nonetheless, under Senate Bill 49, passed in 1997, statewide candidates and ballot measure committees raising or spending $100,000 or more in the general election must file their disclosure reports in a digital, as well as paper format. Contributions and expenditures will then be available to the public on the Internet immediately after these reports are filed.

Even with a much improved method of access to financial data, it remains to been seen how much the public will use the new system. Veteran political reporters, who understand how to read financial disclosure reports, say investigative research is time consuming and not always easy to justify in the context of their other duties, especially when news organizations are cutting back coverage of state politics. An electronic filing system will make research tasks easier, but it will by no means reveal violations that require more intensive investigations of a political committee’s activities. At the same time, this new information system may skew the range of complaints toward particular categories of violations that are easy to spot by amateurs, yet miss the more imaginative financial schemes that only experts can uncover.

Third party enforcement also generates potential problems for the agency workload. Additional complaints from the public through electronic access to files could overburden an already busy agency. Currently, the FPPC finds it difficult to follow up every complaint within the required time. With efforts to install electronic filing, agency executives are concerned about managing an increased number of complaints generated by the ease of public access to financial records. As the Secretary of State lowers the barriers for public access to records, another concern is that the FPPC could be used increasingly as a tool to sway electoral outcomes. Given that political committees have a strong incentive to tar opponents, we might see an increase in complaints related to campaign finance.

Recommendations to improve third party enforcement

Continue to Improve On-line Disclosure. Recent laws improving public access to the campaign finances of political committees will strengthen political accountability. Since third party enforcement is an important element in the overall strategy of political regulation, access to these data should be made as easy as possible for the public and the quality of data should be improved (e.g., more explicit expenditure categories).

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29 Veteran journalist Paul Jacobs of the Los Angeles Times noted that “these stories take time and require considerable research resources. It’s rare that a newspaper will put up the resources to do an in-depth study.” He made these comments in a telephone interview with author, 18 June 1996.

30 Darryl East raised this point at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
The public should also be provided with on-line software that makes it simple to organize and analyze the data in meaningful ways.

**Develop a New Policy for Dealing with Outside Complaints.** With on-line disclosure the number of complaints generated outside the agency will rise. The agency needs a strategy to manage this increased information flow. For instance, the FPPC might need to reconsider procedures for screening public complaints, e.g., raise the threshold for the kind of complaint that requires immediate action. The increased workload also highlights the urgency of developing enforcement priorities (cited earlier) to manage case flow efficiently and fairly. Rebecca Avila, current chief of the Los Angeles Ethics Commission, says enforcement agencies must constantly guard against being used as a "political football" by those seeking to benefit from agency actions against political opponents.31 In deciding to pursue investigations, for instance, Avila devotes considerable attention to how her agency might change the outcome of a race depending on the timing of an enforcement action. The FPPC needs to develop management policies to deal with these situations which might become more common. For example, the agency may want to develop a strategy to keep campaign “opposition research” accountable, to prevent them from generating dubious complaints that hurt political opponents at critical points in the election and that push the FPPC closer to influencing electoral outcomes.

**Allocate Additional Resources to Field Complaints from the Public.** As on-line disclosure makes it easier to review the campaign finances of political committees, complaints from the public are bound to rise. The FPPC should be prepared for this problem by securing resources needed to field complaints and pursue investigations.

**Conclusion**

At the start of this paper we highlighted the difficulties facing the FPPC in trying to satisfy so many different groups when enforcing campaign finance laws. In spite of these tensions, the agency can do much to improve its effectiveness in the eyes of diverse observers. The three themes that emerge from interviews and debates among experts reveal an overriding expectation that the FPPC be fair and accountable. Toward this end, the agency needs to achieve greater consistency in its policies and actions; it needs to develop sanctions that balance deterrence effects with First Amendment rights, and the chilling effects that political regulation may have on the choice of talented people to run for office. Finally, as a capstone to these efforts, the agency needs to encourage and improve third party enforcement as a means to keep not only elected officials accountable, but also the agency. For each of these issue themes we have elaborated recommendations to move the FPPC closer to these overarching goals.

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31 Rebecca Avila, with the Los Angeles Ethics Commission, was a panelist on the Enforcement Panel at the Travers Conference on Campaign Finance Regulation, held at the University of California at Berkeley on May 9, 1997.
As we suggested at the outset, laws are only as effective as the agency responsible for implementing them. With this in mind, we believe it is important to pay close attention to the organizational capacity and strategies of the enforcement agency. The most recent effort in California to reform campaign finance laws may only generate further public cynicism if these laws are not implemented well.