



June 1, 2005

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Gentlemen:

This report is submitted pursuant to the provisions of Senate Bill 1712, Chapter 816, Statutes of 2004. The bill, authored by former Senator Deirdre Alpert, requires my office to provide the Legislature a status report on the Online Disclosure Act of 1997, and to offer recommendations on revising the law “to promote greater reliance on electronic and online submissions.”

OVERVIEW

Over the past five years, California has witnessed a remarkable evolution in the process of publicly disclosing the financing of state political campaigns and lobbying activities. From a paper-based filing system that provided only limited public access to such information, we have emerged into the sometimes-astounding realm of universal Internet disclosure. Today, anyone within reach of a computer can learn the sources and amounts of most campaign contributions in state elections, and the sources and amounts paid to lobby state government.

This is a far cry from what voters imagined in 1974 when they enacted California’s Political Reform Act, which is still considered one of the most comprehensive disclosure laws in the nation. The Act’s preamble proclaimed that “Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited,” and “The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.” For the first 25 years of the Act’s existence, those lofty ideals were more promise than reality. Campaign contributions and expenditures, and lobbying payments were disclosed, but very few voters had direct access to the information. Instead, the mountains of paper reports filed by state candidates, campaign committees, and various lobbying entities mostly gathered dust in Secretary of State filing cabinets, examined by only a relative few in the news media and in rival political camps.

All that began to change in 1997 when the Legislature approved the Online Disclosure Act, a measure that opened the way for electronic and online submissions of campaign and lobbying disclosure reports for display on the Secretary of State’s Internet web site. Starting with the first e-filings in 2000, the promise of the Political Reform Act finally became a reality, with widespread Internet dissemination and public access to the information. The Internet, in fact, provided a window into the once opaque world of campaign and lobbying finance.

As an example of e-filing's reach, 67,778 digitized reports were submitted to the Secretary of State between January 1, 2003 and December 31, 2004. Of those, 34,683 were campaign statements, and 33,095 were lobbying reports and related registration documents. They were displayed on the Secretary of State's web site, which has been named Cal-Access (California Automated Lobbying and Campaign Contribution & Expenditure Search System). The web site received 18,243,899 "hits" in 2004, and 6,577,684 through May of this year, demonstrating strong public interest in the subject matter.

The web site allows visitors to conduct various searches: On the campaign side of the site, they can review the statements submitted by state candidates and officeholders; by ballot measure committees and initiative proponents; by political parties, political action committees, and major donors; and even a list of daily filings and special reports. On the lobbying side, visitors can search out individual lobbyists, lobbying firms, lobbyist employers, and daily filings. The web site is also an online Lobbyist Directory, complete with photographs of individual lobbyists and regular updates reflecting changes in lobbying relationships. And finally, it contains an advanced search tool that permits visitors to search across multiple filings. For example, entering the name of a major donor will reveal all of the donor's contributions and names of recipients during designated time periods.

Cal-Access was developed by the Secretary of State pursuant to requirements specified in the Online Disclosure Act. The law's requirement to e-file applies only to committees with receipts or expenditures of \$50,000 or more, and to lobbying entities with payments of \$5,000 or more during designated filing periods. Candidates and campaign committees must rely on private service provider vendors to collect and transmit most reports. A free, web-based online filing system developed by the Secretary of State and named Cal-Online is available to submit most lobbying reports and a handful of the least complicated campaign reports. Development of a complete suite of free, online registration and disclosure "forms" has stalled for lack of funding.

In a January, 2005 report analyzing and rating campaign disclosure web sites across the country, the California Voter Foundation, the Los Angeles-based Center for Governmental Studies, and the UCLA School of Law concluded that "California has the strongest campaign finance disclosure law and the second best campaign finance disclosure program in the country." High praise, but much remains to be done if e-filing is to achieve its full potential.

RECOMMENDATIONS

The legislation authorizing this report specifically requests recommendations on revising requirements so as to promote greater reliance on electronic and online submissions. If nothing else, our experience with e-filing over the past five years has taught us that the Political Reform Act's 30-year-old disclosure requirements are out-dated and unsuited for the modern computer age. Seven years ago, I authored legislation creating the Bipartisan Commission on the Political Reform Act. After a lengthy and comprehensive study, the commission concluded in its final report to the Legislature that the law "is overly complex and unduly burdensome for many persons who want to lawfully participate in the political system." In many ways, it also thwarts the advantages inherent in electronic filing. The reporting requirements, the myriad filing deadlines, the bewildering committee definitions are all too complex. Few serious state candidates, campaign committees, and lobbying entities dare venture into this labyrinth without the assistance of legal counsel or accounting specialists. Improved online filing systems will prove only marginally beneficial unless there are some fundamental reforms of the reform law.

As a result, I intend to sponsor legislation in the coming months that will embody some of the following concepts and recommendations:

Perhaps in an ideal world, once a campaign committee is formed it would report online all contributions of at least \$1,000 or more that it received within 24 hours. It would file more detailed reports (although not as detailed as is currently required) on a quarterly or biannual basis. All committees would follow this simplified filing schedule—candidate committees, PACs, political parties, ballot measure committees, and slate mailer organizations. There would be no “general purpose committees” or “primarily formed committees” or “major donor” committees, just committees. If they receive contributions, give contributions, or make expenditures of \$1,000 or more they would turn on their computers, link to the Secretary of State’s free Cal-Online filing site, and report the transaction within 24 hours. It’s all possible if the Legislature is willing to change the complex law and burdensome rules, and invest in the Secretary of State’s automated filing system.

To achieve greater reliance on electronic and online submissions, all that is required is that we close our eyes and imagine—imagine a time when all paper filings are vanquished, a time when receipts and expenditures in election campaigns are disclosed daily, and a time when the reporting process is accessible to the least sophisticated filer.

Proposition 34, the campaign reform measure approved by voters in 2000, contains some bellwether provisions that, if expanded, could help us achieve more timely campaign finance disclosure. While the measure is well known for its limits on campaign contributions to state candidates and its voluntary spending limits, it also requires daily online filings of contributions received during a 90-day election cycle immediately preceding a state election. If a state candidate or ballot measure committee is a qualified online filer (receipts or expenditures of \$50,000 or more trigger online filing), the committee must disclose contributions received of \$1,000 or more within 24 hours. Larger contributions of \$5,000 or more received outside the 90-day election cycle window must be disclosed within 10 business days of receipt. The 90 days leading up to an election are hectic times with respect to campaign fundraising, yet in 2002 and in 2004, hundreds of campaign committees found little difficulty in submitting the 24-hour online reports. Many took advantage of the Secretary of State’s free Cal-Online filing system to submit the reports. The Legislature should consider expanding the election cycle window to include the period starting when a committee first qualifies as a committee right up to the date of the election. This would provide a continuous stream of campaign disclosure reports and a continuous stream of information to voters and the news media. At the same time, the monetary threshold that triggers online filing should be lowered from \$50,000 to \$5,000 (the same threshold as for lobbyists) in order to include most committees, and the 24-hour reporting requirement should be broadened to include donors as well as recipients. If accomplished, the traditional 16-day “late” filing period preceding an election could be scrapped. The same 24-hour reporting requirement should apply to committees making independent expenditures.

If the Legislature were receptive to the idea of continuous online filing of campaign contributions, then it follows that it should reconsider all of the existing, 30-year-old filing deadlines, special reports (odd-year and supplemental), and campaign committee definitions that contribute to what the Bipartisan Commission on the Political Reform Act labeled as an “overly complex and unduly burdensome” law. For example, we recently have experienced lawsuits and a variety of proposed legislative amendments aimed at regulating the fundraising activities of

initiative committees. At first, limits were placed on contributions to committees controlled by candidates. All that accomplished was the creation of new, closely aligned committees unburdened by contribution limits. Then a court struck down the limit on contributions to candidate-controlled committees. In addition, consternation developed over the fact that different rules applied to committees involved in efforts to qualify multiple initiatives for either a special election this November or for next June's primary election. So-called "primarily formed" committees had to file early quarterly reports. So-called "general purpose" committees did not. To the average voter, this pretzel palace of complex rules and regulations makes no sense. Why not treat all committees the same? A committee is a committee is a committee. If every committee filed online on a continuous basis, the sunlight of disclosure would shine, and all of the campaign players, donors and recipients alike, could be held accountable.

If the Legislature were to simplify disclosure requirements, my office could make significant strides in revamping our electronic and online filing systems. We currently are handcuffed by a form-driven system that limits our ability to offer candidates and campaign committees a user-friendly, web-based filing format. Today's exciting new computer automation systems should not be held hostage to 30-year-old paper filing forms. Instead we should be developing data-driven systems that easily guide filers through the process, raise red flags when errors or omissions occur, and still collect and report all of the pertinent information. If that could be achieved, today's complex filing burdens would begin to diminish, electronic and online filings would increase, paper filings would be eliminated, and the public's thirst for up-to-the-minute campaign finance information would be quenched.

By its very nature, this legislative report cannot possibly identify or examine every detail and problem associated with California's campaign disclosure law. Instead, it stands as an effort to respond to the Legislature's request for recommendations that hopefully will encourage new ways of thinking about campaign disclosure. I would recommend that in the coming year that the Legislature appoint a task force composed of experts in campaign law and computer technology to address these issues and submit to the Legislature a revised Political Reform Act that is better suited to the 21st century. After 30 years, isn't it time?

I stand ready to assist you in any way possible, and I look forward to working with the Legislature to meet this daunting new challenge.

Respectfully submitted,

BRUCE McPHERSON
Secretary of State

cc: Legislative Counsel
Assembly Elections and Redistricting
Senate Elections, Reapportionment and Constitutional Amendments Committee