THE UNINTENDED CONSEQUENCES OF DIRECT DEMOCRACY

IN CALIFORNIA

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A capstone submitted to the

Graduate School-Camden

Rutgers, The State University of New Jersey

In partial fulfillment of the requirements

For the degree of Master of Arts

Graduate Program in Liberal Studies

Written under the direction of

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And approved by

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Camden, New Jersey

May 2017

CAPSTONE ABSTRACT

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In an attempt to curb the influence that special interests held over the state of California, especially that of the Southern Pacific Railroad, Governor Hiram Johnson convinced the voters in 1911to enact direct democracy via the initiative, recall and referendum.[1] The initiative gave California voters a way to bypass the Governor and State Legislature and propose laws and constitutional amendments directly to their fellow citizens via the ballot box. In the ensuing 104 years, nearly 2,000 initiatives would be circulated for qualification, but only 132 of those would successfully be passed by voters after making it onto the ballot.[2] This study examines four of these successful direct democracy initiatives: 1966's Proposition 1-A, that created a full-time legislature; 1978's Proposition 13, which slashed property taxes; 1990's Proposition 140, that enacted term limits; and Proposition 34 in 2000, which imposed campaign contribution limits on those seeking state office. In the case of each of these four initiatives, voters were promised by the advocates that if enacted, each would help curb the power of the special interests in California. But instead, this study will show that the combined effect of the four initiatives would unintentionally, but dramatically, shift the balance of power in state government away from the people and toward the large special interests that they were ironically designed to curb.

ACKNOWLEDGEMENTS

In the spring of 2015 I took the graduate class, *Women, Men, and Work*, from Professor Cynthia Saltzman. The idea for this research paper sprang from a book Dr. Saltzman assigned for the class, Karen Ho's *Liquidated*. The entrenched nature of the Wall Street culture, where short term profits rule over long term gains, reminded me of the present-day California State Capitol, where term limited legislators deal in relatively minor issues while avoiding tackling the major problems the state faces.

Having worked in California government and politics for over thirty-eight years, I could see many similarities between the dysfunction of Wall Street and that of the State Capitol. I wanted to explain this capitol culture, how it got this way, and what might be done to provide course correction. Dr. Charme worried that I was undertaking too much. When I hit page 75 on my project, without remotely being near completion, I realized he was, as usual, probably right. I then made the difficult decision to focus only on how the culture came to be via four voter-approved statewide initiatives.

I want to thank Dr. Saltzman who suffered through ten different drafts of this ever-changing project. I also want to thank Dr. Charme for his support and friendship over these last three and one half years as I proceeded down the course of gaining my master's degree – one class at a time!

Finally, I want to thank my family who allowed me the many hours necessary to complete the MALS program and this capstone project. Without their support this paper would not have been possible.

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Introduction

"California's government no longer shall be an asset of the Southern Pacific Company."[3]

Hiram Johnson
Governor of California, 1911-1917

"Politics is tricky; it cuts both ways. Every time you make a choice, it has unintended consequences."[4]

Stone Gossard
Pearl Jam

At the beginning of the 20th Century the Southern Pacific Railroad dominated California government and politics. It controlled not only the State Legislature and the Governorship, but city and county governments as well.[5] It used money and gifts to buy political support. Free passes on its rail lines were routinely handed out to lawmakers and their aides. They curried the support of the press via the placement of large advertisements in their newspapers. So complete was the influence of the Southern Pacific that they actually paid political managers in every county to keep lists of potential sympathetic jurors in the event of litigation.[6]

But in 1910, Hiram Johnson campaigned specifically on the issue of ending the decades long domination of the railroads in California politics.[7] As a result, he and a host of other progressives swept into power and soon put 23 initiatives before the voters to change the California constitution. One of these was the idea of direct democracy via the initiative, recall and referendum.[8] And in 1911, the voters of California overwhelmingly passed the idea of the initiative by 76 percent.[9]

The initiative gave California voters a way to bypass the Governor and State Legislature and propose laws and constitutional amendments directly to their fellow citizens via the ballot box. Starting in 1912, and over the next 104 years, close to 2,000 initiatives would be circulated for qualification to the California ballot. Out of these, only 376 of them (19 percent) would qualify for the ballot, and of those, only132 (6.6 percent of all circulated) would be passed by the voters.[10] Everything from regulating prize fights, to issuing fishing licenses, to the death penalty, to liquor laws and reapportionment were dealt with by the voters via the initiative process.[11]

This study examines four of these successful direct democracy initiatives: 1966's Proposition 1-A, that created a full-time legislature; 1978's Proposition 13, which slashed property taxes; 1990's Proposition 140, that enacted term limits; and Proposition 34 in 2000, which imposed campaign contribution limits on those seeking state office. In the case of each initiative, voters were promised by the advocates that if enacted, each would help curb the power of the special interests in California. But instead, each of the initiatives would have a host of unintended consequences that when combined would end up shifting the balance of power in state government away from the people and toward the special interests.

State of the Debate

There have been numerous studies on California government and politics, many of which have focused on one of the four initiatives discussed in this paper. Steve Swatt, in *Game Changers, Twelve Elections that Transformed California*, provides an excellent overview of three of the four elections discussed in this paper, as well as a good background of how the initiative process came to be in California. Other sources, such as

Lynda Powell's book, *The Influence of Campaign Contributions in State Legislatures,* provides perhaps the definitive examination of how money can buy influence in state government. She also examines how term limits tends to steer legislators away from trying to resolve the major problems their states may face, and toward working on smaller issues. Seth Masket's work, *No Middle Ground: How Informal Party Organizations Control Nominations and Polarize Legislatures,* clearly outlines the concept of "select and elect" that is so prevalent in California politics today, and one that will be shown to have been greatly enhanced by the voter-approved Proposition 34 in 2000. Susan Miller, Jill Nicholson-Crotty and Sean Nicholson-Crotty provide an excellent overview of the deteriorating effects of term limits on the institutional memories of state legislatures in *Reexamining the Institutional Effects of Term Limits in the U.S. State Legislatures.* Finally, Jeffrey Chapman in *Proposition 13: Some Unintended Consequences*, provides a first-rate analysis of how the tax cutting proposition pushed power from local to state government and forever altered California's methods of taxation. These are but four of the literally dozens of works that I drew upon for this study and that have been listed out in the bibliography section of this paper.

Despite the vast body of scholarly work in this field, however, there has been little research specifically on the combined effects that the four California initiatives had in shifting the balance of power in state government away from the people of California and toward the large special interests that they were ironically designed to curb. Adding to this body of knowledge therefore, and fostering a greater understanding of the many elements that were involved, is the primary goal of this paper.

PART II

The Four Initiatives and Their Unintentional Consequences

Proposition 1-A (1966): Creating a Full-Time Legislature

> *"…before Proposition1-A, legislators depended on their regular occupation for a living, while now they depend on staying in office for a livelihood."*[12]
>
> H.L. Richardson, Republican
> California State Senate, 1966-1990

> "*The Legislature became very political and a good deal more partisan."*[13]
>
> James R. Mills, Democrat
> Pro Tem of the California State Senate, 1970-1980

In 1961 Jesse Unruh became Speaker of the California State Assembly. At the time, the Speakership was a part-time job because the Legislature only met for approximately fifty days out of the year.[14] It could only consider bills that were presented to it by the Governor, had almost no staff, and little if any real power other than to vote yay or nay on what the Governor asked for.[15]

Unruh was committed to establishing the California State Legislature as a co-equal branch of government, along with the executive and judicial branches.[16] To do this he felt he needed to establish a full-time legislature. But a full-time legislature had many obstacles to overcome to become a reality. It first required the Governor to introduce the idea to the Legislature. It then required passage through both the Assembly and the Senate. Then, because it required a change in the California constitution, a vote of the people was necessary.[17]

Unruh almost singlehandedly accomplished all three. He convinced the Governor to place a bill before the Legislature. Through horse trading he got it passed out of first the Assembly, and then on the last night of session, the Senate. Finally, Unruh convinced both candidates for Governor – Ronald Reagan and Pat Brown – to support the measure and film television commercials on its behalf.[18] In the campaign, Unruh would maintain that "better paid legislators could deal more adequately with the Capitol's strong interest groups."[19] At least in part, then, the campaign for Proposition 1-A was a campaign against the power of the Sacramento special interests.

On election-day, Proposition 1-A passed with over 73 percent of the vote.[20] The California Legislature would now meet full-time. Legislators would be paid a living wage and have ample staff to help them govern California on a co-equal basis.[21] And it worked… at least for a while. In the late 1960's and early 1970's, various comparative studies rated the California Legislature as among the best in the country.[22] Sacramento Bee political editor Richard Rodda drew the same conclusion after conducting visits to several state houses around the nation.[23]

However, as American sociologist Robert Merton discussed in his 1936 article, *"The Unanticipated Consequences of Purposive Social Action,"* like most change, there are the intended and the unintended consequences.[24] For Proposition 1-A, it would be five unintended consequences that would help to forever change the California State Capitol. Those unintended changes consisted of first, altering the type of individual who ran for office; second, dramatically increasing the size of the legislative staff; third, boosting the ambitions of those new staff; fourth, dramatically increasing partisanship in both chambers; and finally, increasing the importance of fundraising for the purposes of ensuring reelection.

The first unanticipated change in the Legislature was in the type of individual who ran for state office. Prior to Proposition 1-A, legislative members served part-time and had other occupations that paid the bills. State Senator Walter Stiern, elected in 1957, was a veterinarian.[25] Senator Al Rodda, elected in 1958, was a college professor.[26] If they lost their election it might hurt their pride, but it didn't really hurt their wallet or their careers. In other words, being a legislator wasn't their only identity. Post 1-A, members served full-time and began to make their careers in elective office. Legislative salaries more than doubled with the passage of Proposition 1-A, and would eventually climb from $6,000 a year to over $100,000 annually. In addition to their salaries, members also receive a tax free per diem for living expenses that now stands at $35,000 a year.[27] Today, California State Legislators are the highest paid state representatives in the nation.[28]

Many of these new career politicians would come out of the ranks of the staff. Prior to Proposition 1-A, no members of the 1966 California State Legislature were former staff members. But twenty years after its passage, retired Senator H.L. Richardson estimated that up to one third of members in the 1987 Legislature were former staffers.[29] By 1998, according to Steve Swatt, more than half of the members of the California State Legislature had prior staff experience.[30]

With professional career politicians now ensconced in state elective office, the desire to retain one's job became increasingly important. Professor Alvin Sokolow of the University of California at Davis, who has studied the California State Legislature for twenty years, states that with the full-time legislature, "…today, defeat means that the legislator is out of a job and often has no community in the district to return to – home is Sacramento."[31] This sentiment is backed up by Geral Gamm and Thad Kisser, who demonstrated in their work, *Broad Bills or Particularistic Policy?* – higher legislative salaries heightened legislators' motivation to retain office.[32] As a result, many legislators felt the need to hire more political, as opposed to policy staff, to ensure that the member kept his or her job.[33]

The rise of staff, especially political staff, is yet another of the unintended consequences of the full-time legislature. Their numbers and importance in both houses of the Legislature increased dramatically with the passage of Proposition 1-A.[34] Prior to the full-time legislature, members were provided with very few staff positions. Although no official records were kept at the time, estimates were that approximately 100 individuals worked for the State Legislature in 1966.[35] Assemblyman Unruh, when he was named Chair of the powerful Ways and Means Committee, found out that he would be provided with but a single secretary.[36] After Proposition 1-A, however, staff would steadily grow. Within two years of the initiative's passage, staff had increased five-fold from 100 to 500.[37] By 2016 there were over 2,000 staff working for the State Legislature.[38] This represents an increase of 1,970 percent from 1967 to 2016, or an average annual increase of 6.25 percent.[39] The cost of the Assembly staff by 1983 was $32 million, six times the cost of the entire 1961 Legislature.[40] By 2014, the legislative budget for staff for both houses was $140 million.[41]

Increasing staff levels by itself wasn't necessarily a bad thing, especially with Unruh's goal of becoming a co-equal branch of government. It was not so much that staff increased in numbers, but rather the unintended consequences of who those staff were, what was being asked of them, and what their own personal motivations were. Many of the new staff, rather than serving a policy function, took on the political function of helping their member keep his or her job.[42] As time wore on, politics would take priority over policy and campaign types began to play an ever-larger role in state politics. As Sherry Bebitch Jeffe, Senior Fellow at the University of Southern California Sol Price School of Public Policy, and a former legislative staffer herself observed, “all this had led to a dangerous shift in the function of legislative staff from being the professional arm of the Legislature to a taxpayer-funded political muscle.”[43]

Highly paid political staff were also career-minded, and as ambitious as the politicians they represented. Not only did they run for office themselves, but they viewed the job of lobbyist as a legitimate career path once their service in the Capitol was done.[44] Thus, the beginnings of the revolving door between the Legislature and the lucrative jobs in the Third House (as the world of lobbying by special interests is known in Sacramento) began during this time period.[45] The danger here, as Sacramento State Professor John Syer observed, is that “if a committee consultant is looking for job alternatives outside the Legislature, he may well be less critical of interest groups that might be a future employer.”[46] Former Washington D.C. lobbyist Jack Abramoff made a similar observation regarding the staff in Washington, D.C. In his book, *Capitol Punishment,* Abramoff admitted he used to tell congressional staffers, “When you are done working for the Congressman, you should come work for me at my firm.” He said after the enticement of a six-figure job was dangled in front of them, he would “own… that entire office.”[47] But whether implied or not, the career path of many staffers began to lead toward lobbying and the Third House. In Washington, Abramoff estimated that approximately 90 percent of all Congressional staff hoped to one day work in the lobbying world.[48] In Sacramento, it is estimated that well over half the current members of the Third House were once former Capitol staff.[49]

By general consensus, increased partisanship was yet another unintended consequence of the full-time legislature. Sherry Bebitch Jeffe, reflecting on the full-time legislature in 1986 concluded, "there is also a tilt toward more partisanship."[50] Former Pro Tem of the Senate, Democrat James Mills stated in 1987 that, as a result of Proposition 1-A, the Legislature became "very political" and "a good deal more partisan."[51] Retired Republican Senator H. L. Richardson, who served for 24 years, both before and after Proposition 1-A, stated that the Senate was now "ten times" more partisan than it was prior to the initiative.[52] And as the years went on, the problem of partisanship in the Legislature only got worse. University of Chicago Professor Boris Shor concluded in 2014 that "California continues to have the most polarized legislature in the nation."[53] Certainly a full-time legislature is not the sole cause of the extreme levels of partisanship we see today, but by all accounts, it has definitely been a contributing factor. And as numerous studies have shown, as partisanship increases legislative polarization escalates, resulting in a reduction in an elective body's ability to effectively legislate.[54]

A final unintended consequence of Proposition 1-A was the increased importance of campaign finance. Twenty years after the initiative, Sherry Bebitch Jeffe maintained that there was far more emphasis on raising the necessary funds to win reelection. Her conclusion was that professional legislators, far from being the independent members Unruh had envisioned, were instead far too dependent on special interest funding to protect their livelihood.[55] Charles Bell and Charles Price, writing on the effects of the full-time Legislature stated that, "No other criticism is made as frequently or forcefully than that legislators have become too dependent on interest groups for campaign financing."[56] And Lynda Powell concluded that higher compensated legislators tend to spend more time raising campaign contributions, and as a result, tend to be more influenced by their contributors.[57] This dependence on special interest campaign funding would only increase as the years went on, spiking dramatically after voters approved Proposition 34 in 2000.[58]

As time passed, Unruh's dream was realized and the state legislature gained an approximate parity with the other two branches of government. But with the full-time professional legislature, Unruh had also created the unintended consequences of a highly partisan, highly political, highly ambitious, staff heavy legislature. Looking back at the part-time vs. the full-time legislature, it was, as sociologist Max Weber might have observed, the difference between living for politics vs. living off politics.[59] The legislators and their staffs now lived off politics. It was to be the first of four political earthquakes to hit California state government over the next 34 years.

Proposition 13 (1978): Slashing Property Taxes

> *"Proposition 13 started the centralization of power. After that, the state started dictating what we did."*[60]
>
> Jerry Brown
> California Governor, 1974-1982
> California Governor, 2010-Present

In the 1970's inflation increasingly became a problem in the United States. Annual increases in the Consumer Price Index were anywhere from a low of 3.3 percent in 1971 to a high of 12.3 percent in 1974.[61] From 1970 to 1978, the CPI rose by 70 percent.[62] During that same time, however, housing prices in California nearly tripled.[63] For people in the Golden State these dramatically increased prices in their homes resulted in just as dramatic increases in their property tax bills, which were linked to assessed value.[64] In some cases people had their property taxes double or triple over a very short period of time.[65] Since reassessments were done only every three years, the sticker shock of these tax bills created an undercurrent of widespread discontent.[66]

Enter Howard Jarvis and Paul Gann, two citizen tax crusaders that wrote and qualified Proposition 13 for the June 1978 ballot. Under the initiative, property assessments would be rolled back three years to 1975 and then set at one percent of market value. Future increases would be limited to just two percent until the property was sold.[67] The roll backs in Proposition 13 would slash property taxes in California by a whopping 57 percent.[68] If passed, it would result in a cut of seven billion dollars in property taxes, but without offering any substitute funding to local governments.[69]

The establishment, including then Governor Jerry Brown, all lined up against Proposition 13. *The Los Angeles Times* argued that the measure would cost 300,000 public employee jobs and force the closure of fire stations and libraries.[70] *The San Diego Union Tribune* called Proposition 13 "an unvarnished piece of demagoguery."[71] But on June 6th, voters nevertheless passed the measure by over 63 percent. Proposition 13 carried fifty-five out of fifty-eight counties in the state, including Los Angeles and San Diego.[72]

While the voter-approved initiative reduced the amount homeowners paid in property taxes, and stabilized what they would pay going forward, it also had the effect of slashing a major funding source for local government.[73] Cutting that funding source meant either finding another method of financing local government programs, or, drastic cuts in these programs.

Governor Jerry Brown came to the rescue by using the state's large surplus to backfill approximately $5 billion of the $7 billion local municipalities lost to Proposition 13 funding cuts.[74] These were state grants and loans that would now be used to fund local government programs that local property taxes used to take care of. In the years to come, however, this "temporary" bailout of local governments would become a permanent change in local government funding.[75] In 1978, for example, the amount a county was able to raise on its own was approximately half of its revenue. By 1995, that figure had dropped to just 20 percent.[76] Cities also saw a similar decrease in locally raised discretionary funds during this time from 66 percent to 43 percent.[77]

As a result of Proposition 13, the bulk of funds for local government programs was now coming from either Sacramento or Washington, D.C.[78] Jerry Roberts and Phil Trounstine of the *Napa Valley Register* stated that Proposition 13 effectively shifted control of property tax revenue to Sacramento, and thereby took power and responsibility away from local governing bodies.[79] Charles Price and Charles Bell, in their analysis of the full-time legislature noted that "…Proposition 13 has shifted substantial policy burdens from local government to Sacramento."[80] Jerry Brown, who was Governor both when Proposition 13 was enacted, and again thirty-two years later, stated that because of Proposition 13, "the state legislature reduced the power of local authorities."[81] And Steve Swat summed it up stating, "…the new reality (is) that local government funds now flowed from Sacramento…"[82]

As the money needed to fund local programs shifted to Sacramento, a second, unintentional, shift would also take place. Sacramento money would come down to the local municipalities, but with strings attached. In 1978, for example, 57 percent of county spending was discretionary.[83] Counties could use that money however they saw fit. But by 1995, the amount of discretionary funds had dropped to 31 percent.[84] A 26 percent drop in just seventeen years. Cities and school districts too saw a precipitous decline in discretionary spending.[85] As Swatt noted, after Proposition 13, local municipalities were "forced to come to Sacramento, hat in hand, and lobby for large chunks of general-fund dollars with strings attached."[86]

Thus, a major, and fully unintentional, shift was taking place in the transfer of power and authority away from local governments and toward the state government housed in Sacramento. In essence, the State Legislature used their new found power of the purse strings to dictate policy.[87] Michael Shires, author of *Patterns in California Government Revenues Since Proposition 13,* has concluded that, "determining the revenues to be raised and deciding how they will be spent, once a hallmark of local government, is a policy of the past in California."[88] The loss of local discretion on both revenue-raising and expenditures has left local governments as little more than the implementation arm of the state. As Steve Peace, retired State Senator from San Diego who served in the Legislature from 1982 to 2002 stated, local government became more dependent on state funds and thereby increased the power of the state over those communities.[89]

As a result of this power shift, the importance of state government took on added significance, which in turn lead to the many special interests increasing their presence in the capitol city to fight for their share of the state financial pie.[90] In 1975, three years before Proposition 13, California had 616 registered lobbyists.[91] By 1985 that figure increased by 20 percent to 740 lobbyists. By 1996 it was 1,100 lobbyists, and by 2015, 1,760 people were registered as lobbyists in Sacramento.[92] And this figure most probably does not even begin to cover the number of people actually hired to influence the state Legislature. A U.S. Government Accountability study in 2012 revealed that close to 75 percent of the people hired to influence Congress on Capitol Hill were not registered lobbyists.[93] By all accounts, a similar trend of lobbyists "de-registering" has taken place in Sacramento as well.[94] Sam Colburn, a long-time Capitol staffer estimated that about 30 percent of the people paid to influence state government are not registered lobbyists.[95]

In addition to the rise in the number of lobbyists hired to influence the state legislature, there has also been a dramatic increase in the amounts spent in these pursuits.[96] In 1975, three years before the vote on Proposition 13, special interests spend $19 million to lobby the state. By 1985 it was up to $74 million. By 1994, $122 million was spent by the special interests on lobbying. And in 2015, that number topped 300 million.[97] These figures are only for lobbying and do not include amounts spent on gifts or campaign expenditures. The years from 1976 to 1996 then, saw an increase in lobbying expenditures of 150 percent, even after adjusting for inflation. And from 1976 to 2015, lobbying expenditures increased by over 1,478 percent. An increased presence of paid special interests at the State Capitol then, was another unanticipated consequence of Proposition 13.

A third unintentional result of Proposition 13 was a shift away from the more stable funding source of property taxes and toward the more volatile ones of sales and income taxes. Historically, sales and income taxes demonstrate wide swings in volatility based on economic conditions.[98] And in California, by 2007, the top 1 percent of state income tax filers paid approximately 48 percent of the taxes.[99] As a result of this shift in taxation methods, from 1995 to 2014, California had the 5th highest tax revenue volatility in the nation.[100] Unused to such wide swings in revenues, the State Legislature spent freely during the good times, especially for ongoing programs, which would leave the state in dire financial circumstances when the down cycles came.[101] In point of fact, every Governor since Proposition 13 passed has had to confront periodic massive deficits when the economy went into recession.[102] The boom and bust revenue cycles, and the lack of experience the elected officials had in dealing with them, only added to the intensity over the fight for resources between traditional state services that now had to compete against an array of local programs.[103]

Proposition 13 caused one final, and unintentional, change in California–that being the explosion in initiative campaigns. Prior to Proposition 13, 52 ballot initiatives had been on the ballot over the last 30 years, or about 2 per election cycle. In the 30 years since Proposition 13, over 156 propositions have been on the ballot, or an average of 10 per election cycle.[104] Much of it was what was called "ballot box budgeting." That is, voter initiatives for such things as: creating a state lottery, mandating the amount of tax dollars going to public schools, or earmarking revenues for programs such as mental health or medical care.[105] All of this ballot box budgeting lessened the discretionary funding options of the state and created even more of a life and death struggle for those funds that were left. In addition, a cottage industry developed around the initiative process and a flood of money poured in to pass or defeat what were largely special interest ballot measures.[106] Since 2000, more than $2 billion has been spent on initiative elections in California.[107]

In 2016, the Howard Jarvis Taxpayers Association estimated that Proposition 13 had saved homeowners over $528 billion since 1978.[108] Coastal homeowners derived the most benefit as appreciations rates there were the greatest and the property owners tended to stay put. The effective tax rate for San Francisco property owners in 2015, for example, was just 0.6 percent. Palo Alto had a 0.42 percent rate, the lowest effective property tax rate in the nation.[109] This was exactly what Proposition 13 was designed to do—lower property tax rates and then stabilize them.

Californian's, however, by voting for Proposition 13, had unintentionally, but dramatically, shifted power away from their nonpartisan local governments and toward the relatively new, full-time, and increasingly partisan, State Legislature in Sacramento. And as this power increasingly became concentrated at the state level, special interests, who now had more at stake than ever before, also expanded their Sacramento presence. Lobbying budgets, gift budgets and campaign spending were all increased by the Sacramento special interests.[110] The professionalization of political campaigns also increased as a result of Proposition 13 as ballot box budgeting took on a far more prominent role in the state. But despite the incredible consequences, both intended and unintended, that Proposition 13 and the full-time legislature created, the two biggest changes to the State Capitol were yet to take place.

Proposition 140 (1990): Legislative Term Limits

> *"Term Limits cost the Legislature not only the institutional memories of longtime legislators, but also of longtime staffers, because the new legislators often brought in their own staffs."*[111]
>
> Delia Chilgren
> California Regional Counsel, Retired
> Allstate Insurance

> *"Of all the mistakes I've made in public life, the one I regret the most is advocating for term limits for the legislature."*[112]
>
> Tom McClintock
> United States Congress, 2008-Present
> California State Senate, 2000-2008

Noted California political consultant Darry Sragow has maintained that about once every twelve years, California voters get completely dissatisfied with state government and pass an initiative designed to dramatically alter the political landscape.[113] Much as Sragow predicted, twelve years after Proposition 13, California voters in 1990 enacted another major reform when they voted for Proposition 140. This was the initiative to enact term limits for state elected officials.

Proposition 140 came about largely because of then Assembly Speaker Willie Brown. Brown was a controversial, colorful, and highly effective Speaker of the California State Assembly. Most surveys at the time indicated that voters favored term limits as a way of getting rid of Willie Brown.[114] Pete Schabarum, a County Supervisor from Los Angeles, wrote an initiative that would impose the strictest term limits on any state legislature in the nation. It stated that an Assemblyman could serve no more than six years, and a Senator could serve no more than eight years.[115] A legislator could, in theory, serve in both houses, one after the other, for a total of fourteen years. After that, the individual was banned for life from ever serving in the State Legislature.[116] In addition, Proposition 140 also eliminated member pensions and cut legislative budgets by 38 percent.[117]

Proponents argued that term limits would end career politicians, save taxpayers $60 million dollars by reducing legislative budgets, create more competitive elections, and end the grip that special interests had on Sacramento state politics.[118] Term limited legislators, it was thought, would be more attuned to the public than to the special interests.[119] Schabarum stated that Proposition 140 would, "remove the grip vested interests have over the Legislature."[120] Mike Zapler of the *San Jose Mercury News* stated, voters enacted "the strictest term limits in the nation… to end the stench of greed and vote-selling in Sacramento…"[121]

The establishment, including Speaker Brown and many of the Sacramento special interests, opposed the initiative and contributed heavily to try and defeat it.[122] Opponents of the measure outspent the advocates by a margin of 31 to 1.[123] In addition to the arguments that Proposition 140 would limit voting rights and take away the constitutional right to vote for the candidate of your choice, opponents charged that it would force elected officials to become even more dependent on entrenched bureaucrats and lobbyists.[124] Charles Price made this prediction: "…what the future promises in the Legislature (under term limits) is weak leaders, instability and rapid turnover. What the future holds in the lobbying community is seniority, experience, and influence."[125] And veteran lobbyist Mike Dillion predicted, "Lobbyists that represent groups with PAC's will have a distinct advantage in gaining access."[126]

As the campaign drew to a close, Californian's were almost evenly divided on the issue.[127] But on Election Day in 1990, voters in the state passed Proposition 140 by a slim 52 to 48 percent margin.[128] Most political observers felt Californians were simply mad at their elected officials, mainly Speaker Brown, and punished them with Proposition 140.[129] Along with California, Colorado and Oklahoma would also enact term limits on their state legislatures in 1990.[130] Subsequently, twelve other states across the country would follow suit.[131]

Proposition 140 did not have an immediate effect on legislative seniority. That is because sitting members could complete a six or eight-year term, depending on which house they were in, prior to being forced out. But as term limits took hold in 1996, legislative turnover increased dramatically. In the 1996 elections, 75 percent of the lower house members were forced from office.[132] The vast bulk of Assembly members now had two or less years of experience.[133] After 1998, at least 33 percent of the lower house and 20 percent of the upper house would be termed out every two years, resulting in a combined turnover rate of around 28 percent per election cycle. This resulted in the entire legislative body being turned over every eight years.[134]

Proposition 140 did exactly what the law stated it would – cut the legislative budget by 38 percent, limited lawmakers to six or eight year maximum terms, and ended legislative pensions. But it was the unintended consequences of the term limit measure that, in the years to come, would empower a host of unelected powerbrokers, rob the elected body of its institutional memory, send a flood of experienced staff into the Third House, and by most accounts, devastate the effectiveness of the California State Legislature.

A study done by the California Journal in 1993 showed that prior to term limits approximately 11 percent of the lobbying corps had eighteen or more years of experience. But 16 percent of the elected legislators (18 of the 120 members) had eighteen or more years of experience.[135] So there was an approximate balance in experience between the elected officials and the special interests. As longtime lobbyist Delia Chilgren stated, "Before Proposition 140 there were legislators and committee staffers who had incredible depths of knowledge about any given subject matter.[136] Longtime staffer Jackie Hanlon put it this way, "Prior to term limits members knew their subjects. Oftentimes they knew more than the department heads themselves."[137]

But as term limits kicked in, the long-standing incumbents were forced to leave, replaced by wave after wave of freshman legislators with little to no experience in state government. As Lynda Powell explained, legislators in term limited states have less knowledge and substantive expertise than their more experienced predecessors.[138] And Steve Swatt stated, because there were so many new members, "Inexperienced freshman legislators were now chairs of committees that they had little knowledge on."[139] One Assembly member, overwhelmed by the complexities of the various issues she was now confronted with, stated that she would need "ten years to learn enough to make a difference."[140] This sentiment was backed up by the Senate's Chief Executive Officer, long time staffer Greg Schmidt, "It takes so much time to become proficient in water policy, or transportation. You just can't do it."[141]

Because of a lack of experience, many legislators turned to any source where they could find institutional memory to help them navigate the new waters they found themselves in. Some found that help among long time staff, but even more found it with lobbyists in the Third House. This help can be measured in the rise of sponsored bills that increased dramatically after term limits took hold.[142] A sponsored bill is proposed legislation that is drafted by a special interest. A *San Jose Mercury News* investigation done in 2010 documented the rise of sponsored bills after term limits took effect.[143] It concluded that term limits had created a system where neophyte legislators relied on lobbyists for legislative ideas; help in shepherding those ideas through the process; and campaign cash.[144] Some freshman lawmakers admitted that over 90 percent of their bills were given to them by the special interests.[145]

But not only was the institutional memory among the elected officials vanishing, long time staff were leaving almost as fast as the new members were coming in.[146] That is because Proposition 140 mandated a 38 percent cut in the Legislature's budget. As with most organizations, labor is the primary cost of doing business. The Proposition 140 mandated cuts in the legislative budget therefore, would mostly have to come out of the people side of the equation. But the unexpected way the cuts were made would actually end up costing the Legislature a lot of their most experienced personnel.[147]

Both houses offered "golden handshakes" if long time staff would take early retirement.[148] Many did and thereby minimized any terminations of younger, less experienced, staff. Some of the staff who left really did retire. But many more went to work using their expertise for their new bosses in the Third House.[149] As long time legislative staffer Maeley Tom stated, "The Legislature is no longer considered a long-term career occupation (for staffers). It is more of a stepping-stone to other opportunities…"[150] This would be the beginnings of a serious trend toward the revolving door in Sacramento where staff and some members would look at the Third House as their ultimate goal. And as former Washington D.C. lobbyist Jack Abramoff has stated, the lure of post-public service lobbying employment is one of the greatest potential sources of corruption in government.[151]

At the time of Proposition 140's passage in 1990, the Legislature had approximately 2,500 staff.[152] But within four months, 1,650 of them had taken the enhanced buyouts and left.[153] That represents a 66 percent reduction in staffing levels in just four months. And the records also show that these were the experienced staff that were leaving.[154] The nonpartisan Legislative Analyst's Office was decimated. The Senate Education committee had three of its four consultants leave. The Assembly Ways and Means Committee lost experts on taxation, local government, public schools, social services, and toxics. Both house parliamentarians left.[155] Overall, the Legislature made $56 million dollars in cuts to a $171 million-dollar budget.[156] Not until around the year 2000 would the Legislature recover and then finally surpass the pre-Proposition 140 spending levels.[157]

Another unanticipated consequence of Proposition 140 was legislators in term-limited states, as Kisser and Straayer demonstrated in their study, tend to work on smaller issues that can be accomplished in a shorter time frame.[158] Short term, rather than long-term thinking, per their study, has been the unintended result of term limits. As one legislator confided to a lobbyist, "What do I care what happens after I am gone? I won't be here to see the results."[159] Former Assembly Republican Leader, and current lobbyist. Bob Naylor stated that term limits have produced a short-term mentality and made lawmakers increasingly reluctant to even consider proposals that might be opposed by the major special interests. For the Democrats those major special interests would be labor, and for the Republicans, anti-tax groups.[160] Jerry Roberts and Phil Trounstine also stated that Proposition 140 rewarded short-term, self-interested political thinking more than long-term policymaking in the public interest.[161]

Proposition 140, because it opened up so many seats every election cycle, also increased the number of campaigns for those open seats.[162] This was yet another unanticipated result of the initiative. Beginning in 1996, when Proposition 140 came into full force, longtime incumbents were termed out and there was suddenly a plethora of open seats with a steady stream of subsequent openings every two years. Special interests soon seized upon this opportunity to go into primary election contests and try to elect someone who already shared their beliefs.[163] They did this via generous campaign donations and supplying the campaign with volunteers. As a result, campaign spending in 1996 increased by 22 percent over the previous election cycle.[164] This was a trend that would only intensify in the years to come as special interests increasingly saw the opportunity to assist in determining the outcome of primary elections in open seated contests.

With the onset of the full effects of Proposition 140, the power balance shifted dramatically away from the elected officials and toward the unelected special interests. Gone were the twenty-year veterans, replaced by neophyte lawmakers that were dependent on their staffs and lobbyists in the Third House. Former Senate and Assembly Republican Leader Jim Brulte stated that term limits fundamentally altered the dynamic between special interests and legislators. “When I was Republican leader in the Assembly, special interests needed me. Today, the leadership in the Legislature needs the special interests.”[165] A dangerous combination was thus developing; first with the full-time legislature that was the co-equal of the other branches of state government; then with Proposition 13’s concentration of power within that legislature; and with the passage of Proposition 140, that very powerful co-equal branch of government was now being manned by very inexperienced legislators and their staffs. As a result, the playing field of this very powerful state government was being dramatically tilted in the favor of the lobbyists and special interests that were vastly more experienced than the other players. But one last jolt would alter the terrain even further in just ten years.

Proposition 34 (2000): Campaign Finance Reform

> *"California politicians think about campaign money when they get up in the morning, they think about it all day and they think about it at night."*[166]
>
> Art Agnos
> California State Assemblyman 1976-1987
> Mayor, San Francisco 1988-1992

> *"Elected officials now depend on lobbyists to fund their campaigns…"*[167]
>
> Steve Swatt
> Game Changers, Twelve Elections that Transformed California

Money in American politics isn't as old as the republic, but almost. It began with the campaign of Andrew Jackson, the first person to seek the Presidency that was not of independent means. And although Jackson in his 1824 and 1828 campaigns didn't raise money for the office himself, his surrogates and workers did.[168] It didn't take long after that for the first campaign finance law to be enacted by Congress. In 1867 Congress declared that employees of the federal government could not solicit campaign donations from naval yard workers.[169] And over the next 150 years many additional such attempts to get money out of politics, and separate campaigning from governing, would be made. One of these attempts was California's Proposition 34 in the year 2000.

State Senator Ross Johnson, along with political activist Tom Knox, wrote Proposition 34 and convinced the Legislature to place it on the November ballot.[170] It dealt with campaign finance reform and the effort to contain campaign costs and reduce the influence of special interests. Specifically, Proposition 34 declared that candidates for state office would be limited in how much money they could accept from any one source. In the case of state legislators, the maximum amount a donor could contribute was $3,000. Statewide, candidates could accept $5,000, and gubernatorial candidates up to $20,000. Contribution amounts would be indexed to inflation.[171] In addition, other facets of Proposition 34 would prohibit lobbyists from giving any money themselves, or acting as a conduit for money into the candidate's campaigns.[172] Inducements were also put in place to encourage candidates to accept spending limits, such as getting a ballot statement that all voters would receive in the mail.[173]

The objectives of the proposition were clear, curb the amount of money raised and spent on political campaigns, and thus curb special interest influence over the political process. Campaign reform is always popular with voters and on election day the people of California overwhelmingly approved Proposition 34 by a vote of 60 to 40 percent.[174]

But as the proposition went into effect, literally none of the stated goals of the initiative would be met. In fact, just the opposite would occur through a host of unintended consequences. Rather than contain costs, as Proposition 34 hoped to do, campaign spending exploded via a new spending vehicle—the independent expenditure.[175] And since these independent expenditure committees were not controlled by the candidates themselves, but rather by consultants hired by the special interests, there was less accountability to the voters. Additionally, since most independent expenditure campaigns utilized good government sounding names, there would be less transparency as voters had trouble discerning who was truly behind all the campaign ads. Finally, since Proposition 34 did nothing to contain the cost of campaigning, only the amounts donors could give, candidates would spend even more time fundraising than they did prior to the initiative's enactment.[176]

The first unintentional impact of Proposition 34 was over the amounts of time candidates had to spend fundraising. Historically, the cost of campaigning in California has outstripped inflation by a sizable amount, so the initiative's indexing of contribution limits did little good in terms of keeping up with rising campaign costs.[177] Television, radio, direct mail, office space and other campaign related expenses all continued to rise, sometimes dramatically. As campaign costs rose, therefore, the time required to raise the amounts of money necessary to run a successful campaign also increased. Candidates had to broaden their financial base, talk to more people, and spend more time on the phones dialing for dollars, just to raise the same amounts of money they had done in the past. And if they wanted to raise more to keep up with rising costs, they had to spend even more time fundraising. As longtime political fundraiser Jack Barnum stated, "Candidates spend more time fundraising today than at any time in my 38-year career in campaign finance."[178] Fundraising under Proposition 34, therefore, took on even greater importance in California politics.

And the more time legislators spend fundraising, per Lynda Powell's empirical evidence, the greater the influence of the donors on those candidates.[179] This fact was underscored by thirty-three-year veteran lobbyist Richard Ratcliff when he stated, "I understand from a legislator's standpoint that they only have so much time. They have to raise campaign money, so they have to prioritize who they see based on this."[180] Proposition 34, rather than lessen the influence of money in politics by lowering the amounts candidates could take, actually, and inadvertently, increased that influence by increasing the amounts of time needed to fundraise.[181] "Money talks, sometimes it shouts," was the conclusion of a Fair Political Practices Commission report on the effects of Proposition 34 in terms of money and political influence.[182]

But what happened to all that money that the special interests could no longer pour into campaigns? The reformers might have hoped that it would just go away, but it didn't. In her study of the influence of money in state legislatures, Lynda Powell found that laws adopted to limit or ban campaign contributions alter how money flows into politics much more than they reduce the total inflow.[183] One reason for this, according to Powell, is that donors and professional fundraisers adapt quickly to any new finance regulations and find creative ways to get around the intent of the new laws.[184] As one long time legislative staffer remarked, "The special interests will always find a way.[185] Adjunct Professor on campaign finance, and current State Assemblyman Brian Maienschein, concurred and believes that money in politics is like water rolling down a hill: you can damn it up in one location only to have it overflow into a lot of unanticipated directions.[186] This is exactly what took place as a result of Proposition 34.

According to the FPPC analysis on the effects of Proposition 34, the unintended results of placing limits on what PAC's and individuals could give directly to the candidate, created a large, and largely unregulated, pool of funds that were then dispersed via a new spending vehicle called the independent expenditure.[187] An independent expenditure is a campaign either for or against a candidate running for office that is not connected to, or controlled by, the campaign being run by the candidate. In California, an independent expenditure campaign can raise and spend funds in unlimited amounts. This is because the federal courts have ruled that independent expenditures are protected under the free speech provisions of the constitution.[188] Independent expenditures were probably the biggest of the unanticipated occurrences that arose from Proposition 34 and they proliferated after the passage of Proposition 34.[189]

Large special interests with very large political action committees (PAC's), like public employee labor unions, the California Chamber of Commerce, the California Medical Association, the California Dental Association, the insurance industry, the realtors, the oil companies, and the trial lawyers, would all come to utilize the independent expenditure.[190] In the years after Proposition 34 they would use these independent expenditure committees to massively leverage their power in the State Capitol. They did this in one of two ways—either by selecting and electing candidates of their choice in primary elections, or through intimidation of sitting members based upon the sheer size and power of their PAC's.

The President of the California Chamber of Commerce, Allan Zaremberg, explained how the process of how "select and elect" works in terms of finding candidates who share your beliefs and then funding their campaigns. "If we can find Democrats and Republicans who share (our) philosophy, then that's our job to try to help them get elected, vs. somebody that doesn't."[191] In the 2008 election, the Chamber's JobsPAC spent $2.2 million attempting to select and elect candidates of their choosing.[192] From 2002 to 2008, the combined total that California special interests spent trying to select and elect candidates was more than $110 million.[193] A recent special election in 2015 for a state senate seat cost over $12 million.[194] Most of this $12 million was in the form of independent expenditures and most of that was from Sacramento special interests.[195]

But the extremely large amounts of campaign funds that independent expenditures control can also act to not so subtly intimidate sitting members of the Legislature. As

Shane Goldmacher stated in his piece for the *Sacramento Bee,* independent expenditure committees “strike fear in the sitting lawmakers that one wrong move could cost them their job.”[196] West Sacramento Mayor and former State Assembly candidate Christopher Cabaldon outlined the strategy behind large independent expenditure campaigns; the idea is to “make such a dramatic showing that other successful candidates have to take notice—and at least think twice before they stray from the orthodoxy.”[197] Retired State Senator Sheila Kuehl weighed in, “If I piss off SEIU (a public employees union) and I’m vulnerable and I need their help in a contested election—not just money but boots on the ground—then I’m going to think twice about crossing them.” The fear isn’t just of big unions, Kuehl stated, but of all moneyed interests like big oil, big real estate, big medical, big business.[198]

Because candidates have come to depend on the special interests to finance their campaigns, both legislators and staff often seek to ingratiate themselves to the major financial players, and this can spill over into the legislative arena as well.[199] A 2012 survey of all 50 state legislatures conducted by Lynda Powell found that on average legislators believed that political contributions exercised a substantial influence on legislative activity.[200] Perhaps not on straight up or down votes on the floor of the legislature, notes Powell, but in the influence that can be seen in the drafting or refining of bills, as well as in the ability to kill bad bills.[201]

The California Chamber of Commerce provides one such example of the influence of a major financial player in the State Capitol. The Chamber has millions of dollars that it utilizes for independent expenditure campaigns.[202] It also has a list of what it calls “Job Killer” bills. These are legislative bills opposed by the Chamber of

Commerce. Over the last fifteen years, the Chamber has had an outstanding kill rate of 91 percent of the bills it opposes.[203]

Another example of the power and success of money in Sacramento are the public employee unions. Labor represents the single largest contributor to Democratic campaigns in California.[204] In addition, their independent expenditures dwarf all other participants by a very wide margin. Per a report done by California Common Sense, labor unions represent the largest source of independent expenditures in California. Labor backed independent expenditure committees spent nearly 50 percent of all independent expenditure dollars between the years 2000 and 2012, more than three times their nearest competitors.[205]

What have been the results of these expenditures? Per former staffer and now longtime Sacramento lobbyist Mark Hobson, the number one question he gets from Democratic offices when lobbying for his clients is, "Where's labor on this?" And if you don't have the backing of labor, he states, you can forget about getting your bill passed.[206] Labor's total domination on issues affecting their members usually works behind the scenes, but sometimes bubbles over onto public display, as when a spokesperson for the Home Workers Union publicly dressed down the Democrats on the Budget Conference Committee:

> *"You know the power, the backing, helped many Democrats get into office who would not have done so without the assistance of the homecare workers union. We helped to getcha into office, and we got a good memory. And come November, if you don't back our program, we'll help to get you out of office."*[207]

And Jan Emerson of the California Hospital Association, simply stated, "In order to be an effective association, you have to have a well-funded PAC."[208]

With the rise of the independent expenditure came another unexpected consequence of Proposition 34, that being reduced transparency. The first thing an independent expenditure committee does is file a name with the Secretary of State's Office. These names are almost always good government sounding groups like *JobsPAC*, which is actually big business represented by the state Chamber of Commerce; or *Neighbors United for a Stronger Middle Class*, which is public employee unions; or *The Alliance for California's Tomorrow*, which is really tobacco, oil, and the real estate industry.[209] These PAC's then run independent expenditure campaigns either in favor of, or opposed to, particular candidates. The good government sounding name appears in all the advertisements, and in very small type, the major donors behind the committee. Voters must look carefully to see who is paying for the advertising.

In addition, one independent expenditure committee with a good government sounding name will often give to another independent expenditure committee with another good government sounding name, thus creating further clouding as to who is really funding what.[210] A curious voter would have to go online and track down each PAC and see who their donors were to discover who was behind the funding in the campaign. Finance expert Jack Barnum summed up the situation, "Given the busy lives and oftentimes lack of attention many voters pay to politics, this occurrence of checking out who is backing an independent expenditure committee is not one that is apt to happen very often."[211] The end result is that industries or groups that might be perceived negatively by the voters can hide behind good government sounding committees and engage fully in trying to elect their chosen candidates.[212]

Because of this lack of accountability and transparency, the campaigns these independent expenditure committees run are oftentimes far more aggressive, or misleading, than the candidate might run themselves. "Some of the nastiest, dirtiest and downright dishonest campaigns I have seen run over the last 14 years or so (since Proposition 34 was enacted) have been run by independent expenditure committees," stated Carl Rodman, a 40-year campaign veteran. "Independent expenditure campaigns allow the candidates to keep their hands clean, while allowing someone else to do the dirty work."[213] In 2016 for example, an independent expenditure campaign that was financially backed by the oil companies claimed that "The Sierra Club ranks Ling Ling Chang as a top Republican for a healthy environment…." When in fact, the Sierra Club called Chang's record "shameful" and stated she received a zero on a recent environmental scorecard they put out.[214]

Finally, despite Proposition 34's attempt to contain campaign costs, politicians in California have raised more than $1 billion dollars for their elections since its enactment.[215] By 2014, 40 percent of the State Senate campaigns cost more than a $1million to run.[216] And the explosion of independent expenditures have only added to the growing price tag associated with campaigns in California. Between 2000 and 2006, a 6,144 percent increase in independent expenditure spending in legislative races took place.[217] From 2000 to 2009, contributions to candidate controlled ballot measures (that also have no contribution limits) increased 200,000 percent. In the 2014 election cycle, ballot measure and independent expenditure campaigns spent $420 million dollars. And this doesn't include money spent by the state parties or money spent on California Congressional campaigns.[218] But only two years later in 2016, ballot measures and independent expenditure campaign costs increased by 62 percent to $680 million.[219] A tobacco tax measure alone drew $100 million in spending, as did an attempt to regulate the pharmaceutical industry.[220]

Today, the explosion of money into the system via both direct contributions, as well as the independent expenditure campaigns, has made candidates in California almost completely dependent on the large special interests for their elections. In 2016, for example, Tom Lackey and Jacqui Irwin ran for the California State Assembly. Each of them was in a contested race and raised significant campaign funds. Irwin, a Democrat from Thousand Oaks, raised close to $1.4 million.[221] Lackey, a Republican from Palmdale, raised around $900,000.[222] In each of their cases, the vast majority of those funds came from special interests in Sacramento. 87.5 percent of Irwin's campaign contributions came from outside of her district, most of them from the Sacramento special interests.[223] Only 6.3 percent of Lackey's money came from his district, the rest was raised from fellow legislators, the Republican Party, and the special interests in Sacramento.[224] And these numbers do not include the very large independent expenditures that were done by the Sacramento special interests on behalf of each candidate. The truth is today, as Steve Swatt has concluded, "Elected officials now depend on lobbyists to fund their campaigns…"[225] And the problem with this, as Lynda Powell demonstrated, is that special interest influence increases in direct proportion to monetary dependence.[226] And both of these problems are primarily due to the unintended consequences of Proposition 34.

PART III

Putting the Pieces Together: The Unintended Results of the Four Initiatives

Proposition 1-A created a full-time, professional legislature, the highest paid in the nation. But 1-A also created full-time, professional politicians. These full-time professional politicians tended to make reelection their primary concern. They tended to hire more political staff that also made getting their bosses reelected a top priority. Legislators who focus on reelection also give greater priority to raising the necessary funds for a successful campaign. Add to this mix Proposition 34, that by placing limits on the amounts legislators could raise from any one contributor, increased the amount of time members must spend fundraising to keep their jobs. Both Proposition 1-A and Proposition 34 then, led to increased time spent fundraising, and with it, as Lynda Powell has demonstrated, increased concern over donor desires.[227] Since most California State Legislators, as Steve Swatt demonstrated, get their campaign funds from the special interests out of Sacramento, the two propositions had the effect of increasing the concern over what these special interests wanted from state government.

Proposition 13, which came along twelve years after Proposition 1-A, gave this professional full-time legislature unpreceded new power by largely stripping local governments of their taxing authority, and concentrating decision making in the halls of the State Capitol.[228] Because Proposition 13 was a dramatic tax cut, as well as a concentration of power at the state level, fights over resource allocation intensified as tax dollars needed to fund governmental programs diminished. These two factors—fight for scarce resources and a concentration of power—led the special interests to increase their presence in Sacramento by adding lobbyists, increasing their campaign budgets, and spending more on gifts for members and staff. All of these trends within the Third House were designed to increase influence and curry favor with these newly empowered state elected officials.

After the passage of term limits with Proposition 140, however, the legislators went from generally being among the most seasoned players around the state capitol, to being among the least experienced. The cuts in the legislature's budget that Proposition 140 mandated also caused a flood of experienced staff to leave the building, many of them going into the ranks of the Third House. Neophyte members and inexperienced staff then looked to the special interests for institutional knowledge and help with their legislation. Because of Proposition 140, today the special interests are the defacto repository of institutional memory regarding the legislative process and the history behind various issues. The special interests thereby provide an invaluable resource to state legislators and their staff. But they are also a resource with an agenda that is driven by whomever they happen to represent.

Term limits, as Lynda Powell points out, was also a contributing factor in reducing a legislator's desire to work on the big problems the state faces like deteriorating roads, unfunded pensions, income inequality, or lack of water storage; and instead led, them to concentrate on more manageable problems such as the banning of school mascots, allowing barbershops to serve beer, and the naming of the California red-legged frog as the official state amphibian.[229] In other words, legislation that, as one veteran staffer put it, "will have little long term effect on the people of California.[230]

Staff, whose own ranks massively swelled with the passage of Proposition 1-A, had ambitions of their own and began running for legislative seats themselves after 1966.

In addition, after the passage of Proposition 140, the inclination of staff to join the lucrative ranks of the Third House became increasingly common. And as a result of the increased campaign clout Proposition 34 gave to the special interests, both staff and legislator often became reluctant to take on the lobbyists who could now either pave the way for their career desires, or block them.

There is intense partisanship in today's capitol culture. This is due at least in part to the creation of a full-time legislature, as well as the intense battle over resources that became routine since the passage of Proposition 13. The results have been not only intense battles between Republicans and Democrats over taxes and government services, but also between various segments within the largely dominant California Democratic party itself, that at times has pitted environmentalists vs. labor interests, or Central Valley moderates against coastal liberals.[231] So despite the fact that Democrats today hold all five statewide constitutional offices, and have two thirds majorities in both the State Assembly and the Senate, little of substance can be accomplished because of the intense partisan, geographic, and ideological divides within the state.[232]

Finally, Proposition 34 that dealt with campaign finance reform, not only didn't reduce the amounts of money in politics, it dramatically increased it, while at the same time reducing the accountability in how that money was spent. Today, there is more money in California politics than at any time in its history, and almost all of it comes from the Sacramento special interests.[233] And with this dramatic increase of money into the system came an even larger increase in the influence and power of those special interests who wield it.

The special interests today use their money not only on campaigns, but to lavish gifts upon both the legislators and their staffs. A look at the public reports reveals gifts such as tickets to Disneyland; professional sporting events like the San Francisco Giants or Sacramento Kings; concerts like the Rolling Stone or Britney Spears; golf at such exclusive courses as Torey Pines and Pebble Beach; travel to such places as Hawaii, Miami, Cuba, and Brazil; and hotel stays at such locations as the Ritz Carlton.[234] From 2000 to 2014 more than $6 million in gifts to state leaders and their aides were handed out. $900,000 in gifts were given to members and staff from the special interests in the 2012/13 cycle alone.[235]

Gifts, like campaign contributions, are used to form the bonds of friendship. This "friendship" is then used for the purpose of gaining access to the legislator and staff in order for the special interests to state their case on behalf of their clients. Retired ARCO executive George Babikian stated that "getting access to the legislature (via providing free tickets) is one of the key reasons the oil company inked the ARCO Arena sponsorship in the first place." "…Sacramento is where the rules are written in California," Babikian stated. "It was a good way to impress the Legislature."[236] ARCO has given over $430,000 in free tickets to concerts and sporting events to legislators and their staffs from 2000 to 2010.[237] Bob Stern from the Center for Governmental Studies summed up the reality of gift giving to legislators and staff; "There's only one reason (lobbying groups) give tickets: to advance their agenda."[238] Gift giving then, it just one more monetary arrow in the quiver of lobbyist weapons in today's State Capitol.

In summary, the combined effects of the four propositions discussed in this paper resulted in a dramatic power shift away from the elected representatives and toward the unelected lobbyists that now seem to monopolize the Capitol playing field. As a result of the four initiatives, California state politics today is dominated by large special interests that control huge political action committees that can reward friends and punish enemies. They use these large PAC's to "select and elect" neophyte state representatives who already share their vision of government. And with PAC's that have good government sounding names that transfer their funds from one PAC to another, there is now less accountability and less transparency than at any times since campaign contribution reporting began.

And what do these special interests want? Lynda Powell in her book quotes Tom Loftus, Speaker of the House in Wisconsin for the answer; "The truest thing I can say about special interest money is that it is mainly given to buy the status quo."[239] But today, for California—with the greatest income inequality in the nation, large unfunded pension obligations, low performing schools, a severe housing crisis, a bad business climate, highest taxes in the nation along with the highest rates of poverty—clearly the status quo isn't working for anyone but the special interests.[240]

Conclusion—The Irony and the Hope of Direct Democracy

"I do not by any means believe the initiative, the referendum, and the recall are the panacea for all our political ills, yet they do give to the electorate the power of action when desired, and they do place in the hands of the people the means by which they may protect themselves."[241]

Hiram Johnson
Governor of California, 1911-1917

There is an ironic twist of fate in the fact that populist Governor Hiram Johnson introduced the initiative as a method to curb the power of the special interests in

California.[242] Advocates of the four initiatives discussed in this paper also stated that their goals were to curb the power of the special interests. Yet the unintended consequences of all four initiatives resulted not in a tamping down of the special interests, but rather in a dramatic shift of power toward them. Today, because of Proposition 1-A, Proposition 13, Proposition 140, and Proposition 34, the special interests in Sacramento are as powerful as at any time since the days of the Southern Pacific Railroad.

According to the author of *Game Changers*, even Hiram Johnson knew that his direct democracy reforms could be abused: "I am quite aware that this year the referendum has been put to some base uses." He stated in 1914. "I am aware too that the initiative may have been as you would have preferred it should not be used." And he predicted that the time might come again when reforms would be required to right the ship of state and free it from the grip of the special interests. When that time does come, he stated, "the most powerful weapons that you will have for your defense and the perpetuity of what you hold most dear politically, will be the initiative, the referendum, and the recall."[243]

Time will tell if Hiram Johnson's belief in direct democracy was well founded. But if the last fifty years is any indication, for Johnson's direct democracy to work, an educated, informed, and active electorate is required. Otherwise, no matter what the reforms might be, the special interests will, as they did with the four propositions discussed in this paper, generally find a way to tilt the playing field to their advantage. Under such circumstances, the hope of direct democracy will remain but an unfulfilled dream.

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