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ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



March 17, 1983
3:00pm

Butrovich Room
Capitol Bldg.

Members Present

Senator Vic Fischer, Chair
Senator Bill Ray, Vice-Chair
Senator Pat Rodey
Senator Tim Kelly
Senator Arliss Sturgulewski

HJR 25--Time Zone Change

Senator Fischer stated that this bill was similar to SJR 17, which the committee had previously considered. It would move the Alaska and Pacific time zones to the Yukon time zone and move the Bering time zone to the Alaska time zone. Senator Fischer also stated that he had sent a questionnaire to all senators asking them their preference for time zone consolidation. Out of nine responses, eight senators favored putting the entire state on Yukon time and one favored putting the entire state on Alaska time.

Senator Fischer proposed a committee substitute which asks the Secretary of the U.S. Department of Transportation to put the entire state on Yukon Standard time and to rename that time zone "Alaska Standard Time."

Senator Sturgulewski asked how the people of western Alaska would view such a change. Senator Fischer responded that some would like it and some would not; however he had spoken with both senators from that region and that they had concurred with the committee substitute.

The committee discussed the effects of a time change on school children, farmers and sportsmen.

Senator Rodey moved and asked unanimous consent to adopt the committee substitute and to move the bill from committee with a do pass recommendation. There was no objection.

SB 155--Truth in campaign advertising

Senator Rodey, prime sponsor, spoke in favor of the bill. He stated that upon reflection he had reservations about making the Alaska Public Offices Commission (APOC) into a quasi-judicial body.

Brooke Miles, APOC staff, state that the commission had not formulated a position on the bill. She conveyed several concerns expressed to her by Theda Pittman, executive director, of the APOC. These included a reservation about creating a quasi-judicial responsibility for the commission and a concern that the commission would be flooded with complaints during the last days of an election.

Senator Fischer appointed Senator Rodey as a subcommittee of one to meet with the commission and to develop improvements to the bill.

HB 198--Relating to membership of the Legislative Budget & Audit Committee, the Alaska Legislative Council and to records of the legislative audit division

The committee briefly discussed the substance of the bill. All were familiar with its substance and spoke in favor of it.

Senator Kelly moved and asked unanimous consent that the bill move from committee with a do pass recommendation. There was no objection.

Senator Fischer adjourned the meeting at 3:35pm.

Introduced: 3/1/63
Referred: State Affairs
and Judiciary

BY RODEY, KELLY, STURGULEWSKI,
KEHTTULA, V. FISCHER AND RAY

1 IN THE SENATE

2 SENATE BILL NO. 155

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to truth in political campaign
7 advertising; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 15.13 is amended by adding a new section to read:

10 Sec. 15.13.115. CIVIL PENALTY FOR RECKLESS DISREGARD FOR TRUTH
11 IN POLITICAL CAMPAIGNS. (a) Each candidate is responsible for the
12 truth of the statements contained in political advertising paid for by
13 the candidate.

14 (b) Each director and officer of a group is responsible for the
15 truth of the statements contained in political advertising paid for by
16 the group.

17 (c) Each person is responsible for the truth of the statements
18 contained in political advertising paid for by the person.

19 (d) A candidate, a group, or an individual may file a complaint
20 with the commission ^{which} under AS 15.13.045 alleging that a statement
21 contained in political advertising was issued in reckless disregard
22 for the truth.

23 (e) If, after an investigation, the commission determines that a
24 candidate, group, or person knowingly made an untrue statement or
25 statements in political advertising in reckless disregard for the
26 truth, the candidate, group, or person is subject to censure by the
27 commission and to a civil penalty of not more than \$5,000 for each
28 untrue statement. A determination of the commission under this
29 section may be appealed to the superior court.

1 * Sec. 2. This Act takes effect January 1, 1984.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SB155
 Title: Truth in Political Campaign Ad-
 Sponsor: Rodey vertising
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: Gen. Governmer.
 BRU, Program of Subprogram(s) Affected:
Public Offices Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		0	10.8	3.8	20.0	4.2
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	10.8	3.8	20.0	4.2
CAPITAL		0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	10.8	3.8	20.0	4.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
		0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Theda Pittman *RPB* Phone: 276-4136
 Division: Alaska Public Offices Commission Date: 3/16/83
 Approved by Commissioner: Lisa Rudd *L. Rudd* Date: 3/16/83
 Department: Administration

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

P. 1 of 2

3/8/83

Analysis:

FY 84 - Because there are no state elections in FY 84, APOC could absorb costs of administering for municipal elections. This assumes FY 84 funding at the Governor's request level of 590.6 general funds and continuation for subsequent years.

FY 85 - Three additional commission meetings at \$3.6 per meeting (per diem travel and salary for Commission members) totalling \$10.8.

FY 86 - One additional commission meeting municipal election year, option well known and potentially more widely used. Assume 6% inflation \$3.8.

FY 87 - Five additional commission meetings at \$4.0 per meeting. A regular state/municipal election year would entail three additional meetings. The increased activity generated by a Governor's election would warrant two additional meetings totalling \$20.0.

FY 88 - Same as FY 86 with inflation of 6% - \$4.2.

MEMORANDUM

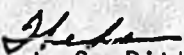
State of Alaska

TO: Commission Members
Alaska Public Offices Commission

DATE: March 12, 1983

FILE NO:

TELEPHONE NO: 276-4176

FROM: 
Theda S. Pittman
Executive Director

SUBJECT: SB 155

SB 155 amends AS 15.13 to provide a \$5,000 civil penalty for a candidate, group, or person who knowingly makes "...an untrue statement or statements in political advertising in reckless disregard for the truth..." and provides that a complaint may be filed with the Alaska Public Offices Commission alleging that such a violation has occurred.

The bill addresses one of the most frustrating aspects of political campaigns, the unscrupulous advertisement or brochure -- often aired or distributed at the last minute so that effective rebuttal is virtually impossible -- which attempts to influence the outcome of an election through the use of misleading information, half-truths, and personal vilification.

In 1982 the California Fair Political Practices Commission undertook a substantial effort to research the constitutionality and the pragmatic problems associated with government regulation of political advertising. As a result of that effort, the California Commission adopted the concept of a voluntary fair campaign practices model agreement subsequently endorsed by the California League of Women Voters which agreed to spearhead efforts to promote candidate use of the agreement.

The California information concerning legal issues and practical enforcement of provisions such as those contained in SB 155 should receive careful attention prior to enactment. (A copy of the final version of the model agreement is attached. I also have a copy of the California briefing paper, but have not yet seen any information assessing the result.)

AS 15.13.090 presently requires that political campaign material be properly identified and staff's experience with that requirement suggests that informal complaints are often registered by those whose interest originates in using the Commission to harass their opponents rather than in a civic duty to assure compliance. A formal complaint has even more potential for harassment. A major difference between AS 15.13.090 and the proposed requirement is that §.090 provides a relatively specific requirement, whereas SB 155 sets a standard that is so subjective and so broad that extensive administrative regulations would be necessary to define the prohibited behavior. Since the proposal is bound to be controversial,

enforcement efforts would be best served by inclusion of a statutory definition.

Page 1, lines 19-22 provide that a complaint could be filed with the Commission "under AS 15.13.045...." Since AS 15.13.120(d) already provides that "A person who believes a violation of this chapter has occurred may file a complaint with the commission....," lines 19-22 could be eliminated from the bill.

Page 1, line 27, the establishment of a \$5,000 civil penalty raises a question about the nature of the Commission which I have tried unsuccessfully to address in other bills which amended the APOC's responsibilities and authority. Basically, there appears to be some disagreement over the possibility that the Commission would be required to become quasi-judicial in order to administer a civil penalty involving such discretion. It seems most sensible to address that question prior to enacting a measure such as this rather than find the State subject to a court challenge which would either complicate or undermine any enforcement.

cc: Brooke Miles, APOC Juneau ✓
Elizabeth P. Kennedy, AG's Office
Mark E. Ashburn, AG's Office
Rebecca Burch, Dept. of Administration



FPPC

Vol. 8, No. 5
Vol. 9, No. 5

BULLETIN

FAIR POLITICAL PRACTICES COMMISSION

1100 K Street, Sacramento 95814
1100 K Street, Sacramento 95814

May 27, 1982
May 27, 1982 **ARRIVED**

COMMISSION RECOMMENDS FAIR CAMPAIGN PRACTICES AGREEMENT

JUN 2 1982

The Fair Political Practices Commission has formally voted to adopt the concept of a voluntary agreement designed to help reduce mud-slinging and negative attacks in campaign advertising. The May 3, 1982 action also included a recommendation to seek the support of the Democratic and Republican parties in urging the voluntary utilization of such an agreement during 1982 general election campaigns. The final version of the agreement was revised substantially from the draft version originally prepared by the staff as a result of comments and testimony presented to the Commission at its March 29 public hearing in Los Angeles. A copy of the model agreement appears on page 10. Los Angeles. A copy of the model agreement appears on page 10.

APOC-ANCH
PM HC
5-20-82

A COST-EFFECTIVE REFORM

Overall state expenditures and individual state agency budgets have demonstrated a steady growth over the years. At the same time, however, an analysis of FPPC budget figures shows that, when inflation is factored out, there has been zero growth in the Commission budget since 1975. There has been zero growth in the Commission budget since 1975.

The Commission was provided with an appropriation of one million dollars as part of the 1974 initiative. The Political Reform Act also provides for an annual cost-of-living adjustment equivalent to what other state agencies receive. Yet, as the chart on page 3 clearly demonstrates, the FPPC budget increase has been consistent with the Consumer Price Index (CPI) and is some 40 percent less than the increase in overall state expenditures during the same period of time. In overall state expenditures during the same period of time.

Continued on Page 2
Continued on Page 2

MODEL FAIR CAMPAIGN PRACTICES CODE/AGREEMENT

I. Fair Campaign Pledge

We pledge to conduct our campaigns for public office openly and fairly. We will discuss the issues and participate in fair debate with respect to our views and qualifications. We will not engage in, or permit, defamatory attacks upon the character of our opponents; nor shall we engage in unwarranted invasions of personal privacy unrelated to campaign issues. We also will not use or permit the use of any campaign material or advertisement which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate. Finally, we will publicly repudiate support deriving from any individual or group whose activities would violate this Fair Campaign Pledge.

Signature _____

Signature _____

Date _____

Date _____

II. Specific Agreements

We further agree to the following specific conditions:

A. Direct Mailings

1. We will clearly identify ourselves (or our campaign committees) as the sender of all our campaign mailings.

2. During the last 14 days preceding the election, we agree to provide to each other a copy of all campaign mailings at least 48 hours before they are placed in the mail.

B. Use of Polls or Polling Information

1. We will not use in our campaign advertisements any false statements concerning the results of any poll.

2. We will not originate or allow questions to be asked in polls which misrepresent, distort, or otherwise falsify the facts regarding any candidate.

C. Submission and Review by Independent Panel

We agree to submit a copy of all campaign advertisements to an independent panel at least 48 hours before they are placed in the mail, broadcast or otherwise published. Each candidate shall pick one person for the panel, and an additional member will be agreed to by the other panelists. The panel will review the advertisements for any statements which are clearly false or misleading. The panel shall be guided by the "Fair Campaign Pledge" in making its determinations.

Following its review of an advertisement, the panel may take no action or it may recommend changes to the candidate. If changes are suggested, the candidate affected may either accept the changes, amend the advertisement in some other way to be acceptable to the panel, or forego the advertisement. Should he or she elect, however, to proceed with an advertisement despite an adverse panel recommendation, the panel shall immediately make its recommendation public. All recommendations made and actions taken by the panel must be done by majority vote.

Any expenses incurred by the panel or panelists will be borne equally by the candidates.

Signature _____

Signature _____

Date _____

Date _____

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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(916) 322-5662

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• • Enforcement • •
322-6441

• • Statements of Economic Interest
322-6444

BRIEFING BOOK

ON

MISLEADING, NEGATIVE AND

LAST MINUTE CAMPAIGN ADVERTISING

MODEL FAIR CAMPAIGN PRACTICES
CODE/AGREEMENT

MARCH 1982

BRIEFING BOOK ON MISLEADING,
NEGATIVE AND LAST MINUTE
CAMPAIGN ADVERTISING

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I.

INTRODUCTION

Misleading, negative and last minute political advertising unfairly damages the reputations of many candidates and elected officials, unnecessarily discourages qualified individuals from running for office, provides an unfair advantage to unscrupulous candidates or unscrupulous campaign managers, and serves to further erode public confidence in elected officials.

In preparing this briefing book on Misleading, Negative, and Last Minute Campaign Advertising, and the proposed Voluntary Campaign Practices Code (See Chapter 9) the staff of the Fair Political Practices Commission:

- Reviewed court cases limiting government regulation of political advertising;
- Surveyed laws in other jurisdictions as well as bills introduced over the years in the California State Legislature;
- Searched the Commission's files for examples of misleading and negative advertisements including misleading "logos" or "warning labels" on campaign envelopes;
- Analyzed various voluntary programs for reducing misleading, negative and last minute campaign tactics;
- Studied testimony presented to the Commission in past public hearings on "Rising Campaign Costs" and the "PAC Phenomenon" and;
- Interviewed (on an "off the record" basis) candidates, professional campaign consultants, and political observers on the origin, use and impact of misleading, negative and last minute political advertising.

II.

THE FAIR POLITICAL PRACTICES COMMISSION'S LIMITED JURISDICTION OVER CAMPAIGN ADVERTISING

The Fair Political Practices Commission has no statutory control or authority over the content, timing, or demeanor of political advertising. Rather, the task of designing, developing, and publishing campaign advertisements is left

solely to the discretion and self-regulation of candidates and their campaign managers. In the final analysis, of course, it is the voters who judge the propriety of misleading, negative or last minute political advertising when they go to the polls.

Despite the perceived problems created by misleading, negative, or last minute campaign advertising, the Fair Political Practices Commission has always been of the opinion that no government agency (including the FPPC) should ever attempt to regulate either the content or timing of political advertising. Free and robust debate, particularly in political campaigns, is crucial to our notions of a democracy, and the United States and California constitutions clearly protect against government intrusion into this area. Thus, the Commission has long believed that any solutions to the problems associated with false or misleading political ads must ultimately come from the candidates themselves and any voluntary advertising/ethics code or dispute resolution system they may choose to follow. (See discussion in Chapter 8.)

The FPPC does, however, have the responsibility for enforcing Section 84305 of the Political Reform Act ("Act")^{1/} which requires any candidate or committee which sends over 200 pieces of identical campaign literature through the mails to accurately identify itself on the outside of the envelope as well as on at least one insert in the mailing. Section 84305 is commonly known as the "mass mailing" provision. (See also Sections 82041.5 and 2 Cal. Adm. Code Sections 18241 and 18435.) Since its establishment in 1975, the FPPC has received and processed numerous complaints concerning alleged violations of the "mass mailing" provision and has instituted formal enforcement proceedings in several leading cases.

Prior to 1978, Section 84250 also required that copies of all mass mailings be sent to the Commission at the time of their public distribution. This requirement was eliminated in 1978, however, for two major reasons. First, a false expectation was created that the Commission has some authority to take action against false or misleading campaign literature when in fact it did not. Second, the Commission was deluged with unnecessary paper as thousands of copies of campaign literature arrived on its doorstep.

Other than the "mass mailing" identification requirement contained in Section 84305, the FPPC exercises no statutory

^{1/}All statutory references in this briefing book are to the Government Code unless otherwise specified.

authority over campaign mailings or broadcast advertising. However, in fulfilling its primary duty of keeping the voter "fully informed" about contributions and expenditures in election campaigns so that "improper practices may be inhibited" (Section 81002(a) of the Act), the Commission has issued several reports on campaign contributions and expenditures. These have served to highlight payments made for various types of political advertisements and for the professional campaign and/or computer firms which specialize in political advertising. In addition, the Commission has sponsored several public hearings during which campaign advertising practices and trends have been discussed.

III.

THE CONTENT OF POLITICAL ADVERTISING CANNOT BE REGULATED BY THE GOVERNMENT

The right to free political expression is guaranteed by both the California and United States Constitutions and ensures that debate in the political arena is "uninhibited, robust, and wide-open." As Justice Black wrote for the United States Supreme Court in Mills v. Alabama, 384 U.S. 214, 218-219 (1966):

Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.

Courts have been particularly suspicious of government interference with speech concerning candidates for public office.^{2/} See Monitor Patriot Co. v. Roy, 401 U.S. 265, 271-72 (1971) ("if it be conceded that the First Amendment was 'fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people' . . . then it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office") (emphasis added); United States v. CIO, 335 U.S. 106, 144 (1948) (Rutledge, J., concurring) (most complete exercise of first amendment rights "essential to the full, fair and untrammelled operation of the electoral process"). Cf. Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

^{2/} There are other possible approaches to regulating campaigns. One possibility is to require candidates to exchange their campaign materials in the closing days before the election. The courts have not ruled on the constitutionality of these alternative approaches.

Only one case, however, has directly dealt with the constitutionality of a campaign falsity statute. Vanasco v. Schwartz, 401 F.Supp 87 (E.D.N.Y. 1976), Aff'd., 96 S.Ct. 763 (1976). The New York State Board of Elections was required to enforce a Fair Campaign Code, which prohibited certain campaign practices, including misrepresentations of a candidate's position or party affiliation, political espionage, and the use of personal vilification or personal attacks. When two candidates challenged the Code and the Board's role in enforcing the Code, the court found the law repugnant to the freedom of speech clause of the United States Constitution. The three-judge District Court panel first noted the "chilling effect" of the Code on the public debate of the issues in an election:

Initially we note that the inhibitory "chilling effect" resulting from the overbreadth of the Code, applies to important First Amendment speech. Free debate on public issues is essential to the survival of the Republic.... In our view, the Code creates a "substantial chill" and has a significant likelihood of deterring this important First Amendment speech.

401 F.Supp. at 97.

Then the court concluded:

Nothing in our decision downgrades the state's legitimate interest in insuring fair and honest elections. Undoubtedly, deliberate calculated falsehoods when used by political candidate can lead to public cynicism and apathy toward the electoral process. However, when the State through the guise of protecting the citizen's right to a fair and honest election tampers with what it will permit the citizen to see and hear even that important state interest must give way to the irresistible force of protected expression under the First Amendment.

401 F.Supp. at 100.

California courts have placed similar importance on the protection of the right to political expression in the election context. See, e.g., Wilson v. Superior Court, 13, Cal. 3d 652 (1975) (court cannot enjoin distribution of a campaign mailing or require that any newspaper article reprints concerning the candidate's opponent be presented in a "fair and balanced" manner); Canon v. Justice Court, 61 Cal. 2d 446 (1964) (statute held void which required the identification of a California voter on any communications which attacked a candidate's personal character or political action; Schuster v. Imperial County Municipal Court, 109 Cal. App. 3d 887 (1980) (statute

prohibiting the distribution of anonymous campaign literature held unconstitutional).^{3/}

Thus any effort to shore up voter confidence in the electoral process by reducing misleading, negative or last minute political advertising must focus on policies, programs and codes which can be voluntarily adopted by candidates and monitored by the press and public.

IV.

APPORTIONING THE CAMPAIGN ADVERTISING BUDGET

A. Gubernatorial and other Statewide Races (30-60 second broadcast commercials dominate)

In gubernatorial and other statewide contests, the largest portion of the campaign budget (roughly 65 percent) is generally directed to broadcast advertising and only a very small percentage to direct mail (2-3 percent) and to newspaper advertising (5 percent). The broadcast advertising budget in turn is heavily weighted toward 30-60 second television ads (roughly 55 percent of the total budget) with radio ads playing a clearly secondary role (roughly 10 percent of the budget).

For statewide candidates seeking to reach large audiences TV advertising is clearly the most cost-effective. But, because of the 30-60 second limit on such ads they are generally designed to address only one issue at a time or to convey only an "image"^{4/} (positive or negative) of the candidate or his opponent.^{4/} Competition for "prime time" time slots is intense and bookings must be generally made a minimum of a week or two in advance. A 60 second TV spot on a Los Angeles station can cost up to \$15,000.

Radio ads are much less expensive, of course, than TV ads -- \$300 for a 60 second spot in Los Angeles. And, since radio stations are known to appeal to certain types of audiences, radio ads can be better tailored for selected audiences, e.g., rock stations/the youth vote, classical music/intellectuals,

^{3/}Section 84305, the "mass mailing" provision of the Political Reform Act, is distinguishable from the section of the Elections Code struck down in Schuster and has been upheld against constitutional challenge in its only court test. See Republican State Central Committee v. Fair Political Practices Commission, L.A. Superior Court No. C 399720 (Judge Pacht) (May 6, 1980).

^{4/}Almost everyone interviewed thought 30-60 second TV ads were far more effective than five minute mini-programs or the longer 30 minute special presentations.

news-talk/middle of the road conservative voters, etc. Radio ads also generally run for 30-60 seconds (occasionally for a minute and a half) and thus impose the same content limitations as to TV ads. Since the time allotted by radio stations to advertising time (versus entertainment or news time) is very flexible and radio stations are very interested in selling more advertising space, they are very willing to accommodate the last minute purchase and placement of additional political ads.

B. Legislative Races (over 50 percent of the budget is spent on direct mailings)

Past reports prepared by the Commission have shown that an ever increasing percentage of campaign funds in legislative races are being devoted to mass mailings, particularly computerized last minute advertisements. In its report on campaign costs 1958 through 1980 ("The Twenty-Year Report"), for example, the Commission documented how expenditures for mail advertising had increased from roughly 30 percent of all legislative campaign costs in 1958 to over 50 percent in 1978. And, on the basis of conversations with leading campaign consultants this trend toward greater and greater reliance on mass mailings in legislative races is clearly continuing. Expenditures in legislative campaigns for radio and TV ads have remained relatively constant at 8 percent of the campaign budget, and those for newspaper ads at below 5 percent of the budget.

As a general rule, TV advertisements are not cost effective in legislative races since the cost for a 30-60 second spot is very high and the coverage far more extensive than desired in a legislative race. Thus while a 60 second spot on a leading Los Angeles TV station can cost \$15,000, it will cover the entire Los Angeles metropolitan area when only coverage of a small portion, i.e., the legislator's district, is desired. In areas where legislative districts coincide more closely with a TV market such as in Sacramento, Fresno, Redding, or Eureka, legislative candidates rely more heavily on TV advertising. Obviously very little TV advertising is done by legislative candidates in the metropolitan areas of Los Angeles, San Francisco, San Diego and San Jose.

Radio advertisements suffer from the same "overkill" problems as do TV ads. However, because radio ads are substantially cheaper and can be better directed to selected audiences, they continue to be used in legislative contests.

WHY THE USE OF "MASS MAILINGS"
IS INCREASING

Not only are mass mailings now clearly the predominate means for conducting legislative campaigns, but they are also being increasingly used to qualify and generate funds for ballot measures, and by ideologically oriented political action committees, to solicit monetary contributions.^{5/}

There are at least four reasons for this steady increase in campaign mass mailings. First, and most importantly, mass mailings can be carefully targeted to selected audiences through the use of computers and refined mailing lists. Second, because mailers are sent into the privacy of the home they can convey a variety of different, and if desired, contradictory, messages to respective voters. Third, mass mailings have proven to be an effective fund raising tool as well as a solid advertising vehicle. Fourth, mailings can be used to deliver a message on the eve of the election which, because of time restraints, cannot be effectively countered by the opposition.

During its 1980 Los Angeles hearing on "Rising Campaign Costs" the Commission received testimony and information concerning the growing sophistication of mass mailing techniques as well as the increasing potential for mass mailing to be contradictory as well as negative in tone. During the 1980 primary election in San Diego, for example, a mass mailing was developed that had 90 different variables which could be adjusted depending upon the recipient's profession, occupation, income level, type of dwelling occupied, number and types of initiative petitions signed, etc. By adjusting these variables, the campaign could assure that all segments of the voting public received a specially tailored appeal for its candidate or against its opponent. This example also illustrates why it is more and more unlikely that the contents of such mailings will be shared or discussed with neighbors or friends in different occupations, tax brackets, etc. Thus, the potential for contradictory statements on any selected issue is increasingly present should a campaign wish to fully exploit modern technology.

The following excerpt from the Direct Mail and Mail Order Handbook, Dartnell Services 2nd Ed. (1974) emphasizes the "audience selectivity" of mass mailings.

^{5/}Several campaign consultants interviewed stressed that mass mailings are on the increase primarily because expenditures for Legislative races are increasing so dramatically.

Direct mail is the most selective of all mass media. Indeed, its selectivity makes it superior to radio, TV, or newspapers for some candidates in some campaigns. Where radio or TV coverage might be too broad, direct mail can be pinpointed to selected areas of the state, or town -- or even a ward or precinct. And it can let you talk about specific issues to people you know in advance will be most interested in those issues.

The possibilities are as wide as your imagination for using direct mail's unique selectivity to appeal to the individual interest of individual voters.

Ibid at 469.

The ability of a campaign to send different messages to different groups of voters should it so desire, is illustrated by the following excerpt from a New West magazine article published January 4, 1980, and entitled Target Practice; Their Aim is True.

The basis of targeted mail ... is the ability of a computer specialist to identify a particular population, then break it down by "lifestyle" characteristics relevant to current political issues.

* * *

That produces the data. It then takes a shrewd campaign manager to "pitch" right into the voter's strike zone. The philosophy underlying the pitch has been around for at least 60 years in the advertising and direct-mail marketing fields - it's finding that untapped tingling zone of "self-interest" in the voter.

No one knows this better than ... the downtown campaign consulting firm that defeated rent control (Proposition R) in San Francisco last fall. Renters and homeowners alike received more individually targeted pieces of mail than some unpopular people would receive in a lifetime. Over \$165,000 was spent generating "25 to 35 pieces of literature," Fourteen versions were mailed, and in some instances, the effort to appeal to the "self-interest" of particular voting groups was pretty far-fetched.

"Our personal freedom to choose our lifestyles is once again threatened," was the pitch on the piece directed to gay renters. The pamphlet implied that the mechanism of rent control would somehow inhibit people from choosing the style of life they wished to lead, and compared

Proposition R with the scurrilous antigay Briggs initiative (Proposition 6) of 1978. It also claimed the law "would outlaw all private housing decisions between owners and renters," which was not true.

To homeowners, the company predicted that rent control would cause "higher homeowners' taxes" and "neighborhood decay." To renters, two pieces were sent during the campaign's final week that warned that rent control would actually raise their rents. Special pieces were mailed in Chinese and Spanish, others to blacks, conservatives, liberals, landlords and church groups.

Several campaign consultants who were interviewed defended the practice of sending contrasting messages to different groups of voters by saying: "Most voters only focus on personalities or one or two issues that affect them personally, anyway."

The utilization of mass mailings to generate substantial political contributions in addition to delivering a potent political message has been demonstrated on numerous occasions including, most recently, the qualification of the Reapportionment Referendum, and before that the qualification of the Gann Initiative. Since the mid-70's, the Gun Owners of California (a political action committee) has successfully been raising millions of dollars through direct mail appeals while at the same time endorsing or attacking legislative proposals or candidates.

Finally, most campaign consultants interviewed believe that mailings are most effective the last few days before an election when there is no time left for them to be refuted by the opposition. One campaign consultant commented that "the thing that makes last minute mail so damaging is that it cannot be answered effectively." Several consultants estimated that in legislative races, a really good mailer, particularly one which is negative in tone, can shift the vote for or against a candidate by as much as 5 percent. Others, while declining to give a percentage figure, agreed that last minute mailers, particularly those accusatory in tone, can often be decisive in legislative contests. And, as one political consultant noted "since the voters sometimes only make up their minds during the last week, last minute mailers are unavoidable."

In a few instances during 1980 legislative campaigns, the charges and counter-charges contained in the last minute mailings, as well as the sheer number of such mailings reached almost comic proportions. During the 1980 primary campaign for State Assembly in Sacramento County, for example, two or

three attack or "hit" pieces arrived in voters' mail boxes daily during the last seven days preceding the election. It is too early to tell whether the receipt of so many mailers will eventually cause a backlash by voters or cause them to disregard all political mailings. Almost all professional consultants agree, however, that the saturation point has not been reached. As one commented:

Mailings are becoming more and more sophisticated and it will never "peak." It's just up to people like me to come up with new ideas and approaches. The "ad game" will always be around.

VI.

SPECIAL PROBLEMS PRESENTED BY MASS MAILINGS

For the same reasons that mass mailings are so effective as campaign weapons they are also the most likely to be used in a misleading, negative, or last minute fashion.

Campaign advertisements sent by mail arrive in the "privacy" of selected homes. They are not generally designed to be shared among neighbors or to otherwise enter into the public market place for debate. As a result, campaign mailers may be contributing to what many observers see as the growing "privatization" of political campaigns in California and the seeming decline in debate and discussion of campaign issues among neighbors. As Professor Eugene C. Lee, Director of the Institute of Government Studies at U.C. Berkeley, has said:

Direct mail privatizes the political process. It comes directly into the house of an interest group without any discussion, without any mediation, without the necessity to put together an organization.

Los Angeles Times, February 14,
1980, p.14.

Because mass mailings are generally not designed for public exposure there is no sunlight to serve as a deterrent or as a disinfectant. Thus they are free to be particularly misleading and negative in tone. As Martin Smith, political writer for the Sacramento Bee recently observed in comparing broadcast to political mail advertising:

Mail advertising lends itself more to negative political campaigns than do broadcast commercials, which, being more in the open, easily can set off a backlash against the campaign making the charges.

Sacramento Bee, February 28,
1982, Editorial page.

Unfortunately, among campaign professionals there appears to be a growing belief that negative mailings (i.e., those in which you criticize your opponent rather than praising your own record) may be the most effective campaign device in legislative contests. The most common subject matters for negative mailers include selected discussions of voting records, charges of low attendance, accusations of being a "big spender," membership in certain clubs or organizations, and ethical breaches. It is rare for a writer to focus on a "personal" issue such as a drinking problem.

In preparing for the 1978 general election, a survey of selected voters revealed that while a letter of endorsement from Howard Jarvis would be helpful to a legislative candidate, a letter from Mr. Jarvis attacking or criticizing one's opponent would be much more effective. Consequently, millions of letters were sent by Republican candidates for the State Legislature in 1980 which contained negative comments about their opponents by Mr. Jarvis. This is but one example of the increasing use of mass mailings to convey a negative rather than a positive image about candidates for office.

To combat this trend, many campaign consultants revealed that they are already in the process of planning strategy to combat or offset what they anticipate will be a barrage of last minute negative mailers during the 1982 campaign season. A strategy which worked fairly well in 1980 and which is expected to be used on an increased basis during 1982 is to send two mailers immediately before the election: One from the candidate praising his record, and one from his wife bemoaning the unfair negative campaign being run by the opposition against her husband.

Others are seeking to avoid negative mailings against them by retaining and thus "neutralizing" campaign firms known for their "hit" pieces. "It's not so much that we want them working for us. We don't dare have them working against us."

Mass mailings, unlike other campaign advertising techniques, are also well suited to last minute surprise attacks. The post office can generally guarantee delivery of campaign mailers on the Monday preceding the election. However, most campaign consultants, so as not to take a chance, tend to target the Saturday before the election as the optimum delivery date. And, because of the privacy of campaign mailers, it is rare that their contents will be discovered by the opposition in time for any steps to be taken to refute any charges or inaccuracies contained in such mailers.

It is also for mass mailings that "independent expenditures" (i.e., those which are not made by or at the behest of a

candidate) are most likely to occur. Broadcast stations which must sell time to qualified candidates or their representatives are not similarly required to sell time to independent expenditure committees. Thus, such groups (which traditionally solicit funds through the mails) are often relegated to mass mailings as their chief campaign weapon. Obviously groups which are not directly affiliated with a candidate have less to deter them from mailing misleading or extremely negative campaign literature.

Finally, campaign mailers are sent in envelopes which themselves can be used to convey misleading inferences as to their true sender or contents. The Commission has seen several instances in which the sender's identification has been left off or a false identification has been placed on the envelope. In other cases the true sender's name is placed on the back of the envelope or in very small print. On the front or in bolder type is placed a misleading identification such as County Sheriff's Office, Patrolman John Doe, Howard Jarvis, Ronald Reagan, etc. The Commission has also been presented with numerous examples of various "logos" or "warning labels" which have been stamped on campaign envelopes to ensure that they are immediately opened by the homeowner. Warning labels such as "Emergency Cable," "Court Action Notice," "Official Tax Rebate Information," "Official Documents Enclosed," "Important Social Security Information," etc., have been successfully employed in the past. Such ploys, while insuring that campaign envelopes are opened, serve only to further erode the public's attitude towards campaign mailings and candidates for public office in general.

VII.

OTHER FACTORS CONTRIBUTING TO MISLEADING OR NEGATIVE POLITICAL ADVERTISING

During the review and interview process undertaken in preparation for the Commission's public hearings, several other factors were identified which may be contributing to the increase in misleading or negative advertising. Concern was expressed, for example, over the practice of paying campaign firms on a "contingency" or "bonus" basis. Under such an arrangement a firm is paid, or is paid a larger sum, only if their candidate wins the election. Such a scheme clearly inserts a "pecuniary" motive in the campaigns and may well result in more heated or desperate last minute mailings. It may also lead to situations where a candidate loses effective control of his campaign down the final stretch. A campaign firm looking at a potential loss or profit of \$10,000 - \$50,000 may be far more willing than a candidate to engage in false or misleading advertising. Many of these

same sentiments towards "contingency" fees were echoed by campaign consultants interviewed by the staff. Fortunately, it appears that only a few firms are still working on a contingency or bonus system.

Strange as it may seem, policies adopted by some broadcast stations and newspapers which were originally designed to prevent last minute or misleading advertising may, in fact, be encouraging such practices to occur in mass mailings. Several newspapers either refuse to publish political advertising on days immediately preceding the election or to provide news coverage of any "new" campaign issue during such time frame. A few television stations have adopted similar policies designed to ensure that they are not used to transmit last minute or unfair campaign charges.

While such policies may be beneficial in statewide races where TV advertising and news coverage is so extensive, the same policies may be backfiring in legislative races where mass mailings dominate. Without access to the news media or the ability to buy last minute TV or newspaper advertising space, the candidate has little means effectively to combat a misleading last minute mailer. And, while it is relatively easy to get radio stations to carry last minute rebuttal ads, the air waves are flooded with political announcements on the days immediately preceding an election, and thus the impact of any one candidate's ad declines proportionately. Consequently, a legislative candidate may often be left at the mercy of an unscrupulous opponent.

VIII.

SUMMARY OF VOLUNTARY PROGRAMS DESIGNED TO REDUCE MISLEADING, NEGATIVE, OR LAST MINUTE CAMPAIGN ADVERTISING

Several voluntary (non-governmental) programs have been utilized in California and other states to deter misleading, negative, or last minute campaign advertising. The theory underlying all of these programs is that candidates (and their campaign committees) will show greater restraint if they have agreed to submit political advertisements to their opponents prior to publication or there exists some independent body with jurisdiction to review and comment on misleading or false campaign advertising. Many candidates and campaign consultants stated that the single most important step that could be taken to clean up California campaigns would be to somehow require candidates to share their advertisements with their opponents 48 hours before they are published. This was adjudged particularly important during the last two weeks of the campaigns.

A brief description of the voluntary programs studied follows:

1. Fair Campaign Practices Committee -- Washington, D.C. (1965 through 1976). This nonprofit organization provided a panel of impartial referees (arbitrators from the American Arbitration Association) to receive and resolve complaints of unfair or misleading advertising. Under the procedures of the committee, all candidates had to agree to the submission and resolution of complaints before the commission assumed jurisdiction. However, the commission would publish information concerning any candidate's refusal to agree to arbitration. The former executive director of the FCPC, Sam Archibald testified before the Fair Political Practices Commission at its public hearing in Sacramento on March 1, 1982.
2. San Jose Mercury-News 1980 Experiment. During the 1980 elections the San Jose Mercury-News requested that opposing candidates voluntarily submit copies of their campaign literature to the newspaper prior to distribution. On its own initiative the newspaper would endeavor to review the literature, spotting inconsistencies or falsehoods. This review process generated stories and editorial comment and was taken into consideration in issuing the newspaper's formal endorsements. One endorsement, in fact, was withdrawn by the Mercury-News after a candidate it previously supported sent out misleading campaign brochures. Mr. Dale Lane, Political Editor of the San Jose Mercury-News will be testifying before the FPPC at its March 29 public hearing in Los Angeles.
3. Brown v. Younger Gubernatorial Campaign Agreement. Under an agreement between the campaign managers for Governor Brown and Attorney General Younger, each campaign agreed to submit copies of its campaign literature to a review panel, consisting of members appointed by each candidate, 48 hours prior to distribution. To most observers this arrangement worked well. Mr. Gray Davis, who conceived and administered the agreement as Governor Brown's campaign manager, will be testifying at the Commission's March 29 hearing in Los Angeles.

In addition to these non-governmental programs, there is at least one government sponsored program which adjudicates and comments on complaints concerning misleading advertisement.

4. Orange County Fair Campaign Practices Commission. This county Commission is authorized to receive complaints relating to false or misleading campaign advertising and to issue public findings. Although the Commission

can impose no sanctions other than publishing its findings, it assumes jurisdiction over disputes whether or not the candidate mentioned in the complaint agrees to submission. The Commission's activities have generated considerable debate within the county. Ms. Joan Riddle, chairperson of the Orange County FCPC, will discuss the FCPC's successes and failures during the FPPC's March 29 public hearing in Los Angeles.

There are also several associations as well as individual newspapers and broadcast stations which have adopted policies or ethics codes to govern political advertising.

5. The American Association of Professional Campaign Consultants. This Association is composed of persons actively involved in the management of political campaigns. The AAPCC has developed and recently updated an ethics code which deals with advertising standards, contingency fees, etc. This Code was recently updated to reflect new campaign techniques. Mr. Joseph Cerrell, the Vice President of AAPCC and an active campaign consultant/manager in California, will discuss the Code and its effectiveness during the Commission's public hearing on March 29, 1982.

6. Newspapers and Broadcast Stations. Individual newspaper and broadcast stations have adopted a variety of practices and policies to govern the acceptance or nonacceptance of last minute, negative or misleading advertisements. These include refusing to carry ads immediately preceding the election, refusing to carry advertisements which contain new issues or new charges immediately preceding the election, refusing to provide news coverage for new issues or charges raised in the closing days of a campaign, etc. (Some unintended ramifications of these policies are discussed in part in Chapter 8.)

Finally, the State Legislature has considered several proposals for regulating campaign practices and political advertising.

In 1979 Senator Omer Rains sponsored legislation (SB 988) which would have established a Voluntary Code of Campaign Ethics prescribing "minimum standards of campaign behavior and responsibility." (Letter from Senator Omer Rains dated March 9, 1982.) The bill died in its first committee.

This year Assemblymen Art Agnos and Richard Mountjoy are sponsoring legislation which would provide sanctions for "false" campaign statements. Copies of these as well as past legislative proposals are available at the Commission's offices.

IX.

MODEL FAIR CAMPAIGN PRACTICES CODE

In preparing the following voluntary proposed Model Fair Campaign Practices Code/Agreement the staff of the Commission attempted to draw the best features from the various campaign ethics codes/agreements and voluntary programs studied in preparation for the Commission's March 29 public hearing. The code consists of a general "Fair Campaign Pledge" followed by a list of optional specific agreements. Candidates would be encouraged to select only those paragraphs which seem applicable to their campaigns and situations.

The campaign consultants interviewed were equally divided between those who thought the code would be beneficial and those that thought it would accomplish little. Those who favored the code stressed its self-enforcing nature noting that breaches of the code would result in adverse publicity, a commodity ill afforded by any candidate. Most of those responding positively to the code thought that requiring candidates to share their advertisements with the opposition prior to publication, particularly during the week before the election, was the code's most important provision. The second most important provision was thought to be the establishment of an impartial panel to review charges of misleading advertisements. There follows a few examples of supportive comments offered on the code during interviews.

The single most important thing the FPPC could do would be to require candidates to share their advertisements with their opponents 48 hours before publication.

A code may or may not be needed in highly publicized races like the Ronka-Reiner race where misleading ads can (and did) quickly backfire, but in less visible contests something like your code would definitely help.

The code or agreement would be a major step forward, particularly if you could get the Democratic and Republican parties to sponsor it.

The mere thought that you will have to show your advertisements to your opponent, or to an impartial panel, will generally deter misleading advertisements.

Obviously the most important sanction available for violation of any such code would be the adverse publicity that would accompany any violations.

The existence of a panel to review campaign literature will deter misleading advertising because of the fear of adverse publicity if the panel rules against you.

I'm not sure you need a panel if you have an agreement to share your ads with opposing candidates. As soon as your opponent sees something in an ad which he believes is obviously misleading, he'll run to the press; so the deterrent factor is already sufficiently present.

Those campaign consultants who disagreed with the need or desirability of a code stressed that it would be essentially unenforceable, and therefore, would really not deter misleading advertising particularly "down the stretch." Some also thought that more "honest" or "naive" candidates might be lulled into a false sense of security vis-a-vis their more unscrupulous opponents. Among the adverse comments offered were these.

Since the only action the proposed panel could take would be to publish its findings of a violation, who would really care?

Your campaign agreement will be like the SALT treaty, everyone agreeing, but then violating and explaining why their actions are really not a violation.

Those with "black hearts" are the ones who will sign and agree to anything and then continue their practices to cover their tracks.

It's very hard to determine whether an issue is new to a campaign or has been previously raised, for example, at some obscure event or rally.

Refusals to sign the code and charges of code violations would become major campaign issues -- detracting the voters from more important and substantive issues.

Additional comments on the proposed code will be presented by witnesses testifying during the Commission's Los Angeles hearing.

MODEL FAIR CAMPAIGN PRACTICES

CODE/AGREEMENT

MODEL FAIR CAMPAIGN PRACTICES CODE/AGREEMENT

I. Fair Campaign Pledge

We, the undersigned, agree to conduct our campaigns for public office in the State of California openly and fairly. We shall discuss the issues and participate in fair debate with respect to our views and qualifications. We shall not engage in, nor will we permit, the character defamation of, or scurrilous attacks upon, any candidate or his or her personal or private life; nor shall we engage in unwarranted invasions of personal privacy unrelated to campaign issues. We shall not use or permit the use of any campaign material or advertisement which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate. We further pledge to immediately and publicly repudiate support deriving from any individual or group which resorts on behalf of our candidacies to advertisements, methods, or tactics which do not live up to the standards of this pledge.

Signature _____

Signature _____

Date _____

Date _____

II. Specific Agreements

We further specifically agree to the following:

Direct Mailings

(1) We will clearly identify ourselves or our campaign committees as the sender of all campaign mailings and literature.

(2) We will not attempt to misrepresent to the recipient of campaign mailings and literature the source or nature of materials.

(3) During the last 14 days preceding the election, we agree to provide to each other a true and complete copy of all campaign mailings at least 48 hours before they are placed in the mail.

Use of Polls or Polling Information

(1) We will not use in our campaign advertisements any false statements concerning the results of any poll.

(2) We will not originate or allow questions to be asked in polls which misrepresent, distort, or otherwise falsify the facts regarding any candidate.

The Raising of Last Minute "New" Issues

We will not introduce any new issues relating to a candidate's character, qualifications or personal life into our campaign advertisements during the three days preceding election day, unless it is in response to issues raised by an opposing candidate or committee or by an independent person or entity not associated with the campaign or the candidates.

Professional Campaign Firms or Consultants

We will not enter into a "contingency" or "bonus" payment agreement with any campaign management firm or consultant.

Submission and Review by Independent Panel

We agree to submit a true and complete copy of all campaign advertisements to an independent panel at least 48 hours before they are placed in the mail or otherwise published. Each candidate shall pick one person for the panel, and an additional member will be agreed to by the other panelists. The panel will review the advertisements for any statements which are clearly or deliberately false or misleading concerning a candidate's character, qualifications or personal life, including but not limited to statements on employment or service records, political activities, party, organization or club affiliations, and voting records. The panel shall be guided by the "Fair Campaign Pledge" in making its determinations.

Following its review of an advertisement, the panel may take no action or it may recommend changes to the candidate. We agree that we may either accept the changes, amend the advertisement in some other way to be acceptable to the panel, or forego the advertisement. Should we elect, however, to proceed with an advertisement despite an adverse panel recommendation, the panel shall immediately make its recommendation public. All recommendations made and actions taken by the panel must be done by majority vote.

The panel will perform its duties on a voluntary basis, but any expenses incurred by the panel or panelists will be borne equally by the candidates.

Signature _____

Signature _____

Date _____

Date _____

Analysis:

FY 84 - Because there are no state elections in FY 84, APOC could absorb costs of administering for municipal elections. This assumes FY 84 funding at the Governor's request level of 590.6 general funds and continuation for subsequent years.

FY 85 - Three additional commission meetings at \$3.6 per meeting (per diem travel and salary for Commission members) totalling \$10.8.

FY 86 - One additional commission meeting municipal election year, option well known and potentially more widely used. Assume 6% inflation \$3.8.

FY 87 - Five additional commission meetings at \$4.0 per meeting. A regular state/municipal election year would entail three additional meetings. The increased activity generated by a Governor's election would warrant two additional meetings totalling \$20.0.

FY 88 - Same as FY 86 with inflation of 6% - \$4.2.