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AN ANALYSIS OF FLORIDA'S ELECTION LAW

by

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The views herein are those of the author and do not necessarily reflect the views or positions of the Policy Studies Clinic or the Florida State University College of Law

FOREWORD

The success of the democratic process depends on an electoral system that is efficient, fair, and open. The election process in Florida is basically a sound one, but this study demonstrates that there are specific changes that would, if implemented, improve the system. Registration procedures and the administration of election laws, for example, could be improved. Campaign finance laws could be modified to be made more equitable and to provide more information to the voters.

This study is the result of seven months of research and writing. The sole purpose behind this project was to evaluate the electoral process and suggest ways to improve it. There is no known consensus of public opinion that would support all the conclusions made herein. Nonetheless, a variety of interested and knowledgeable people have read the report and endorsed many of its conclusions.

We hope the Department of State, the Legislature, and other interested parties will use this report as the basis for a dialogue that will culminate in a system that furthers the democratic process in Florida.

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PREFACE

Many people contributed to this report. Elizabeth Lowrey played a major role in writing the section on voter registration and in preparing the tables and figures. Wilhelmina Weinstein provided extensive legal analyses. Other research assistance was provided by Anne-Marie Bowen, John Keyser, Dominic MacKenzie, and SuZanne Peck. Sandy D'Alemberte, Wayne Bailey, Donna Christie, Bill Jones, Scott Keeter, Richard Piper, Phyllis Slater, Doug St. Angelo, and William VanDercreek all read drafts of the entire report and provided many useful comments. A number of other individuals commented on drafts of sections of the report. These include Sarah Bradshaw, Charlene Carres, Pat Dunn, Larry Gonzalez, Chris Haughee, Mark Herron, Robert Huckshorn, Buddy Irby, Karen Matteson, George Sheldon, Doris Weatherford, Bonnie Williams, and Bib Willis. Ed Feigenbaum, Jeff Garfield, and Fred Herrmann provided valuable information on the electoral systems in other states. Wayne Clark, Beverly Dayton, and John Keyser helped edit the entire report; Rod DeWeese, Renee Lumsden, Kim Mullinax, and Yulondia Wilson typed major sections of it.

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The components of elections laws vary among our states. Voter registration provisions and voting hours are two important ways in which they differ. Florida's provisions concerning both unduly restrain the electoral process and should be changed. Florida ranked 43rd among the states in voter turnout for the 1984 general election, although it ranked 19th in turnout among registered voters. This reinforces the argument that registration procedures should be improved. Most important, the deadline for closing the books should be reduced from thirty days to two weeks. Mail-registration should also be expanded significantly so that forms, which should be uniform statewide, are readily available in many locations.

Florida statutes already permit registration in city, county, and state agencies where it is to be handled by employees of these agencies. However, this procedure has not been widely implemented. Doing so would not only expand registration generally, but also might especially increase it among lower-income citizens whose turnout rate is relatively low.

In Canada, the government assumes the responsibility of canvassing citizens. Registration agents go door-to-door to try to ensure that the rolls are accurate, and they attempt to register as many citizens as possible. This technique is strongly advocated by the National Municipal League as one that

would dramatically increase voter registration. Florida's statutes do not presently allow canvassing. They should be changed, and county supervisors should be encouraged to conduct canvasses, especially in areas with low registration and turnout.

The Division of Elections should keep a centralized register as many other states do. This would be a convenience to groups that need access to the names of registered voters in different parts of the state. It would also help enable Florida to implement the law that Congress is now considering. If that law passes, the U.S. postal service will be authorized to provide the state central election office with copies of the change of address cards that movers complete. The state office (the Division of Elections in Florida) would then arrange a transfer of the registration of intrastate movers. If they were not already registered, the state office could send a mail-registration form to the mover's new address.

Finally, Florida should conduct an experiment with election-day registration in two counties, for at least three elections in each. Having no registration deadline would increase registration and voting rates, and implementation would not be unduly difficult. We can draw upon the experience of administrations in Wisconsin, Maine, and Minnesota, states which have been doing this successfully for over a decade.

Florida presently keeps its polls open on election day for twelve hours throughout the state. Most states that have fixed voting hours statewide keep the polls open longer. Florida

should follow their example. This would certainly make it easier for many registered citizens to vote, especially in the rapidly growing metropolitan areas where many have a long commuting time to and from work.

All the elections in Florida are on Tuesdays, as is the case in almost all of the states. The major reason for this is that the federal law mandates that the elections for federal offices be on that day. It is not clear that moving to weekend voting for state and/or municipal elections would increase turnout. However, municipal governments should be encouraged to experiment with weekend elections. The polls should be open for thirteen hours on Saturday and on Sunday afternoon. Some might be encouraged to vote who find Tuesday elections inconvenient.

Florida's laws concerning challenging elections should be changed. The existing distinction between protests and contests should be largely eliminated. The two should be merged and standing requirements, as well as the grounds on which challenges may be based and the possible relief for successful challenges, should all be broad.

It is more difficult for minor parties and independents to get on the ballot in Florida than in most other states. The issues concerning the desirability of easing minor party access are complex and are not considered in this report. However, the law should be changed so that an independent would only have to get the signatures of one percent of the registered voters in the district to sign a petition, rather than the three percent that

the law presently requires. If neither of the major party candidates are attractive to the voters, citizens should have an opportunity to choose an unaffiliated candidate.

The state attorney serving as advocate for the state Ethics Commission last year recommended an assessment of the present division of responsibility between the Division of Elections and the Elections Commission. This report examines the present statutory authority for both entities, looks at their operating procedures, examines the administrative structure in other states, and reviews some model codes.

The Elections Commission should remain within the office of the Secretary of State, but it should basically be an independent entity with its own staff. The Division will thus be freed of the responsibility of staffing the Commission and of pursuing investigations of violations of the code. However, the Division's responsibilities regarding its remaining elections functions should be broadened. It, as was noted above, should maintain a list of registered citizens throughout the state. Furthermore, it should begin issuing periodic reports analyzing the data it receives from political committees and candidates on campaign contributions. As chapter three discusses, the election offices in a number of states do this. Furthermore, the formulators of the 1973 revisions of our election laws clearly intended for the Division to assume this responsibility.

Campaign finance is a crucial aspect of any election law. One component of financing laws allows different persons and

organizations to contribute to campaigns. Florida presently allows individuals, political committees (PACs), committees of continuous existence (CCEs), political parties, and business corporations to contribute to campaigns.

Corporations should not be allowed to contribute directly to the campaigns of candidates, PACs, CCEs, or political parties. Rather, they should have to form, as unions must, political committees if they wish to contribute. It is unfair to the shareholders of a corporation to have some of the profits going to candidates whom they might not support.

Also, the present distinction between PACs and CCEs should be eliminated as the office of the Secretary of State has proposed. There is presently a $1,000 per election contribution limit to PACs but none for CCEs. This limit should hold for all political committees. There is presently no itemization required of individual contributors making payments in dues to CCEs. However, no organization can be designated as a CCE unless at least one-quarter of its funding comes from dues. The present proposal of the Secretary of State's office would eliminate the distinction between PACs and CCEs, and would not require any political committees to itemize the contributions of their dues-paying members. Non-disclosure should be allowed only for members paying dues below the equivalent of $100 a year. If dues are more than this, individual itemization should be required.

The office of the Secretary of State has also proposed that groups be unable to register as political committees unless they

raise or spend $3,000 in a reporting period. The present limit is $500. The legislature should not adopt this proposal. At the least, this would result in a reduction in disclosure. And, under one interpretation of the law, many small political groups would no longer be able to contribute to political campaigns. These groups, already disadvantaged in our political system, would be further weakened and, in some instances, might wither away.

However, some relief is needed for the political committees that have been facing, in some instances, large fines for late reporting. Three changes are needed. The Division of Elections should send out cards each year to all the registered committees, asking if they wish to remain registered as committees. This might remind some small committees that are no longer active to notify the Division of their disbanding. Also, the proposal of the office of the Secretary of State that there be only a $10 per day fine for late reports, instead of the present $50 per day, for political committees with limited contribution activity should be adopted. It would also be desirable, as the office of the Secretary of State suggests, to put a cap on the amount that any committee can be fined for late reporting in a particular period.

Furthermore, the present reporting requirements for political committees should be lessened. Biannual, rather than quarterly, reports ought to be sufficient in "off" years, and only one report before each election should be required.

Contribution limits are an important aspect of campaign finance. Florida's present limit of $1,000 per individual election for non-statewide candidates, and $3,000 for statewide ones is reasonable. Although several states have stricter limits, almost all of the states that have roughly the same or greater population than Florida have no contribution limits. New York is the one large state that does have limits, but its limits are much higher than those in Florida. Florida's present limits do not generally allow a few individuals to dominate the financing of a particular candidate, but they are not so low as to make it unduly difficult for a candidate to raise money from individuals

Our limits for PAC contributions are the same as for individuals. The per election limit is fair. However, there is reason for citizens to be concerned about the inordinate amount of campaign money going to successful candidates from PACs and corporations. It is true that views differ on the merits of the role of PACs in our political system. However, since major PAC and corporate contributors do not in any way represent a "cross-section" of our citizens, the legislature should initiate a study of different approaches to try to diminish the domination of campaign financing by these interests. The analysts should pay special attention to the approaches of Arizona and Montana. Both states set aggregate limits on the amount of PAC funding that candidates can accept during any campaign. This is a policy that has merit, and it is worthy of further investigation.

Political parties also play a role in campaign finance. At one level, parties can be ideal vehicles to provide money to candidates. Broad-based parties can serve as a crucial link between the electorate and policy-makers. On the other hand, if a party is relying heavily on contributions from a few individuals or groups, its capacity to serve as a broad-based representative link is diminished. Further, it is undesirable for candidates to rely on the parties for most of their funds. This can diminish the independence that candidates should have.

There are no limits now placed on how much parties can give to candidates, and there is no reason to change this policy. Most candidates for the House and Senate in our state receive a small percentage of their contributions from parties.

There should, however, be a limit placed on how much an individual or PAC can give to a party. A limit of $9,000 per election is reasonable. This is three times greater than the present limit on statewide candidates. It would allow parties to raise ample funds, but would diminish the chances that a few individuals or groups could dominate a party's finances.

Party leadership funds are controversial. Some authorities support the present policy, which imposes no limits on contributions to the funds or on campaign contributions from them to legislative candidates. They suggest that the funds are basically vehicles of the party and should not be limited. Others go so far as to urge that they be eliminated. They argue that the funds enable contributors to get around both disclosure

and contribution limits.

Both views are too extreme. Leadership funds should be allowed to continue, but some restrictions should be imposed on them. First, there should be disclosure requirements for these funds as there are for candidates, political committees, and parties. Now, the Democrats disclose both donations to these funds and their contributions to candidates. The Republicans do not. Disclosure should not be left to the discretion of the parties. Second, the same limits that apply to contributions to PACs ($1,000 per election) should apply to donations to party leadership funds. Finally, contributions to any candidate ought to be capped at $3,000 per election. This is higher than the $1,000 PAC limit to these candidates, because the leadership funds generally do not contribute to a candidate who is facing opposition in the primaries.

Last session, the Florida legislature passed an historic public financing bill for candidates for statewide offices. It is important that this legislation be fully funded by the legislature, so that it can be implemented in 1990. Public financing is the only vehicle by which campaign spending can be limited. It also should decrease the role of PACs in funding campaigns. The legislature should initiate a study of public financing for legislative elections. It should look at alternative approaches, their relative costs, and their likely effects.

INTRODUCTION

Although there is no consensus on the definition of democracy, most would agree that having free elections is the crucial institutional component of a democratic government. However, merely having periodic elections in which all adults have the right to vote is not adequate to ensure democratic accountability to the people. Giving citizens every possible opportunity to participate in the election process, administering election laws fairly, and regulating campaign finance are all crucial elements of an election system.

If registration laws are unduly restrictive, if the polls are not open long enough on election day to make them easily accessible to people, or if absentee balloting opportunities are slim, democracy suffers. If those administering the election laws favor one party over another, or incumbents over challengers, the political playing field is unevenly balanced and democracy suffers. If adequate information on who is financing election campaigns is not readily available to the public, and if reasonable limits are not established on campaign contributions, political legitimacy wanes and democracy suffers.

The electoral system in Florida is, generally speaking, an open, fair, democratic process. But it is hampered by certain practices and laws that tend to restrict participation by voters,

create administrative problems, and raise questions concerning campaign financing. This report focuses on those aspects of Florida's election system. It analyzes how the system operates, compares it with the systems in other states and with model election codes, and offers recommendations for changes. Our goal is to recommend modifications in our laws and practices that will bring more democratic participation in the process and, by establishing a more equitable system, reduce political alienation.

Chapter one examines a number of election processes, including voter registration requirements, voting provisions, procedures for challenging elections, and provisions governing access to the ballot for minor parties and independent candidates. The next chapter analyzes the administration of the election laws. It focuses on the division of responsibility within the office of the Secretary of State between the Division of Elections and the Elections Commission. The final chapter examines campaign finance. It reviews disclosure requirements, contribution limits, and numerous other aspects of this crucial component of our election system.

CHAPTER I. ELECTION PROCESSES

REGISTRATION

Before embarking on a comprehensive evaluation of current voter registration laws in Florida and elsewhere, it seems appropriate to address the question of why we have voter registration in the first place. After all, one of our chief democratic goals is ostensibly to maximize citizen participation in the electoral process, and mandatory voter registration requirements almost inevitably hinder this participation. We must constantly ask ourselves, therefore, what policy interests our registration laws serve and whether these interests are sufficiently compelling to justify encroachment upon the right to vote.

When registration requirements began in many locations around the turn of this century, the articulated purpose was to prevent voter fraud.[1] Yet many say its actual purpose was as much to restrict immigrants from voting as to guard against corruption.[2] The racially discriminatory motivations behind registration in the South were reflected vividly in such measures as literacy tests and early registration closing dates.[3]

Certainly, though, registration would not have survived until today if its purpose was still to limit the voting franchise of non-whites and immigrants. The truth is that fraud prevention is a legitimate reason for registration, yet, at the

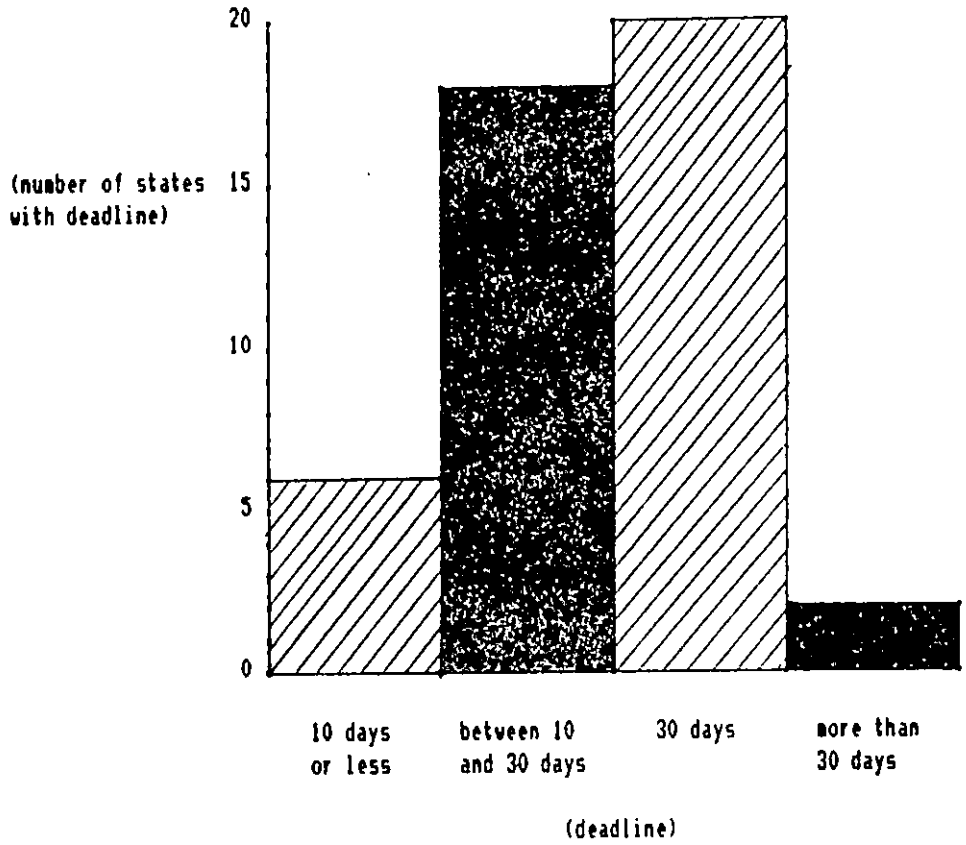
same time, there is no doubt that restrictive registration requirements will deter some people from voting. The reforms recommended in this analysis, therefore, aim to maximize democratic participation without compromising the integrity of the electoral process.

State Registration Systems

Administrative responsibility for registration rests with county government in 39 states and rests with cities, towns, or other regional entities in ten.[4] The historical and still dominant method of registration in most states entails a trip to the office of the county clerk, county board of elections, or similar local authority where the registrant completes and submits the proper forms. However, some type of absentee registration is available in 45 states, typically for military personnel, disabled persons, and persons temporarily out of state, and 23 states permit anyone to register by mail.[5] In addition, most states authorize the use of deputy registrars, who may register citizens in a variety of locations and who are appointed at the discretion of local election officials.[6]

The vast majority of states have a registration cutoff immediately preceding an election. In 20 states this deadline is set at 30 days before an election, and two states close the books even earlier.[7] Twenty-six states have deadlines of less than 30 days, though this feature is partially offset in eight of them by voter residency requirements of at least 30 days.[8] Only three

FIGURE 1. REGISTRATION DEADLINES



Source: adapted from Frontlash Foundation, Inc., Voter Registration and Absentee Voting Information, (Washington, DC: Frontlash Foundation, 1984).

states - Minnesota, Wisconsin, and Maine - permit election day registration.[9]

All states have "purging" statutes that mandate cancellation of an individual's registration in certain circumstances,[10] most commonly if the registrant suffers mental incapacity or is convicted of a felony. Figure 2 shows the disparate state policies on purging the registration rolls. While ten states do not cancel a voter's registration for failure to vote, four states do cancel if a voter failed to participate in the last general election.[11] Twenty-two states purge a voter who has been inactive for four or more years, one state purges a voter who has been inactive for three, and six states purge a voter who has been inactive for two years.[12]

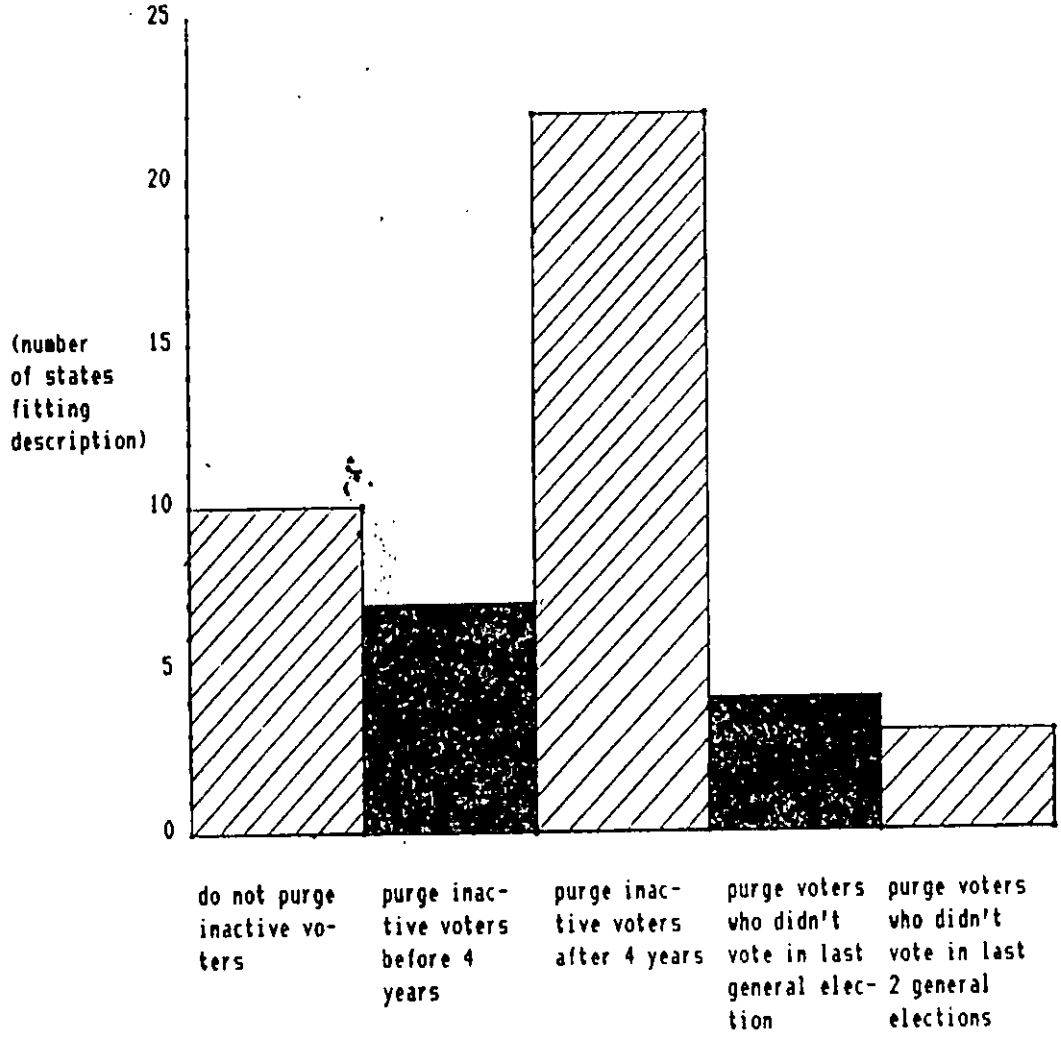
Perhaps the most glaring similarity among the various state registration systems is that the burden of registering is in all cases on the individual citizen. The consequences of this feature, virtually unique to the United States among all Western democracies, are discussed infra p. 14.

Registration in Florida

Florida is one of the 39 states with county-based administration.[13] The chief election official in each county is the county supervisor of elections, who is elected to a four-year term.[14]

Citizens must generally register at the office of the county supervisor, or at approved branch locations, although absentee

FIGURE 2. STATE PURGING DESCRIPTIONS



Source: adapted from Frontlash Foundation, Inc., Voter Registration and Absentee Voting Information, (Washington, DC: Frontlash Foundation, 1984).

registration is also available upon a written request for those unable to register in person.[15] Citizens may also register with deputy registrars wherever the registrars conduct registration. These deputy registrars are appointed at the discretion of the county supervisor and may include volunteers.

Section 98.051(1)(a), Florida Statutes (1985), mandates that the elections supervisor's office be open Monday through Friday for at least eight hours. The office may be open for at least another ten hours any weekday if adequate notice is given.[16] During the 30-day period preceding the closing of the registration books before any statewide or federal election, the office also stays open on Saturdays for at least eight hours.[17]

Registration closes in Florida 30 days before an election.[18] Actually, citizens may still register within this 30-day period, but they will be ineligible to vote in the upcoming election.[19] Of course a person who moves to another Florida county after the 30-day cutoff may vote absentee via his former county (if registered there) for statewide offices and issues, U.S. Senate seats, and for President and Vice-President.[20]

If registered electors fail to vote in a two-year period without requesting that their registration be updated, their registration will be temporarily cancelled.[21] Further, if they fail to respond to the cancellation notice of the elections supervisor within three years, the cancellation becomes permanent.[22] Florida also purges convicted felons from its registration rolls.[23]

Criticisms of Florida's Registration Provisions.

Mail-Registration. Florida allows anyone to register by mail. Would-be voters in Florida, however, cannot simply pick up a mail registration form at a supermarket or post office, as they could do in states with comprehensive mail registration. Instead, they must request one from the county supervisor. Admittedly, our mail provision is preferable to no provision at all, but Florida is "missing the boat" by not utilizing mail registration as one of its principal registration techniques.

Texas introduced across-the-board mail registration to this country in 1941.[24] Since that time, 22 other states and the District of Columbia have implemented the measure. The consensus is that many citizens use mail registration when it is readily available and that it can increase registration levels and ease the administrative workload without increasing voter fraud.[25]

For example, Maryland reports that a full 60% of its voters register by mail, though other opportunities and methods of registration abound in that state.[26] Since enacting mail registration in 1972, Alaska has experienced a 20.6% increase in registered voters and a concomitant 9% increase in voter turnout.[27] Moreover, Iowa's proportion of registered voters increased by 14% in the first four years following introduction of the mail system.[28]

Normally, one would expect such remarkable results to be accompanied by heavy costs, but experience shows that that simply is not true with mail registration. Because citizens can

register at their own convenience, registration tends to be more evenly distributed throughout the year; last minute rushes to meet registration deadlines are less common.[29] This, in turn, means the registrars may make more efficient use of their time.

Moreover, though the government must fund the increased mailing costs that mail registration brings, administration is easier and fewer registrars are needed under the system. Overall costs of mail registration may, therefore, be considerably less than the costs of other methods. Indeed, New York estimates that in-person registration costs $10 per person while mail registration costs only $1 per person.[30]

There are no indications that mail registration has compromised the integrity of voting systems. An early study in New Jersey and Maryland concluded that election administrators were generally satisfied with the process.[31] More recently, The Maryland Administrator of Elections stated, "[A]fter a million mail registrations and eleven years operational experience, I can cite only a single instance of fraudulent registration --- and that voter came in person to the county election office!"[32] Ohio's Director of Elections Programs similarly reported, "When it [mail registration] was first introduced in 1977, one member of the legislature who opposed it tried to register fraudulently and was caught. He claimed he was testing the system and was not prosecuted, but he was embarrassed . . . [that] the system did pick up the attempt."[33]

The evidence cited above demonstrates that mail registration

can yield substantial gains in a state's registration levels without imposing substantial burdens. If Florida is truly seeking meaningful election reform, its legislators should give mail registration serious consideration.

Registration Deadlines. Another registration provision subject to criticism is Florida's 30-day registration deadline. The registration deadline is one of the most important features of any state's registration system. Among such variables as regular registration office hours, weekend office hours, and the availability of absentee registration, registration deadlines have the greatest impact on voter turnout.[34] Indeed, with the aid of complex statistical techniques, researchers conclude that 30-day registration deadlines, as opposed to no deadline at all, decrease the probability of individuals' voting by up to nine percent.[35]

Moreover, the impact of the deadlines may be disproportionately great on uneducated persons. Education often increases one's political interest and thus makes a person more likely to overcome the inconveniences associated with registration (e.g., early deadlines, limited registration office hours). Education also increases one's bureaucratic know-how, thereby better equipping a person to obtain pertinent registration information. In the words of elections researchers Rosenstone and Wolfinger, "[E]ducation produces both a bigger incentive to jump the hurdle and a lower hurdle."[36]

The other side of the coin is that poorly educated persons

frequently lack the basic knowledge of when and how to register and have a seasonal interest in politics that peaks only on the eve of an election. These individuals often are unregistered; by the time they have sufficient motivation to register, many deadlines have long since passed.

In sum, the closer the registration deadline is to election day, the greater the number of registered voters, the greater voter turnout, and the more representative of all cross-sections of society the electorate becomes. In light of this, Florida's 30-day deadline appears unsatisfactory. Florida should join the 25 other states that have deadlines of less than 30 days.

However, the Legislative Chairman of the Florida State Association of Supervisors of Elections contends that Florida's 30-day registration deadline is necessary.[37] He argues that supervisors must perform a myriad of tasks during the days immediately preceding an election, and that they need the 30-day respite from registration rushes to complete their tasks on time and without endangering the integrity of the state's election system.

This concern is understandable and has been articulated by election officials in many states that were contemplating decreasing the registration cut-off time.[38] However, all of the special duties that befall supervisors before an election could be carried on simultaneously with the ordinary duties of registration if extra personnel were temporarily employed. Perhaps volunteer deputy registrars could help in this capacity.

Moreover, Florida law only prevents citizens from voting in the next election if they miss the 30-day deadline; it does not prevent them from registering for future elections.[39] Thus, a citizen who is unaware of any deadline might make a trip to the county supervisor's office, and the supervisor would be obligated to register the citizen. So, to a certain extent, supervisors are already carrying out pre-election routines and registering new voters at the same time.

Lastly, implementing full-scale mail registration would alleviate many of the problems that supervisors foresee in shortening the deadline. As previously mentioned, because registration is distributionally more even with a mail system, the pre-election rush to register is substantially lessened. Therefore, the supervisors have more time to attend to other duties. Certainly, then, there is no reason why a shorter deadline should pose problems for supervisors if adopted in concert with a comprehensive mail system.

Purging Registered Voters. Another troublesome Florida provision is the purging statute which mandates cancellation of a voter's registration for failure to vote within a two-year period. Presumably, this law is aimed at facilitating accurate, up-to-date registration rolls. But the provision will fail to achieve this goal because it stumbles over one of its own premises, namely, that a voter who is inactive for two years has died or moved from the jurisdiction. On the contrary, many voters choose to vote only in presidential elections, which are

held once every four years. To cancel the registrations of these well-intentioned voters in the name of eliminating so-called "dead wood" is like throwing the baby out with the bath water.[40]

We need accurate registration rolls. But, by increasing the purging/inactivity period from two to four years, we can better achieve that goal and prevent the disfranchisement of a significant portion of our electorate at the same time.

Further Ideas and Techniques in Voter Registration

The European Model. As previously mentioned, all American states place the burden of registering on the individual citizen. This feature is significant because it is virtually unique to the United States among all Western democracies.[41] In almost all of the other countries, the initiative for registering citizens rests with the government. It is either done automatically through the use of governmental records of citizens' names and addresses, or by contacting every citizen of voting age through a comprehensive canvass.[42]

Because our dominant concern with registration laws is the impact they have on voter turnout, the obvious question is, what effect does the "do it yourself" policy of American states have on registration levels and, consequently, voter turnout? According to statistics for the most recent national elections in twenty-one Western democracies, the United States, with a 52.6% turnout, ranks twentieth in the number of votes cast as a percentage of the voting age population.[43] In contrast, among

the same countries plus three additional ones, the U.S. ranks eleventh in voting as a percentage of registered voters with an 86.8% mark.[44]

These statistics indicate that the American registration systems hinder voter turnout as compared with the European systems. Indeed, the University of Michigan Center for Political Studies and the elections researchers Rosenstone and Wolfinger have reached exactly this conclusion.[45] "We are confident that establishing a European-type registration system would increase voter turnout by substantially more than nine percent."[46]

Even with this kind of potential, however, it is unlikely that any American state will try a government-initiated system of registration in the near future. Nevertheless, the European model can serve to remind us of the inadequacies of our own system so that we can continue to strive to achieve maximum democratic participation.

Election-Day Registration. The argument in favor of election-day registration is merely an extension of the argument for shorter deadlines. By allowing registration on or very near election day, when media-generated excitement is at its peak, more people will register and more people will vote.

Currently, three states permit election-day registration---Minnesota, Maine, and Wisconsin---and the relevant statistics for those states strongly suggest that the system is bringing more voters to the polls. In 1972, before election-day registration was implemented, Minnesota ranked third, Maine twenty-first, and

Wisconsin was tied for twelfth among all states in voter turnout in the presidential election. In contrast, those states ranked first, second, and fifth respectively in the 1984 election.[47] Furthermore, a study of turnout in congressional elections also indicates the effectiveness of election day registration.[48]

Skeptics insist that election-day registration opens the door to voter fraud. For example, Richard Smolka writes that "with election day registration, the potential for vote fraud is great"[49] However, Minnesota's Secretary of State, says that this just is not so. "I know of only two indictments [for voter fraud] in nine years. Secretaries of State in the two other states that use same-day registration give the unanimous opinion that voter fraud has not been a problem with election-day registrants. Maine has had only two convictions in ten years."[50]

Another often-heard criticism of election-day registration is that it leads to confusion in the polling place. This criticism has some merit, as both Minnesota and Wisconsin experienced administrative problems with the system during its debut. Long lines of frustrated voters appeared, many of them ignorant of where they should go or what they should do to register properly. Difficulties arose in checking identification and verifying residences, and there were shortages of registration forms and ballots.[51]

There is, however, no substitute for experience, and both these states learned from their early mistakes and corrected them in successive years. Of course, one of the major benefits

accruing to any state contemplating election-day registration now is that it can learn from those same mistakes. The trail, so to speak, has already been blazed.

Agency-Based Registration. Agency-based registration first emerged as a comprehensive registration technique in the spring of 1983. Experience is already proving it to be one of the most attractive and innovative registration vehicles available. The idea behind the system is quite simple yet ingenious: make registration possible at all government-operated offices or agencies with which the public has frequent and routine contact such as libraries, driver's license bureaus, tax offices, unemployment offices, and public health centers.[52]

Agency-based registration can potentially reach hundreds of thousands of people, an assertion supported by early results from states employing this technique. New York registered 10,000 voters through public agencies in two weeks, and Ohio registered 70,000 new voters in just six weeks.[53]

Moreover, since many of the agencies deal with low-income groups and minorities (e.g., welfare agencies, unemployment offices), the system will likely produce significant registration gains among these groups. This is good news for democracy in America since both low-income groups and minorities are currently underrepresented in the electorate.

Agency-based registration is cost-effective, too, because the only personnel necessary are the existing agency employees. These employees may do as little as place the registration forms

in conspicuous locations or as much as witness signatures (where required) and submit completed forms to election authorities. The system is flexible enough to fit any state's needs.

Currently, agency-based registration can be accomplished in at least two ways, by executive order of the governor or, of course, by legislation. So far, five states have utilized the former strategy[54] while four states, including Florida, have passed authorizing legislation.[55] Although Florida's legislators recognize the merits of agency-based registration, it has not been widely implemented.[56]

Centralized Register. For most states, the biggest administrative problem in the field of voter registration is the maintenance of accurate, up-dated registration lists. People die or change addresses as a matter of course, and county election officials must monitor these and other contingencies if they hope to maintain accurate rolls.

To alleviate the difficulties of performing this task exclusively on a local level, several states have implemented a central, computerized register. This technique enables a state to cross-check doubtful registrations with state-wide property tax rolls and driver's license records.[57] In fact, many states with a central register require certain public agencies to make monthly reports of deaths, felony convictions, name changes, and address changes to state election authorities to facilitate timely entries on the computer.[58]

So far, the results of central, computerized registration

are encouraging. The increased efficiency of the system enabled county offices in South Carolina to stay open full days for registration and resulted in the highest number of registrations for a single year in the history of the state.[59] And Rhode Island's Secretary of State, Susan Farmer, says centralized registration has improved the accuracy of the state's voter registration records and has, consequently, made interaction between political candidates and the public easier and more efficient.[60]

Statewide Registration Form. Another administrative tool that could improve a state's registration system is a statewide registration form. Statewide forms could be distributed at large public events that draw citizens from diverse counties or they could be strategically placed in post offices and other public facilities so that citizens planning intrastate moves could pick them up when taking care of other pre-move routines (e.g., arranging for mail forwarding.) Because the same form would be accepted by all counties, a registrant could simply submit a completed form to the elections office in his county of residence (present or future).

A statewide form would be especially effective if adopted with a comprehensive mail registration system. One of the staples of such a system is mass public availability of registration forms (e.g., in shopping centers), a situation sure to result in people obtaining forms in one county and submitting them to others. While this would normally pose problems, it

would be perfectly appropriate in states with uniform applications because, again, all counties would accept the same form.

Canvassing. The Model Election System introduced by the National Municipal League argues for state-conducted canvassing of all households, as is presently done in Canada. According to the League, this is the reform most likely to yield complete, accurate registration rolls.[61]

The League's system of canvassing calls for statewide, door-to-door visitation by trained canvassers every one or two years, similar to the practice used in Canada. The canvassers would remove voters from the rolls who no longer resided at their stipulated addresses, and who had not re-registered, and would make efforts to register all those not presently on the rolls.

This system would generally permit household members who are home at the time of the canvass to register absent members. However, the League notes that such a "non-personal" registration method might cause problems in states requiring signature verification at the polls. Because an absent registrant would have no signature on file, there would be no way to match his signature at the polls. Verification would also be a problem if such an individual applied for an absentee ballot.

The League suggests, however, that since many states don't require signature comparisons, the practice may not be necessary to detect or deter fraud. Thus, it concludes that non-personal registration should be allowed unless a state carefully

determines that a signature test "is necessary to guarantee the integrity of the electoral process."[62]

Even if a state determines that signature comparisons are necessary, the League argues that the practice can be incorporated into a "non-personal" registration technique. For instance, a canvasser could leave a postcard for an absent registrant with instructions for the registrant to sign and return it. Alternatively, the absent registrant could sign the registration book at the polls on election day. Although no signature comparison would be possible at that election, comparisons could be made at all future elections.

Conclusions

Registration laws clearly make a difference in our electoral process. They are major contributing factors to the probability of either high or low registration rates and, thus, high or low voter turnout. America will not likely move toward the type of "automatic" registration that exists in many European democracies. Nor will it adopt a countrywide canvas or "enumeration" as exists in Canada. The dominant belief that it is the individual's responsibility to register will probably continue to guide public policy in all of our states.

However, beyond a concern for fraud, there is no rationale for registration laws that decrease the probability of citizens registering. Thus, the state government should implement actions that open all avenues for registration. Florida's registration

laws should be changed to adopt some of the policies of other states that are less restrictive on registration procedures and more aggressive in trying to register people.

The percentage of the eligible electorate who were registered to vote in Florida for the 1984 election was 65.4%, compared with a nationwide figure of about 73%. Only six states plus the District of Columbia had lower registration rates than Florida.[63] Although the percentage of the eligible voters who were registered in Florida did increase by 1.8% from 1980 to 1984, this was less of a gain than the nationwide increase from 69.8% to 73%.[64] However, 75% of those registered actually voted in the 1984 general election. This was higher than the nationwide average and was greater than the turnout of registered citizens in most other states.[65]

Thus, it is crucial that active steps be taken to register eligible voters in order to increase voter turnout. Both the large influx of migrants to our state and the high proportion of elderly residents require a simple and convenient registration procedure. Under our present system, newcomers often will not think of registering until it is too late, and elderly people may find it difficult to get to the registration location unless it is easily accessible.

The legislature should mandate that the registration books remain open until two weeks prior to the election. Studies indicate that moving in this direction is the single most important change available to increase registration rates.[66]

True, a great deal of administrative effort by many county supervisors will have to accompany this change. However, the potential benefits make this effort worthwhile. Other states keep their registration books open until close to the election; Florida can too.

Furthermore, coupling this change with a statewide mail-registration system will ease the transition. Many citizens will register by mail throughout the year. So, although a number of people will certainly register during the last two weeks that the books are open, there will not necessarily be an inordinate number of individuals at the registration sites during this period. Registration forms should be widely available at post offices and other public and private facilities. In some counties, arrangements could be made to include forms with the first utility bill after a new hook-up. This would further encourage new residents to register.

Agency-based registration is compatible with a registration-by-mail system. The governor and department heads should take steps to implement the law already on the books, which allows registration to occur at any state, county, or municipal agency upon the approval of the supervisor of elections of the county.[67] Both mail-order registration forms and personal registration opportunities should be available at these agencies.

The election code should also be modified to allow canvassing. Studies have shown that voting registration drives among groups with low-registration rates have had success.[68]

Canvassing is a further step in this direction.

Finally, Florida should experiment with election-day registration. This clearly brings increases in registration and voting rates. However, the possibility of fraud must be faced. Therefore, several counties should be chosen to try this technique, and the process should be closely monitored. Election-day registration will have to be used for at least three elections in each of the counties so the process can be modified if problems arise. If it proves successful in increasing registration and if it is not shown to increase corruption, this procedure should be expanded.

Having a state-wide computerized list of all registrants would help to decrease the possibility of fraud. As noted above, this system enables a state to cross-check registration with drivers' licenses and other records. In addition, it would help accomplish other desirable goals. For example, those who desire lists of registered voters in many locations could get them from the Division of Elections as opposed to having to go to each Supervisor.

Beyond that, having a state-wide register would make it more feasible to implement additional changes in registration procedures. The United States Congress is considering a bill that would enable states to use the postal service to help register recent movers.[69] The change-of-address form that almost all movers complete would include a carbon copy that would be sent to the chief election official of the state where the move

originated. The state official would then transfer the registration of persons who were already registered within the state. If they were intrastate movers who were unregistered, a mail-registration form could be sent to their new address.

Since recent movers are often slow to register at their new locations,[70] it is important for Florida to participate in this system if Congress authorizes it. Adopting a centralized register will enable the system to be more easily implemented.

VOTING

Changes in registration procedures clearly can affect registration rates and, ultimately, voter turnout. Certainly, however, the relationship is not perfect. One who is mobilized to register and vote in one election may choose not to vote in the next.[71] The reasons why one might decide to sit out an election vary. Obviously, unattractive candidates can dampen a voter's enthusiasm. Also a lack of competition among candidates may make a difference.[72] However, factors associated with the voting process itself may affect turnout.

Voting Hours

One of these factors is the hours that a polling booth remains open. Florida statutes mandate that the polls be open for twelve hours, from 7:00 a.m. through 7:00 p.m., on election day in all voting places throughout the state.[73] The number should be increased to at least 13 hours for three reasons.

First, as Figure 3 indicates, our hours compare unfavorably

with those of most of the other states that have fixed hours. Fourteen states, in addition to Florida, mandate that their polls be open for 12 hours. On the other hand, only three call for 11 hours, the shortest time span. Seventeen plus the District of Columbia mandate 13 hours, three call for 14, and one, New York, keeps its polls open for 15 hours.[74]

Second, there is some statistical evidence that increasing the number of hours can increase turnout. Wolfinger and Rosenstone suggest that keeping the polls open for 14 hours increases the probability of one voting from about one to three percent.[75] These figures are merely suggestive, but they do indicate that polling hours can have an effect on turnout.

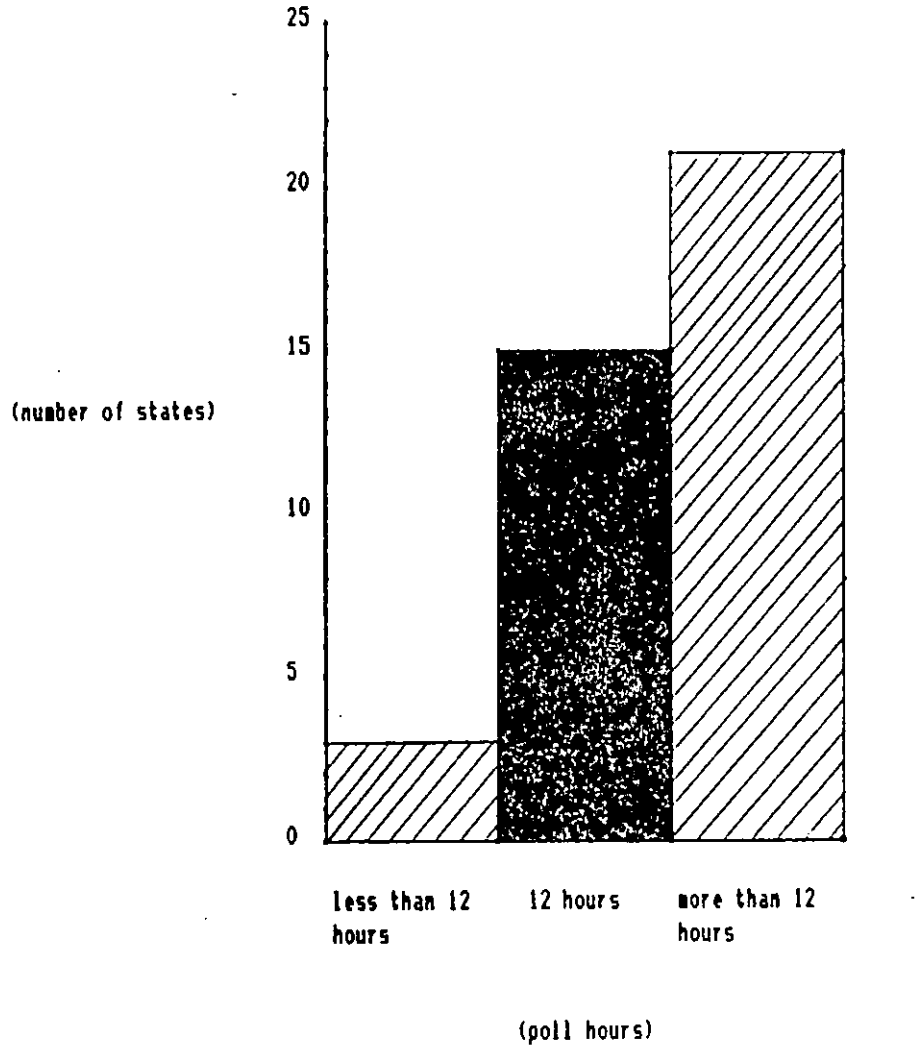
Finally, another factor is Florida's rapid population growth in many of its urban areas, with its accompanying traffic problems and long commuting times for many. Because citizens must register and vote near their residences (unless they vote absentee), those who commute relatively long distances may have a difficult time getting to the polls.

Allowing the polls to stay open until at least 8:00 p.m. may bring some people to vote who otherwise might not. Undoubtedly, it will make it more convenient for some to vote. As with registration, the government should ease any unnecessary burdens on voting.

Voting Days

Florida's general and primary elections are all held on Tuesdays.[76] This, of course, is typical of almost all our

FIGURE 3. POLL HOURS



Source: adapted from Richard G. Smolka, "Election Legislation: 1984-85," in the Book of the States, 1986-87 ed. (Lexington, Kentucky: The Council of State Governments), 209-10.

states. Louisiana and Texas hold some of their elections on Saturday. Some suggest that Florida consider Saturday elections for state offices. The consequences of Saturday elections on turnout are unknown. There appears to be no analysis indicating whether or not Saturday voting has increased turnout in Louisiana or Texas. A Texas study indicates that the voters generally approve of Saturday voting. A poll conducted in the state found that 59% of the voters and 67.5% of the registered nonvoters favored holding all state and local elections on Saturday. Only 22.1% of the voters and 16.6% of the registered nonvoters were opposed to the reform.[77]

A potential disadvantage of this change is that a person will be asked to vote both in a Tuesday election for candidates for federal offices and in a Saturday election for state offices. Turnout, conceivably, might even decrease as people tire of election days. Another potential problem is that administrative costs would increase if more elections are needed.

A possible place to experiment is in municipal elections where turnout is generally low and which are usually held at a different time from elections for state and federal office. Some cities might want to experiment with weekend elections, allowing the polls to remain open for thirteen hours on Saturday and on Sunday from 12:00 to 8:00 p.m. This might increase turnout. It is certainly worth a try.

Absentee Ballots

Some voters are unable to get to the polls because they are out of town on election day or for other reasons. Therefore, absentee ballot provisions can make a difference in whether they will vote or not. One study has suggested that the presence or absence of absentee ballot procedures can affect turnout in a state.[78] Florida's provisions for absentee ballots are good ones, giving ample opportunity for citizens to vote by this mechanism. In fact, Florida's stipulations meet almost all of the standards enumerated in the National Municipal League's Model Election System.[79]

The League's model system enumerates eight conditions that an absentee ballot system should fulfill. Florida's falls short on only one of these.

1. **Absentee voting provisions should apply to both primary and general elections.** Our code meets this criterion.[80]

2. **Absentee voting should be available to any qualified voter who expects to be away from his county or city on election day or who is ill or physically disabled.** Our code is basically in compliance.[81]

3. **There should be no requirement for notarization of the absentee ballot application or the absentee ballot.** Our code is in compliance because it gives persons requesting an absentee ballot the option of having their signature witnessed either by a notary or by two people who are at least eighteen years old.[82]

4. **No special application form should be required to obtain**

an absentee ballot. Florida is in compliance. Voters here may request an absentee ballot from the supervisor or deputy supervisor of elections by mail, telephone, or in person.[83]

5. **Applications for absentee ballots should be accepted up to seven days before an election and absentee ballots should be counted if received by the time the polls close.** Florida is clearly in compliance with both aspects of this recommendation. The only time restriction on requests for absentee ballots applies to requests from electors overseas. These must be received by the Friday before the election.[84] There is no time requirement on requests from within the country. Absentee ballots are counted if they are received by the time the polls close on election day.[85]

6. **To preserve secrecy of the ballot and to prevent fraud, absentee ballots should be returned to and counted at the central election office that issued them rather than distributed to each precinct.** Florida's system meets this recommendation. Absentee ballots are sent to the county supervisor's office and are counted by the county canvassing board.[86]

7. **Every state should adopt all recommendations made in the federal Voting Assistance Act of 1955 as amended.** This act proposes that all members of the armed forces and their families residing overseas, as well as other citizens temporarily living abroad, be allowed to submit a specific form, the federal postcard application, as both an application for an absentee ballot and, if the person is not registered, as an application

for registration. As of September, 1971, 42 states had accepted this card as both an application for registration and an absentee ballot for members of the armed forces. However, only 17 states had adopted this procedure for citizens living abroad.[87]

It appears that Florida is partially in compliance with this recommendation. Sections 97.063 and 97.064, Florida Statutes (1985), as well as 101.692, refer to the postcard application process. It appears that both military personnel and other citizens residing overseas can use it, although absentee ballot requests from citizens living overseas are also referred to in sections 101.62(2)(4) without mention of the postcard procedure. If the supervisor determines that an applicant has never registered in the county, then the supervisor sends the person an absentee registration form which must be completed and returned before the registration books are closed.[88] However, if the applicant had previously been registered in the county, but had allowed his registration to lapse, the supervisor will reinstate the applicant.[89]

8. **American citizens who reside outside the territorial limits of the United States and are otherwise qualified to vote should be able to register and vote where they last resided in the United States, at least in federal elections.** A number of Americans who are neither in the armed forces nor are federal employees live abroad. Because many states define residency as maintaining a home or other physical presence within the state, people from these states living abroad are disfranchised. The

Model Election System suggests that each state define residence to include a qualified voter living overseas. Florida's code seems to comply with this recommendation because it suggests that those who intend to remain as residents of Florida can vote in the state.[90]

Conclusion. Florida's absentee ballot provisions are good. Those who are unable to vote at the polls can vote absentee without significant difficulty. One desirable change is for section 101.692 to clarify who can use the postcard application for a ballot. This is not a moot point because people who use this device have their suspended registration become effective automatically, without taking any additional steps. Others would presumably have to reregister according to the provisions stated in 98.081(2). Sections 97.063 and .064 might contain the clarification that is needed, but it would help to be specific in section 101.692.

A further positive step would be to allow the federal postcard application to serve as the voter registration form rather than just as an application for one. Twenty-five states currently permit this. The Florida Constitution (Art. VI, Sec. 3) requires a registrant to swear to "protect and defend" Florida's constitution, and the present federal postcard application does not contain the necessary language. However, the director of the Federal Voting Assistance Program has noted that his agency is considering adding the necessary language to the application. If this change is made, the necessary changes

should be made in our statutes to make it easier for our overseas citizens to register and vote.[91]

CONTESTING ELECTIONS

Being able to register easily and vote for candidates and referenda are, of course, crucial aspects of the democratic process. Ideally, all steps that accompany and follow voting proceed fairly and efficiently. Ultimately, the votes are tabulated and the winners are declared. However, all elections do not proceed smoothly and honestly. What if the machines break down? What if an election official tampers with the ballots? What if a candidate purchases votes? If the integrity of the electoral, and thus the democratic, system is to be maintained, an election law has to establish sound procedures to deal with these scenarios. If not, one's vote in elections where these events transpire becomes meaningless.

This realization struck home during the primary elections held on September 2, 1986 in Leon County. For whatever reasons, machines did not operate properly and, thus, the votes of many apparently were improperly counted. Others, hearing about the problems that caused voting to be halted in many precincts, stayed home. However, despite the disaster, "winners" were declared in each of the races. One of the "losing" candidates for the Leon County Commission has filed suit. Even if he wins, it is unclear what the remedy might be.

This incident suggests that the legislature should change

the sections of Florida's statutes that establish the procedures to challenge elections. A comprehensive reform will not be proposed here because of the legal complexities involved. However, issues will be raised and some suggestions made that the legislature should consider.

Florida's Statute

The law makes a distinction between protesting and contesting elections, and between two types of election protests. The first method of protest basically gives any candidate or elector the right to have the canvassing board, the group responsible for determining the results of the election, check the accuracy of the vote count.[92] This procedure is desirable and noncontroversial. It should remain in the statute. The remainder of this discussion will not further address this type of protest. The second method of protest goes well beyond challenging possible inaccuracies in the tabulation of votes. It allows any candidate or elector to protest the returns based on charges of fraud occurring in either the tabulating of the ballots or in other practices related to the election.[93]

All protests of this nature are made to a circuit judge in the area where the fraud is alleged to have occurred.[94] Normally, protests must be presented to the judge within five days after the election. If, however, the canvassing board has not adjourned by then, the protest will still be considered until the time that the board adjourns. The significance of a protest is recognized by giving the contestant the right to an immediate

hearing after submitting a petition.

The judge is given wide latitude in trying to establish whether fraud actually occurred and in granting relief when fraud is established. The judge is given the authority "to fashion such orders as he may deem necessary to insure that such allegation is investigated, examined, or checked; to prevent or correct such fraud; or to provide any relief appropriate under such circumstances."[95]

Plaintiffs have up to ten days after the canvassing board adjourns to file an election contest. Although contests, as well as protests, are filed in the circuit court, there is no stipulation for immediate hearing. Furthermore, although "taxpayers" can contest a referendum election, only candidates who claim victory in the election can contest a primary or general election. However, unlike election protests, the possible grounds for contesting an election are not confined solely to fraud. In fact, no specific grounds are enumerated. The statute merely notes that "the complaint shall set forth the grounds on which the contestant intends to establish his right to such office or set aside the result of the election on a submitted referendum."[96]

Finally, the current law stipulates more specific remedies for successful contests than it does for protests. It specifies that an unsuccessful candidate who wins the contest gains the office at the expense of the "adverse party." In a successful referendum contest, the election is declared void.[97]

There have been no significant court decisions concerning the election protest statutes. However, the Florida Supreme Court has played a major role in interpreting the contest criteria. For example, it has ruled in Boardman v. Esteva[98] that, in addition to fraud, gross negligence and intentional wrongdoing are also valid grounds for successfully contesting an election. And, in Bolden v. Potter [99] it ruled that, contrary to an earlier Florida District Court of Appeal decision,[100] the plaintiff did not have to prove that he would have won the election if it were not for the tainted ballots. Instead, the court ruled that when substantial fraudulent practices were clearly shown to have occurred, the election must be declared void. If not, the court argued, the public would lose confidence in the electoral process.

Recommendations

The major problem with the statute is that it provides no short-term remedy for an election mishap that does not involve fraud. Apparently, no fraud occurred during the Leon County primary last year, but the election was clearly not conducted in such a manner that one can be sure that the same "winners" would have prevailed if the election had been run smoothly. The statutes clearly need to be broadened. A recent proposal by the Secretary of State is a step in the right direction. It calls for the following major additions to the protest procedures.

> The Department of State may investigate irregularities, problems, equipment malfunctions, or other unusual circumstances in the conduct or practice of an election for any office, nomination, constitutional amendment, or other measure presented to the electors. If the Department finds that such irregularities, problems, equipment malfunctions, or other unusual circumstances are significant enough so that the true vote for any such office, nomination, constitutional amendment, or other measure presented to the electors will not be determinable, it may protest the conduct of the election by presenting a written protest to any circuit judge of the circuit wherein the election was held or is being held and may seek to amend the conduct or practice of the election, void the results of the election, or call for the conduct of a special election in its place.
>
> The protest shall be filed at any time while the election is being conducted or within one day of midnight of the date the election occurred. Upon filing such a protest, the Department is entitled to an immediate hearing thereon and to any appropriate relief.
>
> The circuit judge to whom the protest is presented shall have authority to fashion such orders as he may deem necessary to insure that such allegation is investigated, examined, or checked to provide any relief appropriate under such circumstances, including voiding the results of the election and ordering the conduct of a special election.[101]

If these procedures had been in the statutes last year, effective steps could have been taken to deal with the problems that arose during the Leon County election. These proposals go considerably beyond the present protest stipulations. Fraud does not have to be established and specific forms of relief are stipulated. However, a basic question remains: what if the

Department of State chooses not to protest? Then, we are back to square one.

The legislature should consider incorporating the Secretary of State's recommendations into the law, but, in addition, should expand the grounds on which a candidate or elector can base a protest. Certainly the other grounds enumerated by the Supreme Court for contesting elections could be included as well. If this were the case, the sole responsibility for initiating protests on election day based upon factors other than fraud would not rest with the Department of State.

It would also be desirable to incorporate in the statutes the grounds allowed by the Supreme Court for contesting elections. This is not legally necessary. However, for a candidate who is neither a lawyer nor well-funded or well-connected enough to have ready access to one, this would be helpful.

The relief for election contests should also be expanded. Presently, the statute makes clear that a successful protester can gain the office at the expense of the adverse party. But, the court should be given latitude to, for example, delay a second primary while a contest of the first is still underway.

In fact, one might ask whether there is any basis for distinguishing between protests and contests. If the protest procedure were used before the county canvassing board certified a winner, and the contest method after certification, there might be a reasonable basis for some distinction. But this is not the

case. After all, the protest can be filed either before the canvassing board adjourns or within five days of the election, whichever occurs last.

The second type of protest and the contest provisions should be merged and the Secretary of State's suggestions should be incorporated into the statutes with them. The consolidated provisions should call for immediate hearings on all challenges. Beyond that, the broader stipulations of each of the present sections should be included in the code. Thus, standing would belong to any candidate or elector qualified to vote in the race; grounds would encompass at least those enumerated in Boardman, and relief would include confirmation or reversal of the original election, ordering a new election, etc. In fact, alterations along these lines would bring most of Florida's provisions close to the suggestions of the only comprehensive study on election contests done to date.[102]

ACCESS TO BALLOT

Minor Parties

Another issue in the election process is the rules for allowing candidates of minor parties to appear on the ballot. These rules affect the choices a voter may have on election day.

In Florida, the election code defines a minor political party as one that does not have registered as members five percent of the total registered voters of the state as of January 1 of a primary election year.[103] Candidates of the minor party

for a statewide office will be placed on the ballot if three percent of the registered electors of the state sign a petition.[104] A minor party cannot have any candidates for less than statewide offices placed on the ballot unless it not only has gathered signatures from three percent of the entire state's registered electors, but also has acquired signatures from three percent of the registered electors of those offices' geographic constituency.[105] Separate petitions for each county from which the signatures are solicited must be brought to the respective supervisors of each county by noon of the 49th day before the first primary election[106]

The supervisor of each county can choose either to verify each signature or to check a random sample of signatures.[107] However, when the petitions contain at least fifteen percent more than the necessary number of signatures, the petitioner can require that the random sampling method be used.[108] Although the supervisor is entitled to a fee from the candidate or party of either ten cents a signature or the actual cost of verification, the fee is waived for candidates who file an oath that they cannot afford to pay.[109] The results of the verification may be contested in the circuit court.[110]

Although most other states also require minor parties to submit a petition in order to get candidates on the ballot, it appears that a majority of the states require signatures of a smaller percentage of the eligible electorate than Florida. Florida and only four other states base minor party access on a

petition signed by a percentage of registered voters. All of these four clearly have much easier requirements than Florida.[111]

There are a variety of other bases that states use to calculate the required number of signatures on a petition. (Those who want detailed information on this subject should read the extended end note.)[112] Due to this diversity, it is impossible to rank the states in terms of ease of third party access to the ballot. However, it is clear that Florida is among the more difficult ones for a third party to get on the ballot, especially when none of its candidates are running for statewide offices.

There are, of course, other impediments besides election petition requirements that make it difficult for minor parties to break into our political system.[113] Furthermore, there are numerous arguments both in favor and opposed to third parties. These issues will not be considered here. Lawmakers and citizens should be aware, however, that our requirements are stringent compared with other states and discussion should proceed with this fact in mind.

Independents

The signature requirements for independents desiring to run for statewide offices are the same as for minor party candidates for those offices. A candidate for less than a statewide office must obtain the signatures of three percent of the registered citizens of the electoral district for that office.[114] As with

minor party access to the ballot, states vary greatly concerning their requirements for independents' access. It appears that Florida's requirements are more stringent than most other states, as they are for minor party access. (Again, those interested in detailed information on this subject should refer to the end note.)[115] Also, as with minor party access requirements, it is impossible to rank the states, but Florida's laws are more prohibitive than most.

Although one can present an argument for having stiff barriers against minor parties, it is more difficult to do the same for independents. A candidate running as an independent will be unsuccessful in a race unless there is acute dissatisfaction with the nominees of the major parties. If this alienation from the dominant organizations exists, one who is pledged to neither party should not have to face significant constraints to get on the ballot. Furthermore, many legislators clearly take stands at odds with their party leadership when reaching the legislature. An "independent" would not necessarily behave significantly differently.

It makes sense to require an independent to show some popular support by obtaining signatures on a petition. However, our signature requirement should be reduced to one percent of the registered voters in that electoral district. If the parties fail to capture the allegiance of the citizens, an "independent" should be able to pursue an electoral contest.

END NOTES - CHAPTER I

1. Walter Dean Burnham, "The Appearance and Disappearance of the American Voter," in Electoral Participation, ed. Richard Rose (Beverly Hills, CA.: Sage Publications, 1980), 43.

2. Richard G. Smolka, Registering Voters by Mail: The Maryland and New Jersey Experience (Washington, D.C.: American Enterprise Institute, 1975), 1.

3. Richard G. Smolka, Election Day Registration: The Minnesota and Wisconsin Experience in 1976 (Washington, D.C.: American Enterprise Institute, 1977), 2.

4. Statistics compiled from Frontlash Foundation, Inc., Voter Registration and Absentee Voting Information (Washington, D.C.: Frontlash Foundation, 1984). North Dakota is the only state which neither requires nor provides for voter registration.

5. Ibid.

6. Deputy registrars may, for instance, register citizens at workplaces, shopping malls, and at schools and universities.

7. Compiled from Frontlash Foundation, Inc..

8. Ibid.

9. Ibid. In addition, Connecticut allows election-day registration up to 11:00 a.m., but only for persons who turn 18, obtain citizenship, or establish residence after the registration deadline.

10. Ibid.

11. Ibid.

12. Ibid. In addition, New Mexico cancels the registration of a voter who misses any primary or general election, and Montana purges a voter who fails to vote in any presidential general election. Our source is unclear as to when, if at all, Hawaii and Washington purge voters for inactivity.

13. Ibid.

14. The only exception is Dade County. It has an appointed head of elections.

15. Fla. Stat. § 97.063(2) (1985).

16. Id. § 98.051(1)(b).

17. Id. § 98.051(1)(c), see also id. § 97.021(23) (defining "weekday").

18. Fla. Stat. § 98.051(3)(a) (1985).

19. See Id. § 98.051(3)(b).

20. Id. § 97.102(1).

21. Id. § 98.081(1).

22. Id. § 98.081(2).

23. Id. § 98.201(1).

24. National Center for Policy Alternatives, Voter Registration and the States: Effective Policy Approaches to Increasing Participation (Washington, D.C.: The National Center for Policy Alternatives, 1986), 19.

25. Ibid. However, my own calculations, based on the data in Frontlash Foundation, Inc., Voter Registration and Absentee Voting Information, brings the total number of states with comprehensive mail registration to 22 (excluding the District of Columbia).

26. National Center for Policy Alternatives, 21 (quoting Marie Garber, Maryland Administrator of Elections).

27. Ibid., 19.

28. Ibid. An early study by Richard Smolka indicates that mail registration did not significantly increase registration initially in Maryland and New Jersey. However, he stressed that his results were preliminary.

29. National Center for Policy Alternatives, 19.

30. Ibid.

31. See Smolka, Registering Voters by Mail, 84.

32. National Center for Policy Alternatives, 22 (quoting Marie Garber, Maryland Administrator of Elections).

33. Ibid., 29 (quoting Margaret Rosenfield, Director of Elections Programs, Ohio Secretary of State's Office).

34. Steven J. Rosenstone and Raymond E. Wolfinger, "The Effect of Registration Laws on Voter Turnout," The American Political Science Review 72 (March 1978): 31.

35. Ibid.

36. Ibid., 28.

37. Buddy Irby, Legislative Chairman of the Florida State Association of Supervisors of Elections, Inc., letter to author, 2 March 1987.

38. David Glass, Peverill Squire, and Raymond Wolfinger, "Voter Turnout: An International Comparison," Public Opinion, 6 (December/January 1984): 54.

39. Fla. Stat. § 98.051(3)(b) (1985).

40. The fact that the supervisor of elections must send a preliminary status-check form to a voter and, if this form is not returned within 30 days, a subsequent notice of temporary cancellation, does not soften the harsh results of a two-year purging/inactivity period. Many voters simply do not have, or will not take, the time to fill out and return the forms. Perhaps some will think, with good reason, that they have already expended enough effort by registering in the first place.

41. Glass, Squire, and Wolfinger, 52.

42. For analyses of registration systems and voting turnout in Europe and the United States see, Ibid., Burnham, 35-73, and G. Bingham Powell, Jr., "American Voter Turnout in Comparative Perspective," American Political Science Review 80 (March 1986): 17-43.

43. Glass, Squire, and Wolfinger, 50. The data are for their most recent elections as of 1981. Only Switzerland ranks below the United States.

44. Ibid., 52. The authors admit that the 86.8% figure is probably overstated since it relies upon survey data.

45. Human Serve Fund, Executive Orders: A New Strategy to Use Public Agencies to Increase Voter Registration (Washington, D.C.: The Human Serve Fund, 1985), 2 and Rosenstone and Wolfinger, 41.

46. Rosenstone and Wolfinger, 41.

47. Committee for the Study of the American Electorate, Non-Voter Study '85-'86, September 25, 1986, table entitled "General Election Total Vote for President: 1984-60."

48. James E. Zinser and Paul A. Dawson, "Encouraging Voter Participation," in Political Finance, ed. Herbert Alexander (Beverly Hills, CA.: Sage Publications, 1979), 230-31.

49. Smolka, Election Day Registration, 66.

50. National Center for Policy Alternatives, 8 (quoting Joan Anderson Growe, Minnesota Secretary of State).

51. Smolka, Election Day Registration, 66.

52. Frances Fox Piven and Richard A. Cloward, "Prospects for Voter Registration Reform: A Report on the Experiences of the Human SERVE Campaign," PS, (Summer 1985): 582-93.

53. National Center for Policy Alternatives, 31.

54. Human Serve Fund, 4.

55. Ibid., 5; National Center for Policy Alternatives, 31.

56. Pinellas and Dade Counties both have active outreach programs to try to register citizens. They have over 700 and 600 registration facilities, respectively. However, in both cases outreach activity has been going on for a number of years and does not seem to have been affected by the state legislation. This information was acquired by telephone interviews by the author with Joan Brock, Pinellas County Election Services Coordinator and Ivy Korman, Dade County Outreach Coordinator for Voter Registration, 26 March 1987.

57. National Center for Policy Alternatives, 75.

58. Ibid.

59. Ibid.

60. Ibid.

61. National Municipal League, A Model Election System (New York: National Municipal League, 1973), 23-36.

62. Ibid, 27.

63. Committee for the Study of the American Electorate, Non-Voter Study '85-'86, September 25, 1986, listing entitled "Percentage of Eligible Voters who Registered in Order of Performance," no page numbers.

64. Ibid., listing entitled "Comparisons-Total Registration."

65. Ibid., listing entitled "General Election Turnout of Registered Voters: 1984-1976."

66. Glass, Squire, and Wolfinger, 53.

67. Fla. Stat. § 98.051(1)(b) (1985).

68. Bruce E. Cain and Ken McCue, "The Efficacy of Registration Drives," The Journal of Politics 47 (November 1985): 1221-1230.

69. H.R. 1668, 99th Congress, 1st Session. This bill was introduced initially on March 21, 1985 by Representative Mel Levine.

70. Peverill Squire, Raymond Wolfinger, and David P. Glass, "Residential Mobility and Voter Turnout," American Political Science Review 81(March 1987): 47-50.

71. See Arnold Vedlitz, "Voter Registration Drives and Black Voting in the South," Journal of Politics, 47 (May 1985): 643-51.

72. Gregory A. Caldeira, Samuel C. Patterson, and Gregory H. Marko, "The Mobilization of Voters in Congressional Elections," Journal of Politics 47 (May 1985): 490-508.

73. Fla. Stat. § 100.011(1) (1985).

74. Richard G. Smolka, "Election Legislation: 1984-85," in the Book of the States, 1986-87 ed. (Lexington, Kentucky: the Council of State Governments), 209-10.

75. Wolfinger and Rosenstone, 321.

76. Fla. Stat. § 100.031, .061, .091(1) (1985).

77. David A. Dean, Texas Secretary of State, Executive Summary, Study of the Fifty States, December, 1982, 38.

78. Lester W. Milbraith, "Political Participation in the States," in Politics in the American States, ed. Herbert Jacob and Kenneth Vines (Boston: Little-Brown, 1965), 25-60; cited in Jae-on Kim, John R. Petrocik, and Stephen N. Enokson, "Voter Turnout Among the American States: Systemic and Individual Components," American Political Science Review 69 (March 1975): 107.

79. National Municipal League, 37-43.

80. Fla. Stat. § 101.62(4) (1985).

81. See Id. § 101.62.

82. Id. § 101.64(1).

83. Id. § 101.62(1).

84. Id. § 101.62(2).

85. Id. § 101.67(2). In fact, Florida was required by federal district court to adopt an administrative rule specifying the following concerning the absentee voting rights of persons overseas: absentee ballots will be mailed to overseas electors at least 35 days prior to the first primary; absentee ballots will be mailed to overseas electors at least 35 days prior to the second primary; with respect to the presidential preference primary and the general election, any absentee ballot cast for a federal office by an overseas elector will be counted if received no later than ten days following the election. Fla. Admin. Code 1C-7.013 (1986). The rationale for this requirement was that because our two primary and general elections are so close together, an overseas elector might have inadequate time to request and submit absentee ballots by election day.

86. Id. § 101.68.

87. National Municipal League, 41.

88. Fla. Stat. § 101.692(3) (1985).

89. Id. § 101.692(4).

90. Id. § 97.064(1).

91. Sarah Bradshaw, interview with author, Tallahassee, Florida, 26 March 1987 provided the information on this point. The recommendation represents the view of the author.

92. Fla. Stat. § 102.166(1)(a)-(b) (1985).

93. Id. § 102.166(2).

94. Id. § 102.166(2) notes that "if it is alleged that fraudulent returns or practices exist in more than one county, venue for such protest shall be in any such county wherein such fraud is alleged to have occurred."

95. Id. § 102.166(2)(b).

96. Id. § 102.168.

97. Id. § 102.1682(1-2).

98. 323 So. 2d 259 (Fla. 1975).

99. 452 So. 2d 564 (Fla. 1984).

100. Smith v. Tynes, 412 So. 2d 925 (Fla. 1st DCA 1982).

101. copy of proposals from Secretary of State to Senate Committee on Judiciary - Civil.

102. Institute for Research in Public Safety, School of Public and Environmental Affairs, Indiana University, An Analysis of Laws and Procedures Governing Contested Elections and Recounts: Final Reports, Volume II: The State Perspective, July 31, 1978.

103. Fla. Stat. § 97.021(14) (1985).

104. Id. § 99.096(1).

105. Id.

106. Id. § 99.096(3). An exception to the three percent requirement is that minor party and independent candidates for President and Vice-President only need signatures of one percent of the registered voters of the state. See Id. § 103.021(3).

107. Id. § 99.097(1).

108. Id. § 99.097 (2).

109. Id. § 99.097(4).

110. Id. § 99.097(5).

111. Virginia requires one-half of one percent including 200 registered voters from each congressional district, Idaho requires one percent of registered voters to sign a petition, and Hawaii one percent. Tennessee requires local parties to obtain signatures of five percent of the registered voters of a county or municipality on a petition. However, Tennessee, unlike Florida, does not require them to also obtain a certain percentage of signatures statewide. See, Thomas Durbin and Winifred A. Watts, Minor and New Political Parties and Independent Candidates: A Fifty State Survey and an Introductory Analysis of Judicial Decision, Washington, D.C.: Congressional Research Service, the Library of Congress, May 1, 1980, updated October 1, 1985.

112. Many states base petition signature requirements on a percentage of those voting in a preceding election, usually a gubernatorial or presidential contest. Because the base in these states is the actual number of people voting as opposed to registered voters, their percentage requirement is not strictly commensurate with Florida's signature requirement of three percent of registered voters. Turnout of the registered voters in the 1984 presidential election ranged from 56.4% in Mississippi to 84.1% in Virginia. The nationwide average was

72.6% according to the Committee for the Study of the American Electorate's Non-Voter Study '85-'86. Thus, a signature requirement of about four and a half percent of those voting in a previous election is roughly comparable to Florida's requirement in terms of numbers of signatures. In fact, the comparable percentage is actually less than this when, as is generally the case, the state's signature requirement is a percentage of the turnout in a gubernatorial or other non-presidential election, since commonly fewer of the eligible voters cast a ballot in these elections. In 1984 there were only four states in which the gubernatorial vote exceeded the presidential vote (Arkansas, North Dakota, Washington, and West Virginia).

Only two states require the signatures of a certain percentage of those voting in the previous presidential election. Both of these require far fewer signatures than Florida. New Mexico requires one-half of one percent of the vote and Washington insists on one signature for each 10,000 voters, or twenty-five registered voters, whichever is greater. Washington also appears to mandate that this number of people attend a convention of the party, which makes the requirement more difficult.

More of the states rest their signature requirements on the vote in the most recent gubernatorial election. Only two require as many signatures as Florida. Maine and Montana both insist on signatures of five percent of the voters. However, six other states require far fewer. Nebraska, Texas, and Missouri require only one percent, North Carolina two percent, South Carolina two and one-half percent, and Kansas three percent. Other states use the preceding gubernatorial or presidential election as a base. Again, most requirements are more lenient than Florida's. Only Oklahoma's requirement of five percent is comparable. The other three all require fewer signatures. Ohio's requirement is one percent, Arizona's two percent, and Arkansas's three percent.

Another method used to establish the signature requirements is to require a certain percentage of votes cast in preceding elections other than those specifically for governor or president. Again, the requirements are generally easier than Florida's. For example, Connecticut insists on one percent of the voters in the last election where the office appeared on the ballot, Michigan requires one percent of the votes polled by the successful candidate for Secretary of State in the last election, Illinois insists on a number of signatures equal to one percent of those voting in the preceding statewide general election or 25,000 qualified voters, whichever is less, and Alaska requires a number equal to three percent of the votes cast in the preceding general election.

Other states require a certain number of signatures rather than a percentage of either registered voters or votes actually

cast. Generally, these numbers appear to be smaller than Florida's three percent requirement. Massachusetts requires 10,000 signatures for governor, Lt. Governor, Attorney General and U.S. Senate, 5,000 for Secretary of State, State Treasurer and Auditor and 2,000 for representatives in Congress; North Dakota requires 7,000 signatures; Rhode Island requests 1,000 signatures for either the U.S. Senate or governor and 500 for congress or a general state office (this appears to be the requirement for nominees of major parties in Rhode Island as well); South Carolina requires 10,000 signatures; Utah mandates 500 registered voters, including at least 10 from each of 10 counties; and Wisconsin requires a petition with at least 10,000 signatures, including 1,000 in each of three separate congressional districts. It is unclear what the procedure is in Colorado, Delaware, Georgia, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, New Hampshire, Pennsylvania, Vermont, or Wyoming. It appears that in most of these states a minor party must merely file nominating papers with the state officials rather than submit a petition with a required number of signatures. To the degree that this is the situation in these states, their requirements are less onerous than in Florida. (Source: Durbin and Watts)

113. See Daniel A. Mazmanian, Third Parties in Presidential Elections (Washington, D.C.: The Brookings Institution, 1974).

114. Fla. Stat. § 99.0955(2) (1985). As with minor parties, the requirement for an independent candidate for president or vice-president to be placed on the ballot is one percent of the registered voters of the state.

115. About nine states require a certain percentage of registered voters to sign a petition. Two of these, Alabama and Virginia, clearly require fewer signatures than Florida. Alabama asks for signatures of only one percent of the registered voters and Virginia mandates signatures from only one-half of one percent. Maryland and Arkansas have the same percentage requirements as Florida. Though Arkansas has a limit of 10,000 for the U.S. Senate and state offices and 2,000 for other offices.) The picture is mixed for a number of other states. South Carolina and Oklahoma ask for five percent, but South Carolina has a maximum requirement of 10,000 signatures, and in Oklahoma a fee can be substituted for the petition. The number of signatures required in North Carolina, Georgia, and California varies with the office, with the lowest requirement being less than Florida's in all cases and the highest equal in the case of California and higher in both North Carolina and Georgia. Kansas requires more than Florida, five percent, for district or county offices. (It is unclear what the situation is with statewide offices) North Carolina requires two percent for statewide offices, five percent for district ones, and ten percent for single county elections; Georgia insists on two and one-half percent for statewide offices

and five percent for others; and California mandates one percent for statewide offices and three precent for others.

Only Oregon uses the preceding presidential election as the bench mark for its signature requirements, asking for three percent of the vote for statewide offices and congressional representatives and five percent for any other office. (Idaho specifies that independents running for president and vice-president obtain signatures equaling three percent of the vote for presidential electors in the last election.)

At least five states require a number of signatures equal to a certain percentage of those voting in the preceding gubernatorial election. Four are clearly more lenient than Florida's. South Dakota requires one percent, Missouri one or two percent depending upon the signers' geographical distribution across districts, Massachusetts requires one and one-half percent, and Montana insists on five percent of the votes cast for the successful candidate for governor. New Mexico's is stricter than Florida's for independent candidates for president, requiring at least five percent, and is comparable for races for the United States Senate or state races run statewide, insisting on five percent. Finally, Texas is much more lenient for a state office to be voted on throughout the state and similar to Florida's for district office. (One percent for statewide and five percent for district).

Only Arizona bases its requirement on the vote cast for either governor or presidential electors in the last election, asking for signatures amounting to one percent of the vote. However, at least seven states call for a certain percentage of the vote cast in either the preceding general election, the previous election for the particular office being contested, or the vote in another stipulated race.

Of the seven, only Wyoming and Nevada are similar to Florida; the other five are more lenient, generally asking for one or two percent of the vote in an earlier election. Wyoming's requirement is five percent of the vote for congressional representatives in the last election and Nevada's is five percent for the contested office at the last election. Montana asks for five percent of the votes cast for the successful candidate for the same office at the last election (other than for president or vice-president), Alaska mandates three percent at the preceding election, Indiana calls for two percent of the votes for Secretary of State, New Jersey asks for two percent of the voters for the general assembly at the last election subject to maximums, and West Virginia requests one percent of the entire vote at the last general election for that office.

Finally, as was the case with minor parties, a number of states insist on a certain number of signatures on a petition

rather than a percentage of eligible voters or of votes cast in an earlier election. The nine generally seem more lenient than Florida. Iowa asks for 1,000 signatures for statewide elections; Kansas 2500 for statewide elections; Kentucky 5,000 for statewide, 400 for representatives in congress and 100 for other offices; Ohio 5,000 for statewide offices with other requirements for other offices; Colorado requests 5,000 for president and vice-president, 500 for statewide election, 350 for congressional district offices and 300 for other offices; Utah asks for 300 signatures for statewide office and 100 for district elections; Tennessee requires 25 signatures; Vermont asks for 1,000 for state and congressional elections, 200 for county or state senate offices and 100 for the general assembly; and Wisconsin asks for 2,000 signatures for statewide offices, 1,000 for representatives in Congress and 400 for state senator. It appears that some states, such as Minnesota, Mississippi and Pennsylvania, merely require nominating papers with no petition needed. Procedures in Connecticut, Delaware, New York, North Dakota, Hawaii, Louisiana or Idaho are unclear. (Source: Durbin and Watts).

CHAPTER II. ADMINISTRATION OF ELECTION LAW

DIVISION OF ELECTIONS

The Division of Elections within the office of the Secretary of State has broad responsibilities for the administration and enforcement of Florida's election laws. The head of the Division has the delegated authority that Fla. Stat. 97.012 assigns the Secretary of State, as the Chief Election Officer, to:

1. obtain and maintain uniformity in the application, operation and interpretation of the election law;

2. provide uniform standards for the proper and equitable implementation of the registration laws;

3. actively seek out and collect the data and statistics necessary to knowledgeably scrutinize the effectiveness of election laws (and);

4. provide technical assistance to the supervisors of elections on voter education and election personnel training services.[1]

Thus, the Division plays a vital role in registration, voter education, and other aspects of the election law. It also has responsibility for implementing many of the campaign finance regulations in the statutes. Chapter 106 (Campaign Finance) imposes reporting requirements on candidates and political committees. The specifics of these requirements will be considered in the concluding chapter of this report. For now,

the important point is that the statutes specify many of the responsibilities that concern administration of the reporting requirements. The Division is required to:

1. prescribe forms for statements and other information required to be filed by Chapter 106;

2. prepare and publish manuals or brochures setting forth recommended uniform methods of bookkeeping and reporting, and including appropriate portions of the election code, for use by persons required by this chapter to file statements;

3. develop a filing, coding and cross-indexing system consonant with the purposes of Chapter 106;

4. preserve statements and other information required to be filed with the Division for 10 years from the date of its receipt;

5. prepare and publish such reports at it may deem appropriate;

6. make, from time to time, audits and field investigations with respect to reports and statements filed under the provisions of Chapter 106 and with respect to alleged failures to file any report or statement required under the provisions of 106;

7. investigate apparent or alleged violations of 106 and recommend legal disposition of the violation;

8. employ such personnel or contract for such services as are necessary to adequately carry out the intent of 106;

9. provide adequate staffing and facilities for the

Florida Elections Commission;

10. prescribe rules and regulations, pursuant to Chapter 120 (The Administrative Procedures Act), to carry out the provisions of 106; and

11. make an annual report to the President of the Senate and Speaker of the House of Representatives concerning activities of the Division and recommended improvements in the election code.[2]

The Division also must provide advisory opinions if any person or organization engaged in political activities or local official having election-related duties requests an interpretation of the election law.[3] A compilation of these opinions is to be published each year. As well, the Division levies fines if a required financial disclosure report from a candidate or committee is filed late.[4]

Thus, it is clear that the Division has far-reaching responsibilities concerning Florida's election law. It has supervisory responsibilities over the elected county supervisors who administer voter registration and the conduct of elections within the county. And it has responsibility both for receiving campaign finance reports from candidates and political committees, and investigating possible violations of the campaign finance requirements in the statutes.

ELECTIONS COMMISSION

Chapter 106, however, also specifies the structure and functions of the Elections Commission, which is given an important role in enforcing the campaign finance aspects of the election law. The Commission, which is within the Department of State, is composed of seven members who are appointed by the Governor with the approval of three Cabinet members for four-year terms, subject to the confirmation of the Senate. No more than four members can be from the same political party. Although the statute grants the Commission, as well as the Division, the authority to investigate the accounts or records of political committees,[5] this function, when it has been performed at all, has been performed by the Division. In fact, the Commission has to rely on the Division to assign staff to it for any task because it has no permanent personnel of its own.[6] The primary function of the Commission has been to adjudicate complaints against candidates, former candidates, office holders, and political committees accused of violating the election law.

The Commission has appellate responsibilities. Political candidates or committees that are fined by the Division for filing their reports late can appeal the fine to the Commission. However, the Commission has original jurisdiction over other suspected violations of Chapter 106 that can be initiated by the Division of Elections or other sources. The Division investigates possible violations and issues a written initial statement to the Commission finding an apparent violation or no

apparent violation.[7] The Commission then decides whether to adjudicate the suspected violation itself or to refer it to the State Attorney having jurisdiction where the suspected violation occurred.[8]

While ongoing, the proceedings of a case are kept confidential. Only after the Commission decides the case are the proceedings and records made public. However, if the election related to the case is scheduled within 30 days of the disposition of the case, all records remain confidential until after the election.[9]

The criteria for finding a violation are stringent. Section 106.25(3) stipulates that a violation shall mean "the willful performance of an act prohibited by this chapter or the willful failure to perform an act required by this chapter."[10] If a violation is found, the Commission has the authority to impose fines not greater than $1,000 per count.[11]

EVALUATION

Robert J. Huckshorn, the senior member on the Florida Elections Commission, has written a positive evaluation of the enforcement of the campaign finance aspects of the Florida election law.[12] He states that Florida is one of the four states that strongly enforce their campaign finance laws. He claims that in all these states (the other three are California, Connecticut, and New Jersey) enforcement agencies frequently are willing to levy fines for common violations and to impose

significant cumulative fines when the cases merit them.

Table 1 shows the number of cases in which the Commission levied fines between 1978 and 1984. The majority of fines were either for the failing to file financial statements or for filing them late or "erroneously." During these years, the Commission levied fines totaling $48,545 for all offenses. Sixty-eight percent of these fines were in the $100-$500 range, although there were "several" around $2,000. In addition to the 81 cases in which fines were levied, the Commission ruled that no violation had occurred in 196 other cases and that only a technical violation, meriting no punishment, had occurred in 25 others.[13]

Although Huckshorn's article presents a positive evaluation of the enforcement of Florida's campaign finance provisions, this view is not uniformly held. The major grievances have not been targeted against the Commission, but rather against the Division of Elections. Last year, Florida's Commission on Ethics held hearings related to a series of complaints concerning the administration of the law by the Division under its former head, Dorothy Glisson, the Deputy Secretary of State for Elections.[14]

Ed Austin, the State Attorney serving as advocate for the Ethics Commission, concluded that the Division of Elections was inadequately administering the election law. For example, although the statute requires the Division to issue rules and regulations to guide enforcement of the statute,[15] it had not done so.[16] Also, the law imposes a duty upon the Division to

TABLE 1. TYPES OF FLORIDA ELECTIONS COMMISSION CASES: 1978-84

CASES RESULTING IN FINES

TYPE OF CASE	NUMBER OF CASES
--- late filing, erroneous filing and failure to file	47
--- improper disclaimers and endorsements	11
--- failure to properly dispose of surplus funds	9
--- improper or unauthorized expenditures	4
--- other	10
TOTAL	81

CASES NOT RESULTING IN FINES

TYPE OF CASE	NUMBER OF CASES
--- technical violations, but no punishment assigned	25
--- no violations found	196
TOTAL	221
TOTAL CASES (with and without fines)	302

Source: adapted from Robert Huckshorn, 783-84.

audit campaign reports,[17] but it had not assumed this responsibility.[18] Beyond these problems, enforcement of the reporting requirement of the law was found to be both generally lax and biased against challengers to incumbents. The Division filed only 26 complaints with the Commission from 1980 through December 3, 1985, and none of these was against incumbents.[19] The Division worked with present office-holders to resolve their cases on an informal "friendly" basis, but failed to give challengers a similar opportunity.[20]

Although he found that the Division head did not violate the Florida Ethics Law[21] because her activities were not undertaken with any corrupt motive, Austin suggested that changes be made in the manner in which the Division was administering the election law. Among his suggestions was that the Division should adopt "written policies and rules of procedure."[22] This step, he argued, would help assure fair and equal treatment for all candidates. He further recommended that the proper authorities "initiate a careful review of the role and focus of the Division of Elections and its Commission."[23]

COMPARATIVE ADMINISTRATION

Acquiring comparative data on election law administration is more difficult than on most of the other topics covered in this report. Some useful information, however, is available. One source is Huckshorn's article, mentioned above, which focuses on the enforcement of campaign finance reporting laws in the states.

TABLE 2. ELECTIONS COMMISSION COMPLAINTS: 1980-85

YEAR	# OF COMPLAINTS RECEIVED BY COMMISSION	# OF COMPLAINTS FILED BY DIVISION
1980	78	0
1981	33	2
1982	54	1
1983	59	14
1984	57	5
1985 (through 12/3/85)	59	4
TOTALS	340	26

Source: Commission on Ethics, State of Florida, Complaint No. 85-292, Report of Investigation, 27.

His initial distinction concerning enforcement efforts among the states is between the 21 that do not have a commission or board to enforce campaign finance laws and the 26 with boards or commissions. The first group relies on existing or new offices, usually the office of the Secretary of State, to collect financial reports and initiate enforcement actions. Generally, enforcement is lax in these states primarily because the offices cannot undertake enforcement actions on their own. Instead, they must turnover the cases of possible violators to established law enforcement agencies, usually the Attorney General at the state level or local prosecutors at the local level.[24]

The 26 states that have established boards or commissions to enforce the campaign finance laws have no uniform pattern of enforcement. Ten of the 26, according to Huckshorn, are weak in enforcement. In fact, their primary problem is similar to the 21 states in the first group; they must rely on existing law enforcement agencies to secure compliance with campaign finance laws.[25]

The additional 16 states do have authority to levy fines, but 12 of them are severely limited, either by their legislatures or by their own rules, in the level of individual fines and the maximum total fine that they can impose. Therefore, only four states - California, Connecticut, Florida, and New Jersey - have strong enforcement records, according to Huckshorn. All are willing to levy significant fines for violations of campaign disclosure laws.[26]

Huckshorn's conclusion that a majority of states are not strongly enforcing the financial disclosure aspects of campaign finance laws is shared by other students of the subject. Karen Fling, writing in 1979, cites Lynn Hellebust's conclusion that "assumptions about the effectiveness of disclosure have not been tested because they have never been adequately administered and enforced."[27] Hellebust argues that election law officials should:

> make sure that the candidates and committees file required reports on a timely basis. The next step is to ensure that the reports are reasonably complete, mathematically correct, and intelligible. The third step is to audit the records of a reasonable number of candidates and committees. An adequate audit includes going beyond the records and the bank accounts maintained by the candidates or committee to the individual contributors and vendors in order to confirm receipts and expenditures directly.[28]

Fling maintains that most states stop at the first or second step, for at least two reasons. First, they are generally underfinanced or understaffed or both. Second, they often are overwhelmed by the large amount of paperwork they are required to oversee.[29]

Fling notes that there are exceptions to this conclusion, citing two of the same states that Huckshorn does. She argues that California's Fair Political Practices Commission is aggressively trying to enforce the election law and that the Election Law Enforcement Commission in New Jersey is playing an active role in overseeing campaign finance legislation.[30]

Huckshorn also advances conclusions as to why enforcement generally has been weak. He suggests that the reasons he enumerates do not apply to the four states, including Florida, that he concludes have good enforcement records.[31] However, an examination of Florida's statutes and the Report of Investigation of Florida's Commission on Ethics on the administration of Florida's election law leads to a different conclusion about our state.

First, Huckshorn argues that many of the statutes are ambiguous and complex. The primary ambiguity lies in requiring a commission to show that an alleged violation has been "willful." He argues that willfulness, like reasonableness, is a difficult legal standard to apply and often is interpreted so strictly that the commissions find few violations. Florida has this stipulation in its code and thus, presumably, our Commission faces this problem. True, the new provisions in the Florida law calling for automatic fines for late reporting do not include this criterion, but it still applies to other suspected violations of the code.

Second, Huckshorn agrees with Fling that because there are so many reports to process, understaffed agencies fail to adequately review them. He further writes they may "present only the most flagrant cases for Commission review and subject the remainder to only cursory examination. Others make no audits at all and only respond when complaints are filed."[32] The Report of Investigation of the Commission on Ethics suggests that Florida's

Division of Elections has this problem. It points out that audits are few and that the Division initiates few complaints.[33]

Third, Huckshorn argues that because strong enforcement is partially contingent upon media attention, the statutory provisions in many states that proceedings be kept secret are counterproductive. He also notes that reporters rarely follow up on cases after they are initially reported, so the public lacks adequate information about campaign finance problems. The first aspect of this argument certainly applies to Florida. Proceedings and findings remain secret until a decision is reached. And, there is no evidence that reporters here have focused more attention on violations of election laws than in other states.

Finally, Huckshorn notes that prosecuting attorneys and attorneys general frequently fail to pursue election law violations because they feel that these are less important than many other criminal or civil cases.[34] This criticism is generally inapplicable to the Florida election code because the Commission can levy fines for civil violations. In addition, under Florida law, any serious violation that appears to warrant criminal investigation may be referred to the state attorney.

As will become clearer after we examine the administrative structures of some other states, Florida's administrative structure seems to be a hybrid when compared with other states. True, Florida has a Commission with the authority to levy fines. However, it is not an independent entity. Instead, it is located

within the Department of State. Furthermore, it has neither its own director nor its own staff to enable it to initiate and follow up on investigations. Rather, it must rely upon the Division of Elections to perform this function. The statute states that the Division may assign staff to the Commission. Unfortunately, however, it does so only on a temporary basis for routine matters.

The Division of Elections handles most of the paperwork, initiates the automatic fines for late filing, and is responsible for investigating violations and reporting to the Commission whether a violation has apparently occurred or not. Although primary investigative responsibility rests with the Division, the Ethics Commission report states that the vast majority of complaints before the Commission emanated from elsewhere.[35] In fact, they are generally initiated by opposing candidates.[36] The Division does occasionally initiate investigations after finding problems with reports filed with it, but this is relatively rare.

A 1976 article by John H. Moynahan discussed the weakness of Florida's administrative structure at that time, which was somewhat different than today.[37] First, the Division of Elections was supposed to begin investigating complaints within 72 hours of a complaint being filed. Then its findings were transmitted to the Department of State, which convened the Elections Commission if there was deemed to be a basis for the complaint. Finally, if the Elections Commission found "probable cause" that the violation had occurred, the Department of Legal

Affairs took final action on the case.[38]

Moynahan reports that the investigatory and adjudicatory functions were separated in order to establish a system of checks and balances. However, he argues that the procedures produced an inefficient use of the state's resources. The Division of Elections had to complete its investigation before the Elections Commission could act and, because the Division had a variety of other duties, bottlenecks often occurred.[39]

Florida's administrative structure is certainly less cumbersome today, and enforcement is clearly stronger now that the Commission itself has the authority to levy civil fines. But Moynahan's point that the Division of Elections, the primary investigative agency, failed to act quickly due to having many other duties might still apply today. The Division has a variety of administrative functions to perform and overseeing elections requires considerable administrative effort.

Furthermore, placing primary investigative authority in a partisan political office may not be the most desirable structure. A number of states have moved investigative and enforcement authority from a partisan office to a non-partisan commission.[40] There is no reason to believe that this reorganization automatically would eliminate bias in the administration of the law; but it does, perhaps, decrease the probability that observers will suspect partisan bias is occurring and might, in fact, decrease the chances that it would occur.[41]

Huckshorn and Fling point out that enforcement of campaign finance legislation is relatively strong in New Jersey and California; and Huckshorn argues that Connecticut does a good job. Thus, it is worthwhile to look briefly at the structures and responsibilities of enforcement agencies in these three states to see how they compare with Florida.

California

California's Fair Political Practices Commission (CFPPC) has five members, and no more than three may be from the same political party. The Governor appoints the chairman, the only full-time member, and one other member. The Attorney General, Secretary of State, and State Controller have one appointee each. The terms of office are four years.[42]

The Commission is guaranteed a substantial budget. The Political Reform Act of 1974, which authorized the Commission's formation, provided a mandatory annual appropriation from the state general fund of $1,000,000 adjusted annually to reflect changes in the cost of living.[43] The CFPPC has been able to hire a staff of about 60 people, far exceeding the 9 or 10 staff persons in the elections section of the Division of Elections in Florida.[44]

The staff is divided into four main offices. The administrative division is responsible for internal administrative functions. The legal division advises the Commission and its staff and officeholders regarding

interpretations of the act and prepares draft opinions and regulations for the Commission to consider. The technical assistance and analysis division responds to requests the Commission receives, develops brochures, and assists filing officers throughout California. Finally, the enforcement division investigates complaints about violations of the act and also files and prosecutes complaints before the Commission. It has both local and state enforcement sections.

The CFPPC was created in 1974 to administer the Political Reform Act passed in that year in a referendum that won the support of over 70% of the voters.[45] It has the enforcement authority over the disclosure aspects of the act dealing with lobbying, personal financial disclosure by candidates and officials, and conflicts of interest. On the other hand, it has no authority over the administration of elections within the state or over registration procedures. This responsibility rests with the Secretary of State. Significantly, rule-making and investigatory responsibility rests with the staff of the Commission as opposed to the structure in Florida where the Division of Elections is primarily responsible for performing these functions.

Other agencies are involved, however, in the campaign finance disclosure process in California. The disclosure statements are filed with the Secretary of State and local filing officers, who are empowered to levy fines of $10 a day against candidates or committees who fail to file their reports on

time.[46] Audits are conducted not by the Commission but by another independent agency, the State Franchise Tax Board. However, the Board is required by law (as amended in 1978) to audit randomly the financial records of lobbyists, candidates and campaign committees which meet certain criteria. Also, the Executive Director of the CFPPC can ask the Tax Board to conduct specific audits of cases that the Commission is investigating.[47]

New Jersey

The New Jersey Election Law Enforcement Commission is technically within the Department of Law and Public Safety, but it is basically an independent bureau.[48] The Commission has four members who are appointed for three year terms by the Governor. No more than two can be from the same political party. It also has an executive director and had 24 staff members for the 1985 fiscal year. The staff is divided into five sections.[49]

The Compliance and Information Section provides information to assist candidates and others who must report their financial statements to them. It also makes these reports available for public inspection. The Review and Investigative Section includes the field and desk auditors. Its primary function is to discover potential violators of the campaign disclosure laws. Unlike Florida's Division of Elections, it frequently conducts audits of reports, and the Commission often initiates actions against potential violators based upon the contents of these reports.[50]

The Legal Section issues advisory opinions in conjunction

with the General Council and initiates formal complaints against candidates. Finally, the Commission includes an Administrative Section created in 1985 to handle personnel matters and a section to administer New Jersey's public financing law covering gubernatorial elections.

The New Jersey Election Commission has responsibility not just over the financial reports of candidates and committees, but also over the disclosure statements of lobbying activities and the personal financial information that candidates and office holders must submit. The Commission also now has responsibility for administering New Jersey's Gubernatorial Public Financing Program for Primary and General Elections. Again, however, as is the case in California, it does not have responsibility for administering other aspects of the election code involving such matters as registration and voter information. This responsibility rests with the Secretary of State. And, as noted above, it is basically an independent commission, hiring its own staff and general director.

Connecticut

The Connecticut State Elections Enforcement Commission is an independent board composed of five members serving five year terms. An attempt has been made to have a bipartisan board by mandating that no more than two will be from the same political party and that one will be unaffiliated with any party. Each of the following political officials has one appointment: minority

leader of the House of Representatives, minority leader of the Senate, speaker of the House of Representatives, president pro tempore of the Senate, and the Governor (whose appointee must be unaffiliated with any political party.)[51] The staff for fiscal year 1985 included only six full time people, consisting of an executive director and general counsel, investigator, accountant, paralegal researcher and two secretaries.[52]

The Commission's primary function is to ensure compliance with Connecticut's election laws. It is authorized to audit the records of a candidate or political committee, issue regulations regarding implementation of the campaign finance laws, issue advisory opinions concerning the campaign finance laws, and impose civil penalties against anyone found to have violated the "campaign finance, absentee ballot and petition laws." The Commission also refers cases involving possible criminal violations to the Chief State's Attorney and suggests possible changes in the election law to the general assembly.

The Secretary of State's office in Connecticut is responsible for overseeing the administration of elections. It also receives the campaign finance reports from candidates and political committees. But the inspection and auditing of the reports are done by the Commission. Neither the Commission nor the Secretary of State's office has jurisdiction over the personal disclosure or conflict of interest legislation in Connecticut. The Ethics Commission has jurisdiction over these matters.

Summary

It is clear that administrative structures and responsibilities for implementing campaign finance reporting legislation lack uniformity in these states. Each one has an enforcement commission, but the commissions vary in their breadth of responsibilities. All three, however, differ from Florida's structure in at least one important way: all have their own staff and bear primary responsibility for investigating possible violations of the law.

In each state, the Secretary of State's office obviously plays a crucial role in administering the election code. It is the major state oversight office concerning registration and the conduct of elections. In two, Connecticut and California, the financial statements of candidates and committees actually are sent there rather than directly to the Commissions. But only in Florida is the Secretary of State's office given such a crucial statutory role in enforcing the campaign finance aspects of the statute.

Recently, many states have moved to concentrate authority over various aspects of elections in a single agency. The roles of the Secretaries of State or State Boards of Elections have been expanded to allow these agencies to prescribe details of administration concerning such matters as voter accessibility and the standards for voter registration forms.[53] A number of states have also moved to have more authority over certification and decertification of vote counting devices. State Boards of

Elections or Chief Election Officers have been given more authority in certifying and monitoring new voting machines and vote counting devices in, for example, New York, Illinois and Texas.[54]

This trend toward greater state regulatory authority over the conduct of elections, as well as the Ethics Commission's critical report and the administrative structures of states with good enforcement records, all argue for allowing our Division of Elections to focus its efforts upon such matters as voter registration and the administration of elections while transferring investigative and auditing authority to a basically independent Elections Commission.

MODEL CODES

Besides looking at the administrative structures of other states, it is worthwhile looking at two model codes that include sections on administration. These codes do not come to identical conclusions, but neither calls for a division of responsibility similar to Florida's.

Herbert E. Alexander and J. Paul Molloy authored a "Model State Statute" in 1974.[55] It calls for a relatively clear separation of authority between a State Commission on Public Offices, which primarily has regulatory responsibilities concerning campaign finance, and a State Voters Assistance Board, which is chiefly concerned with providing information on the electoral process to voters, candidates, and public officials and

with administering a program aimed at gaining universal registration within the state.

The Commission would consist of five members appointed by the Governor for ten year terms. Alexander and Molloy emphasize the importance of having an independent commission, arguing that it would be difficult for elected officials to objectively administer the law.[56] The Commission administers the reporting requirements for candidates and political committees, investigates possible violations of the election law, and imposes civil penalties. The Commission also administers the aspects of the law dealing with personal financial disclosure and conflict of interest.[57]

The State Voters Assistance Board is primarily responsible for introducing practices to make "our democratic system work better." It is a three-member, full-time board whose members are appointed by the Governor with the consent of the Senate for five year terms. No more than two of the members may be from the same political party. The Board is responsible for administering the "universal voter registration" program that the code advocates and for conducting voter information drives. It also administers the public financing provisions of the model code.[58]

The Board is not responsible for administering the campaign finance reporting or enforcement aspects of the code. This function rests with the Commission. Thus, the proposed administrative structure differs significantly from Florida's.

The National Municipal League also suggests an

administrative structure in conjunction with its Model State Campaign Finance Law.[59] Under the structure envisioned in this code, candidates and political committees would send their financial disclosure reports to a State Campaign Finance Commission consisting of seven members appointed by the Governor for seven year terms. No more than four members would belong to the same political party. The Commission would appoint an executive director who, in turn, would appoint other staff members.[60]

Besides receiving the financial reports, the Commission would be responsible for investigating possible violations of this law that are uncovered by its own staff or are called to its attention by others. If the Commission decides that there is "probable cause" that the violation has occurred, it may hold a hearing where evidence is presented.

If the Commission rules that a violation did occur, it may order the violator:

> to comply with any one or more of the following requirements:
>
> (i) To cease and desist violation of this law;
>
> (ii) To file any reports or other documents or information required by this law; or
>
> (iii) To pay a penalty not to exceed $100 a day for failure to file any report or other document or information required by law until such report, document or information is filed.[61]

The most important point concerning this model code is that it calls for an independent commission that receives financial reports, investigates suspected violations of the code, and can

levy civil sanctions. The Commission is given no responsibility to administer aspects of the election code involving such matters as registration or the conduct of elections.

CONCLUSIONS

The administration of the campaign finance aspects of the Florida election law has been criticized by the Commission on Ethics in a report issued last year. The opinion of the State Attorney serving as an advocate for the Commission suggested an examination of the division of responsibility between the Division and Commission. The present division of responsibility should be changed. It has not resulted in as effective enforcement of the elections law as should be the case. It is incompatible with both the structures recommended by the model codes and with the other states that have a reputation of good enforcement.

California, Connecticut, and New Jersey all have an independent commission with its own staff responsible for investigating campaign finance violations. None of these commissions has responsibility for voter registration or election administration. As well, in none of these states does the office of the Secretary of State play a role in investigating violations of the election code. Rather, this office focuses on voter registration and election administration. Under the model codes, this division of responsibility is the most effective structure to enforce campaign finance laws.

Under Florida's organization, the Division of Elections is supposed to oversee the conduct of elections and voter registration, collect the campaign finance statements from candidates and committees, and have the primary investigative authority over campaign finance violations. Amazingly enough, it also has to devote personnel and other resources to two other functions, the administrative code and notaries.

The Division's responsibility concerning election law violations should be narrowed. Investigative responsibility for campaign finance legislation should be moved to the Elections Commission. However, the Division's activities concerning its remaining election-related functions should be expanded. As noted in chapter one, it should maintain a central computerized register of registered electors and keep it updated. Also, as will be discussed in the next chapter, it should compile and analyze the data it receives from campaign finance reports.

The Elections Commission should remain within the office of the Secretary of State, but should be reorganized to include its own staff, including investigators. It should not have to rely on another administrative entity to provide it with administrative personnel or to conduct investigations. Also, complaints should be filed directly with the Commission.

It is important that the investigators not divulge any information acquired during the investigation until the investigation is completed. Also, they must have no contact with any of the commissioners prior to a hearing so that the

Commission can remain an impartial entity. These prohibitions need to be incorporated into the Commission's policy manual. Both New Jersey and Connecticut have such policies and neither state has experienced a problem with information leaking from ongoing investigations.

This reorganization, of course, is insufficient by itself to produce effective and fair enforcement. In some states, the budget of the commission has suffered cuts in recent years, causing it to cut back on its efforts.[62] If resources are not provided, a change in structure will fail to produce the desired results. But not all states have moved in the direction of decreased resources. California, for example, has improved its efforts. In 1984, its legislature expanded the budget of the CFPPC, enabling it to double the number of people in its enforcement division. This increase in resources has made a significant difference in its enforcement activities.[63]

In addition, the requirement that an alleged violation must be proven to be "willful" should be removed from the law. This is too stringent a test for a civil violation. If a candidate or PAC has inadvertently violated the code, the Commission should have the discretion to levy a fine.[64]

A reorganization of the administration of Florida's election law is desirable from the perspective of electoral participants, the Commission, and the Division. Candidates would see more equitable enforcement, the Commission would not have to rely on the Secretary of State's office for resources, and the Division

would be able to concentrate its efforts on its other responsibilities.

However, enforcement of the statutes, no matter how impartially and efficiently it is done, is only one component of the election system. The rules themselves must be clear and fair. The vast majority of the cases coming before the Commission relate to one or more of the sections of Chapter 106, "Campaign Financing." The final segment of this report examines its components and recommends some changes.

END NOTES - CHAPTER II

1. Fla. Stat. § 97.012(1)-(4) (1985).

2. Id. § 106.22(1)-(11).

3. Id. § 106.23(2).

4. Id. § 106.04(8)(a) for committees of continuous existence (CCEs) and Id. § 106.07(9)(b) for candidates or political committees. When a candidate has had only limited activity during a reporting period, the fine is $10 a day. Otherwise, it is $50 a day for candidates, political committees (PACs), and committees of continuous existence. See Chapter 3 of this report for an elaboration of the fining system and definitions of PACs and CCEs.

5. Id. § 106.04(6).

6. The Commission also now has an attorney assigned to it from the Attorney General's Office. Robert J. Huckshorn, interview with author, Tallahassee, Florida, 20 November 1986.

7. Id. § 106.25(2),(4).

8. Id.

9. Id. § 106.25(5). Also, when two or more persons are being investigated in a particular case, no decision concerning one party is made public until the entire case is completed. Id.

10. This criterion does not apply to candidate or committee reports that are filed late.

11. Fla. Stat. § 106.265(1) (1985).

12. Robert J. Huckshorn, "Who Gave It? Who Got It?: The Enforcement of Campaign Finance Laws in the States," Journal of Politics 47 (August 1985): 773-89.

13. Ibid., 783-84.

14. Commission on Ethics, State of Florida, complaint No. 85-192, Report of Investigation, February 26, 1986. The complaint was filed by Paul D. Harvill against Dorothy W. Glisson, the Deputy Secretary of State for Elections.

15. Fla. Stat. § 106.22(10) (1985).

16. Memorandum from Ed Austin, State Attorney, Fourth Judicial Circuit of Florida, Advocate for Commission on Ethics, to Commission on Ethics, March 27, 1986, 4.

17. Id. § 106.22(6).

18. Memorandum from Ed Austin, 3.

19. Memorandum from Ed Austin, 2.

20. Ms. Glisson argued that those challengers had not cooperated with the Division to correct their deficiencies, even though they had been given the opportunity to do so. See, Commission on Ethics, 17.

21. Fla. Stat. § 112.313(6) (1985).

22. Memorandum from Ed Austin, 4.

23. Memorandum from Ed Austin, 5.

24. Huckshorn, 774-75.

25. Ibid., 779.

26. Ibid., 779-86.

27. Karen J. Fling, "The States as Laboratories of Reform," in Political Finance, ed., Herbert E. Alexander (Beverly Hills, CA.: Sage Publications, 1979), 261.

28. Ibid.

29. Ibid., 261-62.

30. Ibid., 262.

31. Huckshorn, 787.

32. Ibid., 788.

33. Commission on Ethics, 4, 7, 24-7.

34. Ibid., 787-88.

35. Commission on Ethics, State of Florida, 27.

36. Robert J. Huckshorn interview.

37. John H. Moynahan, Jr., "Florida's Campaign Finance Law: A Restoration of the Public's Confidence"? University of Florida Law Review 28 (Winter 1976): 458-91.

38. Ibid., 483-84.

39. Ibid., 484.

40. Herbert E. Alexander, Financing Politics, 3rd ed. (Washington, D.C.: Congressional Quarterly, Inc., 1984), 171-72.

41. As of now, the contention against the Division of Elections has been that it has had a pro-incumbent, rather than a partisan, bias.

42. Fair Political Practices Commission, California's Fair Political Practices Commission: The First Four Years, February 1979, 2.

43. Ibid., 3

44. Dorothy Glisson provided the Florida figure to the author in an interview on 20 January 1987.

45. Fair Political Practices Commission, 1.

46. Ibid., 33.

47. Fair Political Practices Commission, California's Fair Political Practices Commission: Activities & Accomplishments (1979-1982), February 1983, 10.

48. New Jersey Election Law Enforcement Commission, 1985 Report of the Election Law Enforcement Commission, 1.

49. Ibid., 5-10.

50. Ibid., 7-8.

51. Conn. Stat. § 9-7a (1985).

52. Connecticut State Elections Enforcement Commission, Report to the Governor 1984-85, n.d., 2.

53. Richard G. Smolka, "Election Legislation: 1984-85," in The Book of the States, 1986-87 ed. (Lexington, Kentucky: The Council of State Governments, 1986), 177.

54. Ibid.

55. Herbert E. Alexander and J. Paul Molloy, Model State Statute: Politics, Elections and Public Office (Princeton, New Jersey: Citizens' Research Foundation, 1974).

56. Ibid., 4.

57. Ibid., 4-9.

58. Ibid., 9-13.

59. National Municipal League, Model State Campaign Finance Law (New York: National Municipal League, 1979).

60. Ibid., 7-9.

61. Ibid., 13.

62. Alexander, Financing Politics, 171-72.

63. California Fair Political Practices Commission, Preserving Integrity in Government: 1983-1984 Biennial Report, 7.

64. The Commission already has considerable latitude in establishing the amount of the fine. See Fla. Stat. § 106.265 (1985).

CHAPTER III. CAMPAIGN FINANCE

INTRODUCTION

Financial disclosure and regulations limiting contributions are crucial aspects of any state election law. The amount of money spent by candidates running for elective office in Florida and many other states has been increasing.[1] Because money is crucial for competing in an election and because most candidates fund only a small proportion, if any, of their campaign with their own money, they must rely on contributions. These come primarily from individuals, political committees, and the political parties.[2]

The motivation behind political contributions varies. Individuals giving relatively small donations to candidates probably support the policies the candidates advocate or perhaps are attracted by the candidates' personal characteristics. Party contributions are obviously, at the most basic level, conveyed to gain partisan advantage in the legislative and executive branches of government.[3] Beyond these, the motivations become more problematic. Some individuals or political committees making large contributions undoubtedly contribute primarily to influence candidates' behavior if they should win. PACs giving to both candidates in a race, for example, might be assumed to have this as a primary goal.[4]

Of course, even if influencing policy decisions is the key aim of a contributor, there often is no clear guarantee the office-holder will respond in kind. There are, after all, many influences on the actions of an elected official, and campaign contributions might not always be the key factor.[5] Furthermore, one contribution might, in some instances, balance out another, even if an incumbent is susceptible to being swayed by his or her campaign chest.[6] On the other hand, few citizens reach adulthood without noticing that those with financial resources generally are advantaged in a variety of ways in our society; so it would not require a great leap of the imagination for citizens to conclude that donations do matter. Because most citizens are unable to contribute large sums to a campaign, either directly or indirectly by giving to PACs, many might well conclude that they do not matter in the political process. Thus, political legitimacy wanes and alienation waxes.

The goals of campaign finance and disclosure legislation should be to make citizens aware of who is sending money to whom and to lessen the probability that donations can "buy" legislative and executive behavior. This chapter will examine Florida's law primarily with regard to these goals. Moynahan, in his 1976 article,[7] enumerated two additional goals that might be met. These are stemming the rising costs of campaigns and equalizing the opportunity of every serious aspirant to political office to mount a campaign. However, probably neither of these can be approached without public financing of elections.

Florida passed a public financing bill during the 1986 session that will initially be implemented in the 1990 campaigns for statewide offices. The bill does not, however, include any financing for legislative races.

This chapter will not focus on alternative plans for expanding public financing to include legislative elections. This is a crucial issue, but will probably not reach the political agenda in Florida soon. The policies recommended here can be implemented immediately. All have been accomplished in other states. They are incremental steps that will help move Florida toward providing better information on campaign financing to the voters and will make numerous aspects of campaign finance more equitable and rational.

HISTORY

Campaign finance and disclosure legislation had an early start in Florida. The legislature passed an act in 1897 that prohibited corporations from using money for political purposes.[8] The legislature went even further in 1913 by placing limits on how much candidates could spend in campaigns for state and county offices.[9] These limits were increased in 1927 and remained in effect until 1949.[9] They were replaced by reporting requirements on the expenditures of candidates.

However, partially because disclosure was being inadequately enforced, the legislature revised the election code dramatically in 1951.[10] This act required candidates to report all contributions and expenditures and also placed a $1,000 limit on all individual contributions.[11]

The reporting dates were frequent. Gubernatorial and U.S. Senatorial candidates were required to submit reports on the Monday of each week preceding the election. Reports from candidates for all other offices were due on the first Monday of each month before the election.[12] In addition, all candidates had to submit reports 15 days after each primary or general election in which they ran.[13] According to Elston Roady, the National Municipal League was so impressed with Florida's reporting requirements that it used them as the basis for its 1961 model reporting law.[14] However, enforcement of these requirements was still weak.[15]

The next major revision of the act occurred in 1973. These provisions required all candidates to file reports on the first Monday of each quarter until 40 days before the election. Then reports were due on the Monday of each week preceding the election.[16] A last preelection report was due five days before the election, and a final report was due 45 days after the last election in which the candidate participated.[17] More important, the act tried to strengthen enforcement procedures by creating an Elections Commission to hear allegations and recommend civil fines.[18]

The legislature also imposed contribution and expenditure limits. No individual could contribute more than $3,000 per election for candidates for statewide offices or more than $1,000 per election for all other offices.[19] Expenditure limits were also restored for all candidates for both statewide offices and legislative seats. [20]

The act also, for the first time, formally recognized and regulated the activity of political committees.[21] Any committee that received contributions or made expenditures totaling more than $500 in a calendar year had to register with the Division of Elections in the office of the Secretary of State.[22] The same contribution limits that were established for individuals were imposed on these groups.[23]

A distinction was made between political committees (PACs) and committees of continuous existence (CCEs). The basic concept was that CCEs would be relatively permanent on-going committees while PACs would be formed for a short time primarily to support or oppose ballot issues.[24] Certain differences were imposed on their allowable activities, reporting requirements, and capacity to raise revenue. Because these basically remain the same today, they will be elaborated upon in the next section.

PRESENT STATUTE

Candidates' Reporting Requirements and Contribution Limits

A candidate for office in Florida must create a campaign organization in order to comply with state disclosure and other

requirements. Candidates must appoint a campaign treasurer and choose a campaign depository in order to accept contributions or make expenditures. Besides the campaign treasurer, a candidate for statewide office may appoint up to 15 deputy campaign treasurers and other candidates may appoint up to three.[25] The campaign treasurer or deputy treasurer, when authorized by the treasurer and candidate, is responsible for keeping detailed accounts of receipts and expenditures and for filing regular reports concerning these finances.

Chapter 106 sets the following limits on contributions that a candidate may accept from any person, political committee, or CCE:[26]

$3,000 to a candidate for statewide office,

$1,000 for a candidate for legislative or multicounty office,

$1,000 to a candidate for countywide or less than countywide office,

$1,000 to a candidate for county court or circuit judge,

$2,000 for a candidate for retention as a judge of a district court of appeal, and

$3,000 to a candidate for retention as a justice of the Supreme Court.[27]

The campaign treasurer's report must include all contributions, regardless of the amount, with information concerning each contributor. The report normally must include the name, address, and occupation of each person who has made a

contribution. However, if the contributor is a relative of the candidate or has given $100 or less, his or her occupation does not have to be reported.[28] The report also includes the amount and source of each donation from each political committee, the source and amount of loans, the amount earned from each campaign fund raiser, the sum of all receipts, including loans, and the value of in-kind contributions received by the candidates during the reporting period.

The campaign treasurer must also report all expenditures made during the reporting period. This includes the names and addresses of all persons to whom expenditures are made (except expenditures made out of the petty cash fund), the total of all expenditures made by the candidate, and a list of all credit card purchases.[29]

There are no limits on a candidate's contributions to his or her own campaign or on "independent" expenditures unconnected with a candidate's election campaign. However, a person or organization making an independent expenditure of $100 or more in support of a candidate must file reports at the same time as PACs, and must include the same information as political committees contributing directly to a candidate.[30]

The present reporting dates are somewhat different from those imposed in 1973, but they are still frequent. Statements are now due "on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed. Following the last day of qualifying for office, the reports

shall be filed on the 4th, 18th, and 32nd days immediately preceding the first and second primaries and the 4th and 18th days immediately preceding the general election."[31]

The fine for late filing is not insignificant. It is $50 a day for the vast majority of cases. Only if the candidate receives or spends $200 or less during the reporting period is the fine reduced to $10 a day.[32] A candidate can appeal the fine "based upon unusual circumstances surrounding the failure to file on the designated due date" to the Elections Commission, which has the authority to waive or reduce it.[33]

Political Committees and Committees of Continuous Existence

There are also detailed reporting requirements for PACs and CCEs. Both are subject to the same limits on contributions to a candidate as noted above, but they differ as to their organizational structure, capacity to raise revenue, reporting requirements, and allowable activities.

A political committee is defined as follows:

> A combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party, which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $500; "political committee" also means the sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.[34]

As is the case with candidates for office, a political committee must appoint a campaign treasurer who is generally responsible for the reports that are required to be filed. The committee may also appoint no more than three deputy campaign treasurers[35] who may from time to time be formally delegated authority to submit reports.

Any political committee that anticipates making expenditures of $500 in a calendar year, or that is trying to obtain signatures on a petition, must file a statement of organization within 10 days after the committee is formed or after it first anticipates receiving or spending $500.[36] The treasurer of the committee is to keep detailed records of receipts and expenditures[37] and must file reports on the same schedule as candidates.[38] If the committee does not receive or spend any funds during the reporting period, it does not have to file a report for that period but it must notify the filing office that no statement will be forthcoming. The same system of fines and appeals applies for late reports for committees as with candidates, except that the fine is $50 per day regardless of how much the committee receives or spends during the reporting period.[39]

Committees are not only limited in the amount they can contribute to political candidates, they are also limited in how much they can receive from any contributor. No individual, other PAC, or CCE can contribute more than $1,000 per election to any PAC.

The present statute retains the same basic definition for CCEs that was initially incorporated in the 1973 statute. In order for a group to be designated by the Secretary of State as a CCE "at least 25 percent of (its income) must be derived from dues or assessments payable on a regular basis by its membership pursuant to provisions contained in the charter or bylaws."[40] If an organization meets these and certain other criteria, it can apply to the Division of Elections to be so recognized.

Once a group is recognized as a CCE, it must begin to file annual reports with the Division of Elections, and it must also file regular reports at the same times as candidates and PACs.[41] Any CCE filing late reports is subject to the same fines as PACs.[42]

However, the contribution reporting requirements for CCEs are laxer than those for candidates and political committees. Although they have the same reporting deadlines and must file an annual report aggregating their activity for the year, they have to report only the total amount of any contributions received in dues, together with the number of members paying the dues, and the amount of the dues.[43]

There are, as well, some greater limitations on CCEs than on PACs. First, they cannot make expenditures supporting or opposing a political issue unless they first register as a political committee.[44] PACs, on the other hand, can make unlimited expenditures in support of or in opposition to issues. Second, they cannot make independent expenditures on behalf of any

candidate.[45] All money spent on behalf of a candidate must be via a contribution to the candidate's campaign treasurer. However, there is also greater latitude given to the CCE in raising money because, unlike a PAC, there is no limit on the amount a person, PAC, or other CCE can contribute to it.

Political Parties

Political parties are also regulated with regard to their contribution activity. There are, however, no absolute limits on how much money they can give to a campaign or on how much they can receive from a contributor. They also can make independent expenditures. Their reporting dates and requirements are the same as for candidates and PACs.

CAMPAIGN FINANCE ISSUES

Allowed Contributors

As noted above, any individual, PAC, CCE, or political party can contribute to a political campaign. In addition, business corporations can give directly to campaigns without forming PACs or CCEs, and they have no reporting requirements.[46] Although it is true that 30 states allow corporate contributions, Florida is unique in allowing them while not allowing direct union contributions.[47]

This oddity in Florida law probably does not significantly affect the relative political influence of industry and labor, because union PACs or CCEs are probably just as effective

vehicles for giving as would be money contributed directly from union funds. One might question, however, the propriety of allowing corporate officers and boards to use shareholders' assets to back candidates whom some might not support.[48] Of course, one contributing to any PAC or CCE may disagree with some of the political choices made by its leadership. However, one who is dissatisfied can normally stop giving without suffering any adverse effects. Shareholders can protest by selling their stock, but they might suffer financial loss. Employees might also object to the pattern of giving of their employer, but they can hardly be expected to quit their jobs over the issue. The Model State Campaign Finance Law of the National Municipal League suggests not allowing either corporate or union contributions to candidates, though it would allow either to establish PACs.[49]

The issue of corporate contributions should be moved to the top of the political agenda and discussed on its merits. If no compelling arguments can be advanced to support the status quo, corporations should be governed by the same rules as other non-party organizational givers. They should not be allowed to contribute directly to campaigns, but should be free to organize PACs.[50]

Political parties are, of course, also allowed to contribute to candidates in Florida and every other state. The primary role of parties is to recruit and support candidates for office, and fundraising and contributions are obviously important and legitimate components of this role. Perhaps more problematic are

the funds organized and controlled by officeholders occupying leadership positions in the House of Representatives and Senate. These funds are then "transferred" to nominees for office. Because many aspects of these funds have been relatively controversial in Florida, they will be discussed in some detail in a later section.

Disclosure Requirements

Florida imposes strict disclosure laws on candidates, PACs, CCEs, and political parties. The legislation is strict both in terms of the information required to be included in each report and the frequency of reporting. Reports are also required from those making independent expenditures totalling $100 or more during a reporting period. There are no reporting requirements for party leadership funds or, as noted above, for corporations.

Florida is in the mainstream in requiring candidates for state offices to file disclosures. Every state requires reports from candidates for statewide offices and all except two require them from legislative candidates. Similarly, all but three states require them for PACs and all but five require state political party committees to file reports.[51] The picture for independent expenditures is more mixed, but more than two-thirds of the states require them to be reported.[52] The requirements for corporate disclosures are also mixed. Of the 30 states, including Florida, that allow corporate contributions, a minority require financial reports.[53]

Florida has frequent reporting dates for candidates, PACs, CCEs, and parties. As noted above, reports are due quarterly through the last day for qualifying for office and then must be submitted 32, 18, and 4 days prior to the first and second primaries and 18 and 4 days prior to the general election. Thus, there can be as many as 11 reports due in an election year from PACs, CCEs, and parties, as well as from candidates who declare their candidacy prior to December 31 of the preceding year.[54] This is certainly more than virtually all other states. It is difficult to calculate the exact number of reporting dates required in each state since in some instances it varies with the type of reporting entity, or with other factors such as the amount of money contributed (for example, in Virginia) or the amount expended during a period (as in Washington). It appears, however, that only in Connecticut, Louisiana, New York and Washington are there as many reports due as in Florida.[55]

It is desirable to have frequent reports from candidates and committees. The media, other candidates, and the public should have ample opportunity to know what candidates and committees are doing. On the other hand, the administrative requirements should not be unduly burdensome for candidates or committees.

The Secretary of State's office has recently recommended eliminating two of the three reporting dates for PACs before each primary and eliminating one before the general election. (As will be discussed below, it also recommends eliminating the distinction between PACs and CCEs. Thus, there are no references

to CCEs in this recommendation.) Reports would be due only on the 4th day preceding each election and would include only contributions to candidates. This is a reasonable reduction that would be especially beneficial to smaller groups that cannot afford to pay staff to do their paperwork. Furthermore, there is room for even fewer reports without violating the spirit of disclosure. Committee reports should be due only biannually rather than quarterly until the last date that a candidate can qualify for office. In fact, there is some indication that PACs view these quarterly reports as being more unnecessary than the frequent reports due before elections.

A study was conducted by the House Committee on Ethics and Elections Oversight Subcommittee in 1981.[56] Questionnaires were sent to 114 randomly selected PACs and CCEs, about 42% of the 274 committees that were registered at that time. Twenty-three of the thirty-eight that responded made no suggestions for changing the reporting system. However, among those that did suggest modifications a "prevalent" comment was that too many reports were required, <u>especially in off-election years</u> when the committees are not as active.[57]

Another reporting change recently recommended by the Secretary of State's office is desirable. It calls for the quarterly reports to be filed by the 20th day following the end of the quarter instead of the 10th, as is presently the case. There is no loss of the spirit of disclosure in delaying the due date slightly. This change, along with the elimination of two of

the quarterly reports in non-election years, would ease the paperwork pinch that some committees might be experiencing.

Conceivably, eliminating some of the reporting dates and setting back the due dates of the biannual reports would increase the probability that committees would meet filing deadlines and not have to pay the substantial fines that have been imposed on some of them.[58] The imposition of automatic fines that began on January 1, 1986 was necessary in order to deal with the problem of many, especially defeated candidates, ignoring the law. However, it apparently has caused hardship for some smaller PACs that have limited funds at their disposal.

The changes in the fining system recommended by the Secretary of State's office should be adopted. First, the reduced fine of $10 a day would apply to PACs with limited activity as well as to candidates. Second, limits are placed on the total possible fine for each violation. There would be a $200 cap per reporting period for the committees subject to the $10 daily fine, and a $1,000 limit for those being fined $50 a day. One addition, however, should be made to these recommendations. If any committee is late in filing for a third time in any calendar year, the limits should be removed. This tardiness would constitute either a willful violation of the law or ineptness in running their affairs. In either case, the fines should not be capped.

The Division of Elections should also initiate a practice comparable to what the Clerk of the House does for lobbyists in

order to keep the list of committees current. A postcard should be sent each year to all registered committees asking them to return the card if they no longer wish to remain active. This might be beneficial to some small PACs that have disbanded but do not think of notifying the division.

The Secretary of State's recent package also included a proposal raising the contribution or expenditure level to qualify as a political committee from $500 to $3,000. Deputy Secretary of State Tom Gardner, testifying before the Senate Judiciary-Civil Committee, noted that this would eliminate 17% of the presently registered committees. This is certainly not the right road to take toward decreasing any perceived burden on either small committees or on the Division of Elections. At the least, this is an unwarranted reduction of disclosure. Especially in campaigns regarding local initiatives in small jurisdictions, groups spending close to $3,000 could be playing a major role in the political debate. These groups should be required to disclose both their receipts and expenditures. If the goal of this proposal is to reduce paperwork for political committees and the Division of Elections, the significant reduction in reporting requirements discussed above should be adequate to accomplish this.

Depending on how the election code is interpreted, it is possible that the consequences of this proposal would be even more deleterious. Some suggest that political groups could no longer give to candidates unless they raised at least $3,000 in a

year since, otherwise, a contribution would represent an indirect expenditure that is a violation of the law.[59] If it is determined that this is the way in which the code should be interpreted, the political consequences of this proposed change are undesirable.

It would put less wealthy groups at a further disadvantage relative to better-financed organizations in the political process. This would occur directly because the less wealthy groups could no longer contribute to political candidates. Beyond this, a number of these groups are likely to lose membership. Because one of their most politically important functions would be outlawed, many members might be less likely to invest time and resources in the group, feeling that the organization is more politically impotent than ever. America's interest group system is already biased in favor of the haves rather than the have-nots.[60] This reform would accentuate this bias. Certainly some, perhaps most, of these organizations would continue functioning, but they would be less active in the political process. True, they could still lobby the legislature, but they would be at an even greater disadvantage than before relative to larger, better funded groups that continue to make their campaign contributions.

At the very least, if the legislature does consider increasing the registration threshold for political committees, it should guard against the possibility of weakening small groups. One way to do this is to specify that groups which

receive or spend less than the new threshold in a calendar year still have the option of registering as political committees. If this is done, disclosure will still be weakened, but the groups will not lose any of their previous political rights.[61]

CCEs and PACs

The Secretary of State's office has proposed eliminating any references in the statutes to Committees of Continuous Existence. All groups would register as PACs. All would be able to make independent expenditures and campaign for or against an issue. In one important respect, however, all groups would not be treated equally. As is presently the case only with CCEs, any contributions representing the paying of dues by members of PACs would only have to be reported in the aggregate, along with the number of members and the amount of the dues. But all non-dues contributions of whatever amount would have to be itemized. Eliminating the distinction in the statutes between CCEs and PACs makes sense. There is no comparable distinction in federal law, nor does there appear to be one in any other state.[62] However, foregoing disclosure of all dues-paying members increases the potential for abuse. What if a PAC composed of the executive officers of major corporations imposes dues on its members of $1,000 a year? True, this is unlikely. But it is a modest precaution to set a bottom contribution figure for disclosure. If dues are lower than this amount, then only aggregate amounts need be reported. However, if they are higher the contributors

should be identified.

States vary widely in their itemization requirements for PACs. Some require that itemizing begin only at $100 or even higher. On the other end of the spectrum, a few require it of all contributions.[63]

Florida has been a leader in "Who Gave It, Who Got It" legislation, and it is unthinkable that our disclosure itemization amount be set at the $100 per reporting period level. However, establishing it at the equivalent of $100 per year is reasonable. Thus, groups having dues of less than $100 a year would merely report the total amount they receive in dues, along with the amount of individual dues and the number of dues-paying members.[64]

Itemization requirements should not, however, be changed for candidates. Our state was a groundbreaker in insisting that candidates reveal the sources of all of their campaign funds. There is no reason to change this requirement. The provisions of the public financing bill that is supposed to be implemented for statewide races in 1990 further reinforces this view. For all candidates who opt to accept state matching funds, the state will match each of their individual contributions up to $250. Because public resources are being allocated based on individual donations, the sources of each penny of these donations should be recorded.

Administrative Compilation of Data

With these changes, Florida will still have, as it should, strict disclosure requirements. However, it is unclear what purpose disclosure has served for the general public and for those who want to study election finance patterns. If it were not for the efforts of the St. Petersburg Times, Miami Herald, and Orlando Sentinel in compiling and analyzing campaign finance data for the 1982 and 1984 elections, and the earlier efforts of the Miami Herald, citizens would have no access to a systematic analysis of the disclosure information. The St. Petersburg Times continued this project for the 1986 elections and, ideally, will be able to continue performing this useful service.

However, the Division of Elections should also be responsible for compiling and publishing analyses of campaign finance data after every legislative race. As of now, it merely lists the total expenditures and contributions for the candidates in each primary and the general election. This is a useful effort, but it fails to go far enough. There is no breakdown, for example, by either type of contributor or average size of contributions to the different candidates. The Federal Elections Commission provides much information on the pattern of contributions for presidential and congressional races. This is also done, to varying degrees, in at least 11 states.[65] A recent article by a leading scholar on state election financing noted that Florida is one of the states that is "noticeable" in not publishing formal reports.[66]

This lack of reporting is important from the perspective of the public, but it is also deleterious from the perspective of the legislature. It is difficult to evaluate major reform proposals concerning campaign finance without being able to look at trends in contributions and expenditures. Analysts should be able to examine the relative roles of individuals, parties, and PACs in the campaign process in order to assess their political activity and, perhaps, political influence. The legislature would then be able to more rationally debate issues such as the public financing of legislative or judicial elections.

Some of the formulators of the last major revision of the election code, in 1973, intended that the Division of Elections would do exactly as is suggested here.[67] In fact, according to the 1973 statute, a wealth of material should now be available from the Division on all elections to date. The statute states that: "It shall be the duty of the division of elections" to do such things as:

> (7) Prepare and publish summaries of the statements received.
>
> (8) Prepare and publish an annual report, including:
>
> (a) Compilations of total reported contributions and expenditures for all candidates, political committees, and other persons during the year.
>
> (b) Total amounts expended according to such categories as it shall determine and broken down into candidate, party, and nonparty expenditures on the state and local levels.
>
> . . . .

> (d) Total amounts contributed, according to such categories of amounts as it shall determine...
>
> (9) Prepare and publish from time to time special reports comparing the various totals and expenditures made with respect to preceding elections.
>
> (10) Prepare and publish such reports as it may deem appropriate.
>
> (11) Assure wide dissemination of statistics, summaries, and reports prepared under this chapter.[68]

It is not too late to bring these intentions to fruition. In order to do this, the legislature must allocate resources to the Division to provide the necessary computer facilities. It is an investment worth making. Not only would it finally enable our state to reach the goals of disclosure, but it would also enable the Division to compile state-wide registration rolls, a recommendation made in chapter one.

Contribution Limits

Court Opinions. The Buckley v. Valeo (424 U.S. 1) United States Supreme Court decision issued in 1976 is the landmark case concerning campaign finance regulations. It upheld most of the provisions of the Federal Election Campaign Act of 1971, as amended in 1974, although it did strike down parts of the act.

The Court upheld limits on individual and group contributions to candidates and candidate committees. It argued that these limits are reasonable steps to reduce both the

actuality and appearance of corruption. The Court found that the contribution limits do not unduly infringe on the right of individuals or candidates to engage in political discussion, and it ruled that the limits serve the governmental interest of protecting the integrity of the electoral process.

On the other hand, the Court invalidated the act's ceiling on overall campaign expenditures as being an impermissible limit on political expression and, thus, unconstitutional under the first amendment. The Court did rule, however, that expenditure limits could be imposed as one of the conditions imposed on candidates who accept public financing.

In two subsequent Supreme Court opinions, First National Bank of Boston v. Bellotti[69] and Citizens Against Rent Control v. City of Berkeley,[70] both contribution and expenditure limitations in issue-referendum campaigns were held unconstitutional. The Court reasoned that the risk of corruption in candidates' campaigns is not present in issue-referendum campaigns. Following these decisions, the United States Court of Appeals for the Fifth Circuit in Let's Help Florida v. McCrary[71] struck down as unconstitutional Florida's limitations on contributions in state and county issue-referendum campaigns. This opinion was adopted by the Florida Supreme Court in Winn-Dixie Stores, Inc. v. State of Florida,[72] which applied the Buckley and Belotti holdings to a Florida statute. The Florida Supreme Court in Winn-Dixie quoted from the court's ruling in Let's Help Florida:

> The state's interest in preventing the actual or apparent corruption of candidates, which the Supreme Court found so compelling in Buckley, does not justify restrictions upon political contributions in referendum elections. When people elect a candidate, they choose someone to whom they can delegate their political decision-making. The people's need to prevent large contributors from improperly influencing this representative decisionmaker is critical. In contrast, when people vote on a referendum proposal, they directly decide the pertinent political issue for themselves. Large contributions for publicity by one group or another do not influence the political decision makers - in this case, the voters themselves-except in a manner protected by the first amendment.[73]

Florida's Limits. Florida's contribution limits for individuals and political committees are, as noted above, $3,000 for statewide candidates per election and $1,000 for candidates for other positions.[74] There are no aggregate limits on how much an individual or PAC can contribute in an election cycle to all candidates or committees.

The obvious goal of the limits is to decrease the probability that a few individuals or organized interests can dominate the finances of a successful candidate and thus have an inordinate degree of influence over public policy. It is equally important though to avoid holding the contribution limits so low that a candidate is unable to raise ample funds to communicate with the voters.

It is impossible to definitively determine the "magic figure" that reconciles these two values. But there seems to be no compelling reason to change Florida's present limits. On one

hand, they are more restrictive than those of most other states, suggesting that influence-peddling is not as likely in Florida as in most other jurisdictions. On the other, no one suggested problems with the present limits either on the questionnaires that the Division of Elections sent to committees and candidates last year[75] or in the interviews conducted to gather information for this report. This lack of criticism suggests that participants in the electoral process do not see the limits as too restrictive.

Approximately 26 states have no contribution limits for individuals for either statewide or less than statewide races.[76] However, Florida's limits are not the most restrictive. About 16 states have tighter or comparable limits for statewide offices and 15 for less than statewide offices. However, except for New York, all the states having larger populations than Florida have no individual contribution limits.[77]

Our present limits are similar to those recommended by the model code of the National Municipal League. The code suggests a contribution limit of $5,000 on individual contributions to candidates for state offices and a limit of $2,500 on contributions for local offices.[78] It is difficult to strictly compare these recommended limits with Florida's, because ours vary depending on the number of elections in which a candidate must compete and whether it is a statewide or legislative race. All in all, the differences are insignificant.

About eight states also limit the aggregate amount an

individual can contribute in an election year.[79] This certainly is a desirable policy in a state that has either no limit or a very high one on the amount an individual can contribute to any particular candidate. However, in Florida such a limit would serve no beneficial purpose because the existing per-election caps are reasonable.[80]

There also appears to be no compelling reason to change the present limit on how much a PAC can contribute to a campaign. Of course, views on the role of PACs in our political process vary widely. Some suggest they are, on the whole, beneficial because they link more citizens to the policy-making process than otherwise would be possible. They also provide funds that allow more political activity by candidates and, therefore, provide more information to voters. Others are more critical, suggesting that the net impact of PACs on the political process is primarily to advance the views of "special interests" and to exaggerate the political influence of the better organized, generally more well-to-do, segments of our society.[81] Regardless of which view is more correct, the Florida legislature recognized in its public financing bill passed last year that many perceive government officials to be "unduly influenced by . . . special interests to the detriment of the public interest."[82] Therefore, strict limits are needed.

As with limits on individual contributions, Florida's limits for PACs compare favorably with most other states. Also, no respondent to the questionnaires argued that the present limits

were onerous to their fund raising activity. Thus, there seems no reason to change the present levels.

About 20 states allow unlimited PAC contributions.[83] Most of these also permit unlimited individual contributions.[84] On the other hand, approximately eight are comparable to or more restrictive than Florida's limits for contributions to statewide elections. Significantly, all the states with a higher population than Florida have no limits on PAC contributions.[85]

A few states also have aggregate limits on how much any PAC can contribute during an election period.[86] As of now, the consequences of this strategy to reduce the role of PACs in campaign financing are uncertain. Thus, Florida should not now adopt an aggregate limit.

Such a limit on PAC contributions in an election cycle is intended both to reduce the influence of a particular organized interest and to decrease the overall PAC role in campaign financing. However, well-financed interests could possibly respond by forming additional PACs. Thus, their influence would not be diminished by this legislative change, nor would the overall PAC role be weakened.

Both Arizona and Montana have taken a different approach to weaken the influence of PACs. They have set an overall limit on how much a candidate can receive from all PACs combined. This is an intriguing approach, and it deserves serious consideration in Florida.[87] Critics contend that some of the consequences of this approach might actually be counter to its goal. One unintended

consequence of this strategy, they argue, might be to hurt the less affluent and less organized groups that perhaps could not raise and target money quickly enough to give to candidates before they reach their limits. They also suggest that a limit of this type would merely encourage PACs to make independent expenditures that cannot be limited by statute.[88] It is unclear that either of these arguments is valid. Perhaps many small groups can target money as well as the larger ones. It is also unlikely that most PACs will invest the considerable time, effort, and money needed to make widespread independent expenditures.[89]

As Table 3 indicates, the role of PAC and corporate contributions has been growing in Florida. The proportion of total contributions from PACs alone going to those gaining seats in the Florida House of Representatives increased from 37.9% in 1982 to 45.4% in 1984. It increased even further to 49.3% in 1986. One sees a similar pattern with those gaining Senate seats during this period. PAC contributions as a proportion of the total funds raised by winning candidates increased from 34.4% in 1982 to 41.3% in 1984, and reached 46.9% in the last election.

The pattern is even more pronounced when PAC and corporate contributions are examined together. Although 1986 corporate figures are not available, in 1982 funds from PACs and corporations combined accounted for 50.8% of the contributions to winning Senate and House candidates. In 1984 their share was up to 61.9%. Furthermore, the percent of the legislators who

TABLE 3. PAC AND CORPORATE CONTRIBUTIONS TO SENATE AND HOUSE VICTORS: 1982, 1984, AND 1986

	(1982)	(1984)	(1986)
TOTAL HOUSE CONTRIBUTIONS -	$ 4,614,201	$ 5,115,641	$ 6,773,100
--- PAC -	$ 1,747,398 (37.9%)	$ 2,322,217 (45.4%)	$ 3,336,024 (49.3%)
--- corporate -	$ 580,285 (12.6%)	$ 840,160 (16.4%)	n/a n/a
--- PAC & corp -	$ 2,327,683 (50.4%)	$ 3,162,377 (61.8%)	n/a n/a
TOTAL SENATE CONTRIBUTIONS -	$ 3,186,240	$ 1,991,100	$ 3,459,957
--- PAC -	$ 1.096,841 (34.4%)	$ 823,015 (41.3%)	$ 1,624,085 (46.9%)
--- corporate -	$ 539,255 (16.9%)	$ 410,434 (20.6%)	n/a n/a
--- PAC & corp -	$ 1,636.096 (51.3%)	$ 1,233,449 (61.9%)	n/a n/a
TOTAL HOUSE AND SENATE CONTRIBUTIONS -	$ 7,800,441	$ 7,106,741	$10,233,057
--- PAC -	$ 2,844,239 (36.5%)	$ 3,145,232 (44.3%)	$ 4,960,109 (48.5%)
--- corporate -	$ 1,119,540 (14.4%)	$ 1,250,594 (17.6%)	n/a n/a
--- PAC & corp -	$ 3,963,779 (50.8%)	$ 4,395,826 (61.9%)	n/a n/a

Sources: adapted from St. Petersburg Times, "For a Better Florida," 1983 ed., 27,30,32 (1982 statistics only); St. Petersburg Times, "For a Better Florida," 1985 ed., 32-3,36 (1984 statistics only); St. Petersburg Times, March 29, 1987 at 4D (1986 statistics only).

received more than 50% of their funds from corporations and PACs increased dramatically from 1982 to 1984 before levelling off in 1986.[90]

Furthermore, these contributions from organized interests do not represent a cross section of Florida's social groups. The major donors - realtors, builders, attorneys - clearly represent the more privileged sectors. This is not to suggest that their policy preferences are clearly counter to the public interest. It is to suggest that there is no justification in a system that calls itself a democracy for these interests to have a greater voice than others. In the absence of public financing of legislative elections in Florida, the approach of Arizona and Montana is worth serious consideration. Undoubtedly, it has many facets and potential consequences that will have to be seriously examined. This study should begin immediately.

Political Parties

Political parties in Florida hold a privileged position in financing elections. They can receive contributions in unlimited amounts and can contribute as much as they want to candidates' campaigns. In addition, most of the filing fees that candidates pay go directly to the party. Florida is not unusual in placing no limits on the amount that parties can contribute to campaigns. About 38 other states also have basically no contribution limits. And, of those with limits, several are tied to a public financing system.[91] Florida is one of the few states that cap individual

and PAC contributions while allowing unlimited contributions to and from the party.[92]

It is reasonable for parties to have greater financial latitude than other organizations or than individuals. After all, a primary rationale for their existence is to recruit and support candidates for office. They potentially offer some counter-balance to the best financed interests in our society by coalescing more mass based support behind candidates.[93] Of course, a party can also represent a relatively narrow, privileged segment of our society, and limits should not be dismissed out of hand. Certainly, if a party were receiving large checks from a few individuals or interests, it would be wise to place limits on these. After all, the parties would, in effect, be laundering campaign contribution money for the wealthy. Also, limiting party contributions to candidates might be desirable if they were accounting for high percentages of the contributions in races. It is undesirable to have any group playing the dominant role in financing candidates, thereby forcing them to rely primarily on one entity for support. To the degree that this is the case, the officeholders' capacity to independently evaluate policy alternatives is compromised.

There is no reason to limit the amounts that parties in Florida can contribute to political campaigns. Their role in direct contributions to legislative candidates has been insignificant in most cases. There were relatively few races in 1982, 1984, and 1986 where the party's share constituted a

sizable portion of the candidate's funds. Tables 4 and 5 show the limited role of the parties in the successful House races in these years. Even though the figures are low, they are undoubtedly overstated since they include both general party and leadership funds.

In 1986, about 57% of successful candidates for the House received no party money, and another 29% received 5% or less of their contributions from the parties. Only four successful candidates (3% of the total) obtained more than 20% of their contributions from the parties.

About 59% of the successful House candidates in 1984 received no party money, and the party accounted for 5% or less of the contributions of another 21% of the Representatives. There were only eight victors (7% of the total) who received more than 20% of their funds from the party.

The picture was not significantly different in the party share of the contributions for the victorious Representatives in 1982. The party contributed no funds to about 42% of the candidates and contributed 5% or less to another 35%. A total of only four candidates received more than 20% of their funds from their party.

A major difference between the 1982 legislative elections and those in 1984 and 1986 was that a much higher proportion of the seats were uncontested in 1984 and 1986 than in 1982, when reapportionment probably encouraged competition. In 1986, 43.3% of the representatives were unopposed and in 1984, 45.6%,

TABLE 4. CONTRIBUTIONS FROM POLITICAL PARTIES TO SUCCESSFUL HOUSE OF REPRESENTATIVES CANDIDATES (ALL 120 SEATS): 1982, 1984, AND 1986

% of candidate's contributions supplied by party	# and % of successful House candidates whose party contributions matched the levels specified in the first column		
	(1982)	(1984)	(1986)
0% -	50 (41.7%)	71 (59.2%)	68 (56.7%)
.1 to 5% -	42 (35.0%)	25 (20.8%)	35 (29.2%)
5.1 to 10% -	17 (14.2%)	5 (4.2%)	7 (5.8%)
10.1 to 15% -	3 (2.5%)	7 (5.8%)	3 (2.5%)
15.1 to 20% -	4 (3.3%)	4 (3.3%)	3 (2.5%)
20.1 to 25% -	2 (1.7%)	3 (2.5%)	2 (1.7%)
25.1 to 30% -	1 (.8%)	2 (1.7%)	1 (.8%)
30.1% and above -	1 (.8%)	3 (2.5%)	1 (.8%)

Sources: adapted from St. Petersburg Times, "For a Better Florida," 1983 ed., 30-33 (1982 statistics only); St. Petersburg Times, "For a Better Florida," 1985 ed., 32-35 (1984 statistics only); St. Petersburg Times, March 29, 1987 at 4-5D (1986 statistics only).

The column to the extreme left lists differing party-to-candidate contribution levels. The other three columns list, for the indicated election years, the number and percentages of succsessful House candidates who received the level of party support listed in the first column.

TABLE 5. CONTRIBUTIONS FROM POLITICAL PARTIES TO SUCCESSFUL HOUSE OF REPRESENTATIVES CANDIDATES (CONTESTED SEATS ONLY): 1982, 1984, AND 1986

% of candidate's contributions supplied by party	# and % of successful House candidates whose party contributions matched the levels specified in the first column		
	(1982) (98 seats contested)	(1984) (65 seats contested)	(1986) (68 seats contested)
0% -	29 (29.6%)	17 (26.2%)	16 (23.5%)
.1 to 5% -	41 (41.8%)	24 (36.9%)	35 (51.5%)
5.1 to 10% -	17 (17.3%)	5 (7.7%)	7 (10.3%)
10.1 to 15% -	3 (3.1%)	7 (10.8%)	3 (4.4%)
15.1 to 20% -	4 (4.1%)	4 (6.2%)	3 (4.4%)
20.1 to 25% -	2 (2.0%)	3 (4.6%)	2 (2.9%)
25.1 to 30% -	1 (1.0%)	2 (3.1%)	1 (1.5%)
30.1% and above -	1 (1.0%)	3 (4.6%)	1 (1.5%)

Sources: adapted from St. Petersburg Times, "For a Better Florida," 1983 ed., 30-33 (1982 statistics only); St. Petersburg Times, "For a Better Florida," 1985 ed., 32-35 (1984 statistics only); St. Petersburg Times, March 29, 1987 at 4-5D (1986 statistics only).

The column to the extreme left lists differing party-to-candidate contribution levels. The other three columns list, for the indicated election years, the number and percentages of succsessful House candidates who received the level of party support listed in the first column.

compared with 23.3% in 1982.[94] Because the parties virtually never contribute to unopposed candidates, the figures change somewhat when looking at party contributions to successful contested candidates. However, this does not modify the picture of the relatively modest role of the party in most of the elections. As Table 5 shows, the party still contributed 5% or less of the candidate's total contributions in about 75% of the races in 1986, in 63% of the races in 1984, and in 71% of them in 1982.

Tables 6 and 7 show that the picture is largely the same in looking at party contributions in the Senate. In 1982, about 37% of successful Senate candidates received no party money, and 42% received 5% or less of their contributions from the party. No successful candidates received more than 10% of their contributions from the party. In the 1984 elections, 60% of successful Senate candidates received no party money, 25% received 5% or less of their contributions from the party, and no candidate received more than 10% of his contributions from the party.

In 1986, the picture in the Senate elections changed somewhat. About 45% of successful Senate candidates received no party money, and 14% received 5% or less of their total contributions from the party. About 23% of successful candidates, however, received more than 15% of their total contributions from the party.

The party role in 1986 changes more dramatically in looking

TABLE 6. CONTRIBUTIONS FROM POLITICAL PARTIES TO SUCCESSFUL SENATE CANDIDATES (ALL SEATS): 1982, 1984, AND 1986

% of candidate's contributions supplied by party	# and % of successful Senate candidates whose party contributions matched the levels specified in the first column		
	(1982) (40 seats)	(1984) (20 seats)	(1986) (22 seats)
0% -	15 (37.5%)	12 (60.0%)	10 (45.5%)
.1 to 5% -	17 (42.5%)	5 (25.0%)	3 (13.6%)
5.1 to 10% -	8 (20.0%)	3 (15.0%)	2 (9.1%)
10.1 to 15% -	0	0	2 (9.1%)
15.1 to 20% -	0	0	3 (13.6%)
20.1 to 25% -	0	0	0
25.1 to 30% -	0	0	1 (4.5%)
30.1% and above -	0	0	1 (4.5%)

Sources: adapted from St. Petersburg Times, "For a Better Florida," 1983 ed., 27 (1982 statistics only); St. Petersburg Times, "For a Better Florida," 1985 ed., 36 (1984 statistics only); St. Petersburg Times, March 29, 1987 at 4D (1986 statistics only).

The column to the extreme left lists differing party-to-candidate contribution levels. The other three columns list, for the indicated election years, the number and percentages of succsessful Senate candidates who received the level of party support listed in the first column.

TABLE 7. CONTRIBUTIONS FROM POLITICAL PARTIES TO SUCCESSFUL SENATE CANDIDATES (CONTESTED SEATS ONLY): 1982, 1984, AND 1986

% of candidate's contributions supplied by party	# and % of successful Senate candidates whose party contributions matched the levels specified in the first column		
	(1982) (32 seats contested)	(1984) (8 seats contested)	(1986) (14 seats contested)
0% -	7 (21.9%)	0	2 (14.3%)
.1 to 5% -	17 (53.1%)	5 (62.5%)	3 (21.4%)
5.1 to 10% -	8 (25.0%)	3 (37.5%)	2 (14.3%)
10.1 to 15% -	0	0	2 (14.3%)
15.1 to 20% -	0	0	3 (21.4%)
20.1 to 25% -	0	0	0
25.1 to 30% -	0	0	1 (7.1%)
30.1% and above -	0	0	1 (7.1%)

Sources: adapted from St. Petersburg Times, "For a Better Florida," 1983 ed., 27 (1982 statistics only); St. Petersburg Times, "For a Better Florida," 1985 ed., 36 (1984 statistics only); St. Petersburg Times, March 29, 1987 at 4D (1986 statistics only).

The column to the extreme left lists differing party-to-candidate contribution levels. The other three columns list, for the indicated election years, the number and percentages of succsessful Senate candidates who received the level of party support listed in the first column.

only at contested Senate seats. About 35% of the winning candidates received more than 15% of their contributions from the party, compared with none in 1982 and 1984. However party contributions to only two winning candidates (14% of the total contested winners) accounted for more than 25% of their total contributions in 1986.

All in all, party funds are nowhere close to being the dominant source of money for campaigns. They should not be limited.

Although there is no reason to limit party contributions to candidates, Florida should place a limit on how much individuals and PACs can contribute to a party. (As noted earlier, corporations should not be allowed to contribute.) As noted above, parties at their best are vehicles for broad-based participation and influence. This democratic breadth is limited if giving is dominated by the wealthy. A limit of $9,000 per election, or three times the cap for statewide candidates, is reasonable. This would still allow parties to raise large sums of money, while decreasing the probability of a few individuals or organizations dominating party financing. If this is done, parties are more likely to be counterbalances to large corporate givers, rather than being allies with them.

Leadership Funds

Leadership funds in both parties are active in supporting party candidates running for office. In fact, some suggest they

are often the major party mechanism making direct contributions to legislative candidates. General party funding often goes largely for efforts such as voter registration drives and providing in-kind services to party members. Because the Republican party fails to separate its leadership fund in its disclosure reports, it is impossible to determine if this statement is accurate for it. Division of Election records show that, at least for the 1984 and 1986 legislative races, this was true for the Democrats. The Democrats, thus far the perennial majority party in both the House and Senate, have a President's Fund in the Senate and Speaker's Fund in the House. The Republicans have a joint Senate-House Campaign fund.[95]

These funds, especially the Speaker's and President's Funds, have been widely attacked within Florida. For example, the St. Petersburg Times has been critical of them in a number of editorials. This newspaper argues that there is a large potential for abuse of the funds because a lobby can secretly arrange to subsidize candidates by giving money to a leadership fund with the understanding that the money will go to particular candidates. Moreover, it contends that because there are no limits on fund contributions to candidates, the funds can be vehicles for circumventing the contribution limits.[96] Also, because there are no disclosure regulations concerning them, there is a high potential for secret deals.[97] Some also argue that raising money for these funds gives the appearance that a type of extortion is occurring. That is, lobbyists are asked to

give money to the funds with at least the tacit understanding that their favorite bills will not receive leadership support if they fail to contribute to them.[98]

The report of the California Commission on Campaign Finance presents an extensive analysis of the role of transfers, which they define as "campaign funds received by individual officeholders and given to other candidates."[99] This, therefore, technically encompasses more than party leadership funds, but the report's discussion focuses mainly on the leadership efforts.[100] The report enumerates the following potential benefits of these funds:

1. They can increase competition in selected races. Some candidates, especially those in poorer districts, can wage more competitive campaigns. Receiving transfers can also be beneficial if the opponents are personally wealthy and are willing to spend large sums on their own campaigns.

2. They allow candidates to spend less time fundraising and more time campaigning.

3. The funds "arguably" insulate recipients from the influence of special interest groups by allowing legislative leaders to act as a "buffer" between special interests and the candidates.[101]

Among the potentially detrimental effects of the funds noted in the report are:

1. They can inject an "arms race" mentality into campaigning. If a candidate believes the opponent might benefit

from transfers, he or she will continually try to raise more funds.

2. Transfers may weaken the bonds between the candidates and their constituents because funding is coming from outside the district.

3. Because transfers obscure the original source of campaign contributions, the source of funds cannot be used as a campaign issue.[102]

The California Commission report argues that perhaps the more important liabilities of the funds are the effects they might have on the legislative process. It notes, as does the St. Petersburg Times, that the funds increase the appearance of corruption in the legislature by raising the possibility of exchanging contributions for influence.

Transfers play a much more important role in California than in Florida. They became by 1982 the dominant source of funds for California Democrats running in competitive open seat races.[103] In the 1980 general election, Democrats received almost 24% of their campaign dollars from legislative transfers.[104]

The Commission concludes that transfers are becoming too significant in financing candidates in California and that, generally, their disadvantages outweigh their advantages. It calls for them to be banned. The Commission calls for partisan money to play a role in legislative elections through a combination of parties and legislative caucuses.[105] Thus, although it formally calls for an elimination of transfers, it

recognizes some legitimate role for party leadership in allocating funds.

Obviously, the California situation is different from Florida's. For one thing, leadership funds do not play as significant a role in campaign finance in our state. But, the Commission's concern about the negative consequences of transfers has been echoed by some legislators, interests groups, and newspaper commentators in this state.

These funds have a nebulous status in Florida. On one hand, they can be seen as vehicles for indirect contributions that are not allowed by Florida's election laws. Candidates' campaign funds cannot be used to contribute to the campaigns of other aspirants for office either during their races or with their surplus funds after the race is over. On the other, the funds can be viewed, as they presently are by many observers, as arms of the party and, thus, free to contribute to and draw funds from whomever they wish for whatever amounts.

Both perceptions have some basis in fact. They are arms of the party to a degree, as illustrated by the fact that the Democratic party makes periodic contributions to the President's and Speaker's funds. Also, they should not be seen as strictly illegal transfers because individuals, PACs, and corporations are giving to the funds with the knowledge that the money is passed on to other candidates.

The rub is that these contributions may not be entirely "voluntary." Many feel it is necessary to give in order to have

access to the legislative leadership. Also, the leadership funds cannot be viewed strictly as party funds, because, not uncommonly, the leadership represents merely a fraction of the party members in the legislature. Thus, contributions to the funds may help allow some in the party to maintain their position at the expense of other party members.

What should be done? At a minimum there should be disclosure requirements for leadership funds identical to those for PACs, parties, and candidates. Although the Democrats presently distinguish their leadership funds in their disclosure reports, both for contributions and expenditures, there is no rationale for leaving disclosure to the discretion of the parties. Second, there should be a limit on how much a PAC or individual can contribute to the funds. Contributions to a fund should not be allowed to exceed the $1,000 per election contribution that is allowed to PACs. Finally, a limit should be placed on how much each fund can contibuted to any candidate. The leadership funds should be able to contribute $3,000 per election, which is three times the PAC limit to legislative candidates. This allowance recognizes that the funds generally do not support members of their party until they qualify for the general election.

CONCLUSIONS

This chapter does not focus on pubic financing in the state, either past or future. The legislative history and details of

Florida's 1986 act are well documented in a recent article.[106] The Florida Campaign Financing Act of 1986 was an historic bill, calling for partial public financing of statewide elections beginning in 1990 along with an expenditure limitation on those candidates who accept the financing. It is important that the legislature adequately fund this system so that it can be fully implemented in 1990. Otherwise, Florida will have taken a major step backwards in trying to halt the increase in campaign spending.[107] A study should also be undertaken of the merits and alternative structures for public financing of legislative roles in Florida.

However, none of the proposals in this chapter are dependent upon this expansion. All are based on the present statute. The ideas presented here, such as prohibiting direct corporate contributions, publishing analyses of campaign finance data, limiting contributions to the parties, and insisting on disclosure and limitations for the party leadership funds, will move Florida's campaign finance system further in the direction of accountability and equity.

END NOTES - CHAPTER III

1. For a general discussion of trends in state election financing see, Ruth S. Jones, "Financing State Elections," in Money and Politics in the United States: Financing Elections in the 1980s, ed., Michael J. Malbin (Chatham, New Jersey: Chatham House Publishers, Inc., 1984), 172-213. Especially, see 172-180 on campaign costs. For an analysis of trends in Florida see, Michael W. Giles and Anita Pritchard, "Campaign Expenditures and Legislative Elections in Florida," Legislative Studies Quarterly X (February 1985): 71-88.

2. Jones, 180-83.

3. For a discussion of strategic giving by both parties and political action committees (PACs) see, Ruth S. Jones and Thomas J. Borris, "Strategic Contributing in Legislative Campaigns: The Case of Minnesota," Legislative Studies Quarterly X (February 1985): 89-105.

4. Jones, 191 notes that a Texas PAC wrote to legislators in 1980 that it was prepared to reward its "helpful friends" with campaign contributions and in-kind services in exchange for "appropriate consideration" of legislation that it was promoting.

5. Other factors include party leadership, lobbies, and an official's ideology. See, for example, Aage R. Clausen, How Congressmen Decide (New York: St. Martin's Press, 1973).

6. Robert J. Samuelson, "The Campaign Reform Failure," in Taking Sides: Clashing Views on Controversial Political Issues, 5th ed., ed., George McKenna and Stanley Feingold (Guilford, Connecticut: The Dushkin Publishing Group, Inc., 1987), 62-5.

7. Moynahan, 459.

8. Elston Roady, "Ten Years of Florida's "Who Gave It - Who Got It Law," Laws & Contemporary Problems 27 (Summer 1962): 435.

9. Ibid, 436. Roady argues they were repealed because they were seen as unenforceable.

10. Ibid. Roady says many defeated candidates chose not to file post-election reports and faced no sanctions.

11. Fla. Stat. § 99.161(2)(8) (1951).

12. Id., § 99.161(8)(a).

13. However, any candidate running unopposed after the time for qualification for nomination or election had ended was not obligated to file any additional reports. Fla. Stat. § 99.161(8)(e) (1951).

14. Roady, 446.

15. John French, former staff director of Committee on Ethics and Elections, Florida House of Representatives, interview with author, Tallahassee, FL, 12 February 1987.

16. Fla. Stat. § 106.07(1) (1973).

17. Fla. Stat. §§ 106.07(1), (5) (1973).

18. French interview.

19. Fla. Stat. §§ 106.08(1)(a)-(d),(f) (1973).

20. §§ 106.10(1)(a)-(g) (1973). Due to the Buckley v. Valeo Supreme Court decision in 1976, these limits were removed. Another stipulation of the 1973 revision prohibited unauthorized independent expenditures. These were also invalidated by the Buckley v. Valeo decision.

21. French interview.

22. Fla. Stat. § 106.03(1) (1973).

23. §§ 106.08(1), .04(5) (1973).

24. French interview.

25. Fla. Stat. §§ 106.021(1)(a)-(b) (1985).

26. Corporations are considered to be persons for the purposes of this statute. Also, each primary election and the general election are counted as separate elections.

27. Id. § 106.08(1).

28. Id. § 106.07(4)(a)(1).

29. Only candidates running for statewide offices are allowed to use credit cards.

30. Fla. Stat. § 106.071(1) (1985).

31. Id. § 106.07(1)(a).

32. Id. § 106.07(9)(b).

33. Id. § 106.07(9)(c).

34. Id. § 106.011(1).

35. Id. § 106.021(1)(a).

36. Actually the statute's discussion of political committees is open to different interpretations. See end note 61, below.

37. Fla. Stat. § 106.06(1) (1985).

38. Id. § 106.07(1)(a).

39. Id. § 106.07(9).

40. Id. § 106.04(1)(b).

41. Id. § 106.041(4).

42. Id. § 106.04(8).

43. Id. §§ 106.04(4)-(4)(a).

44. Id. § 106.04(5).

45. Id.

46. Fla. Stat. § 106.011(1) (1985) reads that "corporations regulated by Chapter 607 or Chapter 617 are not political committees if their political activities are limited to contributions... or expenditures... from corporate funds and if no contributions are received by such corporations."

47. Calculated from Chart 2-A, James A. Palmer and Edward D. Feigenbaum, Campaign Finance Law 86 (Washington, D.C.: National Clearinghouse on Election Administration, 1986). I am considering Michigan as a state that prohibits corporate contributions since it does not allow them for candidate elections. It does allow them to a ballot question committee. Eight states prohibit both corporate and labor union contributions. These are Arizona, Connecticut, New Hampshire, North Carolina, North Dakota, Pennsylvania, Texas, and Wyoming. Twelve states prohibit corporate, but allow union contributions. These are Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Montana, Ohio, Oklahoma, South Dakota (for unions that are associations, not for those that are corporations), Tennessee, West Virginia, and Wisconsin. This information is correct as of January 1, 1986.

48. In the 1984 races for the Florida House of Representatives, the last year for which compiled data are available, corporations were outspent by PACs in contributing to most

successful candidates. However, there were 14 races in which corporations actually gave more than PACs and others in which they gave substantial amounts. In the races of successful Senatorial candidates, corporations outspent PACs in only 2 of the 20 races but, again, their contributions were not insignificant in a number of other contests. This information was compiled from tables provided in the St. Petersburg Times, "For a Better Florida", 1985, 32-5.

49. National Municipal League, Campaign Finance Law, 32-5. The code argues that this is desirable for both the reason noted in the text and because the public is concerned that allowing either corporate or union contributions might give either type of entity too much influence.

50. As will be discussed below, the distinction between PACs and CCEs should be eliminated.

51. This information is compiled from Sandra K. Schneider, ed., Campaign Finance, Ethics & Lobby Law Blue Books 1986-87 (Lexington, Kentucky: Council on Governmental Ethics Laws through the Council of State Governments, 1986), 38-9. The information is correct as of January 1, 1986. Only Hawaii and South Carolina do not require them for legislative candidates. Arkansas, Mississippi and Utah do not mandate them for PACs. All the states except for Alabama, Arkansas, Louisiana, Nevada, and Virginia require state political party committees to file reports.

52. Ibid. The fourteen states that do not require them are Illinois, Indiana, Maryland, Mississippi, Montana, New Hampshire, New Mexico, North Dakota, Ohio, Rhode Island, South Dakota, Utah, Virginia, and Wyoming.

53. Ibid. Thirteen states require them. These are: Alaska, Arizona, California, Georgia, Hawaii, Missouri, Nebraska, New Jersey, Ohio, Tennessee, Texas, Vermont, and Wisconsin.

54. The first report covers October 1-December 31 of the preceding year. The last date for qualifying for office is in July. Thus, a maximum of eight reports are required from a candidate who does not file until the last day.

55. The stipulations for all the states are presented in Palmer and Feigenbaum, Chart 1, "Campaign Finance Report Filing Requirements."

56. House Committee on Ethics and Elections Oversight Subcommittee, Oversight Review of Election, Campaign, and Financial Disclosure Forms, 1981.

57. Ibid., 2.

58. From January 1, 1986 through November 20, 1986, the Division imposed 1,480 fines amounting to $604,500 on candidates and committees. Over one-third of these were appealed to the Commission. See, Staff, Committee on Ethics and Elections, Florida House of Representatives, An Overview of Elections Enforcement, January 6, 1987, 7-8.

59. Fla.Stat. §106.08(3)(1985).

60. An excellent analysis of the implications of this bias can be found in E.E. Schattschneider, The Semisovereign People; A Realist's View of Democracy in America (New York: Holt, Rinehart and Winston, 1960).

61. Fla.Stat. § 106.011(1) 1985 defines "political committee." It suggests that no such entity exists until it receives contributions or makes expenditures greater than $500 during a calendar year, unless it is trying to obtain signatures to support an initiative for a constitutional amendment that it is sponsoring. Thus, this suggests that contributions by a group that does not reach the $500 threshold would represent an illegal indirect contribution unless, perhaps, it is also sponsoring an initiative for a constitutional amendment. But Fla.Stat. § 106.03(1) (1985) suggests that a political committee can exist even if it does not reach the $500 threshold or is not sponsoring an amendment. Thus, it could make contributions but not have reporting requirements. The law should be clarified.

62. I reached this conclusion by examining the information presented in Palmer and Feigenbaum. It is possible, however, that a similar distinction exists elsewhere. One can not definitely rule out this possibility without examining each of the state's statutes.

63. Ohio is one of the states that require complete disclosure. However, it makes an exception for a person's contribution at one social or fund-raising activity of $25 or less. See, Palmer and Feigenbaum, Chart 1, "Campaign Finance Report Filing Requirements," for information on each of the states.

64. For the biannual reports in non-election years, the line would be $50. For the more frequent reports due in election years, a logical break would be $20 per reporting period.

65. Ruth S. Jones, "Financing State Elections," 211.

66. Ibid.

67. Interview with John French.

68. Fla. Stat. § 106.22 (1973).

69. 435 U.S. 765 (1978) (overturning a Massachusetts statute insofar as it prohibited corporations from making any contributions and expenditures to influence the vote on referendum measures).

70. 454 U.S. 290 (1981) (ceilings on ballot measure campaign contributions were held unconstitutional as constraining the right of association).

71. 621 F.2d 195 (5th Cir. 1980), affirmed, 454 U.S. 1130 (1981) (F.S. Section 106.08(1)(d) imposing individual contribution limit of $3,000 for statewide referendum issues and F.S. Sec. 106.08(1)(e) limiting contributions to $1,000 to political committees for countywide referendum issues held unconstitutional).

72. 408 So.2d 211 (Fla. 1981) (F.S. Sec. 106.08(1)(e) limiting corporate contributions in referendum campaigns held unconstitutional as restricting First Amendment freedom of expression and association).

73. Let's Help Florida, 621 F2d at 199-200.

74. There is a $2,000 limit in Judges' campaign for retention at either the district or appellate level.

75. Dorothy Glisson provided the completed questionnaires to this author.

76. This figure includes New Jersey and Mississippi. New Jersey's is unlimited, except for a cap of $800 for governor in either a primary or general election. Mississippi's is basically unlimited, with the only exception being a $250 cap on contributions to judicial office primary candidates. See, Palmer and Feigenbaum, Chart 2-A, "Contribution and Solicitation Limitations."

77. Ibid. New York has limits based on a formula. Although the limits will vary from election to election, they are clearly much less stringent than Florida's.

78. National Municipal League, Campaign Finance Law, 28-29.

79. Palmer and Feigenbaum, Chart 3-A. It is unclear if Minnesota or New Hampshire have aggregate limits.

80. However, both Maine and Wyoming have strict limits per election and also have aggregate limits, see Ibid. Also, the 1986 report of the New York Campaign Finance Commission proposed in conjunction with its public financing proposal both a $1,000 contribution limit per candidate and a $25,000 limit on an individual's contributions to all candidates in any calendar

year. See, State-City Commission on Integrity in Government, Report on a Bill on Campaign Financing and Public Funding of Election Campaigns, April 30, 1986.

81. Ruth S. Jones, "Financing State Elections," 186-87. For conflicting views on the role of PACs in the political process, see Elizabeth Drew, "Politics and Money," in McKenna and Feingold, 50-60 and Robert J.Samuelson in Ibid., 61-68. At least four approaches to limiting the role of PACs relative to other actors in the campaign process are reviewed in Michael J. Malbin, "Looking Back at the Future of Campaign Finance Reform: Interest Groups and American Elections," in Malbin, ed., 232-70.

82. House Bill No. 1194, Chapter 86-276, creating sections 106.30-106.36, Florida Statutes, the Florida Election Campaign Financing Act.

83. Palmer and Feigenbaum, Chart 2-A. I am including Mississippi and New Jersey in these totals. Mississippi is unlimited except that contributions to judicial office primaries are limited to $250 and New Jersey is unlimited except for a cap of $800 for governor in any primary or general election.

84. Ibid. The exceptions are Kentucky, Maryland, Massachusetts, New York, South Dakota, and Wyoming. All allow unlimited PAC contributions while having some limits on individual ones.

85. Ibid.

86. Ibid. Connecticut, Hawaii, Minnesota, and Montana all have limitations.

87. This technique was also at the heart of the Boren proposal that was proposed in Congress in 1985. It has now been modified to include public financing of Congressional candidates. Arizona has limits for both legislative and statewide elections. Montana's limits apply only to legislative candidates.

88. Joseph E. Cantor, A Policy Analysis of the Boren Proposal for Campaign Finance Reform, Congressional Research Service, March 6, 1986, revised April 23, 1986, 10-11.

89. Ibid., 11-12.

90. Corporations and PACs contributed at least half of the total contributions to 61.2% of the legislators in 1982, 77.9% in 1984, and 76.1% in 1986. The figures for members of the House of Representatives were 59.2% in 1982, 76.7% in 1984, and 73.3% in 1986. The figures for victorious Senate candidates were 67.5% in 1982, 85% in 1984, and 90.9% in 1986. These percentages are calculated from the aggregate figures presented in each of the

St. Petersburg Times publications cited in Table 3.

91. Palmer and Feigenbaum, Chart 2-B, "Contribution and Solicitation Limitations." This count includes Mississippi, New Jersey, New Mexico, and Wyoming. Mississippi has limits only in judicial primary elections; New Jersey limits the state committee to $800 for governor in the general election, but otherwise there are no limits; and New Mexico prohibits contributions in primaries, but is otherwise unlimited. Wyoming does not allow party contributions in primaries, otherwise there are no limits.

92. Alexander, Financing Politics, 3rd ed., 165.

93. Walter Dean Burnham, Critical Elections and the Mainsprings of American Politics (New York: Norton, 1970). For an argument that the parties' role in financing candidates should generally be strengthened at both the state and federal level see, David Price, Bringing Back the Parties (Washington, D.C.: Congressional Quarterly, Inc., 1984), 239-62.

94. Alan B. Rosenthal, "The State of the Florida Legislature," Florida State University Law Review 14 (Fall 1986): 411 notes these percentages for 1982 and 1984. The 1986 figure has calculated from information provided by the Division of Elections. I am not including any analysis of party contributions to losing candidates because these data are not compiled anywhere.

95. Ibid., 413.

96. Editorial, "Money, Ethics, and Power," St. Petersburg Times, 8 October 1986.

97. As noted above, the Democrats have been disclosing these funds during the past few elections. The Republicans have not.

98. Lucy Morgan, "Critics Lash Out at Legislative Leaders Campaign Funds," St. Petersburg Times, 5 October 1986, 1-B.

99. California Commission on Campaign Financing, The New Gold Rush: Financing California's Legislative Campaigns (Los Angeles, CA.: Center for Responsive Government, 1985), 96.

100. Legislative caucuses also play a major role in distributing funds to legislators in California. According to the Commission report, these are basically controlled by the party leadership.

101. California Commission on Campaign Financing, 100-02. Regarding the last point, the report also noted that "this beneficial effect may be offset by legislative quid pro quos delivered by the leadership to major contributors during and

after the elections." (102)

102. Ibid., 102-06.

103. Ibid., 99.

104. Ibid., 97.

105. Ibid., 112.

106. Chris Haughee, "The Florida Election Campaign Financing Act: A Bold Approach to Public Financing of Elections," Florida State University Law Review 14 (Fall 1986): 585-605.

107. Probably the only way to halt spending increases is to impose expenditure limits. As noted above, Florida did have spending limits on candidates until the Buckley v. Valeo Supreme Court decision in 1976 invalidated this approach unless spending limits are coupled with a public financing bill. Thus, aggregate expenditures will probably continue to rise in legislative races in Florida unless the public financing approach is expanded. Even public financing combined with expenditure limitations does not necessarily decrease the total amount of spending in a campaign. Ruth Jones reports that public financing in New Jersey stimulated so many candidates to enter the primaries that there was unprecedented total spending by gubernatorial candidates. She reports the same result in Michigan. See, Jones, "Financing State Elections," 203. Thus a public financing plan has to be structured carefully if reducing total spending is one of its goals.