STATE ADMINISTRATION
FEBRUARY 6, 1981
RM 436

The meeting of the State Administration Committee was called to order at 8:00 a.m. on February 6, 1981 with Chariman Jerry Feda presiding. All members were present except Representatives O'Connell, Pistoria and Azzara who were absent.

Chairman Feda opened the hearing on House Bill 501.

HOUSE BILL 501-SPONSOR, Representative Conn, introduced HB 501 to the committee. This bill limits the maximum aggregate contribution that can be made by any person to a political action committee or group organized to support or oppose any ballot issue to $750. No person associated with such a committee or group may solicit or receive a contribution from a person that exceeds $750 in the aggregate. A person who is convicted of violating these provisions is guilty of a misdemeanor. In addition, a group that receives an illegal contribution must pay from its campaign funds an amount equal to the contribution for deposit in the state general fund. Representative Conn said that she introduced this bill because she thinks there is a need to keep Montanan's active in the initiative process. She submitted to the committee amendments to the bill which she said corrected drafting errors in the bill. A copy of these amendments is attached and is EXHIBIT 1 of the minutes.

PROPONENTS

MIKE MALES, Environmental Information Center, read a prepared statement to the committee. A copy of his testimony is attached and is EXHIBIT 2 of the minutes.

LARRY WILLIAMS, Montana Tax Reduction Movement, Kalispell, Montana, read a prepared statement to the committee. A copy of his testimony is attached and is EXHIBIT 3 of the minutes.

MARK MACKIN, Lobbyist for the Citizen's Legislative Coalition, Butte, Montana, addressed the committee in support of HB 501. A copy of his prepared testimony is attached and is EXHIBIT 4 of the minutes.

MIKE DAHLEM, representing himself, stated that he concurred with the testimony of the other proponents and also wanted to make a couple comments in regard to possible objections to HB 501. He said that some will say HB 501 is unconstitutional. If you will look at the law it does not limit the

HB 501 (cont.)

amount of money that can be spent on any one initiative but it limits the amount that can be contributed by one person or group. Opponents also may say that in order to represent an initiative, large amounts of money are needed. If you will look at the amount of money spent in respect to the success of the initiative you will find low budget operations can be just as effective as initiatives that have large amounts of money spent. He said this is according to recent records in Montana and with an exception of I 84.

MARK MELOY, Montana Small Businessmen's Assoc., stated that the initiative process is good for the small businessmen because it brings a piece of the action directly to them. He stated that their reason for supporting this bill is economic. Businessmen do not always have the time or resources to get up to the legislature let alone try to compete with well established lobbying forces. He stated that the initiative process is a democratic system because it is available to citizens regardless of their economic positions or political standings. HB 501 insures that the economic advantage will never rule without a corresponding base of interest routed within the society.

KELLY JENKINS, representing Common Cause, stated that he has never been the victim of large contributions. I favor HB 501, he stated, because I think it would be a good means of putting a lid on the process and allowing the average person to have more input in the initiative and political process. He said that if there is concern about the constitutionality of the bill, one thing the committee might do is to amend the bill so that it is tied to a state servant. That way there would be no doubt but that the bill would be constitutional. He said that all the contributions could be listed in the secretary of state voters handbook. Any opponent or proponent who received a contribution of over $750 could be denied a place in the handbook. The reasoning behind this would be, you can either buy your way in front of the people or we will give it to you free but we will not subsidize your getting in front of the people and allow you to accept huge contributions.

Representative Conn stated that Representative Harrison Fagg had planned to testify in support of HB 501 but could not make it to the hearing.

HB 501 (cont.)

ART KUSSMAN, Montana Tax Relief Assoc., read a prepared statement to the committee in support of HB 501. A copy of his testimony is attached and is EXHIBIT 5 of the minutes.

OPPONENTS

REPRESENTATIVE BILL HAND, Executive Secretary, Montana Mining Assoc., stated that he could understand the concern behind this bill. He said that federal controls would probably prohibit the legislature from addressing this problem. He said that it should be addressed on the federal level.

GEORGE BENNETT, Mountain Bell and Montana Dakota Utilities, stated that this bill seems to be aimed at big out of state corporations. He said that these corporations have a great economic interest in Montana even though they are run out of Denver, Co. and Bismark, N.D. respectivly. He said that you do not have to be a lawyer to know that what this bill is, is an "economic muzzle" based on the idea that if you have to spend money to support your ideas there is something inherently evil. The corporations have been held by the courts to have a right to participate in the political process on ballot initiatives because under certain circumstances those corporations may be fighting for their economic lives. This bill would prohibit corporations from getting their ideas across in situations where it may be ential for their survival. He said that he cannot believe that Montanans are influenced deeply by "media bliss". He said this bill has serious constitutional defects because it attempts to cut off the free flow of ideas which have always been the foundation of our democratic process.

GARY LANGLEY, WETA and also former campaign manager for Montanans for Jobs and Mining, stated that when they were battling Initiative 84 they had to raise large amounts of money to counteract some very deceptive ballot language. The only place we could raise this kind of money, he said, was from mining companies that are headquartered out of state. We raised approximately $100,000 from 10 or 12 mining companies. The proponents to Initiative 84 were subsidized by the Equal Time Act so we needed that funding. He also said that he could see no difference between out of state corporations contributing money for initiatives and entities contributing money to environmental groups to operate the state of Montana.

HB 501 (cont.)

BEN HAVDAHL, Montana Motor Carriers Assoc., urged the committee report a do not pass on this bill because it puts undue restrictions on their members of the pact who wish to make contributions to express their views on certain initiatives.

JANELLE FALLAN, Montana Chamber of Commerce, arose in opposition to this bill. She said that we do have disclosure in reference as to how much money is spent on campaigns. It is all public record. She said the proponents of this bill would make you believe the voters of Montana could be bought rather easily.

DON MURRAY, Pacific Power and Light Company in Kalispell, cited an example of a case intitled C & C Plywood vs. Hanson in 1978 in which the court ruled that it was unconstitutional to prohibit contributions or expenditures by any incorporated organization in order to advocate the sucesss of any political candidate or ballot issue. The court found it to be an infringement on both freedom of speech and association. In terms of the unconstitutionality determined by that court proceeding, he stated, HB 501 is indistinguishable from the statute language by that decision.

JACK LOWS, CCF & D, stated that his office did not wish to take the position as pro or con to HB 501. He said that in regard to the constitutionality of it, a nearly identical statute was recently upheld by the supreme court in California. A copy of the "California Reporter" which he referred to is attached and is EXHIBIT 6 of the minutes.

QUESTIONS BY THE COMMITTEE:

Winslow: Mr. Williams, if money does not win the campaign, why the limit?

Williams: The potential abuses that exist are really ripe for someone within or out of the state of Montana to buy an issue on the ballot.

Winslow: This money that comes in from out of state is good for the state economy and the small business is it not?

Williams: 80 to 85% of the money is spent on the media and very little is spent on printing etc.

QUESTIONS (cont.)

Spilker: If you believe that the amount should be limited, why didn't you limit yourself in regards to I 86?

Williams: At that time there were no limits. That was when I first recognized that a problem existed. It was the first initiative I was involved in and we got started too late to raise an adequate amount of money.

Dussault: Mr. Murray, when a corporation contributes money to an individual campaign, it can only be done through a pact, is that correct.

Murray: Yes.

Dussault: When a corporation contributes to a ballot issue it can be done directly?

Murray: Yes.

Dussault: It seems obvious to me that there is a separate constitutional question in this bill and in the issue that you referred to.

Murray: In the C & C Plywood vs. Hanson case the courts ruled that there was a restriction to the rights of corporations to speak and write things down and the right to listen.

Sales: How was the $750 figure arrived at?

Conn: It was felt that in this time of inflation, that figure was one that individuals can afford to contribute without financial strain and it is consistant with corporate contributions.

Williams: I felt that the limit could be higher.

Spilker: I am confused about corporate contributions to pacts?

Fallan: Corporations do not contribute to individuals, they may form individual acting committees that can contribute.

Representative Conn closed the hearing on House Bill 501.

HOUSE BILL 520-SPONSOR, Representative Bardanouve, introduced this bill at the request of the Public Employees' Retirement System. This bill defines certain public pension plans as separate retirement systems for the purpose of social security coverage; empowers the governor to authorize a referendum for social security coverage for these systems; permits the Public Employees' Retirement Division to use a portion of the interest money from the investment of social security funds to defray administrative costs; and modifies the interest penalty for delinquent social security payments from political subdivisons.

PROPONENTS

LARRY NACHSHEIM, P.E.R.S., went through the sections of the bill and explained the changes to the committee. A copy of his testimony is attached and is EXHIBIT 7 of the minutes.

OPPONENTS

There were no opponents to House Bill 520.

QUESTIONS BY THE COMMITTEE:

McBride & Sales: Are there bodies that are not reporting on time?

Nachsheim: Yes, at election time we have a problem because even with the penalty some of these counties make more money by investing the money. We waive the majority of the penalties. We are not trying to raise revenue we are just trying to get them to comply.

Representative Bardanouve closed the hearing on House Bill 520.

HOUSE BILL 502-SPONSOR, Representative Anderson, stated that this bill permits search and rescue personnel to use blinker-type red lights on their private vehicles when on emergency duty. It also removes the inscription requirement and size limit for these lights when used by firefighters. He said that this bill has been termed the "Red Light Bill".

PROPONENTS

ART KORN, Montana Volunteer Firefighters' Assoc., passed out amendments to the committee. He explained the amendments. (SEE EXHIBIT 8a, 8b, 8c,) He said that since the bill was drafted he had gotten together with the volunteer

HB 502 (cont.)

emergency medical personnel and decided to put in these amendments. The amendment dealing with revolving red lights is because presently, he stated, we are in violation since we use revolving lights as well as blinking.

OPPONENTS

There were no opponents to House Bill 502.

QUESTIONS BY THE COMMITTEE:

Kropp: Captain Miller, do you see any problem with this legislation?

Miller: I really have no feelings one way or the other. There should be some guidelines on who will qualify to use these lights.

Winslow: Would they still have to abide by the speed limits.

Miller: There would be no authority to violate any traffic laws.

Dussault: Who would authorize the use of these lights to the volunteer medical personnel?

Korn: I had not thought of that amendment, but it should be specified in the bill and it should be the Chief of the fire department.

Representative Anderson closed the hearing on House Bill 502.

HOUSE BILL 586-SPONSOR, Representative Kanduch, introduced HB 586 to the committee. This bill requires an agency to prepare a statement of the estimated economic impact of adopting, amending, or repealing a proposed agency rule. This statement must be sent to the Administrative Code Committee and filed with the secretary of state for publication in the Montana Administrative Register. The Committee may refuse to accept a statement, and an agency may not continue rulemaking proceedings until the Committee accepts the agency's statement.

HB 586 (cont.)

PROPONENTS

DAN MIZNER, Montana League of Cities and Towns, arose in support of HB 586. He said that one thing that happens is the legislature spends 90 days talking about what happens at the local level and then we spend 20 months fighting with the state agencies who impose upon the local government by rulemaking expenditures. In local government today somewhere between 70 and 85% of your budget you have no say over, because you have rules and regulations imposed upon you and if you don't do them you have fines and penalties. We are asking in this bill that not only the legislature do something about the budget, but that we impose upon the state agencies something to do about it. You may want to amend the last part of the bill.

OPPONENTS

JOY BRUCK, League of Women Voters in Montana, stated that the LWV has no quarral with the Code Commission requesting an economic impact statement when they feel one is needed, but to request an agency to prepare a statement for each rule is cumbersome and unnecessary. And again, she stated, this bill gives decision making powers that belong to the entire legislature. We have followed the interim activities for several sessions and understand the problems the Legislature faces during the long 21 month interim, particularly the code committee and the finance committee. This is one of the reasons we keep pushing for annual sessions. We believe by meeting more often in addition to having the oversight committees serving in the "watchdog capacity" as they do now, the Legislature as a whole would gain more strength, and have more control over the executive.

JOHN NORTH, Department of State Lands, submitted prepared testimony to the committee. A copy of his testimony is attached and is EXHIBIT 9 of the minutes.

DAL SMILIE, Department of Social and Rehabilitation Services, read his testimony to the committee. A copy of his testimony is attached and is EXHIBIT 10 of the minutes.

N. A. ROTERING, Department of Institutions, gave concurring testimony in oppositon to HB 586.

DON Mac Intyre, Department of Natural Resources, appeared in opposition to House Bill 586. He stated that the bill

HB 586 (cont.)

is overkill. He said that HB 329 should have been looked at at the same time as this bill. He said the proposed amendments in HB 586 could have been implemented in HB 329 but in this bill it creates problems. He said that an impact statement can be requested from the Administrative Code Committee if necessary.

LARRY WIENBERG, Department of Revenue, arose in opposition and stated that he agreed with other opponents and wanted to point out that the state provides the laws for local government and they should provide the funding.

QUESTIONS BY THE COMMITTEE:

Dussault: Mr. Mizner , can you give me three examples of rules that had impact on local government last year.

Mizner: The building Code implementation and EPA rules, which have to do with solid waste at local levels.

Dussault: I asked for three, but relative to those two, did you approach the administrative code committee and request an impact statement?

Mizner: No not at that time, we have several requests in now.

Dussault: Have you caused resolutions to appear in this session that are results of these rules?

Mizner: Yes.

Representative Kanduch Closed the hearing on House Bill 586.

HOUSE BILL 580-SPONSOR, Representative Feda, introduced this bill at the request of the Montana Salary Commission and the House State Administration Committee. It sets salaries for elected state officials, supreme court justices, district judges, the commissioner of campaign finances and practices, the chairman and members of the state tax appeal board, and legislators. He turned the testimony over to the members of the Salary Commission.

JOHN HOYT, Salary Commission, explained the reasoning behind the proposed salary increases made by the commission.

HB 580 (cont.)

A copy of the "Report and Recommendations of Montana Salary Commission" is attached. His testimony was a summary of this report. (SEE EXHIBIT 12)

JEAN LeBAR, Montana Salary Commission, stated that we are way behind other states in comparison to salaries for elected state officials except for the Attorney General.

ARNOLD RIEDER, Salary Commission, said that the commission had worked hard to come up with these figures and he thought they were fair. However, he said, inflation is a real problem and it has to be stopped. By raising up these salaries to where they probably should be only feeds this "cancerous problem". He said that it is an honor and a priviledge to serve in the State Government and high salary does not necessarily mean you will get better people.

TOM HARRISON, Montana Judges Assoc., concurred with Mr. Hoyt's testimony. He said the salary has to be proportionate to the responsibility and dedication you expect people to put into the jobs. He said that in the case of judges, they are prohibited from using all the skills and background they have aquired in any other profession. Their judges salary is their only salary whereas other elected officials may practice law on the side, as an example.

OPPONENTS

There were no opponents testifying on House Bill 580.

QUESTIONS BY THE COMMITTEE:

Phillips: Mr. Hoyt, have you figured out the total cost of this?

Feda: A fiscal note has been ordered on the bill.

Kropp: When you figured the increase for the Governor's salary, did you figure in all the benefits?

Hoyt: The benefits do not have that much monetary value.

QUESTIONS (cont.)

Spilker: When this report came out, I went to the Legislative Council to talk to the attorney who helped you draft the report. I was very upset with your judgement about "foreign special interests wanting important parts of Montana while paying only lip service to the concerns of her residents" in which you implicated ARCO and the lobbyists at this session. I don't feel you should be making this kind of judgement.

Hoyt: I did not intend to offend anyone intentionally. At the time this report was written, we had just lost a significant part of Montana due to ARCO's interests.

McBride: Could you followup on the comparison with these salaries to other states.

LeBar: The report I have is for fiscal 81. I will check on it.

Dussault: It would be very helpful to the committee to have a list of these comparisons. Could we get this before taking any action on this bill?

Feda: We will get a copy for the committee from the legislative council.

Kropp: I see Mr. Bill Opitz from the Public Service Commission is here. Would you like to comment?

Opitz: I have a comparison sheet that I would like to pass out to the committee. (SEE EXHIBIT 11)

A motion was made and seconded to adjourn at 11:15 a.m.

Respectfully submitted,

G. C. "JERRY" FEDA, Chairman

Cathy Martin'Secretary

(1)

EXHIBIT 1

AMENDMENTS TO HB 501

1. Page 1, line 13.
Following: "to"
Insert: "all"

2. Page 1, line 14.
Strike: "committee"
Insert: "committees"
Strike: "group"
Insert: "groups"

3. Page 1, line 21.
Following: "issue"
Strike: "such as a"
Insert: "including the"

4. Page 1, lines 23 and 24.
Following: "which"
Strike: "in the aggregate exceeds $750 or which is submitted in the name of another."
Insert: "violates subsection (1) of this act."

(2)

EXHIBIT 2

House State Admin. Committee
6 February 1981

TESTIMONY IN SUPPORT OF HB 501

We support passage of HB 501 (limiting single donations to ballot issue campaigns to $750 maximum) for several reasons:

(1) Enormous ballot issue campaigns are overshadowing candidate races. In 1980, nearly $750,000 was spent on four ballot issue campaigns -- more than was spent on the campaigns of 125 legislators who will consider around 1,500 issues during the session.

(2) Ballot issue campaigns have grown exhorbitant because contributions to candidates are limited; contributions to ballot issue committees are unlimited. HB 501 makes the rules of the game consistent for both.

(3) The concept of limitations on single donations has been upheld by both the California and U.S. Supreme Courts. The California decision stated: "Voters lose confidence in our governmental system if they come to believe that only the power of money makes a difference. . .Appropriate limitations on large contributors remains a constitutionally valid means of dealing with undue influence by moneyed interests in the electoral process."

(4) Large, out-of-state interests are dominating the Montana ballot issue process. In 1980, 75% of all money spent on Montana ballot issues came from out-of-state donors, while 62% came from the 26 largest out-of-state contributors. Two contributors kicked in $66,000 and $51,000, respectively, more than the average contributions of 5,000 Montana citizens.

(5) HB 501 will enable Montana citizens, businesses, and organizations to compete with large, out-of-state interests, which is essential to maintain local control over the outcome of our state's ballot issue campaigns. HB 501 applies the same rules to all donors and deserves passage.

Mike Males
Environmental Information Center
P.O. Box 1184, Helena 59601

EXHIBIT 3

(3)

MONTANA TAX REDUCTION MOVEMENT

Larry Williams & Ken Nordtvedt, Co-Chairmen P.O. Box 1781 Kalispell, Montana 59901 (406) 755-2361

TESTIMONY IN SUPPORT OF HOUSE BILL 501

by Larry Williams

I urge your support of House Bill 501 for two reasons. First, as it stands right now, in terms of money, it is too easy to get an initiative on the ballot. That's because there are simply no limitations on any way whatsoever on raising funds to qualify initiatives in Montana.

It would be very easy for someone to raise, say, $30,000 to $50,000, which would be more than enough to promote the idea of an initiative and circulate the petitions; and qualify a concept that could be potentially dangerous on environmental, social, governmental, or business issues.

The forces behind, say, legalized gambling or prostitution, would not have much trouble raising the necessary funds. All that's basically needed is one large contributor, corporate or private.

By placing a $750 limitation on contributions you will be preserving the integrity of the initiative process to make certain that initiatives in Montana are not purchased and placed on the ballot box like so much candy at the store.

MONTANA
TAX
REDUCTION MOVEMENT

Larry Williams & Ken Nordtvedt, Co-Chairmen P.O. Box 1781 Kalispell, Montana 59901 (406) 755-2361

Secondly, House Resolution 501 will be equally effective after an initiative has qualified for the ballot in that it will prevent massive out-of-state corporate contributions from continuing to buy or sway ballot issues. We have reached a ludicrous point in Montana where the initiative issues have received more dollars, and, thus, more attention, than major statewide and federal campaigns; campaigns where decisions of four to six years are required, versus initiative decisions that will most likely be changed by the Legislature anyway.

What we are asking is nothing more than to have the same limitations placed on the organizers of initiatives and the potential opponents of initiatives that currently exist on political candidates. Actually, what we're asking for is more flexible and open than what candidates face, in that corporate contributions to initiative battles would be allowed, while they are not allowed in political campaigns; and the amount of $750 is greater than the limits placed on most Legislative races.

You can preserve the integrity of the initiative process, while at the same time tightening up the ability to qualify an initiative, and also insure that hundreds of thousands of out-of-state dollars do not flood the Big Sky each and every election year, drawing us away from equally, if not more important contested political races.

House Bill 501 is sensible legislation designed to place monetary controls on the initiative process and place it on an equal footing with political campaigns.

(4)

EXHIBIT 4

CITIZEN'S LEGISLATIVE COALITION

P.O. Box 4071
Butte, Montana 59701

2-5-81

TESTIMONY BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE
HB 501 CONN

Mr. Chairman, members of the committee, my name is Mark Mackin, lobbyist for the Citizen's Legislative Coalition. I rise in support of HB 501.

No one faction, institution, or special interest should be able to dominate the political debate on questions of interest to the entire public. We believe that this applies in all cases, whether the interest of that faction is aesthetic or economic or moral in nature. HB 501 will help to deal with this problem by placing the interested group or industry in a position of having to seek a broader base of support for their side of the issue, rather than trying to simply advertise the public into compliance.

Additionally, voters may interprete the size of campaign donations, and their source as an indication of hostility to the public interest. Indeed, the public may vote on the basis of who spent how much money instead of on the merits of the issue. Equalising the amounts of money that can be contributed will focus far more attention on the merits of the arguemnts, where that attention should be, than on the campaign finances of the opponents.

This type of thinking on the part of voters could easily decide a close issue, and would do a disservice to our political system.

EXHIBIT 5

Arthur F. Kussman
409 South Montana
Helena, Mt. 59601
Phone 442-6642
February 6, 1981

TO: The Members of the House State Administration Committee

Subject: HB 501

I favor passage by the Committee of HB 501.

In that the initiative process is an activity involving the peoples' right to help initiate ~~it~~ when they feel this action is ~~needed~~ legislation needed, it seems reasonable to have this process protected from excessive amounts of money being contributed, for either the passage or defeat of such an initiative.

This is especially appropriate when huge amounts of money are applied from out-of-state sources, as in the case of I-83 leading up to last Nov. 4th election.

More than one half million dollars was spent to ~~defeat~~ defeat that initiative, two thirds of which (or more) came from out of state sources.

An effort on the part of out-of-state gambling interests -- during the months leading up to the June, 1978 primary election -- to secure a constitutional initiative to allow wide open gambling in Montana , involved huge amounts of out-of-state funds.

The effort failed because of the thinly veiled hypocracy of their objectives.

However, we may not always be that fortunate.

In that the initiaitve process is ~~genuinely~~ usually a peoples' effort , let's keep it that way by limiting the amount which any special interest group can contribute to promote or defeat such an issue. This action would also limit the use of huge amounts of out of state funds (or even in-state funds) to launch an initiative, as in the instance of the all out effort to change the constitution to permit wide open gambling.

Sincerely,

Art Kussman

League of Women Voters of Montana 6 Feb 81
Margaret S. Davis
917 Harrison, Helena, Montana 59601

HB 501 - support
Limiting contributions to political
action committees and ballot issue comms.

The League of Women Voters supports the thrust of this bill to limit campaign contributions to political action committees (which are however not defined in existing law) and ballot issue committees.

Corporations could still act independently to support or oppose a ballot issue. It is preferable alternative to have them act in their own name rather than operate through an often large, glowingly titled ballot issue committee.

Margaret S Davis

NAME KELLY JENKINS BILL No. SOI

ADDRESS BOX 237 HELENA DATE

WHOM DO YOU REPRESENT COMMON CAUSE

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

COULD INSURE CONSTITUTIONALITY OF HB 501 BY TYING IT TO A STATE SERVICE SUCH AS A LISTING IN THE VOTERS HANDBOOK OF CONTRIBUTIONS OF OVER $750 OR DENYING PAC'S WITH RECEIPTS GREATER THAN $750 CONTRIBUTING A COPY TO THE SECRETARY OF STATE'S VOTERS HANDBOOK.

FORM CS-34
1-81

NAME MARK MACKOW BILL No. 501

ADDRESS 1316 Spruce St. DATE 2-6-81

WHOM DO YOU REPRESENT Ct Legislative Coalition

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

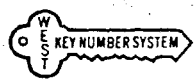
Initiative proponents + opponents should establish a broad base of support among MT citizens in order to see that the issue is fairly + well decided.

The use of large amounts of money do affect the process gets away from this idea.

FORM CS-34
1-81

leased James to his mother's custody, had a duty to tell her of his homicidal threats and inclinations. The complaint alleges that the County's failure to warn her was negligent, and proximately caused Jonathan's death. Thus under settled principles of tort law as explained in our prior opinion in *Tarasoff*, the complaint states a cause of action. I would therefore reverse the judgment dismissing plaintiffs' complaint and remand the cause to the superior court for further proceedings.

MOSK, J., concurs.



CITIZENS AGAINST RENT CONTROL et al., Plaintiffs and Respondents,

v.

CITY OF BERKELEY et al., Defendants and Appellants.

S.F. 24124.

Supreme Court of California.

Aug. 7, 1980.

A summary judgment of the Superior Court, Alameda County, John P. Sparrow, J., declared unconstitutional a section of a Berkeley ordinance providing that no person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to a measure to exceed $250. On appeal by the city and other defendants, the Supreme Court, Mosk, J., held that municipality could constitutionally place a limit on size of contributions to committees formed to support or oppose ballot measures under initiative and referendum as such a limit served compelling governmental interests without unduly infringing upon First Amendment rights.

Reversed.

Richardson, J., dissented with opinion in which Clark and Manuel, JJ., concurred.

Vacating, Cal.App., 160 Cal.Rptr. 448.

1. Constitutional Law ⇐91

Municipality may constitutionally place a limit on size of contributions to committees formed to support or oppose ballot measures as such serves a compelling governmental interest without unduly infringing upon First Amendment rights. U.S.C.A.Const. Amend. 1.

2. Constitutional Law ⇐91

Monetary restrictions on election campaigns requires strict scrutiny. U.S.C.A. Const. Amend. 1.

3. Constitutional Law ⇐91

Ordinance placing limit on size of contributions to committees formed to support or oppose ballot measures and challenged under First Amendment would be given stringent review. U.S.C.A.Const. Amend. 1.

4. Constitutional Law ⇐91
Municipal Corporations ⇐108

Municipal ordinance placing $250 limit on type of contributions to committees formed to support or oppose ballot measures under initiative and referendum was not unduly restrictive because the $250 ceiling was too low and, thus, ordinance which was necessary to accomplishment of compelling governmental interests used least restrictive means to achieve those ends and violated neither the First Amendment nor applicable Article of the California Constitution. U.S.C.A.Const. Amend. 1; West's Ann.Const. Art. 1, § 2.

Michael Lawson, City Atty., Theodore R. Lakey, Acting City Atty., and Charles O. Triebel, Jr., for defendants and appellants.

Robert M. Myers, Venice, David C. Velasquez, Los Angeles, William H. Jennings, Beverly Hills, Stephen Shane Stark, Acting

City Atty., George Agnost, City Atty., San Francisco, Burk E. Delventhal, Diane L. Hermann and Alice Suet Yee Barkley, Deputy City Attys., as amici curiae on behalf of defendants and appellants.

Dobbs & Nielsen, Vigo G. Nielsen, Jr., John E. Mueller and James R. Parrinello, San Francisco, for plaintiffs and respondents.

MOSK, Justice.

[1] May a municipality constitutionally place a limit on the size of contributions to committees formed to support or oppose ballot measures? We conclude that while the challenged legislation must be examined with great care, such a limit is constitutional because it serves compelling governmental interests without unduly infringing upon First Amendment rights. Although resolution of a conflict between fundamental interests such as these is never easy, in this instance the balance favors allowing government regulation.

At the April 1977 Berkeley municipal election the electorate was asked to vote on a proposed initiative charter amendment to create a rent control board empowered to fix the rates for most rental units in the city. The measure was controversial, and opponents formed an unincorporated association known as Citizens Against Rent Control (CARC).

Berkeley's Election Reform Act of 1974 (Ord. No. 4700–N.S.) regulates its municipal elections. The city attorney and the Berkeley Fair Campaign Practices Commission informed CARC that section 602 of the act, prescribing a $250 maximum on contributions in support of or in opposition to a ballot measure, would be enforced in the forthcoming election.[1] CARC admittedly accepted several contributions in excess of the $250 limit, totalling some $18,600. On March 30, 1977, the Fair Campaign Practices Commission ordered CARC to pay that amount to the city's general fund as required by section 604 of the act.[2] CARC responded by filing a complaint for injunctive and declaratory relief against the city and the commission (hereinafter Berkeley) contending that section 602 was in violation of its First Amendment rights and those of other named plaintiffs who desired to make contributions larger than $250.[3] The superior court granted a preliminary injunction against enforcement of sections 602 and 604.

After the election, CARC amended its complaint to allege it had accumulated a campaign debt of approximately $8,000 and it sought to solicit large contributions to satisfy this debt. CARC then moved for summary judgment on the ground that section 602 was invalid on its face. The court granted the motion and rendered a judgment declaring that section 602 violated the First Amendment to the United States Constitution and article I, section 2, of the California Constitution. Berkeley appeals.

I

Our past decisions, and those of the United States Supreme Court, establish a frame-

1. Section 602 is authorized by Elections Code section 22808 and provides: "No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to a measure to exceed two hundred and fifty dollars ($250)."

"Person" is given a broad definition in section 219 to include all types of business entities as well as individuals.

"Contribution" is broadly defined in section 206 to include all types of monetary donations or loans that are directly or indirectly in aid of or in opposition to a ballot measure.

Section 600, limiting candidate contributions to $250, is not here in issue.

2. Section 604 provides: "If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City Auditor for deposit in the General Fund of the City."

3. The other plaintiffs were a real estate broker, the Berkeley Board of Realtors, and three individuals who alleged they were contributors to CARC and owners of real property in Berkeley.

work for determining whether section 602 prevents effective political advocacy or impermissibly interferes with associational rights. The seminal ruling is *Buckley v. Valeo* (1976) 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, which considered the constitutionality of the Federal Election Campaign Act of 1971 (Pub.L.No. 92-225, 86 Stat. 3) and the Federal Election Campaign Act Amendments of 1974 (Pub.L.No. 93-443, 88 Stat. 1263). *Buckley* upheld against First Amendment attack the act's limitation of $1,000 on *contributions* to candidates for federal office, but invalidated restrictions on *expenditures* by or on behalf of candidates. The court held that the contribution and expenditure of money for political expression were the equivalent of pure speech, and hence that statutory limits thereon must be judged by the strict scrutiny reserved for infringement of First Amendment rights. (*Id.* at pp. 15–19, 58–59, 96 S.Ct. at pp. 632–34, 653–654.) We adhered to *Buckley* in *Citizens for Jobs & Energy v. Fair Political Practices Com.* (1976) 16 Cal.3d 671, 129 Cal.Rptr. 106, 547 P.2d 1396 (invalidating expenditure limitations on campaigns to pass ballot propositions), and in *Hardie v. Eu* (1976) 18 Cal.3d 371, 134 Cal.Rptr. 201, 556 P.2d 301 (invalidating expenditure limitations on campaigns to qualify ballot propositions). We observed in *Hardie* (at p. 378, 134 Cal.Rptr. at p. 204, 556 P.2d at p. 304), "On the other hand, as the high court noted in *Buckley*, appropriate limitations on individual *contributions* remain a constitutionally valid means of dealing with undue influence by moneyed interests in the electoral process. (*Buckley, supra*, at pp. 23–28, 96 S.Ct. at pp. 636–637 . . . .)"

While this case was on appeal, the Supreme Court spoke to a related issue in *First National Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707, overturning a Massachusetts statute insofar as it prohibited corporations from making *any* expenditure or contribution, directly or indirectly, to influence the vote on ballot measures. The court held that the statute infringed upon First Amendment rights (*id.* at pp. 785–786, 98 S.Ct. at pp. 1420–21), and looked to whether it served a compelling state interest by the least restrictive means (*id.* at p. 786, 98 S.Ct. at p. 1421). The court recognized the importance of the state's asserted justification of "Preserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government' " (*id.* at pp. 788–789, 98 S.Ct. at p. 1422), but declined to find the Massachusetts statute served such an interest in the absence of a showing by record evidence or legislative findings that "the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts, or that there has been any threat to the confidence of the citizenry in government." (Fn. omitted; *id.* at pp. 789–790, 98 S.Ct. at p. 1423). The court rejected the view that the possible influence of corporate advertising on the outcome of the vote justified the complete prohibition of such advertising. (*Id.* at pp. 790–792, 98 S.Ct. at pp. 1423–24; see generally Comment, *The Constitutionality of Limitations on Corporate Contributions to Ballot Measure Campaigns* (1978) 13 U.S.F.L.Rev. 145 (hereinafter U.S.F. Comment).)

II

[2, 3] Berkeley's first contention is that CARC and the other plaintiffs have failed to show infringement of their First Amendment rights so as to require it to demonstrate that section 602 serves a compelling governmental interest by the least restrictive means. CARC responds that certain affidavits before the trial court furnished adequate evidence both that its ability to engage in effective political advocacy was impaired and the associational rights of its contributors were significantly diminished. Regardless of the weight of that evidence, however, the controlling federal decisions appear to hold that monetary restrictions on election campaigns will be deemed to require strict scrutiny. Thus in *Buckley* the court differentiated contribution from expenditure limitations, stating that the for-

mer resulted in "only a marginal restriction" and "little direct restraint" on political communication. (424 U.S. at pp. 20–21, 96 S.Ct. at pp. 635–36.) However, despite the finding of marginal effect the court invoked strict scrutiny in considering the constitutionality of the contribution limitations. (*Id.* at pp. 23–38, 96 S.Ct. at pp. 636–644.) We likewise give the challenged ordinance stringent review.

III

The ordinance at issue here affects one of the prominent attributes of the 20th-century California political landscape: the popular initiative and referendum. We reiterated only recently that " 'The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it "the duty of the courts to jealously guard this right of the people" [citation], the courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process" [citation]. "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." [Citations.]' " (*Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 41, 157 Cal.Rptr. 855, 859, 599 P.2d 46, 50.) The United States Supreme Court recognized our commitment to the initiative and referendum when it declared, "California's entire history demonstrates the repeated use of the referendums to give citizens a voice on questions of public policy. . . . Provisions for referendums demonstrate devotion to democracy, ..." (*James v. Valtierra* (1971) 402 U.S. 137, 141, 91 S.Ct. 1331, 1333–1334, 28 L.Ed.2d 678.)

There can be no doubt that government regulation designed to preserve the integrity of the initiative and referendum promotes a goal of the highest priority. As will appear, the Berkeley ordinance serves this compelling interest in a manner that does not frustrate another important aim of the electoral process: i. e., that all be given an opportunity to be heard so as to assure the widest dissemination of opinions on important public questions.

A

While the provision of the 1911 amendment for statewide initiatives and referenda has drawn most of the public and judicial attention over the years, that amendment also declared, "The initiative and referendum powers of the people are hereby further reserved to the electors of each county, city and county, city and town of the State to be exercised under such procedure as may be provided by law."[4] The Legislature has fully implemented these provisions by statutes regulating county, municipal, and district initiative and referendum elections. (Elec.Code, § 3700 et seq.)

The reason for the adoption of the initiative and referendum methods of direct legislation by the people is beyond any doubt: the electorate sought access to and control of a legislative process that it believed

4. Former California Constitution, article IV, section 1, paragraph 18. Present article II, section 11, similarly declares, "Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. This section does not affect a city having a charter."

The former section also contained a reference to charter cities similar to that in the present Constitution. However, we interpreted this language to merely give charter cities, like Berkeley, the authority to increase the powers of referendum and initiative granted by the Constitution, but not to diminish them. (*Hopping v. Council of City of Richmond* (1915) 170 Cal. 605, 610–611, 150 P. 977; accord, *Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 756, 8 Cal.Rptr. 427, 356 P.2d 171; *Brown v. Boyd* (1939) 33 Cal.App.2d 416, 420–422, 91 P.2d 926; Comment, *The Scope of the Initiative and Referendum in California* (1966) 54 Cal.L.Rev. 1717, 1723, fn. 40.)

could be dominated by special interests. (See Diamond, *California's Political Reform Act: Greater Access to the Initiative Process* (1975) 7 Sw.U.L.Rev. 453, 455–463; U.S.F. Comment, p. 164; Note, *The California Initiative Process: A Suggestion for Reform* (1975) 48 So.Cal.L.Rev. 922, 923–924.) The initiative and referendum gave the electorate an opportunity to exercise the power of direct as distinguished from representative democracy, and it has made frequent use of that power. The ensuing greater popular participation in public affairs has been generally acknowledged as salutary.

It has also been recognized, however, that the initiative and referendum processes can themselves be employed by the special interest groups whose power they were designed to curb. (Diamond, *op. cit. supra*, 7 Sw.U.L.Rev. at pp. 461–463.) Accordingly, the voters used the initiative to regulate those same processes, and to enact other election reforms, by adopting the Political Reform Act of 1974. (Gov.Code, § 81000 et seq.) Later that year, the Legislature enacted sections 22004 and 22808 of the Elections Code, which allow counties and cities to impose limits on contributions to local ballot measure campaigns. As noted above, such restrictions were said to be constitutional in *Hardie v. Eu.*

While admitting that contribution limitations in candidate elections serve a compelling interest of preventing corruption (*Buckley v. Valeo, supra*), CARC argues that the subsequent decision in *Bellotti* demonstrates that no comparable danger of corruption exists in a ballot measure campaign. As shown below, we conclude that *Bellotti* is distinguishable from the present case and that to allow large contributions to ballot measure campaigns has an equivalent potential to pervert the purpose of the initiative and more generally corrupt the electoral process.

Concededly, initiative and referendum elections do not raise all the same problems as candidate elections, in which large campaign contributions risk creating future "political debts." (*Bellotti*, 435 U.S. at p. 788, fn. 26, 98 S.Ct. at p. 1422, fn. 26.) However, the initiative and referendum procedure is nonetheless subject to being perverted by large contributions. Indeed, in their effect upon the *election process*, contributions to candidates and contributions for or against propositions differ very little.

The original proponents of the initiative and referendum sought to give the electorate the ability to govern directly by majority rule: this was to be true democracy as distinguished from representative democracy. Instead, the domination of these processes by large contributors leaves other citizens with a stilled voice in the very domain of our electoral system set aside for accomplishing the popular will.[5] The finding, all too common in commentaries on the initiative and referendum, that direct legislation is "enormously expensive to produce and is largely a tool of interest groups," appears to have inspired measures like the Berkeley ordinance, which attempt to return to the primary goals of the initiative and referendum. (Crouch et al., Cal. Government and Politics (3d ed. 1964) p. 108.) When large contributors use the power of their purse to overcome the power of reason, they thwart the intended purpose of the initiative or referendum: instead of fostering participation by a greater segment of the electorate, the vision of direct democracy is transformed into a tool of narrow interests. (Nicholson, *Buckley v. Valeo: The Constitutionality of the Federal Election Campaign Act Amendments of 1974*, 1977 Wis.L.Rev. 323, 330.)

The danger lies not only in the frustration of our declared policy of preserving the initiative and referendum system, but in the inevitable effect on the electoral process as a whole. The importance of this process to the conduct and future of our democratic form of government cannot be gainsaid.

5. Thus the Berkeley Election Reform Act begins with the declaration that "Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth . . . ."

Indeed, "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." (*Reynolds v. Sims* (1964) 377 U.S. 533, 555, 84 S.Ct. 1362, 1378, 12 L.Ed.2d 506.) "The electoral process is at the very heart of constitutional government; it is to a large degree the ultimate arena in the competitive struggle for ideas." (Rosenthal, *Campaign Financing and the Constitution* (1972) 9 Harv.J.Legis. 359.) And, as the United States Supreme Court said on a closely related matter, "what is involved here is the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process. This case thus raises issues not less than basic to a democratic society." (*United States v. Auto Workers* (1957) 352 U.S. 567, 570, 77 S.Ct. 529, 530, 1 L.Ed.2d 563, 568.)

In *Buckley* the court recognized the potential for corruption of the electoral process in a regime of large contributions in candidate elections. (424 U.S. at pp. 26–27, 96 S.Ct. at pp. 638–39.) Here, it is argued that the electoral process is similarly corrupted by such contributions because voters lose confidence in our governmental system if they come to believe that only the power of money makes a difference. In another context we recognized the danger of such a loss of confidence: "One disturbing phenomenon of the current political scene of which we may take judicial notice is an apparent substantial increase in voter apathy. The erosion and decay caused by the acid of indifference, unconcern, and lack of participation, if prolonged, may pose a danger to the democratic institutions, far more subtle and invidious than any other." (*Johnson v. Hamilton* (1975) 15 Cal.3d 461, 471, 125 Cal.Rptr. 129, 134, 541 P.2d 881, 886.)

Commentators on our political scene have recognized the nexus between voter apathy and large campaign contributions: "The mass of citizens have tended to shun the opportunity to donate to campaign coffers and to participate in other forms of political activity because they felt their limited resources would be outmatched by a small group of rich and influential 'angels' . . . [This feeling] has also inspired the emergence of a growing sense of estrangement or disaffection from public institutions and leaders." (Berg et al., Corruption in the American Political System (1976) 47–50.) The result of this phenomenon is decidedly negative: "By abandoning the field of battle, the average voter leaves the political wars to be fought by big contributors and powerful interests." (*Id.* at p. 51.)

Another political scientist reviewed the dramatic effect of large contributions on the results of ballot measure votes in Colorado and concluded, "This study did not find Colorado citizens apathetic, cynical, or ignorant towards the initiatives. The majority of people were interested in the issues and did have ideas on them. But on several proposals their ideas tended to reflect the latest polling techniques, campaign strategies and gimmicks of those with the most power and money. The corrosive impact of this unregulated, grossly unequal power perverted the democratic process in a manner for all to see, whether or not the final election results were to one's liking. . . . It seems clear that initiative campaigns can be subject to the same types of influence that exists in other types of electoral politics, although perhaps in different proportions. Because personality issues may be less important, and partisanship is less clear, money may be all the more crucial." (Shockley, The Initiative, Democracy and Money: The Case of Colorado, 1976, printed in Hearings Before the Subcom. on the Const. of Sen. Com. on Judiciary on S.J.Res. 67, 95th Cong., 1st Sess., at pp. 188–189 (1977).) A student of the California initiative process has also expressed his belief that this form of corruption may be as injurious as a direct bribe of a public official. (Radabaugh, Tendencies of Cal. Direct Legislation (1961) *id.* at p. 279.)

The Berkeley ordinance, on the other hand, seeks to reverse the trend toward loss of confidence in our political system and apathy in elections by assuring the voters that their vote and their participation,

whether in the form of money or services, are significant. We conclude that the interests served by the ordinance should be recognized as compelling. Next, we turn to an examination of the countervailing First Amendment rights asserted by CARC.

B

CARC contends that any interest served by section 602 pales in comparison with the infringement of First Amendment rights caused by the ordinance. It further argues, relying on *Bellotti*, that the ordinance actually has a detrimental effect on the initiative process because it prevents the voters from receiving adequate information to enable them to cast an informed vote. We agree, of course, that direct participation of the people through the initiative or referendum "increases the need for '"the widest possible dissemination of information from diverse and antagonistic sources."' [Citation.]" (*Bellotti*, 435 U.S. at p. 790, fn. 29, 98 S.Ct. at p. 1423, fn. 29); but while the measure at issue in *Bellotti* completely silenced the voice of Massachusetts corporations, the ordinance here has no such purpose or effect.

To the contrary, the Berkeley ordinance allows to all the right to participate in a ballot measure campaign and to join with others in so doing. The statute at issue in *Bellotti* totally prohibited both corporate expenditures and contributions; the Berkeley ordinance places no limit on expenditures, and permits contributions from any source in amounts up to $250. Thus, an individual or business entity that believes its interests are benefitted or threatened by a proposed ballot measure remains free to *spend* money in unlimited amounts, by mass advertising or any other method, to inform the public of its reasons why the measure should be adopted or defeated. However, in order to maintain the initiative and referendum processes as a tool of direct democracy for the people, individuals or business entities are prohibited from *contributing* more than a modest sum to a committee formed to support or oppose the measure. In addition, of course, no restriction is placed on the right of individuals or corporate members to volunteer their *services* in a ballot measure campaign.

CARC's assertion that its right to engage in effective political advocacy is affected by a contribution ceiling is answered by the decision in *Buckley*. The high court recognized the constitutional problems that would result if a contribution limit did prevent effective advocacy, but stated: "The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression." (424 U.S. at pp. 21–22, 96 S.Ct. at p. 636.) The court pointed out that only 5.1 percent of the funds raised by 1974 congressional candidates came in amounts greater than the $1,000 ceiling. (*Id.* at p. 21, fn. 23, 96 S.Ct. at p. 636, fn. 23.) Here, Berkeley stresses that only about 17 percent of CARC's funds were raised from persons or entities contributing in excess of the limitation. Further, CARC ended all fundraising almost a month before the election, and presumably could have raised more funds in legal amounts had it continued to solicit contributions.

We conclude that the Berkeley ordinance does not interfere with effective advocacy or dissemination of information by all sides to a ballot measure controversy, but instead is designed to preserve initiative and referendum elections for the salutary purpose for which they were created, and tends to prevent the corruption of the political process that otherwise results.

Similarly, the ordinance does not impermissibly limit associational rights guaranteed by the First Amendment. CARC argues that such rights are violated because those who desire to give more than $250 are required to spend it on their own. This argument too was answered in *Buckley*, when the court observed that contribution

ceilings nevertheless leave the contributor "free to become a member of any political association and to assist personally in the association's efforts . . . ." (424 U.S. at p. 22, 96 S.Ct. at p. 636.) Thus under the Berkeley ordinance anyone who wishes to do so may join and work for any committee supporting or opposing a ballot measure. This is the heart of the freedom to associate; no case has held that the right extends so far as to entitle political contributors to dominate such committees and their campaigns by unconstrained financial pressure.

It could be contended that unlimited expenditures by individuals and corporations can be as sinister as unlimited contributions to committees, and that the activities of committees can be as essential to the political process as those of individuals and corporations. While as a broad proposition that viewpoint may be arguable, it is a value judgment. On such matters we yield to the legislative determination.

The contrary legislative determination here is not without a tenable rationale. Campaign committees are generally shrouded in anonymity, often adopting seductive names promising to save taxes, preserve resources, or prevent crime. While committees must ultimately identify their donors, the campaign propaganda and the identification are not simultaneous: inducements are disseminated and voter impressions are formed substantially before the sources of committee financing are revealed. On the other hand, when political views are expressed directly by individuals and corporations rather than indirectly or covertly through committees, the voters are immediately made aware of the interested parties and can evaluate their motivation.

C

Finally, the ordinance cannot be sustained unless it is necessary to promote a compelling governmental interest and operates by means that are the least restrictive of First Amendment rights. We hold above that large contributions to a local ballot measure campaign threaten our electoral system and potentially pervert the purpose of initiative procedures; in light of this conclusion, restricting the size of such contributions "focuses precisely on the problem." (*Buckley*, 424 U.S. at p. 28, 96 S.Ct. at p. 639.) We reject, as the *Buckley* court did, the argument that mere disclosure of contributions is sufficient for this purpose. (*Id.* at pp. 27–28, 96 S.Ct. at pp. 638–39.) As with the measure at issue in *Buckley*, the contribution limitation in section 602 does not interfere with other ways of engaging in political activity, but restricts the one means that represents a danger rather than an aid to the electoral process.

[4] We also reject the argument that the ordinance is unduly restrictive because the $250 ceiling is too low. The major proportion of CARC's funds came in amounts under the ceiling; moreover, the few contributions that were larger were considerably above the ceiling and hence would not have been aided by a modest upward adjustment.[6] The court in *Buckley* refused to invalidate contribution ceilings on this ground absent proof that the difference was so great as to be a matter of kind and not of degree. (424 U.S. at p. 30, 96 S.Ct. at p. 640.) No such proof is presented here. Finally, we point out this is not a statewide initiative but merely a local campaign in a single municipality, and the amount of ceiling must be viewed in that light.

We conclude that the Berkeley ordinance is necessary to the accomplishment of compelling governmental interests, and uses the least restrictive means to achieve those ends. It violates neither the First Amendment nor article I, section 2, of the California Constitution.

The judgment is reversed.

BIRD, C. J., and TOBRINER and NEWMAN, JJ., concur.

6. The record shows that CARC received three contributions of $5,000, one of $2,000, and two of $1,000.

RICHARDSON, Justice, dissenting.

I respectfully dissent. In my view, the Berkeley ordinance impermissibly suppresses rights of free expression of California citizens. It clearly violates First Amendment principles, both of freedom of speech and association, as repeatedly expressed by the United States Supreme Court. It also contravenes similar guarantees contained in article I, section 2, of the California Constitution.

Provisions of the ordinance have been litigated before. Its section prohibiting any person from making "any contribution to any candidate or committee" was struck down in *Pacific Gas & Electric Co. v. City of Berkeley* (1976) 60 Cal.App.3d 123, 131 Cal.Rptr. 350. The provision before us prohibits any individual, corporation, or other entity from contributing more than $250 to any campaign in support of, or opposition to, any ballot measure. A citizens' committee organized itself to oppose a rent control ballot measure at the Berkeley general election of April 1977. The committee raised money from interested citizens and groups to assist its campaign, and the majority now authorizes the forfeiture into the Berkeley City Treasury of $18,600 of the committee's donated funds.

The ordinance impairs two constitutional rights of the donors and contributors to the committee. Each is fundamental. Each is constitutionally protected. First, is the citizen's right of free speech and of unrestricted expression. The First Amendment prohibits Congress from "abridging the freedom of speech." A similar guarantee, expressed somewhat differently, appears in article I, section 2, of our state Constitution, and provides that "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

With specific application to the free speech limitations contained in the ordinance before us, it has been held by the highest authority that campaign restrictions "operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' [Citation.] Although First Amendment protections are not confined to 'the exposition of ideas,' [citation] 'there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . .' [Citation.] This no more than reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,' [citation]." (*Buckley v. Valeo* (1976) 424 U.S. 1, 14, 96 S.Ct. 612, 632, 46 L.Ed.2d 659.)

The second right, which is restricted by the Berkeley law, is that of free association. As we observed last year "contribution limitations restrict the contributor's freedom of association, . . ." (*Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 43, 157 Cal.Rptr. 855, 861, 599 P.2d 46, 52.) This associational right has also been repeatedly described by the United States Supreme Court as a " 'basic constitutional freedom,' *Kusper v. Pontikes* [1973] 414 U.S. 51 at 57, 94 S.Ct. 303 at 307, 38 L.Ed.2d 260 that is 'closely allied to freedom of speech and a right which like free speech, lies at the foundation of a free society.' " (*Buckley v. Valeo*, supra, 424 U.S. 1, 25, 96 S.Ct. 612, 637, 46 L.Ed.2d 659; *Shelton v. Tucker* (1960) 364 U.S. 479, 486, 81 S.Ct. 247, 251, 56 L.Ed.2d 231; *Bates v. Little Rock* (1960) 361 U.S. 516, 522–523, 80 S.Ct. 412, 416, 4 L.Ed.2d 480.)

The reality of this limitation on a donor's associational rights is immediately disclosed when it is noted that the Berkeley ordinance permits expenditures without limit to influence the results of the election by advertising or other means. John Q. Citizen himself may spend unlimited funds for or against the rent control measure. Yet, if

the same citizen exercising a right to associate with others of like mind seeks to give to a committee which either supports or opposes the same ballot proposition, the *contribution* may not exceed $250. Although the majority approves this result, Justice Rouse speaking for a unanimous Court of Appeal was eminently correct in describing this consequence as "a supreme anomaly" because thereby "a contributor is entitled to less protection when he exercises his First Amendment rights of free speech *and association*, than if he exercised only his right to free speech." One fundamental right receives greater protection than two in combination. Such a result is wholly untenable and cannot be valid constitutional law. "If a person's independent speech cannot be restricted constitutionally, neither can his speech through association." (Note, *The Unconstitutionality of Limitations on Contributions to Political Committees in the 1976 Federal Election Campaign Act Amendments* (1977) 86 Yale L.J. 953, 967.)

When two such fundamental rights of a citizen, free speech and association, are conjoined, any attempted restriction "is subject to the closest scrutiny." (*Buckley*, 424 U.S. at p. 25, 96 S.Ct. at p. 637.) We have said that any impairment may be supported only when "the restraints imposed are nonetheless justified as incidental to the promotion of a 'substantial' or 'compelling' governmental interest, unrelated to speech, and unattainable by means less intrusive upon First Amendment rights." (*Hardie v. Eu* (1976) 18 Cal.3d 371, 377, 134 Cal.Rptr. 201, 204, 556 P.2d 301, 304.) In so concluding we have but echoed similar expressions by the high court: (*Buckley v. Valeo*, supra, 424 U.S. 1, 14, 21, 96 S.Ct. 612, 632, 635, 46 L.Ed.2d 659; *N.A.A.C.P. v. Button* (1963) 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405.)

More recently, in a case in which the Supreme Court invalidated an outright ban on expenditures or contributions by corporations aimed at influencing the vote on ballot measures, the court emphasized that when restraints on First Amendment rights are at issue " 'The state may prevail only upon showing a subordinating *interest which is compelling*' [citations], 'and the burden is on the government to show the existence of such an interest.' [Citation.] Even then, the State must employ means 'closely drawn to avoid unnecessary abridgment . . . .' [Citations.]" (Italics added, *First National Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 786, 98 S.Ct. 1407, 1421, 55 L.Ed.2d 707.)

What, then, is the compelling interest requiring imposition of a restraint so substantial on two rights so fundamental? The majority identifies it thus: "large contributions to a local ballot measure campaign threaten our electoral system and potentially pervert the purpose of initiative procedures; . . ." (*Ante*, p. 91 of 167 Cal. Rptr., p. —— of —— P.2d.) My colleagues of the majority urge a theory that public confidence in the electoral processes is undermined by permitting unrestricted contributions in ballot measure elections. It is noteworthy that it is not the *fact* of a danger but the *potential* of a danger that alone generates the *compelling* interest found by the majority. It will readily be seen that this wholly untested political hypothesis is not based upon any record but rather upon the opinions and conclusions of "commentators on our political scene," "a political scientist," or a "student of the California initiative process." (*Ante*, p. 89 of 167 Cal.Rptr., p. —— of —— P.2d.) Moreover, the "commentators" and "students" have hardly been unanimous in their support of contribution limitations to ballot measures. (For contrary views, see generally, Note, supra, 86 Yale L.J. 953; Ely, *The Supreme Court, 1977 Term* (1978) 92 Harv. L.Rev. 5, 163; Redish, *Campaign Spending Laws and the First Amendment* (1971) 46 N.Y.U.L.Rev. 900; Clagett & Bolton, *Buckley v. Valeo* (1976) 29 Vand.L.Rev. 1327.)

The majority's conclusion that there is such a "threat" to our electoral system thereby "potentially" inhibiting the initiative process may or may not be correct. There is no record before us and in this connection the procedural posture of the case should be noted. The trial court granted summary judgment in favor of the

citizens' committee which attacked the ordinance. Assuming, only for purposes of analysis, that the trial court was improvident in the entry of its summary judgment invalidating the ordinance, it is manifestly unfair for the majority on the other hand to sustain the ordinance without affording the citizens' committee an opportunity to challenge or rebut the opinions and views of the "commentator," "political scientist," and "student" on which the majority wholly relies. The study of a Colorado ballot measure, or a 16-year-old analysis which concludes that the California initiative and referendum process is "largely a tool of interest groups" would make interesting background material for a political debate. Unquestioned and unverified, however, these opinions do not constitute the hard evidentiary support needed to demonstrate a state's present and *compelling interest* in the suppression of the multiple First Amendment rights of our California citizens. The existence of such a threat and its potential are wholly undocumented. Indeed the only empirical data that appear in the record are studies of spending on statewide initiative campaigns in California during the period 1954–1974. The studies conducted by a Sacramento research organization, reveal that in 28 statewide contests the highest spenders won 14 times and lost 14 times. I must leave to the reader what that arithmetic proves.

The rationale for the ordinance's restrictions, viewed as sufficient by the majority, is the danger of "corruption" of the initiative process through the infusion of unlimited sums of money by "large contributors" (*ante*, p. 88 of 167 Cal.Rptr., p. —— of —— P.2d) favoring or opposing a ballot measure. This, the majority argues, will destroy the electorate's "confidence in our political system." (*Ante*, p. 90 of 167 Cal.Rptr., p. —— of —— P.2d.) In the absence, however, of some affirmative showing "by record or legislative finding" this precise reasoning, central to the majority opinion, was flatly rejected, as to corporate contributors, by the *Bellotti* court, supra, 435 U.S. 765, at pages 789–790, 98 S.Ct. 1407, at pages 1423, 55 L.Ed.2d 707, in these words: "[T]here has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts or that there has been any threat to the confidence of the citizenry in government." Similarly, there has been "no showing" whatever that large contributors, corporate or otherwise, have thwarted or perverted the initiative in California, which at present appears to be alive and well and increasingly used.

The majority further concludes that candidate and ballot measure elections "differ very little" and that, as in candidate elections, large contributions have "equivalent potential to pervert the purpose of the initiative and more generally corrupt the electoral process." (*Ante*, p. 88 of 167 Cal. Rptr., p. —— of —— P.2d.) But again, the Supreme Court summarily dismissed this reasoning, noting, "*Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections,* [citation] *simply is not present in a popular vote on a public issue.* To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution 'protects expression which is eloquent no less than that which is unconvincing.' [Citation.]" (*Bellotti*, supra, at p. 790, 98 S.Ct. at p. 1423.) (Italics added.)

The same result was reached July 11, 1980, by a unanimous Fifth Circuit in which it sustained a district court's invalidation of similar statutory limit on contributions to a committee supporting a referendum measure. The Court of Appeals noted: "When people elect a candidate, they choose someone to whom they can delegate their political decisionmaking. 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 decisionmakers—in this case, the

voters themselves—except in a manner protected by the first amendment." (*Let's Help Florida v. McCrary* (5th Cir. 1980) 621 F.2d 195.) For identical views from the Second Circuit, see *Schwartz v. Romnes* (1974) 495 F.2d 844, 851–853, and from the Ninth Circuit see *C & C Plywood Corp. v. Hanson* (1978) 583 F.2d 421, 425.

Directly answering and rejecting the majority's assertion that, unless restricted, "the domination . . . by large contributors leaves other citizens with a stilled voice, . . ." (*ante*, p. 88 of 167 Cal. Rptr., p. —— of —— P.2d) the high tribunal emphasized, ". . . *the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment*, which was designed 'to secure "the widest possible dissemination of information from diverse and antagonistic sources,"' and '"to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."' *New York Times Co. v. Sullivan* [(1964) 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686] at 266, 269, 84 S.Ct., at 718, 720, quoting *Associated Press v. United States*, 326 U.S. 1, 20, 65 S.Ct. 1416, 1424, 89 L.Ed. 2013 (1945), and *Roth v. United States* [1957] 354 U.S. 476 at 484, 77 S.Ct. 1304 at 1308, 1 L.Ed.2d 1498. The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. [Citation.]" (*Buckley v. Valeo*, supra, 424 U.S. 1, 48–49, 96 S.Ct. 612, 649, 46 L.Ed.2d 659, italics added.)

Thus, point by point, I find the majority's rationale wholly inconsistent with and opposed to the First Amendment free speech and associational pronouncements of the United States Supreme Court, which are binding upon us under federal supremacy principles.

Moreover, the majority does not attempt to answer Justice Rouse's perceptive analysis of the meaning of "corruption" within the initiative context: "The term 'corrupt' implies the existence or expectation of a political quid pro quo. In addition, the term 'corruption' subtly conveys the impression that there is a deviation from an objective standard. Such a belief can have no validity. In a democratic system, objective truth is that which the majority subjectively chooses to adopt. Hence it is delusive to maintain that a declaration by the electorate can be 'corrupt.' The price of free speech is that we must put up with opinions which we may deem to be the purest humbug, untainted by any trace of truth . . . (*N.A.A.C.P. v. Button*, [1963] 371 U.S. 415, 445 [, 83 S.Ct. 328, 344, 9 L.Ed.2d 405].)"

Beyond this, however, there is inherent in the majority position an underlying theme that to me is disturbing, namely, that somehow the California electorate needs to be "protected" from free spending "special interests" which will mislead the voters at election time with slanted propaganda, confusing them into making decisions that are unwise for them. This whole approach is very dubious for several reasons.

I note that section 112 of the Berkeley ordinance requires that the city shall publish in Berkeley newspapers, and in such other newspapers as the Berkeley Fair Campaign Practices Commission considers appropriate, a list of all contributors of over $50 to all candidates or committees. These publications shall occur at least twice during the last seven days of the campaign. The sources of initiative financing thus are matters of public record freely available to the electorate before an issues election. (See *C & C Plywood Corp.*, supra, at p. 425.)

The majority, in my opinion, substantially underestimates the sophistication, intelligence and political maturity of the California electorate. It is a reasonable assumption that the average voter understands that the initiatives and referenda, statewide or local, are sponsored and supported by groups or individuals who may have "axes to grind" and who are beneficially interested in the result.

The increasing use of the initiative and referendum and the rising costs of elections, as noted by Justice Rouse, are hard facts of the present political scene. Doubtless $250

does not buy as much free speech today as it did in 1974 when the ordinance was adopted, suggesting the not altogether pleasing prospect that under the majority's rationale a citizen's most fundamental First Amendment rights may expand and contract with the Consumer Price Index.

Regardless of the foregoing, however, I wholly disagree with the premise underlying the majority's assumptions which betrays an over-protective "father knows best" syndrome. I find nothing in either Constitution, federal or state, or in law or policy which permits a city council to quantify or measure out the amount of information or misinformation which the electorate may receive in a ballot measure campaign. In my view, a city council has no authority to permit $250 worth of free speech and association and then, drawing the line, to confiscate for the city treasury all sums in excess thereof donated either by supporters or opponents who wish to be heard on an initiative measure.

The long arm of government does not belong in this arena where the direct voice of the people is heard through the initiative or referendum. Where the clash of contesting ideas, opinions and arguments in many forms culminates in the ultimate expression of the people's will, through an issues election, let the people be the sole judge. Let them separate for themselves the wheat of truth from the chaff of falsehood. They need no self-appointed protective guardian to measure for them the amount of public issue information, misinformation or argument which is to be available for their consideration. Justice Jackson put it very well in his concurring opinion in *Thomas v. Collins* (1945) 323 U.S. 516, 545, 65 S.Ct. 315, 329, 89 L.Ed. 430: "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind. . . . In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us."

The controlling principle is fundamental: "Government is forbidden to assume the task of ultimate judgment, lest the people lose their ability to govern themselves. See *Thornhill v. Alabama*, 310 U.S. 88, 95, 60 S.Ct. 736, 740, 84 L.Ed. 1093 (1940); Meiklejohn, The First Amendment is an Absolute, 1961 S.Ct.Rev. 245, 263. The First Amendment rejects the 'highly paternalistic' approach of statutes like § 8 which restrict *what* the people may hear. [Citations.]" (*Bellotti*, supra, 435 U.S. fn. 31, pp. 791–792, 98 S.Ct. p. 1424, italics added.) In similar fashion, in my view, the First Amendment prohibits adoption of ordinances which restrict *how much* the people may hear on public issues. This is the clear import of the recent First Amendment expressions of the high court. In the words of one interpretive commentator: "The court [in *Bellotti*] properly deemed it safer to entrust the marketplace of ideas to private and diverse individuals and groups than to allow state controls over speakers and messages. The Court's approach is consistent with recent decisions invalidating paternalistic state restrictions on commercial speech. The public can be trusted to evaluate political and commercial messages in light of their sources before making political and consumer decisions." (Ely, supra, 92 Harv. L.Rev. at pp. 168–169.)

There can be no doubt that a rent control measure is a "governmental affair" of broad interest to landlords, tenants and to the public at large. A free flow of information to an electorate which decides this issue is wholly salutary. Public comment and discussion, pro or con, is highly desirable and should be encouraged. Thus, the speech is protected.

Finding it impossible to square either the majority's rationale or its holding with numerous United States Supreme Court decisions, several of them very recent, which define in broad terms the reach of the First Amendment protections for American citizens, I conclude that the ordinance before us is constitutionally flawed.

Doubtless, the Berkeley City Council in adopting the contribution restrictions of the ordinance was well intentioned. Nonetheless, it was misadvised for it violated the

First Amendment in trenching on two fundamental rights of our citizens without any demonstration of the requisite degree of compelling interest. The limitations of the ordinance cannot stand when considered in the light of this overriding pronouncement of the United States Supreme Court in *Bellotti*, supra, at pages 791–792, 98 S.Ct. at page 1424: "[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the framers of the First Amendment." [Fn. omitted.]

I would affirm the judgment.

CLARK and MANUEL, JJ., concur.

EXHIBIT 7

LC 321 - Social Security Legislation

PURPOSE: Section 1. Adds Judges, Sheriffs' and Game Wardens' Retirement Systems to retirement systems covered by Social Security which will permit these systems to vote on social security coverage. Previously all these systems enjoyed social security coverage as spin-offs of the P.E.R.S.

Section 3. Delete reference to the earmarked revenue account from management of Social Security accounts as the Public Employees' Retirement Board has no authority over this account. The language is pre-executive reorganization and this section does not reflect the division of authority created under executive reorganization. The Board who is responsible for making the determination and manages this account has no authorities or responsibilities in the earmarked revenue fund.

Section 4. The purpose of this section is to encourage compliance with the Federal deposit and reporting procedures, not produce revenue. Therefore, the state agencies shall have the authority to waive part or all of the interest penalty when, in the opinion of the Board, a reasonable explanation has been submitted in writing by the political subdivision. This language is found in the body of the bill.

PROS AND CONS: Section 1. Each newly defined retirement system will have the opportunity to vote on social security coverage. Currently, these systems have little or no voice in their social security coverage as they are covered under the P.E.R.S. blanket social security coverage agreement. This bill probably should have been introduced as these individual systems were formed.

Section 3. The P.E.R.D. administrative costs are currently funded from the interest earnings on these moneys. The investment of social security moneys was instituted in approximately 1965 and the result of these interest earnings, the three-tenths of a percent of salaries, assessed agencies participating in the social security program was removed in about 1968. Had the three-tenths of one

percent of salaries been assessed in fiscal 1979-1980, it would have produced about $1.59 M. in administrative expense money.

Section 4. This provision will simply make current interest penalties reflective of current money values. Recently, more reporting agencies have not timely filed their social security reports and delayed their monthly deposits because the interest penalties were so low, that more interest could be earned in the short term money market than the combined state and federal interest penalty. The current provisions no longer serve as an incentive for timely reporting and depositing.

FINANCIAL IMPACT: Sections 1, 2 and 4 have no material financial impact. Section 3 if literally interpreted, could result in the loss of $.5 M a year in agency funding creating the prospect of assessment for administrative costs to participating agencies of the state and political subdivisions.

PRIOR LEGISLATIVE HISTORY: The state social security provisions have had very few amendments since the state signed the Federal-State Social Agreement in 1955.

EXAMPLES OF HARM: Section 1, 2 is relatively harmless, could save the state money and possibly facilitate consolidation of Game Wardens' and Highway Patrolmen's Retirement Systems in the future.

Section 3. Failure to correct the language in this section, could jeopardize current retirement funding practices. If all social security earnings were to go into the earmarked revenue fund, the State of Montana would receive the additional interest income and both the state and political subdivisions would be required to provide additional funding to make up for the funding loss to the general fund.

Section 4. This bill is similar to the bill passed in the last session for the Public Employees' Retirement System. The bill could have an economic effect on chronic delinquents but should improve compliance of the current reporting and depositing procedures. The bill enacted in the 1979 Legislature has worked well under P.E.R.S. although the majority of interest penalties have been waived because reasonable cause has been presented by the agencies.

INTERESTED PARTIES: Montana Judges are very interested in the prospect of leaving social security. The Legislative Auditor is concerned with the interpretation of Section 3 and based on the P.E.R.S. bill in the 1979 Session, Central Payroll and reporting agencies will be interested in the manner Section 3 is administered. We were able to overcome these objections in the 1979 Session.

ART KORN 502

EXHIBIT 8a

Gary Gray	Belt	President	Gene Darling	Columbia Falls	Vice-Pres. Dist. #1
Clem Duaime	Butte	Vice President At Large	Ed Tennant	Hamilton	Vice-Pres. Dist. #2
Arthur J. Korn	Butte	Secretary-Treasurer	Joe Moriarity	Shelby	Vice-Pres. Dist. #3
			Joe Armstrong Nelson	Bozeman	Vice-Pres. Dist. #4
			Frank Frankovich	Stanford	Vice-Pres. Dist. #5
			Lyle Stortz	Roundup	Vice-Pres. Dist. #6
			Dennis Garsjo	Glasgow	Vice-Pres. Dist. #7
			Arlin Anderson	Plevna	Vice-Pres. Dist. #8

Montana State Volunteer Firemen's Association

From the Office of
ARTHUR J. KORN, Sec'ty-Treas.
1916 So. Washington St.
Butte, Montana 59701

AMENDMENT #2

Title, Line 5

Following: "personnel"

Insert: "and volunteer emergency medical personnel"

ART KORN 502

EXHIBIT 8b

Montana State Volunteer Firemen's Association

From the Office of
ARTHUR J. KORN, Sec'ty-Treas.
1916 So. Washington St.
Butte, Montana 59701

AMENDMENT #1

Page 1, Line 22

Following: "Firefighter"

Strike: "or"

Insert ","

Following: "Personnel"

Insert ", or volunteer emergency medical personnel"

ART KORN 502

EXHIBIT 8c

Gary Gray	Belt	President	Gene Darling	Columbia Falls	Vice-Pres. Dist. #1
Clem Duaime	Butte	Vice President At Large	Ed Tennant	Hamilton	Vice-Pres. Dist. #2
Arthur J. Korn	Butte	Secretary-Treasurer	Joe Moriarity	Shelby	Vice-Pres. Dist. #3
			Joe Armstrong Nelson	Bozeman	Vice-Pres. Dist. #4
			Frank Frankovich	Stanford	Vice-Pres. Dist. #5
			Lyle Stortz	Roundup	Vice-Pres. Dist. #6
			Dennis Garsjo	Glasgow	Vice-Pres. Dist. #7
			Arlin Anderson	Plevna	Vice-Pres. Dist. #8

Montana State Volunteer Firemen's Association

From the Office of
ARTHUR J. KORN, Sec'ty-Treas.
1916 So. Washington St.
Butte, Montana 59701

AMENDMENT #3

Title, Line 5

Following: "Red"

Insert: "rotating or"

Page 1, line 12

Following: "Blinker-type"

Insert: "or revolving"

Page 1, line 17

Following: "may use a"

Insert: "revolving or"

NAME Jay Bennett BILL No. HB 586

ADDRESS 1601 Illinois Helena DATE 2-6-81

WHOM DO YOU REPRESENT LWV of Montana

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The LWV has no quarrel with the Code Comm requiring an economic impact statement when they feel one is needed, but to require an agency to prepare a statement each rule is cumbersome and unnecessary.

And again, this bill gives decision-making power that belongs to the entire legislature. We have followed the interim activities for several sessions, and understand the problems the Legislature faces during the long 2½ month interim, particularly the Code Comm. & the Finance Comm. This is one of the reasons we keep pushing annual sessions & oppose by-passing more often in addition to having the oversight committees drawing in the "watchdog capacity" as they do now, the Legislature as a whole would gain more strength, and have more control over the executive

FORM CS-34
1-81

John Worth

EXHIBIT 9

9

HB 586

The Department of State Lands opposes HB 586 for numerous reasons.

First, Article VI, Section 4 of the Constitution provides that "[t]he executive power is vested in the governor who shall see that the laws are faithfully executed". HB 586 authorizes the Administrative Code Committee to enforce the economic impact statement provisions and thereby violates the separation of powers doctrine. Also, the provision for indefinite suspension could allow the committee to interfere with the executive's enforcement of laws through adoption of rules.

Second, interim legislative committees have only the power to gather information for the entire legislature, not to act on its behalf. HB 586 grants to the Administrative Code Committee power to act by suspending rules without action by the entire legislature.

Third, by requiring the preparation of economic impact statements on every rulemaking action, HB 586 would greatly increase the cost of government, in most cases unnecessarily, as is evidenced by the fact that the Administrative Code Committee in the past has requested economic impact statement on extremely small minority of rulemaking actions.

Fourth, HB 586 allows the Administrative Code Committee to suspend rulemaking when the economic impact prepared by the agency "in its judgement" inadequately covers those items contained in subsections (1)(a) through (1)(c). The phrase "in its judgement" gives the committee descretion to suspend rulemaking without requiring it to objectively adhere to the requirements for the contents of the impact statement.

Finally, HB 586 allows the Administrative Code Committee to suspend rulemaking even though the rulemaking may be required of the agency for receipt of federal funds or to administer programs which, if the rules are not adopted in a timely fashion, will be administered by a federal agency. For example, federal strip mine rules provide the Department has six months after adoption of new federal rules or amendment of existing federal rules to take similar action. Indefinite suspension could jeopardize this and other state programs.

10 Wade Smiley

EXHIBIT 10

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' TESTIMONY IN OPPOSITION TO HB 586

This bill relates to economic impact statements for agency rulemaking. This agency believes that rendering an economic impact statement when making rules is not an unreasonable burden. In fact we believe we are in a position to best ascertain the impact in our authorized duty areas.

HB 586 goes much further in that it would allow an interim committee of the Legislature to suspend any rulemaking proceedings, (see Section 5 of HB 586) and keep them in suspense "until acceptance of the applicable statement by the committee," (see Section 5 of HB 586). This proposed wording would seem to mean that a majority of an interim committee can substitute its judgment for the expertise of the rulemaking agency. Anytime an influential group disagrees with an executive branch agency operating within its delegated authority it may request delays by appealing to a majority of one interim committee. This will cause tremendous disruption of services, federal disallowances of federal financial participation, and lawsuits. The majority of one interim committee will be managing state government.

Executive branch agencies currently must respond to testimony in a responsible manner and their final decisions are reviewable by the Legislature. The Legislature as a whole may negate agency action. An interim committee may not. In the 1975 case of State Ex Rel. Judge v Leg. Finance Committee 168 Mont. 470 states that the Montana Legislature cannot delegate: "...a power properly exercisable only by either the entire legislature or an executive officer or agency to one of its interim committees. Such a hybrid delegation does not pass constitutional muster. The power in question here resides in either the entire legislative body while in session or, if properly delegated, in an executive agency."

Article III, Section 1 of the Montana State Constitution requires a separation of powers. This bill clearly violates that section.

Bill O'Pelz HB580

EXHIBIT 11

PSC

	Chairman Chmn	Commissioners Cmrs
Alaska Trans.	# 48,468	# 48,468
Wyoming	34,440 - # 46,152	31,200 - # 41,820
Utah	29,868 - 43,620	29,868 - 43,620
California	42,802	40,764
Hawaii	42,500	40,375
Alaska PUC	41,340	40,848
Wash.	40,800	36,200
Oregon	37,381	33,919
Colorado	36,950	36,950
Arizona	36,000	36,000
Nevada	33,000	31,500
New Mexico PSC	32,664	31,404
North Dakota	30,328	30,328
Idaho	28,000	28,000
* Montana	26,800	26,800
Excluding Alaska & Mont. (Trans.)	# 35,852 - # 37,810	# 34,412 — # 36,287
South Dakota	24,000	24,000
Nebraska	20,000	20,000
all of ^ states above cept for Alaska Trans.	# 33,555 - # 35,146	# 32,385 - # 33,908

* Mont. @ 28,700

CHART II
SALARIES, CHAIRMEN AND COMMISSIONERS (1979)

State, Federal and Associate Commissions	Chairmen	Commissioners
Nuclear Regulatory Commission	$57,500	$53,500
New York Public Service Commission	54,730	46,063
Alberta Public Utilities Board	40,500-53,200	35,700-45,300
Civil Aeronautics Board	52,500	50,000
Federal Communications Commission	52,500	50,000
Interstate Commerce Commission	52,500	50,000
Federal Railroad Administration	52,500	47,500
National Transportation Safety Board	52,500	50,000
Postal Rate Commission	52,500	50,000
Quebec Public Service Board	50,000	29,635-40,929
New Jersey Board of Public Utilities	49,000	49,000
Virginia State Corporation Commission	49,000	48,000
Quebec Electricity and Gas Board	48,900*	36,200*
Alaska Transportation Commission	48,468	48,468
New York State Department of Transportation	47,800*	47,322*
District of Columbia Public Service Commission	47,500	47,500
Connecticut Division of Public Utility Control	38,557-47,329	35,648-43,759
Tennessee Public Service Commission	46,512	46,512
Wyoming Public Service Commission	34,440-46,152	31,200-41,820
Texas Railroad Commission	43,700-45,200	43,700-45,200
Texas Public Utility Commission	44,200	44,200
Utah Public Service Commission	29,868-43,620	29,868-43,620
Indiana Public Service Commission	43,600	37,700-41,600

*1978 Survey of Salaries-no update for 1979-80 received.

CHART II (Continued)

State, Federal and Associate Commissions	Chairmen	Commissioners
California Public Utilities Commission	$42.802	$40,764
Hawaii Public Utilities Commission	42,500	40,375
Pennsylvania Public Utility Commission	42,500	40,000
North Carolina Utilities Commission	42,484	41,484
Kentucky Energy Regulatory Commission	42,200	41,200
Wisconsin Public Service Commission	41,743	38,623 & 35,218
Rhode Island Public Utilities Commission	41,365	23,829-36,924
Alaska Public Utilities Commission	41,340	40,848
Washington Utilities and Transportation Commission	40,800	36,200
Georgia Public Service Commission	40,512	40,512
Illinois Commerce Commission	40,500	30,000-32,000
Maryland Public Service Commission	40,000	15,750-36,800-39,000*
Ontario Telephone Service Commission	40,000	$85.00 per diem
Iowa State Commerce Commission	30,000-40,000	30,000-40,000
Ohio Public Utilities Commission	39,000	36,000
Kentucky Department of Transportation	38,500	35,000
Florida Public Service Commission	37,800**	37,800**
Oregon Public Utility Commissioner	37,381	33,919
Colorado Public Utilities Commission	36,950	36,950
Michigan Public Service Commission	36,600	34,100
Arizona Corporation Commission	36,000	36,000
Kansas State Corporation Commission	35,000	32,625
West Virginia Public Service Commission	35,000	32,500

*Two full-time Commissioners; two part-time Commissioners.
**Effective January 1, 1980.

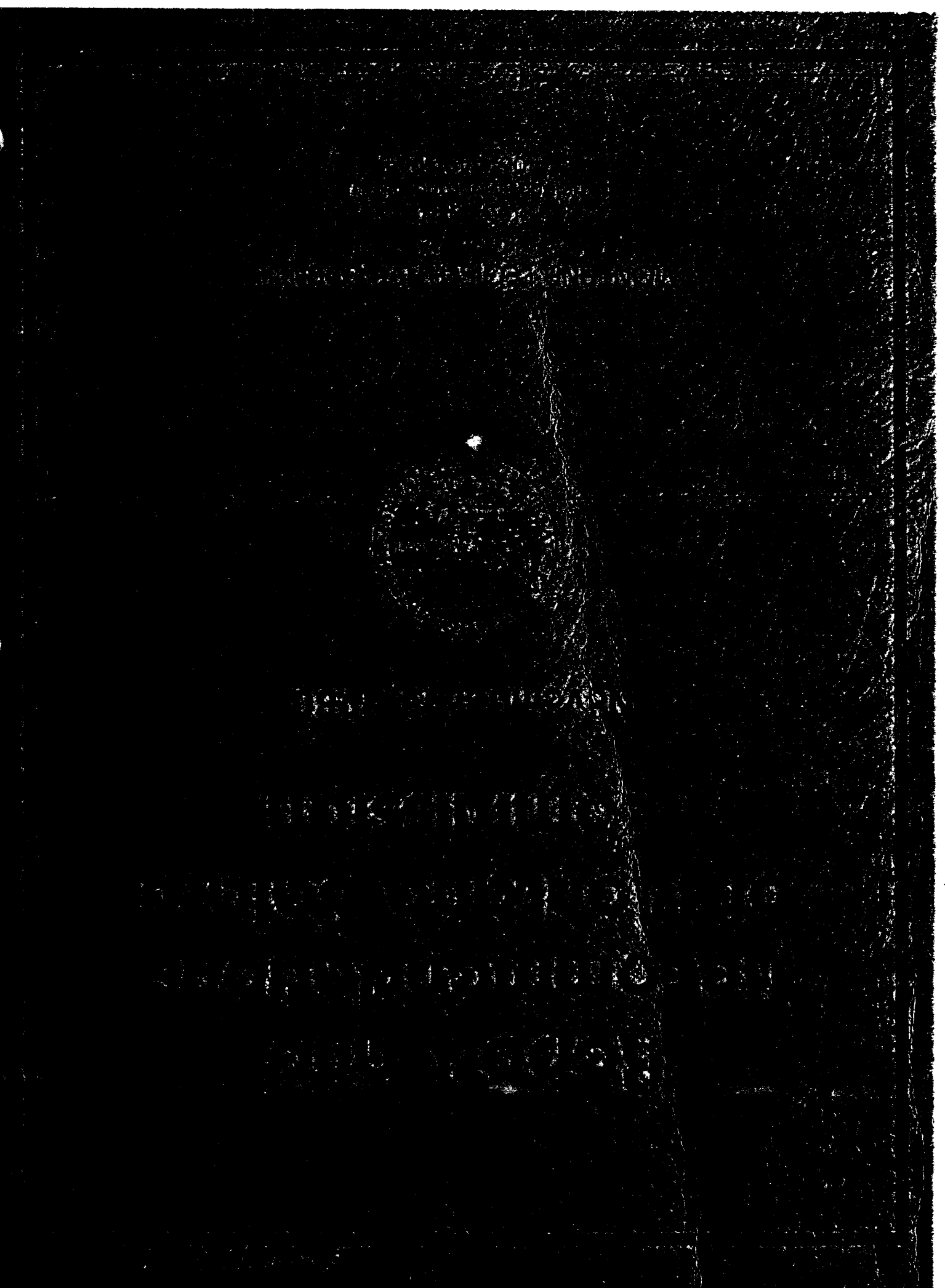
CHART II (Continued)

State, Federal and Associate Commissions	Chairmen	Commissioners
Vermont Public Service Board	$23,200-34,800	$10,600 part-time
Minnesota Department of Public Service	34,000	34,000
Nevada Public Service Commission	33,000	31,500
New Mexico Public Service Commission	32,664	31,404
Arkansas Public Service Commission	32,610	31,401
Massachusetts Department of Public Utilities	32,524	27,420
Oklahoma Corporation Commission	25,000-31,500	27,000-30,000
South Carolina Public Service Commission	31,421	28,746
Mississippi Public Service Commission	31,000	31,000
North Dakota Public Service Commission	30,328*	30,328*
Maine Public Utilities Commission	30,035**	25,334**
New Mexico State Corporation Commission	30,000***	30,000***
New Hampshire Public Utilities Commission	23,320-29,680	21,200-27,560
Kentucky Utility Regulatory Commission	29,400	28,400
Idaho Public Utilities Commission	28,000	28,000
Missouri Public Service Commission	28,000	28,000
Puerto Rico Public Service Commission	27,000***	24,700***
Montana Public Service Commission	26,800	26,800
Iowa Transportation Regulation Board	17,800-25,800***	17,800-25,800***
Arkansas Transportation Commission	24,390***	23,340***
South Dakota Public Utilities Commission	24,000	24,000
Alabama Public Service Commission	23,713	23,191

*All Commissioners receive $30,328 which includes unvouchered expenses.
**Effective January 8, 1979.
***1978 Survey of Salaries-no update for 1979-80 received.

CHART II (Continued)

State, Federal and Associate Commissions	Chairmen	Commissioners
Nebraska Public Service Commission	$20,000	$20,000
Louisiana Public Service Commission	17,500 part-time	17,500 part-time
Delaware Public Service Commission	6,000 part-time	6,000 part-time
Kentucky Railroad Commission	3,600 part-time	3,000 part-time
Virgin Islands Public Service Commission	$30 stipend for each meeting, part-time	
Texas Aeronautics Commission	per diem, part-time	per diem, part-time



VISITORS' REGISTER

HOUSE _____ COMMITTEE

580 Date _____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
John Hoyt	Great Falls	Mont Salary Comm.	✓	
Bill [illegible]	PSC Helena		✓	
Dan Kemmis	Billings	Salary Comm	✓	
Tom Kim	"	"		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE HB 502 COMMITTEE

Date 2/6/81

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
P.A. Ellis	Helena	MT St U of Fire Ass'n	✓	

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VISITORS' REGISTER

HOUSE ____ COMMITTEE

501 Date ____

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Gene Pigeon	Glendive	M.D.U.		✓
Mike Males	Helena	E.I.C.	✓	
George Bennett	"	Mt. Bell MDU		✓
Bill [illegible]	Mt. Mng Assn	(Helena)		✓
Ben Havdahl	Helena	Mont Motor Carriers		✓
[illegible] Murray	Kalispell	Pacific Power & Light		✓
[illegible] Williams	Kalispell	Mont Tax Reduction Movement	✓	
Mike Dahlem	Helena	self	✓	
[illegible]	Helena	[illegible]		✓
Mark Mackin	Helena	Cit Leg Coalition	✓	
[illegible] Estby	Helena	Common Cause	✓	
[illegible]	Helena	LWV of Montana	✓	
[illegible] Langley	Helena	WETA		✓
[illegible]	"	Common Cause	✓	
[illegible]	"	Mont Small Bus Assn	✓	
[illegible]	"	Self	✓	
[illegible] Jackson	"	Weta		✓
[illegible] Langley	"	NFIB		✓
[illegible]	Astoria	CCF+D	—	—
[illegible]	Helena	LWV of Mt	✓	

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VISITORS' REGISTER

HOUSE _____ COMMITTEE

Date _____

SB

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
AL. Smilie	Helena	SRS		✓
Ray Beck	Helena	LWV of Montana		✓
Dan McIntyre	Helena	DNRC		✓
John North	Helena	Dept of State Lands		✓
Karl Wayne	Helena	Univ System of MT	X	
Larry Weinberg	Helena	D.O.R.		✓
NA Rotering	Helena	Dept/Institutions		✓
Jean Miller	Helena	EIC		✓

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