

**HB**

**355**



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
(907) 465-4990

### COMMITTEE MEMBERS

Rep. Jay Ramras  
Chairman  
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(907) 465-3004

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Rep. Max Gruenberg  
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Rep. Lindsey Holmes  
Room 405  
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### MEMORANDUM

Date: March 27, 2008

To: Representative Kevin Meyer  
Co-Chair House Finance Committee

From: Representative Jay Ramras  
Chair House Judiciary Committee

Re: Referral File for CSHB 355(JUD) 25-LS1263M

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Attached please find the following documents, which represent the referral file for HB355:

- Sponsor Statement
- CSHB 355(JUD) 25-LS1263M
- Adopted amendment #3
- Fiscal Notes
  - OOG – Indeterminate
  - ADM – 0
- Failed amendments #1 and #2 with legal opinion
- Sectional Analysis
- CSHB 355 (25-LS1263E) work draft
- Legal Opinions
  - Alpheus Bullard, March 19, 2008
  - Assistant Attorney General, Margaret Paton-Walsh, March 11, 2008
- HB 355 (25-LS1263C)
- Back-up materials
- Letter of Support
- HJUD Report

# Alaska State Legislature

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50 Front Street, Suite 203  
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Phone: (907) 247-4672  
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*Session*  
State Capitol, Room 13  
Juneau, AK 99801-1182  
Phone: (907) 465-3424  
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Representative Kyle Johansen  
District 1

## Sponsor Statement

### **HB 355: An Act Relating to Ballot Initiative Disclosure Requirements**

Alaska's lawmaking process – in order to maintain its high regard, importance and legitimacy – must be as open and transparent as possible. The integrity of the initiative process must also be protected. HB 355, or the Open and Transparent Initiative Act (OTIA), is a reasonable step towards those goals as it introduces a better way to inform Alaskans about how ballot initiatives are funded.

HB 355 seeks to identify individuals and groups who financially contribute for or against initiative campaigns, requires registration of an initiative group with the Alaska Public Office's Commission (APOC), and requires on-line filing of disclosure forms. These guidelines are similar to those imposed upon elected officials.

Initiative-created law has the same authority and effect as law created by elected officials. Therefore voters should be allowed to know who is making law through the initiative process. This legislation would make the initiative process more available to public scrutiny. HB 355 improves Alaskan's accessibility to information that is important to consider before casting their vote.

Initiative committees are required to disclose financial contributions, but their disclosures are not published in a timely manner or available on the internet to be easily accessed by the public. APOC does have a website that displays initiative committee information, but it is not current and the information provided is minimal. HB 355's electronic filing requirement remedies this situation.

In short, OTIA seeks to allow Alaskan voters to make the most informed decision as possible, and knowing who financially contributes to initiatives is a significant part of that decision.

ADOPTED

25-LS1263\E.2  
Bullard  
3.25.08

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE JOHANSEN

TO: CSHB 355( ), Draft Version "E"

1 Page 3, lines 12 - 18:

2 Delete all material and insert:

3 "Sec. 15.45.770. **Registration and reporting.** (a) In addition to those persons  
4 required to register before making an expenditure in support of or in opposition to a  
5 ballot initiative under AS 15.13.050(a), an individual making expenditures exceeding  
6 \$500 in a calendar year in support of or in opposition to an initiative shall register with  
7 the commission.

8 (b) A person making expenditures in support of or in opposition to an  
9 initiative and registered under AS 15.13.050(a) and an individual registered under (a)  
10 of this section shall file reports as required by AS 15.13.040 and AS 15.13.110."

11

12 Reletter the following subsections accordingly.

ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras  
Chairman  
(907) 465-3004  
Fax: (907) 465-2070  
Representative\_Jay\_Ramras@legis.state.ak.us  
  
1292 Sadler Way, Suite 324  
Fairbanks, AK 99701



**Committee Members:**  
Representative Nancy Dahlstrom,  
Vice-Chairman  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

State Capitol, Room 120  
Juneau, Alaska 99801-1182

**Fax**

To: Alpheus Bullard  
Legislative Legal

Fax #: 2029

Number of pages including cover: 2

From: Jane Pierson

Date: March 26, 2008

Re: Final for HJUD on HI 55 (25-LS1263VE)

Please go final on the above-referenced bill. There is one attached amendment to be included (25-LS1263VE.2).

Should you have any questions concerning this matter, please do not hesitate to contact me.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 355  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB355-OOG-DOE-2-12-08 Dept Affected: OOG  
 Title An Act requiring the disclosure of the identity of certain RDU Elections  
persons, groups in support or opposition of ballot initiatives. Component Elections  
 Sponsor Representative Johansen  
 Requester House Judiciary Committee Component Number 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	*****	0.0	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES</b> )								
-----------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	*****	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

We are unable to determine what fiscal costs will be incurred by this legislation under the current intent language

Prepared by Gail Fenumiai, Director  
 Division Division of Elections  
 Approved by Linda Perez, Administrative Director  
Office of the Governor

Phone 465-2644  
 Date/Time 2/13/2008, 10:40am  
 Date 2/13/2008

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 355  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB355-DOA-APOC-2-11-08 Dept. Affected: Administration  
 Title: "An Act relating to the disclosure of the identity of certain..." RDU: AK Public Offices Commission  
 Component: AK Public Offices Commission  
 Sponsor: Representative Johansen  
 Requester: House Judiciary Committee Component Number: 70

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**ANALYSIS:** (Attach a separate page if necessary)

This bill requires groups that support or oppose a ballot initiative to register with APOC and to disclose their contribution and expenditure activities thereafter. This bill will not have a fiscal impact on APOC.

Prepared by: Brooke Miles  
 Division: Alaska Public Offices Commission  
 Approved by: Rachael Petro, Deputy Commissioner  
Department of Administration

Phone: 907-334-1726  
 Date/Time: 2/12/08 12:00 AM  
 Date: 2/12/2008

AMENDMENT #1 w/D

OFFERED IN THE HOUSE

BY REPRESENTATIVE SAMUELS

TO: CSHB 355( ), Draft Version "E"

1 Page 1, line 1, following "Act":

2 Insert "**prohibiting certain expenditures made in support of or in opposition to**  
3 **ballot initiatives; and**"

4  
5 Page 1, line 11, following "that":

6 Insert "prohibiting expenditures originating from outside the state in support of or in  
7 opposition to ballot initiatives and"

8  
9 Page 2, following line 13:

10 Insert new material to read:

11 "(c) It is the intent of the legislature that this Act ensure that monetary expenditures  
12 and contributions originating from outside the state not dictate how Alaska ballot initiatives  
13 are framed and understood.

14 \* **Sec. 4.** AS 15.13.065(c) is amended to read:

15 (c) Except **as provided in AS 15.13.074(j), except** for reports required by  
16 AS 15.13.040 and 15.13.110, and except for the requirements of AS 15.13.050,  
17 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do  
18 not apply to limit the authority of a person to make contributions to influence the  
19 outcome of a ballot proposition. In this subsection, in addition to its meaning in  
20 AS 15.60.010, "proposition" includes an issue placed on a ballot to determine whether

21 (1) a constitutional convention shall be called;

22 (2) a debt shall be contracted;

23 (3) an advisory question shall be approved or rejected; or

1 (4) a municipality shall be incorporated.

2 \* Sec. 5. AS 15.13.074 is amended by adding a new subsection to read:

3 (j) An individual who is a resident of another state or a group or nongroup  
4 entity organized under the laws of another state, resident in another state, or whose  
5 participants are not residents of this state may not make a contribution in support of or  
6 in opposition to an initiative.

7 \* Sec. 6. AS 15.13.084 is amended by adding a new subsection to read:

8 (b) Notwithstanding (a) of this section, an individual who is a resident of  
9 another state or a group or nongroup entity organized under the laws of another state,  
10 resident in another state, or whose participants are not residents of this state may not  
11 make an expenditure in support of or in opposition to an initiative."

12

13 Renumber the following bill sections accordingly.

14

15 Page 2, following line 29:

16 Insert a new bill section to read:

17 \*\* Sec. 9. AS 15.13.140(b) is amended to read:

18 (b) An independent expenditure for or against a ballot proposition or question  
19 (1) shall be reported in accordance with AS 15.13.040 and 15.13.100 -  
20 15.13.110 and other requirements of this chapter; and  
21 (2) may not be made if the expenditure is prohibited by  
22 AS 15.13.084(b) or 15.13.145 [AS 15.13.145]."

23

24 Renumber the following bill sections accordingly.

AMENDMENT #2 w/d

OFFERED IN THE HOUSE

BY REPRESENTATIVE SAMUELS

TO: CSHB 355( ), Draft Version "E"

1 Page 1, line 1, following "Act":

2 Insert "restricting contributions made in support of or in opposition to ballot  
3 initiatives; and"

4  
5 Page 1, line 11, following "that":

6 Insert "limiting the amount of contributions made in support of or in opposition to  
7 ballot initiatives and"

8  
9 Page 2, following line 13:

10 Insert new material to read:

11 "(c) It is the intent of the legislature that this Act ensure that contributions made in  
12 support of or in opposition to ballot initiatives are restricted in the same manner as other  
13 political contributions.

14 \* Sec. 4. AS 15.13.065(c) is amended to read:

15 (c) Except for reports required by AS 15.13.040 and 15.13.110 and except for  
16 the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the  
17 provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person  
18 to make contributions to influence the outcome of a ballot proposition. In this  
19 subsection, [IN ADDITION TO ITS MEANING IN AS 15.60.010,] "proposition"  
20 means a referendum, a constitutional amendment submitted at an election to the  
21 public for vote, and [INCLUDES] an issue placed on a ballot to determine whether

22 (1) a constitutional convention shall be called;

23 (2) a debt shall be contracted;

- 1 (3) an advisory question shall be approved or rejected; or
- 2 (4) a municipality shall be incorporated.

3 \* Sec. 5. AS 15.13.070(b) is amended to read:

4 (b) An individual may contribute not more than

5 (1) \$500 a [PER] year to a nongroup entity for the purpose of  
6 influencing the nomination or election of a candidate, to a candidate, to an individual  
7 who conducts a write-in campaign as a candidate, or to a group that is not a political  
8 party;

9 (2) \$5,000 a [PER] year to a political party; or

10 (3) \$500 a year to an individual, group, or nongroup entity for the  
11 purpose of influencing an initiative.

12 \* Sec. 6. AS 15.13.070(f) is amended to read:

13 (f) A nongroup entity may contribute not more than \$1,000 a year to another  
14 nongroup entity for the purpose of influencing an initiative or the nomination or  
15 election of a candidate, to a candidate, to an individual who conducts a write-in  
16 campaign as a candidate, to a group, or to a political party."

17  
18 Renumber the following bill sections accordingly.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
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State Capitol  
Juneau, Alaska 99801-1182  
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## MEMORANDUM

March 26, 2008

**SUBJECT:** Requested amendments to CSHB 355( )  
(Work Order Nos. 25-LS1263\E.3 and \E.4)

**TO:** Representative Ralph Samuels  
Attn: Linda Hay

**FROM:** Alpheus Bullard *LAB*  
Legislative Counsel

This memorandum accompanies the two amendments to CSHB 355( ), draft version "E," that you requested. Both are likely to be held unconstitutional because they burden the First Amendment interests of certain individuals, groups, and nongroup entities.

### **Freedom of Speech**

The First Amendment of the Constitution of the United States protects freedom of speech and freedom of association. The freedom of speech is not absolute, Messerli v. State, 626 P.2d 81, 86 (Alaska 1981), but any content-based restriction on speech in Alaska must serve a "compelling" state interest. Mickens v. City of Kodiak, 640 P.2d 818, 821 (Alaska 1982) and State v. Metcalfe, 110 P.3d 976 (Alaska 2005). Political campaign contributions and expenditures fall within the protections of the first amendment. Buckley v. Valeo, 424 U.S. 1 (1976). Any restriction on the ability of individual groups and nongroups inside or outside the state of Alaska to make contributions or expenditures in support of or in opposition to ballot initiatives is likely to face a first amendment challenge.

The only state interest the United States Supreme Court has thus far found adequate to support campaign contribution limits is the prevention of corruption or the appearance of corruption, and the court has concluded that this rationale does not extend to initiative campaigns. "[B]allot initiatives do not involve the risk of 'quid pro quo' corruption present when money is paid to, or for, candidates." Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999), citing Meyer v. Grant, 486 U.S. 414 (1988), citing Bellotti. See also Randall v. Sorrell, 126 S. Ct. 2479 (2006) (striking down state contribution caps as too stringent).

Based on this precedent, it is likely that a court would invalidate the dollar limits on contributions to initiative campaigns in amendment E.4.

Representative Ralph Samuels

March 26, 2008

Page 2

Amendment E.3 would allow only state residents and groups organized under Alaska law, resident in this state, and whose participants are Alaska residents to make contributions or expenditures in support of or in opposition to a ballot initiative. In VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), the Ninth Circuit invalidated a similar geographically based restriction enacted by initiative in Oregon. The court found:

Measure 6 bans all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption. Appellants are unable to point to any evidence which demonstrates that all out-of-district contributions lead to the sort of corruption discussed in *Buckley*. . . . Measure 6 is not closely drawn to advance the goal of preventing corruption and under this analysis fails to pass muster under the *First Amendment*.

Id. at 1221. Preventing corruption and the appearance of corruption is the only justification which has been found adequate to justify infringing on the First Amendment freedom of association by limiting or banning campaign contributions, and the Ninth Circuit found that a complete ban on out-of-district contributions was not closely drawn to serve this goal. Amendment E.3 would likely be invalidated for the same reasons.

#### **Privileges and Immunities**

Amendment E.3, because it applies only to non-residents, would also be subject to challenge under the privileges and immunities clause.

The federal privileges and immunities clause restricts the state's ability to interfere with the fundamental rights of non-residents. See Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). The Alaska Supreme Court has summarized the effect of the privileges and immunities clause as follows:

Article IV, section 2 prohibits discrimination against nonresidents "where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states." No "substantial reason" will be found absent some showing that nonresidents are "a peculiar source of the evil" which the state's action is meant to remedy. In addition, the discrimination worked upon nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Only if the challenged discriminatory action surmounts both of these hurdles will it survive privileges and immunities clause scrutiny.

Noll v. Alaska Bar Association, 649 P.2d 241, 244 (Alaska 1982) (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948), and Hicklin v. Orbeck, 437 L.Ed.2d 397, 404 (1978); citations omitted). So, in addition to having to provide a "compelling justification" for the measure to satisfy the First Amendment, you would also need to show a "substantial reason" why the measure should apply only to non-residents in order to withstand a privileges and immunities clause challenge.

Representative Ralph Samuels

March 26, 2008

Page 3

**Conclusion**

Imposing contribution limits for ballot initiatives, or prohibiting out-of-state contributions or expenditures made in support of or in opposition to ballot initiatives, is likely to be interpreted by a court as an unconstitutional burden on the freedom of speech under the First Amendment to the Constitution of the United States, and article I, section 5 of the Constitution of the State of Alaska.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw

08-176.ljw

Enclosures

# ALASKA STATE LEGISLATURE

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REPRESENTATIVE KYLE JOHANSEN  
DISTRICT ONE

Chair  
Transportation

Vice Chair  
Fisheries

Member  
Economic Development  
Trade and Tourism  
State Affairs

## Sectional Analysis – House Bill 355

- Section 1.** Establishes the Act to be known as the Open and Transparent Initiative Act.
- Section 2.** Provides legislative findings that informing the electorate of the identity of persons, groups, and nongroup entities that make significant contributions or expenditures in support of or in opposition to ballot initiatives would improve the state's electoral and legislative processes.
- Section 3.** States that it is the intent of the legislature that the Act's purpose is to ensure that the people of Alaska are able to learn the identity of persons, groups, and nongroup entities that make significant contributions or expenditures in support of or in opposition to ballot initiative and the aggregate amount of such contributions.
- Section 4.** Conforms AS 15.13.110(e) to the change made by section 5 of the Act.
- Section 5.** Adds a new subsection to AS 13.13.110 that requires an initiative committee, person, group, or nongroup entity receiving contributions or making expenditures exceeding \$500 in a calendar year in support of or in opposition to a ballot initiative to make certain reports.
- Section 6.** Adds a new article entitled "Initiative Disclosure Requirements" to AS 15.45.
- Section 15.45.750** States that it is the purpose of AS 15.45.780 is to ensure that significant contributions and expenditures made in support of or in opposition to ballot initiatives are disclosed so that the electorate may be fully informed.
- Section 15.45.760** Establishes rules for initiative committee names.
- Section 15.45.770** Requires initiative committees to register with the Alaska Public Offices Commission and file certain reports, and provides that the commission will publish these reports on the internet.

# ALASKA STATE LEGISLATURE

Session  
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Chair  
Transportation

Vice Chair  
Fisheries

Member  
Economic Development,  
Trade and Tourism  
State Affairs

REPRESENTATIVE KYLE JOHANSEN  
DISTRICT ONE

**Section 15.45.780** Provides that advertising and promotional material paid for by an initiative committee, person, group, or nongroup entity receiving contributions or making expenditures exceeding \$500 in a calendar year in support of or in opposition to a ballot initiative must include the name of the committee, person, group, or nongroup entity.

**Section 7.** Establishes that the Act applies to initiatives for which the applications are filed with the lieutenant governor after the effective date of the Act.

25-LS1263VE  
Bullard  
3/20/08

**CS FOR HOUSE BILL NO. 355( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES JOHANSEN, Johnson, Samuels, Wilson, Lynn**

**A BILL**  
**FOR AN ACT ENTITLED**

1 "An Act requiring the disclosure of the identity of certain persons, groups, and  
2 nongroup entities that expend money in support of or in opposition ( ballot initiatives  
3 and the aggregate amounts of significant contributions or expenditures made by those  
4 persons, groups, and nongroup entities."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new section  
7 to read:

8 **SHORT TITLE.** This Act may be known as the Open and Transparent Initiative Act.

9 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 **FINDINGS.** The legislature finds that informing the electorate of the identity of  
12 persons, groups, and nongroup entities that make significant contributions or expenditures in  
13 support of or in opposition to ballot initiatives would enhance the integrity of the state's  
14 electoral and legislative processes.

1 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3 LEGISLATIVE INTENT. (a) It is the intent of the legislature that this Act ensure that  
4 the people of Alaska are able to cast informed votes on election day by having the opportunity  
5 to know

6 (1) the identity of persons, groups, and nongroup entities that make significant  
7 contributions or expenditures in support of or in opposition to a ballot initiative; and

8 (2) the aggregate amount of significant contributions or expenditures made by  
9 persons, groups, and nongroup entities in support of or in opposition to a ballot initiative.

10 (b) It is the intent of the legislature that the Alaska Public Offices Commission collect  
11 and provide to the people of Alaska readily accessible information related to the identity of  
12 the sources of significant financial contributions and expenditures made in support or  
13 opposition to a ballot initiative.

14 \* Sec. 4. AS 15.13.110(e) is amended to read:

15 (e) A group formed to sponsor [AN INITIATIVE,] a referendum or a recall  
16 shall report 30 days after its first filing with the lieutenant governor. Thereafter, each  
17 group shall report within 10 days after the end of each calendar quarter on the  
18 contributions received and expenditures made during the preceding calendar quarter  
19 until reports are due under (a) of this section.

20 \* Sec. 5. AS 15.13.110 is amended by adding a new subsection to read:

21 (g) An initiative committee or any person, group, or nongroup entity receiving  
22 contributions or making expenditures exceeding \$500 in a calendar year in support of  
23 or in opposition to a ballot initiative shall make a full report in accordance with  
24 AS 15.13.040 on the contributions received and expenditures made for the period  
25 beginning on the last day covered by the most recent previous report and ending three  
26 days before the due date of the report. Reports must be filed as provided under (a) and  
27 (b) of this section. If the report is a first report, it must cover the period beginning on  
28 the day an application is filed under AS 15.45.020 and ending three days before the  
29 due date of the report.

30 \* Sec. 6. AS 15.45 is amended by adding new sections to read:

31 **Article 4. Initiative Disclosure Requirements.**

1           **Sec. 15.45.750. Statement of purpose.** The purpose of AS 15.45.750 -  
2           15.45.780 is to ensure that significant contributions and expenditures made in support  
3           of or in opposition to initiatives are fully and truthfully disclosed so that the electorate  
4           may be fully informed and improper practices may be inhibited.

5           **Sec. 15.45.760. Initiative committee names.** An initiative committee must  
6           have a name that

7                   (1) includes the ballot title of the initiative and identifies that the  
8           committee is for the initiative;

9                   (2) is not deceptively similar to that of another person, group, or  
10          nongroup entity; and

11                   (3) is not otherwise misleading.

12          **Sec. 15.45.770. Registration and reporting.** (a) An initiative committee under  
13          AS 15.45.030(3) or any person, group, or nongroup entity receiving contributions or  
14          making expenditures exceeding \$500 in a calendar year in support of or in opposition  
15          to an initiative shall

16                   (1) register with the commission, and

17                   (2) file reports as required by AS 15.13.040 and in the manner  
18          provided by AS 15.13.110.

19                   (b) Campaign reports under this section must be submitted electronically.

20                   (c) The commission shall publish reports required under this section on the  
21          Internet, in a format accessible to the general public, within two working days after the  
22          commission receives the report.

23          **Sec. 15.45.780. Advertising and promotional materials.** All political  
24          advertising in support of or in opposition to an initiative that is paid for by an initiative  
25          committee or any person, group, or nongroup entity receiving contributions or making  
26          expenditures exceeding \$500 in a calendar year in support of or in opposition to an  
27          initiative must include the name of the committee, person, group, or nongroup entity.

28          **Sec. 15.45.790. Definitions.** In AS 15.45.750 - 15.45.790, "commission"  
29          means the Alaska Public Offices Commission.

30          \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
31          read:

1           APPLICABILITY. This Act applies to an initiative for which the application was filed  
2 with the lieutenant governor under AS 15.45.020 after the effective date of this Act.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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## MEMORANDUM

March 19, 2008

**SUBJECT:** Constitutional issues (HB 355; Work Order No. 25-LS1263\C)

**TO:** Representative Kyle Johansen  
Attn: Sonia Christensen

**FROM:** Alpheus Bullard *ALB*  
Legislative Counsel

You asked if there were any constitutional concerns in reference to HB 355, a bill that requires the disclosure of the identities of certain persons, groups, and nongroup entities that expend money in support of or in opposition to ballot initiatives. It is my opinion that the bill is constitutional.

The relevant constitutional concern is whether the bill infringes on the freedom of speech guaranteed under the First Amendment of the United States Constitution. In the context of the bill's disclosure requirements for initiative committees, persons, groups, and nongroup entities receiving contributions or making expenditures exceeding \$500 in a calendar year in support of or in opposition to a ballot initiative, I believe the state's interest in providing the electorate with information related to certain parties that support or oppose ballot issues has been established.

In McConnell v. Federal Election Commission, 540 U.S. 93 (2003), the United States Supreme Court resolved a key disclosure question, upholding the constitutionality of new disclosure rules in the Federal Bipartisan Campaign Reform Act of 2002 (BCRA) related to contributions and expenditures funding "sham issue advocacy" in candidate elections. See id. at 196 (2003) (opinion of Stevens and O'Connor), quoting McConnell v. FEC, 251 F. Supp. 2d, 176, 237 (D.D.C. 2003):

Curiously, plaintiffs want to preserve the ability to run these advertisements while hiding behind dubious and misleading names like: 'The Coalition-Americans Working for Real Change' (funded by business organizations opposed to organized labor), 'Citizens for Better Medicare' (funded by the pharmaceutical industry), 'Republicans for Clean Air' (funded by brothers Charles and Sam Wyly). Findings PP 44, 51, 52. Given these tactics, *Plaintiffs never satisfactorily answer the question of how 'uninhibited, robust, and wide-open' speech can occur when organizations hide themselves from the scrutiny of the voting public.* McConnell Br. at 44. Plaintiffs' argument for striking down BCRA

disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs argue are trampled by BCRA, but ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace.<sup>1</sup>

(Emphasis added.) It is these "interests of individual citizens seeking to make informed choices in the political marketplace" that support the disclosure requirements of HB 355. Knowing who is supporting or opposing a ballot initiative is an effective cue that allows citizens to better make their voting choices.

The use of corporate wealth (like individual wealth) to speak to the electorate is unlikely to "distort" elections--especially if disclosure requirements tell the people where the speech is coming from. The premise of the First Amendment is that the American People are neither sheep nor fools, and hence capable fully capable of considering both the substance of the speech presented to them and its proximate and ultimate source.

McConnell, 540 U.S. at 258-59 (Scalia, dissenting).

Because the courts have held that initiative elections pose no threat of *quid pro quo* corruption<sup>2</sup> the justification for statute and regulations mandating disclosure must rest on these informational concerns highlighted by the District Court in McConnell. In California Pro-life Council Inc., v. Randolph, 507 F.3d 1172 (2007 U.S. App.), the court followed McConnell in accepting a lower court's rationale that California had a compelling interest in informing the electorate regarding contributions and expenditures made to pass or defeat ballot measure initiatives.<sup>3</sup>

A contrary opinion as to the bill's constitutionality would depend on a broad reading of a prior Supreme Court case, McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)

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<sup>1</sup> See also First National Bank of Boston v. Bellotti, 435 U.S. 765, 791-92 (1978) (Corporate advertising in support or in opposition to ballot referenda cannot be suppressed, and suppression is unnecessary because the voters could evaluate the corporate speakers themselves - in part through disclosure laws).

<sup>2</sup> See Bellotti, 435 U.S. 765, 789-90 (1978), and Buckley v. Am. Constitutional Law Foundation, 525 U.S. 182, 203 (1999).

<sup>3</sup> The court accepted this "information" rationale but did not accept the lower court's second articulated rationale of preventing veiled political actors from concealing their involvement in the political process, because the notion of deterring corruption has been rejected as a constitutionally sufficient interest in the ballot measure disclosure context, citing Montana Chamber of Commerce v. Argenbright, 226 F.3d 1049, 1056 (9th Cir. 2000) and Bellotti, 435 U.S. 765, 790, (1978).

Representative Kyle Johansen  
March 19, 2008  
Page 3

(court affirmed a plaintiff's right to disseminate an anonymous leaflet containing her views on a school tax referendum). Reliance on McIntyre as support against disclosure provisions in this bill that apply to "[a]n initiative committee or any person, group, or nongroup entity receiving contributions or making expenditures exceeding \$500 in a calendar year in support or in opposition to a ballot initiative"<sup>4</sup> would in my opinion be misplaced, for in McIntyre the Court was concerned with "independent communications by a person like Mrs. McIntyre," *id.* at 354, and "[the Court] recognize[d] that a State's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here." *Id.* at 353.<sup>5</sup>

From the Court's opinion it seems clear that McIntyre is not to be extended far beyond its facts, and the informational interests justifying disclosure of the identity of an initiative committee or any person, group, or nongroup entity advertising in a state initiative process (the subject of HB 355) are different from those applied to a lone leafleteer distributing handbills relating to a local school board election (McIntyre).<sup>6</sup>

If you have any questions, please do not hesitate to contact me.

TLAB:ljw  
08-159.ljw

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<sup>4</sup> See sec. 5 of HB 355.

<sup>5</sup> See also McIntyre, 514 U.S. 344 at 349 (little information is imparted "in the case of a handbill written by a private citizen by the identity in the case of a handbill written by a private citizen who is not known to the recipient, the name and address of the author add little, if anything, to the reader's ability to evaluate the document's message"); *id.* at 351 (statute overbroad because it applies to "individuals acting independently and using only their own modest resources"); and *id.* at 358 (Ginsburg, concurring) (emphasizing that the case dealt with "an individual leafleteer who, within her local community, spoke her mind, but sometimes not her name. We do not thereby hold that the State may not in other, larger circumstances require the speaker to disclose its interest by disclosing its identity").

<sup>6</sup> The difference between the disclosures that could be required in McConnell and the mandated disclosure that was found unconstitutional in McIntyre might be summed up by Justice Ginsburg's "[i]n for a calf is not always in for a cow." *id.* at 358.

# STATE OF ALASKA

SARAH PALIN GOVERNOR

## DEPARTMENT OF LAW

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March 11, 2008

The Honorable Jay B. Ramras  
Chair of the House Judiciary Committee  
Alaska State House of Representatives  
Alaska State Capitol, Room 118  
Juneau, Alaska 99801-1182

Re: HB 355 "Open and Transparent Initiative Act"

Dear Representative Ramras:

At the March 3, 2008, meeting of the House Judiciary Committee, the committee requested a written response to two questions that arose in the course of hearing HB 355, the "Open and Transparent Initiative Act." Those questions are:

1. May the State of Alaska prohibit contributions to initiative committees made by anyone other than a natural person without violating the protections of the First Amendment?
2. May the State of Alaska require those who pay for political advertising in support of or opposition to a ballot initiative to include either the name of the payor or a statement indicating that the payor declines to be identified without violating the protections of the First Amendment?

Although when question one was initially raised, my first reaction was that this might be permissible, upon research and further reflection, I believe that the First Amendment constitutes a significant impediment to both of these proposals.

As a first step, it is important to understand the framework within which the courts analyze First Amendment questions. Limitations on political speech cut to the heart of the First Amendment and the United States Supreme Court has typically applied strict scrutiny to any such speech restrictions, requiring that the State demonstrate both a compelling interest that the restriction is designed to protect *and* that the restriction is narrowly tailored to achieve the desired protection. See e.g., *Buckley v. Valeo*, 424 U.S. 1, 44-5 (1976); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978).

In applying this framework, the U.S. Supreme Court has made a clear distinction between limitations that may be imposed on campaigns for public office and those which may be imposed on campaigns regarding initiatives, ballots and referenda. Greater limitations may be imposed on the former because the Court has recognized a compelling state interest in preventing corruption and the appearance of corruption. *See e.g., Buckley*, 424 U.S. at 26-27. As a result, in the service of preventing corruption, the Court has accepted limits on financial contributions to political candidates and disclosure of the source of contributions to candidates and expenditures in support of or opposition to the election of candidates. *Id.* at 29, 66-7.

In contrast, the U.S. Supreme Court has been less sympathetic to restrictions on contributions and speech in the context of ballot initiatives and referenda, because the danger of corruption is absent. "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue." *Bellotti*, 435 U.S. at 790, citations omitted. The Court has characterized speech regarding ballots and referenda as "core political speech" deserving of the highest level of protection. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 346-7 (1995). With this context in mind, I will now discuss the two specific questions raised by members of the committee.

1. May the State of Alaska prohibit contributions to initiative committees made by anyone other than a natural person without violating the protections of the First Amendment?

My initial reaction that this might be permissible was based upon my recollection of existing statutes that prohibit corporate contributions to candidates' campaigns. However, the Court's distinguishing between candidate campaigns and ballot initiative campaigns makes this analogy inapposite. In fact, the Court has previously found laws limiting corporate contributions and expenditures on ballot initiatives unconstitutional. *Bellotti*, 435 U.S. 765 (1978). *Bellotti* held that a Massachusetts statute that prohibited corporations from "directly or indirectly giv[ing], pay[ing], expend[ing] or contribut[ing] . . . any money or other valuable thing for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." *Id.* at 768.

*Bellotti* also suggests that other kinds of associations would enjoy greater rather than lesser protection. Indeed, the Court commented that "[i]f the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent

worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.” *Id.* at 777.

It seems then, based on *Bellotti*, that the courts might not look favorably on the sort of large-scale prohibition of contributions to initiative campaigns involved in limiting contributions to individuals. Although the Supreme Court has upheld statutes limiting campaign contributions, it has done so with the explicit understanding that limiting the *size* of a contribution has only a “marginal effect” on the speaker’s ability to communicate: “A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it *permits the symbolic expression of support* evidenced by a contribution but does not in any way infringe the contributor’s freedom to discuss candidates and issues.” *Buckley*, 424 U.S. at 21 (emphasis added). Moreover, the Court has explicitly rejected an extension of this limitation to contributions to ballot or initiative committees. *Citizens Against Rent Control/Coalition For Fair Housing v. City of Berkeley*, 454 U.S. 290 (1981).

Thus, an outright ban on contributions from particular sources, which would likely be seen as a much greater infringement on the free speech rights of associations, groups, corporations, etc., may be vulnerable to a First Amendment challenge. It is worth noting, however, that both *Bellotti* and *Citizens Against Rent Control* Courts assumed that the State interest in exposing the sources of money supporting or opposing ballot measures could be effectively protected through disclosure and reporting requirements. For example, in *Citizens Against Rent Control*, the Court noted that “[i]t is true that when individuals or corporations speak through committees, they often adopt seductive names that may tend to conceal the true identity of the source,” but nevertheless struck down the proposed limits on contributions, arguing that “[t]he public interest allegedly advanced by [the law]—identifying the sources of support for and opposition to ballot measures—is insubstantial because voters may identify those sources under the provisions of § 112 [which required the publication of lists of contributors before elections].” Thus, although the existing case law is not particularly encouraging, it is possible that the state could make a case, supported by appropriate legislative findings, that the disclosure and reporting requirements were not effectively protecting the strong state interest in public awareness of who is behind campaigns for or against ballot initiatives.

2. May the State of Alaska require those who pay for political advertising in support of or opposition to a ballot initiative to include either the name of the payor or a statement indicating that the payor declines to be identified without violating the protections of the First Amendment?

As I indicated at the hearing, the United States Supreme Court held, in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 349 (1995), that the state's interest in providing voters with additional information was "plainly insufficient to support the constitutionality of" a statute that prohibited anonymous political advertising. Before *McIntyre*, the Court had occasionally suggested, in the course of discussing other election laws, that it might be more amenable to disclosure requirements related to political advertising. For example, in *Bellotti*, the Court noted that "[c]orporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible. Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." *Bellotti*, 435 U.S. at 792, n.32. In *McIntyre*, however, the Court explicitly distinguished this statement in *Bellotti* and other such suggestions, arguing that they were made in the context of cases involving limitations on candidate campaigns, where the interest in avoiding the appearance of corruption was strong, in contrast to campaigns for and against ballot initiatives where, in the Court's view, the danger of corruption was not an issue. *McIntyre*, 514 U.S. at 354, 356.

The *McIntyre* Court also based its holding partly on the perception that the identification requirement constituted "compelled" speech. *Id.* at 348 ("we think the identity of the speaker is no different from other components of the document's content the author is free to include or exclude."); *see also, id.* at 355. Although I have not found any cases that consider the specific proposal made by Representative Gruenberg, to the extent that *McIntyre* reflects the view that compelled speech violates the First Amendment, the addition of the alternative of declaring that one refuses to identify oneself does not resolve the problem: either declaration would seem to be compelled speech.

The Ninth Circuit has also read *McIntyre* this way, noting "*McIntyre's* understanding that proscribing the *content* of an election communication is a form of regulation of campaign activity subject to traditional strict scrutiny." *ACLU of Nevada v. Heller*, 378 F.3d 979, 987 (9<sup>th</sup> Cir. 2004). In *Heller*, the Ninth Circuit struck down a Nevada statute with a similar ban on anonymous political advertising to that contained in Section 6 of HB 355, holding that "requiring a publisher to reveal her identity on her election-related communication is considerably more intrusive than simply requiring her to report to a government agency for later publication how she spent her money. The former necessarily connects the speaker to a particular message directly while the latter may simply expose the fact that the speaker spoke." *Id.* at 992.


This analysis suggests that the courts may not be more receptive to a requirement that political advertising contain either the identity of the speaker or a declaration that the speaker declines to identify him or herself than they have been to bans on anonymous

political advertising—either way, the speaker would be compelled to include a message that he or she did not wish to. And the Ninth Circuit has explicitly held that “[t]he simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit.” *Id.* at 993.

Despite this apparently inhospitable environment, neither the United States Supreme Court nor the Ninth Circuit has expressed the view that there could never be a sufficiently compelling state interest to warrant some kind of identification requirement. *See e.g., McIntyre*, 514 U.S. at 353 (“We recognize that a State’s enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here.”); *Heller*, 378 F.3d at 1000 (“An on-publication identification requirement carefully tailored to further a state’s campaign finance laws, or to prevent the corruption of public officials, could well pass constitutional muster. Nevada’s statute, however, is simply not a viable example of such legislation.”) Thus, it may be possible, through amendment of HB 355 and/or legislative findings, to establish a state interest sufficiently compelling to require some form of identification on some political advertising.

Sincerely,

TALIS J. COLBERG  
ATTORNEY GENERAL

By:   
Margaret Paton-Walsh  
Assistant Attorney General

MPW/kmh

cc: Rep. Dahlstrom, Vice-chair, Judiciary House Committee  
Rep. Coghill, Committee Member  
Rep. Lynn, Committee Member  
Rep. Samuels, Committee Member  
Rep. Gruenberg, Committee Member  
Rep. Holmes, Committee Member  
Rep. Johansen, Bill Sponsor  
Russell Kelly, Legislative Liaison, Governor’s Office  
Michael Ford, Legislative Liaison, Dept. of Law  
Deborah Behr, Dept. of Law

## 7. FINANCIAL DISCLOSURE

### Overview

The role of money in the initiative process has grown dramatically during the past decade. Although large contributions to initiative campaigns are not new and date to the turn of the last century, they are even larger and more common today than ever before. The I&R Institute reported in 1998 that issue committees nationwide spent almost \$400 million to support and oppose ballot measures. California led the way in 1998. According to the secretary of state, California committees spent just under \$193 million to support and oppose the 12 general election ballot measures. Combined spending for 214 state-wide and legislative candidates in the 1998 general election totaled just under \$136 million for the general election, or about 70 percent of the spending on ballot measures.

Even more concerning than the extraordinary amounts of money raised and spent in initiative campaigns is the fact that such large sums of money come from so few sources. Large contributions overwhelmingly dominate initiative campaigns, and small, grassroots contributions make up a small percentage of the total money spent. Of course, whether that is a problem in and of itself is debatable; nevertheless, voters deserve to know who is funding initiative campaigns. If a measure qualifies for the ballot because one or two wealthy individuals or corporations underwrote the costs, voters should be able to consider that fact as they decide how to vote on the measure.

Unlike candidate campaigns in most states, in which contributions are limited, it is not uncommon for large contributions from a small handful of contributors to fund an initiative, from the drafting and signature-gathering phases through the campaign. A series of U.S. Supreme Court rulings, *Buckley v. Valeo*, 424 U.S. 1 (1976), *National Bank of Boston v. Bellotti*, 435 U.S. 1 (1978), and *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981) have clearly established the Court's view that limiting contributions and expenditures in initiative campaigns is an impermissible violation of First Amendment rights. The rationale behind the Court's rulings is that, although it is possible that a candidate could be corrupted by large contributions, it is impossible to corrupt an issue.

### Recommendations

**Recommendation 7.1:** States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

**Recommendation 7.2:** After a title has been certified for an Initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

**Recommendation 7.3:** States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

**Recommendation 7.4:** States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

In spite of the Court's reluctance to limit money in initiative campaigns, voters have consistently supported the idea. About half the states have at some time in their history attempted to limit spending in initiative campaigns, and voters have supported spending restrictions on initiative campaigns in at least two states—California and Alaska. Such limits have failed to stand up to judicial scrutiny, however.

### *Initiative Financial Disclosure Requirements*

With contribution and expenditure limits out of the question, states are left with only one avenue of regulating money in initiative campaigns: disclosure. States have a responsibility to ensure that voters receive high-quality, transparent information about the sponsorship and financial support of initiative proponents and opponents. Such information not only minimizes abuse and manipulation of the initiative process, but also provides voters with key tools necessary for deciphering the sometimes veiled motives of initiative proponents. Voters cannot make a fully informed decision without campaign finance information about initiatives.

**Recommendation 7.1:** States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

**Recommendation 7.2:** After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

**Recommendation 7.3:** States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

**Recommendation 7.4:** States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

The following commissions, individuals and organizations have recommended increasing disclosure requirements for initiative supporters and opponents:

Speaker's Commission on the California Initiative Process (2002)  
 David Broder, *Washington Post* (in testimony before the task force on Dec. 7, 2001)  
 California League of Women Voters (1999)  
 City Club of Portland, Oregon (1996)  
 Citizens' Commission on Ballot Initiatives (California, 1994)  
*Sacramento Bee* (1994) and  
*Los Angeles Times* (1990)

States use disclosure requirements in various phases of the initiative campaign. In some states, sponsors must disclose the amount of money they pay to petition circulators. In most states, initiative campaign committees are required to disclose their contributions and expenditures. They also are often required to disclose the names of contributors who give more than a threshold amount. A few states also require that initiative committees

identify out-of-state contributors, and at least 11 states require reporting by people or groups that make independent expenditures in support of or opposition to an initiative. Presently, no state requires that expenditures be reported for pre-certification activities, such as polling and drafting.

Every initiative state requires some degree of disclosure of contributions and expenditures by initiative campaigns; states vary in the degree of detail required in such reports and the frequency of reporting. In many states, the information is posted for the public on a Web site (usually the secretary of state's).

### *Effectiveness of Initiative Campaign Spending*

Recent scholarly research suggests that high-spending campaigns often are no more successful in passing an initiative than are low-spending campaigns. Money is instrumental in changing voter opinion, however, when it is spent in opposition to a measure. Research suggests that high spending by opponents can be effective in defeating initiatives by creating a climate of confusion and uncertainty, under which most voters vote "no."

### **Recent Legislative Action**

There has been significant legislative activity in the area of initiative campaign finance reform, as states scramble to equalize the disclosure requirements for initiative campaigns with those imposed on candidate campaigns. During the period of 1999 through 2002, legislatures in 15 states considered 34 bills addressing the issue of money in initiative campaigns. Highlights include the following.

- In 2001, **Arizona** passed HB 2389, requiring that committees that support or oppose ballot measures register before distributing campaign literature or running advertisements, that literature and ads disclose the political committee that funds them, and that ballot measure committees report contributions of \$10,000 or more within 24 hours of receiving them.
- **Montana** passed HB 468 in 1999, requiring the people who employ paid signature gatherers to file financial disclosure reports. The report must include the amount they pay to each signature gatherer. **Utah** also passed a similar measure in 1999.
- In 2001, **North Dakota** passed a pair of bills that tightened financial disclosure requirements for petition sponsors and extended the requirements for last minute contributions to initiative campaigns to include contributions from political parties to initiative campaigns.
- **Oregon** passed a bill in 2001 that added a new report requirement prior to the May primary, and up to two additional reports if aggregate contributions or expenditures exceed \$2,000. Under prior law, proponents had to file just one report two weeks after the July deadline for turning in signatures.
- A 1999 bill passed in **Arkansas** requires that the use of state funds to support or oppose a ballot measure be reported to the Legislative Council if the expenditure exceeds \$100.

- A bill pending in **Massachusetts** would test the U.S. Supreme Court's ruling that prohibited limiting contributions to initiative campaigns. HB 3862 proposes limiting to \$100 contributions made for the promotion or defeat of ballot questions.
- A bill passed in 2002 in **Arizona** voids any signatures gathered before the proponents filed a statement of organization. It also requires that committees include their name, the serial number for the petition, and their support or opposition of a measure in their statement of organization. The bill is SB 1285.
- A failed bill in **Oklahoma** would have swept initiative campaigns into the existing campaign finance disclosure requirements by changing the definitions of "contribution" and "expenditure" to include any communication that clearly advocates the passage or defeat of a ballot measure.

# LEGISLATIVE RESEARCH REPORT

DECEMBER 3, 2007



REPORT NUMBER 08.056

## DISCLOSURE REQUIREMENTS FOR INITIATIVE CAMPAIGNS IN ALASKA, CALIFORNIA, AND WASHINGTON

PREPARED FOR REPRESENTATIVE KYLE JOHANSEN

BY DANIEL LESH, LEGISLATIVE ANALYST

You asked for a side-by-side comparison of the disclosure requirements for initiative campaigns in Alaska, California, and Washington. We summarize these requirements in Table 1 and attach each state's relevant statutes.

As you may know, the Ballot Initiative Strategy Center (BISC) conducted an extensive review of states' financial disclosure requirements in relation to initiatives.<sup>1</sup> This report applied a grading system to state laws based on fifteen different disclosure variables. Just two states—California and Washington—received "A" grades; Alaska received a grade of "C."<sup>2</sup> The BISC identified Alaska's continuing challenges and weaknesses as follows:

1. Accessing the donor data is tedious, requiring many mouse clicks over many separate pages to access the desired data.
2. There is no permanent electronic feature or search option for linking ballot committees to their respective issue (although committee summary data and third party expenditures are organized by issue).
3. There are no electronic sorting options.
4. Ballot committees are not separated from other political committees (although the Alaska Public Offices Commission maintains a separate list of ballot committees from 2000)

We include, as Attachment A, the BISC report, "The Campaign Finance Reform Blind Spot." Jennie Bowser, the principal of the initiative, referendum, and recall program at the National Conference of State Legislatures, suggested the BISC as a quality source for our report. More information on the BISC is available on its website at <http://www.ballot.org>. Ms. Bowser can be reached at (303) 556-1356.

For the 24 states with an initiative process, the BISC gave 2 A's, 2 B's, 4 C's, and 11 F's. Four states received an incomplete, for not presenting ballot initiative donor data online. The BISC did not report a grade for one state.

5. Although Political Action Committees (PACs) involved in ballot campaigns are labeled as "Ballot Measure Groups," PACs are also involved in candidate campaigns.
6. Contributions over \$250 made in the last nine days of the cycle must be reported within 24 hours, but that data is not disclosed online until after the election.
7. Committees can "disband" and rename to avoid reporting signature gathering phase contributions.
8. The electronic filing program is optional; most committees do not participate.
9. There is a large gap in the filing schedule, from February 15 to 30 days prior to the election.

As noted by the BISC, "many of the disclosure problems highlighted in this report would be ameliorated, if not eliminated, if states adopted mandatory electronic filing." Both Washington and California, to which we compare Alaska in Table 1, require groups that oppose or support a ballot measure to file disclosures electronically when contributions or expenditures reach a certain threshold.

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#### ONLINE PRESENTATION OF DISCLOSURE DATA

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Washington and California also received high marks from the BISC for their presentation of disclosure data, while Alaska did not. Although all three states provide extensive data online, the websites for Washington and California are much better organized to facilitate meaningful interpretation of these data. For instance, those states' websites allow users to search for disclosure data by ballot measure to quickly locate all committees accepting contributions or making expenditures to influence a specific ballot measure. In Alaska, this type of search is not possible. Below, we provide selected statutes from Alaska, Washington, and California related to campaign disclosure data presentation—an area in which the BISC focused many of its critiques regarding the state of ballot measure finance disclosure in Alaska.

**Alaska:** AS § 15.13.040(o):

Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

**Washington:**<sup>3</sup> Wash. Rev. Code § 42.17.460(1):

It is the intent of the legislature to ensure that the commission provide the general public timely access to all contribution and expenditure reports submitted by candidates, continuing political committees, bona fide political parties,

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<sup>3</sup> The Washington statutes detailing how disclosure data shall be presented to the public are extensive, including both general legislative intent language as well as specific provisions regarding access goals, access performance measures, and an information technology plan. We include Washington's disclosure data presentation statutes as Attachment B.

lobbyists, and lobbyists' employers. The legislature finds that failure to meet goals for full and timely disclosure threatens to undermine our electoral process.

**California:** Cal. Gov. Code § 84602:

(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to this title.

(g) Provide assistance to those seeking public access to the information.

---

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.



**THE CAMPAIGN  
FINANCE REFORM  
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is a national, non-partisan, educational policy center that tracks local measure activity and contributions, trains individuals to work on ballot initiative campaigns, and facilitates greater understanding and strategic use of the initiative process.

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## disclosure



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Dozens of state disclosure agency staff in the 24 states and the District of Columbia spent hours talking on the phone with us, answering our questions, guiding us through their disclosure laws, and helping us to better understand the challenges they experience in their efforts to disclose initiative financial data to the public. We salute these public employees and their dedication to working, in large measure, with limited resources and staff.

This research was supported by the Stern Family Fund, Carnegie Foundation of New York, and the Center for Democracy and State Politics at the University of California, Berkeley. We also thank Daniel South, Director, Ballot Funding org.; James Gulliver, President, Citizens for Public Campaign Finance; and the staff of Ballot Reform Strategy Center, Eugene, OR.

*Rebuffed by strict, new limits on their ability to buy influence through the national political party apparatus, former federal soft money donors will likely seek new, less regulated paths to influence public policy, including ballot measures.*

## Introduction



More than a century ago, populist and progressive reformers began a decades long fight to implement initiative and referendum in the United States. The initiative process, reformers believed, would enable organized citizens to circumvent entrenched legislatures and recapture democracy by writing their own laws without the intercession of elected officials. Direct democracy's pioneers believed that wealthy interests, particularly corporations, exerted an undue influence over state legislative campaigns effectively drowning out the voices and interests of ordinary voters. Over the years, ballot initiatives have often accurately reflected the most pressing popular concerns in their jurisdictions, and their use has been a barometer of popular discontent with state legislatures.

Today direct democracy's pioneers might not recognize the process they created. The costs of modern political campaigning, including paid media, mass mailings, and polling, coupled with increasingly stringent initiative qualification standards have largely limited direct democracy to the most well organized and well-heeled special interests. Wealthy individuals and institutions routinely spend millions each election cycle trying to alter public policy via ballot initiative. In 1998 alone, ballot committees spent \$400 million supporting or opposing ballot measures. By comparison, the national Republican and Democratic parties raised only \$193 million in "soft money." In a 2000 pilot project conducted by the Ballot Initiative Strategy Center Foundation (BISC Foundation) tracking initiative donors in seven states, ballot committees raised over \$109 million. Over 57% of the contributions were raised in quantities of \$50,000 or more.

While the passage of federal campaign finance legislation that places strict limits on soft money contributions and the Enron scandal helps shed light on the problem of money in candidate campaigns, little attention is paid to the millions of largely unregulated dollars spent on ballot initiatives each year. And the problem may soon grow worse. Since the courts have struck down laws that limit contributions to ballot campaigns wealthy donors can use initiatives to regain a foothold in the influence buying market. As former Washington State Supreme Court Justice Phil Talmadge recently noted, "in the 1990's...special interests decided it was a lot cheaper to buy initiatives than buy legislators."

With the courts effectively standing in the way of initiative contribution limits, mandatory electronic filing and better disclosure laws can help voters make more informed decisions about the critical issues they face in the polling booth each election.

### **WHY DISCLOSE INITIATIVE DONOR DATA?**

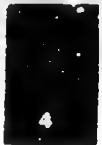
Disclosing initiative donor data is important because voters gain insight into the economic and special interests at stake in a ballot question. Understanding these interests is particularly important in ballot campaigns because the considerations voters weigh when casting a ballot measure vote differ from the factors that influence their decision in candidate races. Since initiative campaigns are nonpartisan, voters lack the political party cues that help them choose between candidates. Moreover, there is generally no candidate associated with an initiative

campaign; voters must examine initiative proposals absent this human link. Ballot titles are often misleading and voters may be unsure about an initiative's effect on public policy. Finally, many ballot measure campaigns often receive less media coverage than candidate races and there are fewer initiative campaign debates. Given these unique challenges, voters depend more heavily on organizational endorsements and an awareness of the chief funders of a ballot measure effort when casting their vote.

### **QUALITY ONLINE DISCLOSURE IS CRITICAL**

BISC Foundation focused principally on evaluating online ballot measure donor disclosure practices in the 24 ballot measure states and the District of Columbia. State agencies charged with disclosing initiative donor data often make initiative campaign finance information available on paper in their office, or in electronic form on the Internet. Since the average voter has neither the time, nor the expertise to travel to their state capital to examine hundreds of pages of campaign filing reports, voters, reporters, and opinion leaders are increasingly relying on the Internet for campaign donor information. Though many voters do not have access to the Internet, most do obtain information about ballot measures from television and newspaper articles, organizations and leaders they trust, and family and friends. Since reporters and voter education groups generally obtain ballot measure donor data from the Internet, online disclosure is the most efficient and cost-effective way to reach as many voters as possible.

Unfortunately, the evidence compiled in this report clearly demonstrates that most initiative states' donor disclosure practices are woefully inadequate and fail to provide citizens with the initiative funding information they need in order to cast informed votes on Election Day. Campaign finance reformers must begin to focus greater attention on improving ballot measure disclosure.



## How to Use this Report

BISC Foundation's research is the first comprehensive effort to document online initiative donor disclosure practices in the 24 states with the ballot measure process. We believe that BISC Foundation's findings serve several purposes.

**Campaign Finance Reform Advocates** can use the state by state analysis and model guidelines as a blueprint for reform in their state.

**Journalists** can use BISC Foundation's research to evaluate existing and proposed initiative campaign finance disclosure regulations more critically and better understand the effects of federal campaign finance reform on ballot measure financing.

**Researchers and Academics** will have less difficulty obtaining and analyzing raw initiative donor information if policy recommendations in this report are adopted.

**State Disclosure Agencies** can use our state by state analysis and our model guidelines to learn about effective disclosure practices in other states and avoid disclosure pitfalls as they improve their own disclosure programs.

**Voters** will benefit from a better understanding of disclosure laws and, if policy recommendations in this report are adopted, gain greater access to initiative donor data prior to Election Day.

# disclosure



## Methodology

Three guiding principles informed the evaluation of online disclosure programs and provided a foundation for the creation of the survey criteria. In order to best serve voters, states should adopt disclosure policies that:

- **Guarantee timely disclosure**
- **Provide donor data in a clear and easily accessible format**
- **Clearly link ballot measure committees to their related ballot initiative(s)**

The survey was designed to assess the ability of state disclosure agencies to adequately disclose ballot measure donor data through their websites (typically accessed from the state's secretary of state web page). The criteria developed from the above principles relate to specific features of disclosure websites and to the requirements that govern disclosure programs. The criteria are divided into the following general categories:

- **Filing Requirements**
- **Data Quality**
- **Voter Access**
- **Data Format**

All states were evaluated using the same criteria and standards. Although disclosure sites were evaluated early in the election cycle, BISC Foundation paid particular attention to how disclosure sites would perform throughout the year, particularly in the weeks leading up to Election Day.

Survey data was gathered from February through May 2002. Online disclosure practices were evaluated based on extensive phone interviews with disclosure agency staff, evaluation of the statutes governing donor disclosure, thorough investigation and "test driving" of state disclosure websites, and additional, web-based research.

Ballot initiative and donor disclosure terminology varies from state to state and can be confusing. For a complete list of technical terms used throughout this report, please refer to the Glossary of Terms in Appendix B.

*"The legislature never gives us the money to actually post donor data.*

*We have to use creative budgeting to get the work done."*

- DISCLOSURE AGENCY STAFF MEMBER

## KEY FINDINGS: HOW DONOR DISCLOSURE PRACTICES FALL SHORT

While a handful of states provide excellent initiative donor disclosure resources, a series of flaws, enumerated below, critically weaken complete, transparent initiative campaign finance disclosure in the 24 initiative states. Not surprisingly, many states share the same difficulties. Initiative donor disclosure databases are often difficult to navigate. There is often no clear link between ballot committees and the initiatives to which they are related. Donor data is often poorly organized, labeled, or not made available in a timely fashion. These and other disclosure problems hinder voters' ability to evaluate a ballot measure's financial supporters.

### RECURRING INITIATIVE DISCLOSURE WEAKNESSES:

**Disparities between candidate and ballot committee disclosure practices.** Disclosure agencies often place a higher priority on keying and posting candidate donor and lobbying data. Ballot committee names are often more misleading than candidate committee names, yet states seldom clarify for voters which initiatives ballot committees support or oppose. This disclosure problem, unique to ballot initiatives, is made worse when disclosure sites are not well organized and lack adequate search options and summary data. States also fail to compensate for structural differences between candidate and initiative campaigns. For example, many states fail to capture contributions made during the critical signature-gathering phase of an initiative campaign. States could vastly improve initiative donor disclosure by closing the gap between candidate and ballot measure disclosure.

**Limited mandatory electronic filing.** The benefits of electronic filing include more timely reporting, accurate disclosure for the public, less work for disclosure agency staff, and lower long-term costs for states. So many of the disclosure problems highlighted in this report would be ameliorated, if not eliminated, if states adopted mandatory electronic filing. Four of the six states with mandatory electronic filing rank in the top four in BISC Foundation's survey. Optional electronic filing programs result in low participation, strained disclosure staff, and slow, potentially inaccurate data entry. States should implement optional electronic filing programs as an interim step toward mandatory electronic filing.

**A lack of legislative leadership in improving initiative donor disclosure.** Initiative campaign finance observers might assume that disclosure agencies are chiefly to blame for inadequate initiative donor disclosure practices. BISC Foundation found, however, that disclosure practices fall short largely because the laws that regulate disclosure are inadequate and because disclosure agencies are chronically underfunded and understaffed. In fact, BISC Foundation identified a strong correlation between a disclosure agency's resources and its ability to effectively disclose initiative donor data. Washington, California, Massachusetts, and Illinois, the top four states in BISC Foundation's survey, have the most disclosure agency staff.

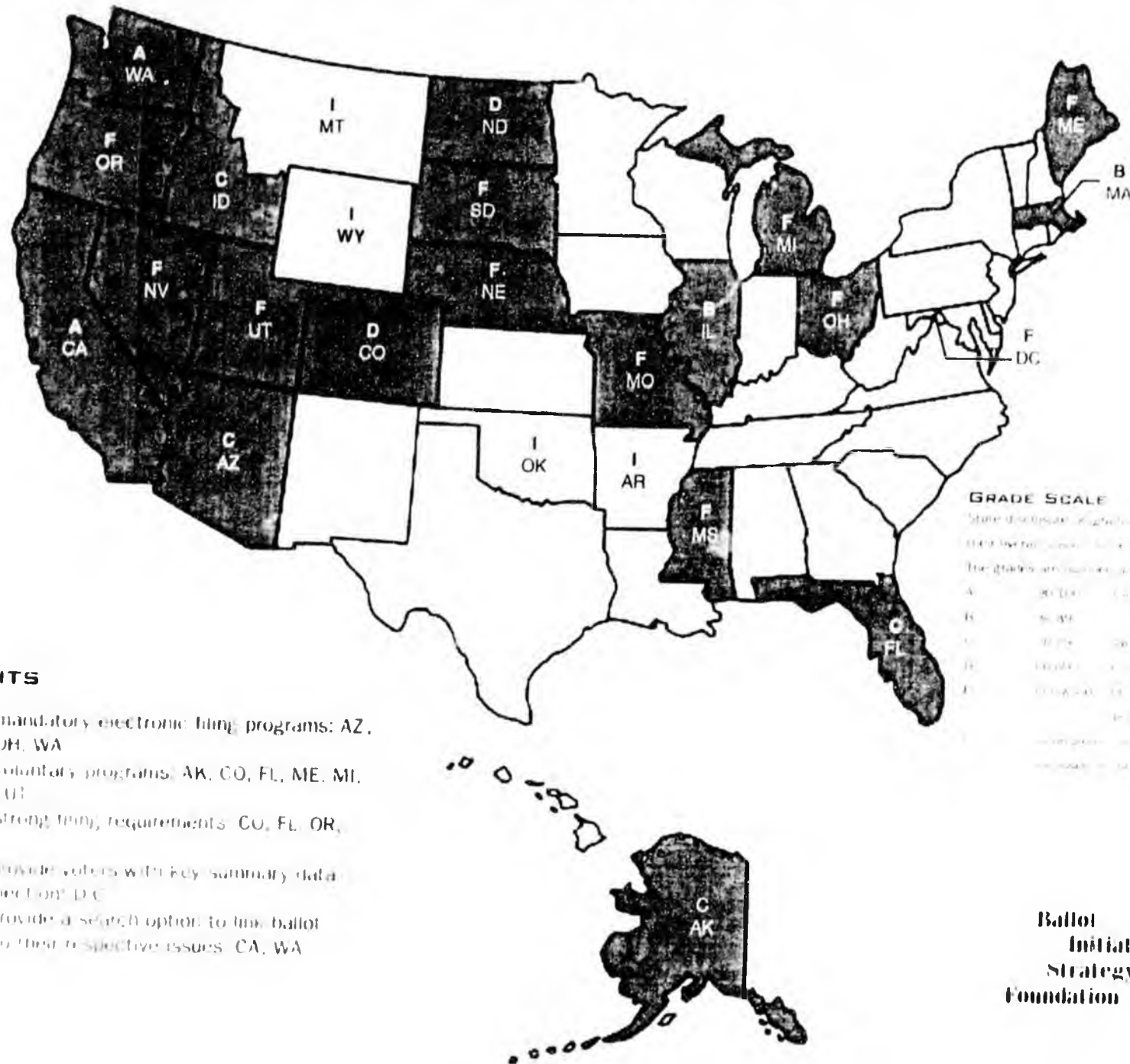
members. Legislatures, not state disclosure agencies, are chiefly responsible for drafting comprehensive disclosure laws. Though most disclosure agencies could make a handful of free or low-cost improvements to their disclosure programs, they generally do the best they can with limited resources and staff.

The experience in New Jersey is informative. Although not an initiative state, New Jersey's disclosure agency—New Jersey Election Law Enforcement Commission—has pioneered the way among the states in developing a complete and accessible electronic disclosure system of all campaign financial activity, including legislatively-referred ballot measures. The agency has done so on its own initiative, without any explicit statutory requirement. New Jersey's system of complete financial disclosure has almost become too good, as indicated by the legislature's cutting back on appropriations to the disclosure agency.

**SUPPOSE YOU ARE A VOTER TRYING TO USE YOUR STATE'S DISCLOSURE WEBSITE TO FIND OUT ABOUT A GIVEN BALLOT MEASURE. REGARDLESS OF THE STATE YOU LIVE IN, YOU ARE LIKELY TO EXPERIENCE SOME OF THE FOLLOWING SCENARIOS:**

- \* You may not be able to find the disclosure database or search options because of poorly worded or vague links. Ballot committees or initiatives may not be referenced at all on the disclosure website.
- \* You may not be able to determine which committees are involved in ballot campaigns, or which ballot measures a ballot committee supports or opposes.
- \* You may have to search the files of every political committee listed online—searching by committee names you are unfamiliar with—to be sure you've viewed all possible sources of ballot measure funding.
- \* You may have to spend several hours clicking and searching through empty files or poorly organized lists to find out which committees and donors are spending the most money, or to identify out-of-state ballot measure donors.
- \* If you want to find out how much money is being spent on ballot measures, you may have to tally the figures of all the committee reports manually.
- \* You may not be able to view complete donor data for months at a time not until election week, and possibly not until after Election Day.
- \* The donor data you find may not be complete or accurate, with major loopholes allowing groups to avoid filing proper disclosure statements.

# Ballot Initiative Disclosure Report Card



## HIGHLIGHTS

- States with mandatory electronic filing programs: AZ, CA, IL, MA, OH, WA
- States with voluntary programs: AK, CO, FL, ME, MI, MO, ND, OR, UT
- States with strong filing requirements: CO, FL, OR, WA
- States that provide voters with key summary data prior to the election: DC
- States that provide a search option to link ballot committees to their respective issues: CA, WA

## GRADE SCALE

State disclosure of ballot issue grades according to the letter grade shown on the map. The grades are based on the following:

A	20/100	CA, WA
B	50/100	AK, CO, FL, ME, MI, MO, ND, OR, UT
C	30/100	AZ, WA
D	10/100	ND, SD, NE, CO
F	0/100	WA, OR, NV, UT, ID, MT, WY, ND, SD, NE, MI, IL, OH, DC, MS, FL

I: Informational only (no grade)

Ballot Initiative Strategy Center Foundation

# Detailed State Scores

State	Filing Method	Filing Schedule	Donor Data Posted On-time	Complete Donor Data	Historical Donor Data	Summary Filings	Time Disclosure	Has Data < 4 Years Ago	Database Update	Has Data > 4 Years Ago	Separate Filings	Direct Filings	Year of State Contribution	CC Third Party Filings	CC Late Filings	Has Data > 4 Years Ago	Score	Extra Credit	CC Total Score	Ranking	Grade	
WA	5	3	5	5	2	1	3	3	2	3	3	3	3	Y(3)	Y(3)	Y(3)	35	90	9	99	1	A
CA	3	1	5	3	3	2	3	3	3	3	3	3	2	N	Y(3)	Y(3)	35	90	6	96	2	A
MA	5	1	5	5	2	2	5	3	2	2	2	3	2	Y(3)	N	N	31	79	3	82	3	B
IL	3	1	5	2	2	1	3	2	3	0	2	3	3	Y(3)	Y(3)	Y(3)	28	72	9	81	4	B
ID	1	2	3	2	2	1	5	3	3	0	2	3	3	N	N	Y(3)	28	72	3	75	5	C
AZ	3	2	5	2	3	0	3	2	3	0	1	3	2	N	Y(3)	Y(3)	27	69	6	75	6	C
FL	2	5	1	5	2	1	1	3	2	2	3	2	2	Y(3)	N	N	27	69	3	72	7	C
AR	2	1	1	3	3	2	2	2	3	2	2	2	1	N	Y(3)	N	27	69	3	70	8	C
RI	2	0	5	2	2	0	2	2	3	1	1	3	3	N	N	Y(3)	24	62	3	65	9	D
CO	2	5	3	2	2	0	3	1	2	1	2	1	1	N	N	Y(3)	23	59	3	62	10	D
MO	2	2	3	2	1	1	3	1	2	1	1	1	1	N	N	Y(3)	21	54	3	57	11	F
SD	1	0	5	5	1	1	3	0	3	0	1	3	0	N	Y(3)	Y(3)	19	49	6	55	12	F
MI	2	0	5	2	1	0	3	1	3	0	1	1	1	N	Y(3)	Y(3)	18	46	6	52	13	F
OH	5	0	5	2	1	0	3	3	2	0	0	0	1	Y(3)	N	N	18	46	3	49	14	F
NE	1	2	5	2	1	0	2	1	2	1	0	0	1	N	Y(3)	Y(3)	16	41	6	47	15	F
DC	1	1	5	1	0	3	3	0	3	0	0	1	0	N	N	N	16	41	0	41	16	F
MN	5	2	5	2	1	0	2	0	3	0	0	0	0	N	Y(3)	N	14	36	3	39	17	F
NV	1	0	1	2	1	0	2	0	3	0	1	1	0	N	Y(3)	N	12	31	3	34	18	F
UT	2	1	0	0	1	1	0	0	2	0	1	3	2	N	N	N	15	33	0	33	19	F
MT	2	2	0	0	0	0	0	0	1	0	1	1	3	N	N	Y(3)	10	26	3	29	20	F
WV	2	5	0	0	1	1	1	0	3	0	0	0	0	N	N	N	11	28	0	28	21	F

For a complete explanation of ranking criteria refer to Appendix A on page 12

*"The key to the whole thing is mandatory [electronic filing]."*

— DISCLOSURE AGENCY STAFF MEMBER



## DETAILED FINDINGS

BISC Foundation's critique highlights our chief concerns with the state of initiative donor disclosure practices. The analysis is divided into four topics: filing requirements, data quality, voter access, and data format.

### FILING REQUIREMENTS

**Electronic Filing:** Committee reports are submitted either on paper (typed or handwritten), or electronically. Paper filings are either scanned or manually entered into a database by disclosure agency staff. Scanned reports tend to be less flexible from a researcher's point of view because data cannot be searched or sorted. Accessing scanned files can be slow and cumbersome, and the handwritten data is sometimes illegible. On the other hand, paper reports that are manually keyed by disclosure agency staff may contain more errors than scanned or electronically filed reports and tend to drain disclosure agency staff resources.

Although optional electronic filing is a step in the right direction, most committees tend not to participate in voluntary electronic filing programs. A survey of electronic reporting systems across the nation found that all state voluntary reporting systems have fewer than a third of all committees filing electronically; a quarter of these optional systems have a median of one percent of their committees filing electronically.<sup>1</sup> Low electronic filing participation rates force disclosure agency staff to enter data manually, a particularly labor-intensive activity. In addition, disclosure agencies that display some data in a database and other data on scanned forms force voters to search for data in two places. A handful of states with optional or partial electronic filing programs hope to change to a mandatory system in the coming years.

Mandatory electronic filing is not necessarily a prerequisite for good disclosure, but its benefits include more timely, accurate disclosure for the public, less work for disclosure agency staff, and lower long-term costs for states. Mandatory electronic reporting also makes it easier for states to require 24-hour reporting by committees in the last two weeks of the campaign.

<sup>1</sup> For more information on the benefits and costs of electronic filing programs, see the Brennan Center for Justice's excellent report [Access Denied: Electronic Reporting of Campaign Finance Activity](#), written by Craig Holman and Robert Sherris.

**Ballot Committee Filing Deadlines:** Filing schedules vary widely from state to state. The best states require regular committee reporting (Colorado, Florida, Oregon, Washington) while the worst states leave voters guessing who's funding ballot measures until late October (Michigan, Nevada, North Dakota, Ohio, South Dakota). Gaps in the filing schedule, particularly near the election, substantially limit full and accurate disclosure. Filing deadlines in the spring and summer months are also important for tracking activity during the crucial signature gathering period of ballot campaigns (discussed below).

**Signature Gathering Phase Disclosure:** A significant amount of money is typically raised and spent during the signature-gathering phase of an initiative campaign. Voters deserve to know who is bankrolling this critical period of a ballot measure campaign, yet many states do not disclose signature gathering phase contributions until much later in the cycle. South Dakota does not disclose signature gathering phase contributions at all. Alaska allows committees to disband and reform to avoid reporting signature gathering phase contributions.

Furthermore, ballot committees cannot report the number of the initiative they are supporting or opposing until their initiative qualifies and the state assigns such a number. As a result, even when states require reporting during the signature-gathering phase, the relationship between ballot committee names and initiative designations is unclear.

**Third Party Ballot Campaign Expenditures:** Rather than directly contributing to a ballot committee, some institutional and individual donors may choose to make a third party or "independent expenditure" on behalf of a ballot measure campaign. States define independent expenditures differently but generally define expenditures to be independent if they are not made in cooperation, consultation, or concert with, or at the request, suggestion, or prior consent of a candidate or committee. Though most states do not report a large amount of independent expenditures around ballot measure campaigns, the popularity of this seldom used electoral tool could increase in the wake of the federal campaign finance reform legislation as former federal soft money donors, seeking new paths to influence policy, dump millions into ballot campaigns around the country. Washington State reported over \$1 million in third party expenditures on ballot measures in 2000.

In states where interest groups use third party expenditures to influence ballot measure outcomes, several disclosure problems exist. Florida, Massachusetts, Missouri, and Oregon do not disclose third party expenditures on line while other states post these reports in a different section on their websites. In Idaho, third party expenditure reports are not filed until five days prior to the election.

Organizations and individuals may also begin to use "527" groups, so named by the IRS code under which they are regulated, to influence ballot measure outcomes since these federal political entities fall outside the jurisdiction of state disclosure laws and because the "527" contribution disclosure feature on the IRS website is very weak.

**"501 (c)" Organization Disclosure Loopholes:** Some ballot initiative proponents receive contributions from 501 (c)3 and 4 organizations (so named by the section of the federal tax code under which they are organized). Though contributions to 501 (c)3 and 4 groups over \$5,000 must generally be reported to the Internal Revenue Service, that contributor information is, under most circumstances, not made available to the public. Ballot initiative funders who wish to remain anonymous can pass their donations through 501 (c) groups that contribute to ballot committees. For example, affirmative action opponent Ward Connerly received nearly \$1 million in contributions from his 501 (c) organization, the American Civil Rights Coalition, for his "racial privacy" ballot proposition in California. Reconciling the tension between a nonprofit's interest in protecting the privacy of its donors and the public's need for complete disclosure will be difficult to resolve. Thus far, the courts have sided with the privacy concerns raised by nonprofits.

**Individual Donors from Out-of-State Groups:** Voters deserve to know when out-of-state interests are involved in ballot campaigns, but tracking out-of-state contributions made to ballot measures can be difficult. This is largely due to states' unwillingness to require out-of-state donors to comply with in-state reporting requirements, and to website formats that do not allow voters to search by out-of-state committee data. Only five state disclosure sites (Florida, Illinois, Massachusetts, Ohio, and Washington) allow voters to search for out-of-state ballot contributors (California offers a sorting option within individual committee listings).

Some states require that out-of-state committees adhere to the same filing standards as in-state committees, whereas Maine and Utah require that out-of-state committees file by the committees' home state guidelines. Oregon only requires out-of-state committees to disclose individual donors if they spend more than two-third of their total funds in Oregon. There are several states that do not require out-of-state committees to disclose individual donor information at all.

**Late Filing Penalties:** Late filing penalties range from mild to severe and not surprisingly, there is a loose correlation between late filing penalties and committee compliance with filing schedules. North Dakota, for example, imposes no penalties and is still waiting for committees to file their 2001 year-end reports, while next door in South Dakota, where filing late is a Class 2 Misdemeanor, committees file on time. Election officials generally do not seem to regard this as much of a problem, but if a committee wanted to conceal its financial information until after the election, in most states it would constitute a relatively minor investment.

**Reporting Form Weaknesses:** In order to allow voters to search by initiative number in a donor database, state disclosure agencies must require that committees clearly indicate the ballot measure they support or oppose on their official reporting form. Some states do not require committees to specify their purpose on reporting forms and, as a result, will have a harder time should they choose to link committees to particular ballot measures in the future.

Massachusetts approaches this problem differently by requiring that committee names reflect the policy that they are working for or against (Citizens for More School Funding, for example). This approach also answers the concerns of many who believe that committee names are misleading. Some corporate lobby groups like the Pharmaceutical Research and Manufacturers of America (PhRMA) create committees with names like "The Consumer Alliance" that are clearly designed to intentionally mislead voters by cloaking the committee's chief financial sponsors. Voters in Florida, for example, may be surprised to discover that the "Committee for Responsible Solutions" has one donor: the tobacco giant Philip Morris.

## DATA QUALITY

**Donor Information Requirements:** Most states require that any committee (often defined as two or more individuals) that raises or spends money for or against an initiative register as a ballot committee and file regular reports with their state's disclosure agency. Ballot committees are generally required by law to report certain kinds of information about their donors, and these requirements vary from state to state. Most states require that committees report the name, contribution amount, and address of their donors. However many states (in contrast to the Federal Election Commission), fail to require two pieces of critical information: occupation and employer. Employment information allows researchers to track the economic interest of every contributor, whether a business, PAC or individual, so that the public can assess the political leverage that money from those interests exerts on policy decisions. Employment information also helps researchers identify "bundling," the process by which employees from one corporation band together to raise money for a ballot measure. While completely legal, employee bundling can obscure a corporation's involvement in a ballot measure campaign.

**Historical Information:** Voters and researchers use historical donor data from prior elections to identify trends in ballot funding, and to recognize and track active donors over time. Ballot advocates may refer to historical donor data to identify potential financial supporters. Although most disclosure sites offer some initiative campaign finance information from previous elections, very few offer comprehensive, searchable historical databases or additional analysis and charts. Most states simply lack the resources to enter and post historical data, particularly donor information filed prior to the creation of their on line disclosure programs. Most disclosure agencies do not post donor information from elections prior to 1998.

**Summary Information:** Summary data helps voters and reporters quickly obtain the most important funding information about ballot measures by providing a snapshot of an initiative's financial activity. Most voters do not have time to dig through committee reports to identify major donors to ballot measure campaigns. Unfortunately, most disclosure agencies do not post comprehensive summary donor data. Since most states do not require that committees file cumulative reports, voters must add figures from a series of reports in order to generate contribution and expenditure totals, top 10 contributors, average expenditures, or out-of-state contribution totals. Some states aggregate committee expenditure and contribution totals, but only the Alaska, California, the District of Columbia, and Massachusetts disclosure agencies provide extensive summary information.

Summary data that is not made available until after an election is of little use to voters. The District of Columbia is the only jurisdiction that posts summary data prior to Election Day. Virtually every state needs to drastically improve the availability and quality of key summary figures.

## VOTER ACCESS

**Timeliness:** Delayed access to donor data severely hampers voters' ability to make informed decisions about ballot questions. Voters must have access to complete donor data—within days of filing deadlines—throughout the election cycle and prior to Election Day. Several variables affect the timeliness of donor disclosure: campaign finance reporting schedule, filing method, disclosure agency staff size, and initiative volume. While most states post donor data within two days, a handful of states may take several weeks or more to post data. Delays are generally due to budget or staff constraints, or voluntary electronic or paper filing, which forces disclosure staff to manually key data into a database.

**Data Accessibility:** In some states, voters may have difficulty simply finding the disclosure website and database within it. The link to the disclosure agency's site may be difficult to find or poorly labeled. The site may not reference ballot measures anywhere and relevant search options, historical information, or the database itself may also be poorly labeled. As of May 2002 the Maine disclosure agency failed to post a link from its homepage to its own disclosure database site located at an entirely different web address.

**Downloadable Data:** voters and researchers should be able to download initiative donor data in a commonly recognized format at no cost. Researchers use raw data to conduct comparative studies with other donor data and to manipulate the data as they see fit. Most disclosure agencies do not allow voters to download initiative donor data. Disclosure agencies that scan files cannot give voters the option to download and manipulate raw data—another shortcoming of scanned file sites.

## DATA FORMAT

**Ballot Committee/Ballot Number Link:** Most disclosure agencies fail to link ballot committees to their respective ballot initiatives, largely because it is not a typical filing requirement, as discussed above. This critical disconnect severely limits the ability of donor data and may be the single most important and consistently neglected aspect of online initiative disclosure. *Candidate* committee names like "Jane Doe for Congress" leave little room for confusion—clearly, that committee supports Jane Doe's candidacy. In the ballot measure arena, however, voters who are familiar with the ballot initiative may not know what the related ballot committee is named. It may not be obvious, for example, that the "Committee for Arizona's Future" supports eliminating the state income tax. Disclosure agencies expend significant resources disclosing initiative donor data, yet when that data appears absent any context and voters are left to guess which committees support or oppose which ballot measures, the value of that data is greatly diminished. Only California and Washington provide a direct link between committees and ballot numbers as a permanent and obvious search feature in their donor databases. Florida provides a link between the ballot title and sponsoring committee. Some disclosure agencies provide a separate list of committees and the ballot numbers to which they are related, a less desirable solution.

**Querying Databases:** A well designed database allows voters and researchers to search data by a range of criteria quickly and easily. The best databases allow voters to search by initiative designation (states usually assign a number to each ballot measure though some use letters), employer, occupation, state, election year, contribution amount, filing date, and several other criteria. These options give voters the greatest flexibility and access to donor data. However, most donor databases only allow voters to search by committee or by filing date. These two options are inadequate. If voters can only search by committee, they must know the names of relevant ballot committees to conduct an effective search. Most voters are unfamiliar with ballot committee names (as discussed above), and

particularly when there are many, undifferentiated committees, voters will have difficulty finding the data they want. The results of a filing deadline search only cover a limited period, and voters still need to know the relevant committee name to conduct the search. Voters may have to search for hours to obtain a complete picture of a ballot committee's financial activity.

**Sorting Ability:** Sorting enables voters to view retrieved data as they see fit. For example, voters may want to sort contributors by state to identify out-of-state donors, or by contribution amount to pinpoint the top donors to a ballot campaign. Sorting by amount is perhaps the most important sort option, as most voters are likely to be interested in viewing major contributions and expenditures. Without this option, voters must dig through pages of files to find major donors. Many donor databases do not include sorting options and disclosure agencies that post scanned data cannot provide a sort option at all—one of the many limitations of "scanned files."

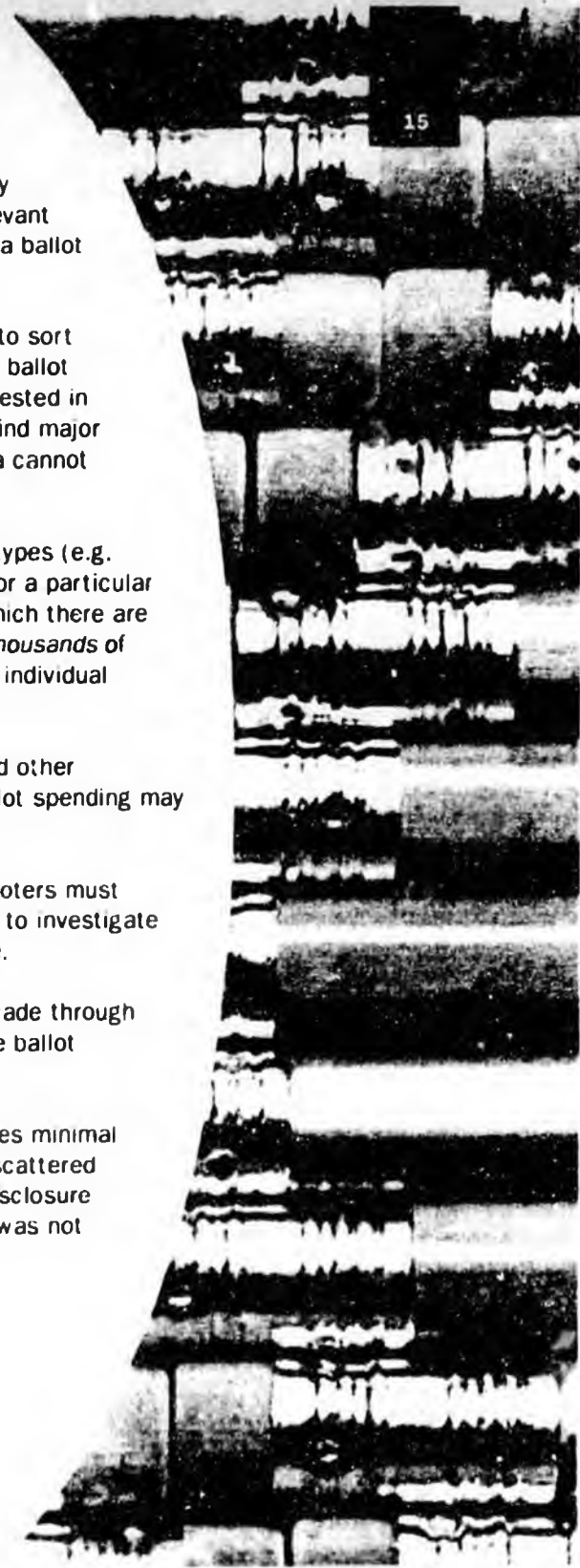
**Ballot Committee Identification:** Many disclosure agencies do not physically separate different committee types (e.g. PACs, candidate committees, political party committees, ballot committees, etc.), complicating any search for a particular ballot committee. Voters may have a difficult time conducting ballot measure finance research in states in which there are many committees, or where voters may only search by committee name. Ohio and Oregon, for example, list *thousands* of PACs, and do not clearly differentiate those that are involved in ballot measure campaigns. Voters must open individual committee files to determine committee type.

The problem is compounded when states make no meaningful *legal* distinction between ballot committees and other committee types. If any committee type can campaign directly for or against an initiative, voters tracking ballot spending may not know where to conduct their research or when their research is complete.

In states that allow standing PACs and other committee types to make contributions to a ballot committee, voters must conduct two waves of research: one to identify principle donors to the ballot question committee and another to investigate the donors to political committees that have themselves made contributions to the ballot question committee.

Disclosure agencies also tend to keep dormant committees on their ballot committee lists forcing voters to wade through pages of empty reports to locate active committees. Overall, disclosure agencies that fail to properly organize ballot measure donor data are effectively limiting voters' access to information.

**Database Navigation:** Voters should be able to obtain donor data easily, from an intuitive website that requires minimal searching and clicking. Many disclosure sites fail this simple web navigation test. Donor information may be scattered about the site, difficult to locate, or require too many mouse clicks to access. As of June 2002, Colorado's disclosure database had good sorting options but it was not immediately obvious that they existed because the feature was not clearly identified or labeled.





## STATE-BY-STATE ANALYSIS

Many of the disclosure agency staff we surveyed were in the midst of reform, updating online databases, improving disclosure features, or modernizing their websites. As a result, the State Analysis merely provide a snapshot of online initiative donor disclosure in the 24 states with the ballot measure process. The individual state summaries are rather basic and intended to assist disclosure agencies and reform organizations identify the challenges to complete, transparent online ballot measure donor disclosure in their state. An explanation of the criteria by which states are evaluated and a glossary of terms can be found in Appendices A and B.

BISC Foundation recognizes that many of the recommendations listed below are dependent on legislature enacted policy and can only be implemented with adequate funds and staff. Still, most state disclosure agencies can improve the overall quality of initiative donor disclosure by implementing a handful of website format changes or adding critical missing features to their donor databases.

Four of the 24 states with the initiative process — Arkansas, Montana, Oklahoma, and Wyoming — do not post any initiative donor data online at all.

### ALASKA



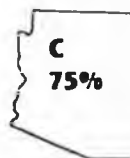
The Alaska Public Offices Commission (APOC) website has great potential to be a model disclosure resource, with some of the best historical and summary information, a strong database and good search options. However, the current electronic filing system is "nearing its limits," and the development of a new web-based system — and the general quality of disclosure in Alaska — may be jeopardized by budget cuts.

#### Challenges:

- Accessing the donor data is tedious, requiring many mouse clicks over many separate pages to access the desired data.
- There is no permanent feature or search option for linking ballot committees to their respective issue (although committee summary data and third party expenditures are organized by issue).
- There are no sorting options.

- Although PACs involved in ballot campaigns are labeled as "Ballot Measure Groups," PACs are also involved in candidate campaigns.
- Contributions over \$250 made in the last nine days of the cycle must be reported within 24 hours, but that data is not disclosed online until after the election.
- Committees can "disband" and rename to avoid reporting signature gathering phase contributions.
- The electronic filing program is optional; most committees do not participate.
- There is a large gap in the filing schedule, from February 15 to 30 days prior to the election.

## ARIZONA



Arizona's Division of Elections boasts some of the best historical data, mandatory electronic filing, and a strong database. The Secretary of State recently mandated the distribution of election pamphlets (available in Spanish) to all Arizona residents. The names of the top four donors

to ballot measure campaigns must be included on all campaign materials.

### Challenges:

- There is no permanent feature or search option for linking ballot committees to their respective issue (although historical data is organized by ballot number). Ballot committees are not required to disclose the issue they support or oppose on any of their reports.
- The only search option is a committee search; there are no sort options.
- There is no summary data.
- Some of the historical data ("Contributions of \$10,000+") is separate from the main database and difficult to find.
- Donor data does not include contributor's address.
- There are large gaps in the filing schedule from January 31 to June 30, and from August 29 to October 10.

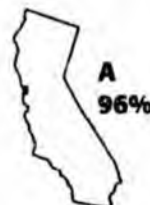
## ARKANSAS



The Arkansas Ethics Commission does not post ballot initiative donor data online. The Commission does post scanned files for candidate committees, but ballot initiative data — back to 1992 — can only be viewed in the paper files, which are organized by committee

name, in the Ethics Commission offices. There are no summary figures available. Committees are required to file monthly after registering, again seven days prior to elections, and 30 days afterwards. Arkansas should begin to disclose ballot initiative donor data online.

## CALIFORNIA



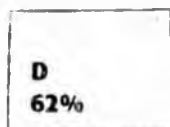
The Cal-Access site, a service of the California Secretary of State's Political Reform Division is an excellent ballot initiative donor disclosure resource. The donor database has multiple search and sort options and the raw data can be downloaded. Ballot committees are organized by initiative, there is

excellent summary and historical data; and electronic filing is mandatory for committees raising over \$50,000 (this threshold may be lowered to \$10,000, although it is unlikely that an initiative could get off the ground in California for less than \$50,000). Cal-Access is planning to provide a free online filing program by January 2003.

### Challenges:

- Summary data is difficult to find, separate from the main database under "Political Reform Page"
- Though voters can search donor data by initiative and sort by multiple criteria, search options for ballot measure data could be expanded.
- There is a large gap in the filing schedule for the general election, from the January 31 year end report to October 5 (the primary election filing schedule is slightly better).

## COLORADO



The Colorado Secretary of State's Election Center recently launched a new online disclosure database and Colorado has some of the best filing requirements in the country. Ballot committees file regularly throughout the year and five times in September and October. Voters

can request copies of the database on a CD or download campaign finance reports. Electronic filing was made optional in 2000, but there do not appear to be any plans to make it mandatory. The absence of electronic filing hurts what is otherwise an excellent disclosure program.

### Challenges:

- Once initiatives qualify, the Election Center lists committees by issue, but there is no permanent feature or search option that links ballot committees to their respective initiatives.
- The only way to search is by committee, and voters must know the name or partial name of the committee they are searching to conduct an effective search.
- The link for viewing scanned files is difficult to find and voters may not realize that they may have to refer to the database and the scanned files to obtain complete committee data. The link for the disclosure database is somewhat unclear.
- The data sorting options are decent, but they are not labeled and it is not immediately obvious that they exist.
- Historical data is only available in unsorted, downloadable Excel files that are difficult to use since contributions are designated by committee ID number, not by initiative number or committee name. The state does not make summary figures available.
- Issue committees are not the only committee type that can be involved directly in an initiative campaign.
- Since electronic filing is optional, many committees do not appear in the database until their data has been entered manually (which may take two-four weeks).

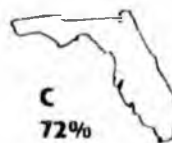
## DISTRICT OF COLUMBIA 41%

The District of Columbia's Office of Campaign Finance has a relatively new on-line disclosure program and donor information, posted in PDF files, only dates back to 2000. The office has recently added an excellent data summary feature for candidate committees and plans to provide summary data for ballot committees.

### Challenges:

- There is no permanent feature or search option for linking ballot committees to their respective issues.
- Donor data does not include contributor's address.
- There is no way to search or sort committees, other than by filing date. Initiative donor data is difficult to isolate because all reports from a wide range of committees are posted one after another in lengthy scanned files without any clear separation between committee types.
- There is no historical data for initiative committees.
- Ballot committees are not the only committee type that can be involved directly in an initiative campaign.
- There are no immediate plans for an electronic filing program.
- The only set filing dates prior to the elections are four months, two months, and eight days prior.

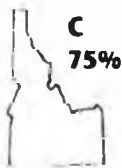
## FLORIDA



The state's Division of Elections does an admirable job with limited resources. Their database has excellent search and sort options, raw data can be downloaded, and the filing requirements are very good. The disclosure agency maintains a list of ballot initiatives and their respective sponsors. The agency also maintains separate "committees" database that allows voters to search by issue (e.g., animal protection, banking, civil rights, etc.). They and a legislature recently passed legislation that improves filing requirements for political committees.

**Challenges:**

- Ballot committees are linked to initiatives in a separate "committees" database, but it is not immediately clear that the link is a searchable database.
- The "committees" database allows voters to search by issue, but a general committee search yields a lengthy list of committees that are not sorted by type.
- Summary data could be expanded (although a sorting option allows voters to view ballot committee contribution totals).
- There is no mention of ballot initiatives or which groups (PACs) are involved in ballot initiatives in the campaign finance database.
- Third party expenditures are not yet disclosed online.
- Although electronic filing is technically mandatory, committees are exempt if they claim to be "unable" to comply — and most do.
- Since most committees do not file electronically, the disclosure agency is hard pressed to key large volumes of committee reports within a few weeks of the filing deadlines, this severely limits the utility of an otherwise excellent database.
- Although the state has improved ballot committee filing requirements, corporations and other businesses do not have to register or file as a committee if they do not solicit outside funds to support or oppose a ballot measure.

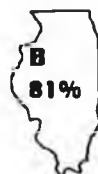
**IDAHO**

Although Idaho has relatively little ballot activity, the state's Election Division provides a solid disclosure resource with limited staff and a simple but effective website. The database has multiple search options (including a "View summary figures" link), and voters can download raw data in an Excel sheet. Users are made

aware of upcoming reporting deadlines and other key campaign finance updates on the agency's website. The legislature may add additional reporting deadlines to the filing schedule.

**Challenges:**

- There is no permanent feature or search option for linking ballot committees to their respective issue. Ballot committees ("measure groups") are not required to disclose a purpose or issue in their files.
- The summary data could be expanded (committee totals and overall ballot measure spending figures are posted).
- There are no sorting options.
- Third party expenditures are reported five days before an election and 30 days after, which delays full disclosure until after Election Day.
- Although reports are scanned immediately and the data is manually entered in the database within two weeks, an electronic filing system would simplify and improve disclosure.
- There is a large gap in the filing schedule, from July 30 to October 10.

**ILLINOIS**

The Illinois initiative process is limited to constitutional amendments and "advisory" (non-binding) measures. As a result, advocacy groups tend not to use the process. The last constitutional amendment passed by initiative was in 1980; the last advisory measure was in 1978 (it passed, but was ignored by the legislature). Committees that raise

less than \$25,000 (in a six month period) are not required to file electronically and the state only posts aggregate data from these committees. Since few ballot committees raise more than \$25,000, donor data is usually limited to committee totals. Donor data that is posted is well presented and easy to search. Though the Illinois initiative process is advisory only, other states would do well to disclose ballot measure donor information as well as the Illinois State Board of Elections.

**Challenges:**

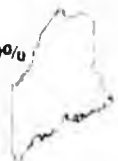
- There is no permanent feature or search option for linking ballot committees to their respective issue.

- Since few ballot committees exceed the \$25,000 electronic filing threshold, the state posts very little ballot committee donor data.

- There is large gap in the filing schedule, from July 31 to October 21.

## MAINE

F  
29%



The Maine Commission on Governmental Ethics and Election Practices has a new database but may not have the resources to post complete data online prior to the election. The disclosure agency hired temps to enter data for the April 10 deadline but as of June 1 it was uncertain how much data had been posted. The director does not know how long it will take to enter data or whether there will be sufficient funds to enter additional data later in the cycle. The commission is clearly understaffed and there is no relief in sight. Despite Maine's strong ballot initiative tradition, weak disclosure legislation and inadequate resources have paralyzed Maine's disclosure program.

### Challenges

- As of June 1, the Ethics Commission had not provided a link to its own donor database; the Commission's site is separated from the Secretary of State's page by three vague links, and there is no clear distinction between the Ethics Commission and the Elections Division.

- There is no permanent feature or search option for linking ballot committees to their respective issue.

- There is no historical or summary data posted online.

- Search options are limited; there are no sort options.

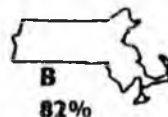
- It is not obvious that PACs are the committee type most often involved in ballot initiatives, although any committee types may sponsor a ballot measure. The lack of distinction between committee types is confusing. A ballot PAC's "purpose" may also be vague or misleading.

- Few committees participate in the voluntary electronic filing program; a mandatory system would alleviate many of the problems listed above.

- out of state committees submit reports according to the filing requirements of their home state.

- There is a large gap in the filing schedule, from July 27 to October 10.

## MASSACHUSETTS



The Massachusetts Office of Campaign and Political Finance has one of the best websites for ballot initiative disclosure in the country. The database is well designed with extensive search options, summary information and reports, and raw data that can be

downloaded. A newly re-designed web interface streamlines donor research. Massachusetts's disclosure law requires that committee names reflect the economic or ideological interests of a majority of its contributors. This will be the first year of mandatory electronic filing for committees raising more than \$25,000.

### Challenges

- OCPF maintains a separate list of ballot committees, but users must copy committee names or ID numbers and insert them into the donor database to retrieve committee data.

- On the "View Reports by Committee" page, all eight inactive committees are lumped together.

- The state maintains good historical summary data but does not have a historical donor database.

- The site links and donor data could be more clearly labeled and well organized.

- Third party expenditures are not disclosed online.

- There is a large gap in the filing schedule, from the year-end January 23 report to September 6, and another gap from October 22 to December 1. The state does not require immediate disclosure of large contributions made late in the election cycle.

## MICHIGAN



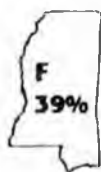
Most of the donor data posted by the Michigan Bureau of Elections is displayed in scanned files. The few ballot committees that opt to file electronically appear in a well-organized database with excellent search and sort options. However, most committees will probably

continue to file on paper and will not appear in the database until December 31, 2004, when electronic filing becomes mandatory.

### Challenges:

- There is no permanent feature or search option for linking ballot committees to their respective issue. Although some committees specify their purpose on their statement of organization, it is not required.
- Although ballot question committees are clearly designated, other committee types may become directly involved in ballot measure campaigns.
- Scanned file search criteria are limited to committee name and committee type only and there is no way to organize or separate committees by election year or issue.
- Voters may not realize that they must refer to the database and the scanned files to obtain complete committee data.
- There is no summary information and historical data is not separated from current data.
- There are substantial gaps in Michigan's filing schedule (there are only two filing deadlines prior to the election).

## MISSISSIPPI



Ballot initiatives were discontinued in the state of Mississippi from 1922 until 1993. Since the process was reinstated, only two initiatives have qualified for the ballot. The website is difficult to evaluate since there has not been very much donor data to disclose and

there are few references to ballot initiative campaign finance data. Nonetheless, the state has improved its filing requirements and the Elections Division is developing an electronic filing system, which may be launched on a voluntary basis next year.

### Challenges:

- The (mostly candidate) data consists of scanned files only.
- The time it takes to post data online — currently up to one week — would be greatly reduced by a mandatory filing system.
- There is no permanent feature or search option for linking ballot committees to their respective issue.
- There is no summary data.
- Voters may only search by filing date and committee.
- PACs are involved in ballot campaigns but may also contribute to non ballot campaigns.
- There is a nine-day "grace period" for late filers, which essentially nullifies the seven day requirement prior to election deadline.
- There are large gaps in the filing schedule, from (ten days after) June 30 to Sept.30, and then not until seven days prior.

## MISSOURI



Missouri's Ethics Commission recently launched a new disclosure database and the state is implementing voluntary electronic filing in 2002. Since electronically filed data appears in the database and the rest is scanned, any assessment of the disclosure site has to take into account the quality of both the database and the inherently weaker scanned files system. Nonetheless, Missouri is making substantial improvements in its disclosure program. Requiring mandatory electronic filing would be the next logical step.

### Challenges:

- Viewing data in scanned files is slow and awkward; scanned files appear sideways on the screen and the data is sometimes illegible.
- There is currently no permanent feature or search option for linking committees to their respective issue, although the Elections Commission

expressed an intention to post a list of committees by issue once initiatives qualify

- \* There are no files available for years prior to 2001, and very little summary data
- \* In the database voters can search committee type or committee name, but there are no other significant search options and no sorting options
- \* There is no mention of ballot initiatives or of the fact that campaign committees and continuing committees are involved in initiatives. Any committee can give directly to an initiative campaign and there is no meaningful distinction for an "initiative committee."
- \* There is no clear link from the Secretary of State's page, the link for scanned files is not as clearly labeled as the link for electronic filings, voters might not be aware of the need to search both to find all committees
- \* Out of state committees are only required to disclose donor data of Missouri residents, out of state contributors' information is not disclosed
- \* There is no filing deadline in September

## MONTANA



Montana does not post ballot initiative donor data on line. Though the state has a decent filing schedule, the Commissioner of Political Practices Office does not provide complete campaign finance information to the

public in any form until weeks or months after filing deadlines. Montana voters generally consider several ballot measures per election and deserve to know who is funding those efforts. Montana needs better disclosure legislation and the CPP needs more financial resources if it is to provide an online disclosure to the public.

## NEBRASKA



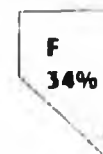
The Nebraska Accountability and Disclosure Commission website has some helpful features including search options for individual and non individual contributors. The Commission plans to improve the site shortly and is

currently testing an electronic filing system that it hopes to implement prior to the 2004 election. The Commission could significantly improve the disclosure site with some key format changes.

### Challenges:

- \* There is no permanent feature or search option for linking ballot committees to their respective issue
- \* No summary data is posted online. The Division publishes a booklet with summary figures, proceeds from sales of the booklet support the Division
- \* The only way to search is by committee name and if voters do not know the name, a general search produces too many listings, there are no sort options
- \* There is no separation of ballot committees and candidate committees, which makes searching even more difficult. Furthermore, ballot committees are not the only groups that can support or oppose an initiative
- \* There is no clear link from the Secretary of State's website to the Commission's site; the site links and donor data could be more clearly labeled and well organized
- \* There is a large gap in the filing schedule, from June 30 to October

## NEVADA



The Nevada Elections Division is currently running a pilot program for an electronic filing system, but it only applies to non-ballot PACs and candidate committees. Recent efforts to improve the state's messenger filing

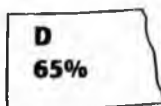
requirements were unsuccessful. Though ballot committees are supposed to file regular reports, they are not legally required to register with the Nevada Division of Elections.

### Challenges:

- \* The disclosure site has scanned files only
- \* There is no permanent feature or search option for linking ballot committees to their respective issue. It is not required that committees disclose their exact or purpose when they file

- There is no summary data.
- There is no way to search other than by committee and by third party expenditure.
- Committees are listed with no available disclosure data.
- Ballot advocacy groups are not limited to initiative campaigns and PACs may become directly involved in ballot measure campaigns; in this respect, there is little distinction between committee types.
- Ballot committees do not have to register with the Elections Division.
- Aug 27 and Oct 29 are the only filing dates prior to the election and there is no requirement for prompt disclosure of contributions made late in the cycle.

## NORTH DAKOTA



The North Dakota Elections Division is planning to revamp its site before the 2002 November elections; plans include a searchable database with sorting options. The current site is well designed and easy to use. If promised upgrades are completed, North Dakota will have one of the best initiative donor disclosure mechanisms in the country, a commendable achievement for a state that generally sees few ballot measures.

### Challenges:

- There is currently no permanent feature or search option for linking ballot committees to their respective issue.
- There are no sorting options.
- There is no summary data.
- Disclosure time will improve when mandatory electronic filing is implemented; currently electronic filing is optional and data is posted "as fast as [Division staff member] Lee Anne can type."
- Third party expenditures are not disclosed online.

- There is no penalty for failing to file: as of April, Division staff were still waiting for January reports to arrive.
- There are only three reporting dates, January 31, May 30, October 24 (although contributions over \$500 made within 20 days of the election must be reported within 48 hours).

## OHIO



Ohio Election Services has a disclosure site with a large database, good search and sort features, and great potential. Ohio is one of few ballot initiative states in which electronic filing is mandatory and raw data can be downloaded from the database. Despite these strengths, there are no clear references to ballot committees or initiatives on the site and any ballot measure donor data is buried in a lengthy list of PACs. If voters do not know the specific name of the ballot committee they're seeking, they'll likely have a difficult time finding any ballot measure donor data.

### Challenges:

- It is not immediately obvious that ballot measure data is even posted online (the groups are found under "PAC").
- There is no permanent feature or search option for linking ballot committees to their respective issue.
- The few existing ballot committees are not separated from the thousands of other committees
- Voters must know specific committee names to conduct an effective search
- There is no summary or separate historical data (old files can only be accessed once a specific committee has been selected)
- Oftentimes committee data is incomplete or unavailable (Election Services outsources data entry)
- Third party expenditures are not disclosed online
- The only filing deadlines between the year end report and the November elections are April 25, June 14 and October 24; there is no requirement for

prompt disclosure of contributions made late in the cycle.

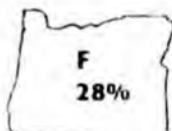
## OKLAHOMA



Oklahoma's Ethics Commission does not post ballot initiative donor data online, unless it is filed electronically. When electronic filing was mandatory for a brief period from 1998 to 1999, disclosure data was automatically posted online. Software difficulties compelled the legislature to make the program voluntary. Since then, very few groups have opted to file electronically. Since reports that are not submitted electronically are not posted, very few are disclosed online.

If data were manually keyed, or electronic filing became mandatory again, voters could search by PAC filings, contributions, expenditures, and late contributions. Ballot committees are not organized by issue, or separated from candidate committees and other committee types. Unfortunately, the Ethics Commission has larger issues it still needs to address. Hopefully Oklahoma's legislature will reinstate the mandatory electronic filing requirement and online disclosure program very soon.

## OREGON



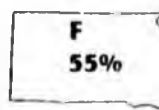
The Oregon Elections Division provides good disclosure resources offline. Data is available in booklet form for a nominal fee, and the Division will mail information to voters on request, but only ballot committee summary figures are posted online. The electronic filing program becomes mandatory in 2004 (currently groups can apply for a "waiver" and most of them do). Electronic filing would enable the Division to post complete donor data online. The Oregon legislature recently passed a law that increases reporting requirements during the signature gathering phase of an initiative campaign.

### Challenges

- The Division only posts summary figures for ballot committees; individual donor data is not available online.
- There is no search option for linking ballot committees to their related initiatives.

- The only way to search is by committee name; a general search produces over 2,000 results.
- There is no separation of candidate committees and ballot committees; voters must open individual committee files to determine their purpose and type.
- The Division takes up to 10 days to manually enter and post the summary figures (most mandatory electronic filing systems enter complete data quickly and automatically). That means that data from the October 23 deadline might not be posted until a day or two before the election.
- Third party expenditures are not disclosed online.
- out of state groups are not required to disclose donor data unless they spend more than two thirds of their total funds in Oregon; large, wealthy groups could have considerable influence and be exempt from disclosing financial information.

## SOUTH DAKOTA



The South Dakota Elections Division only posts disclosure data in scanned file format. The Division has a brand new website that is fairly well organized; ballot committees are clearly distinguished from other

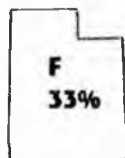
committees, and there are some basic summary figures from past elections. South Dakota is improving its disclosure program. The next logical step would be to introduce an electronic filing program and disclosure database and to enhance the range of summary figures that are available to voters.

### Challenges

- Data is available in scanned files only.
- There is no permanent feature or search option for linking ballot committees to their respective initiative.
- The only way to search is by committee name.
- The historical and summary data is limited to group totals.

- Signature gathering contributions and expenditures do not have to be reported unless there is money left over.
- There is a large gap in the filing schedule, from July 1 to seven days prior to the election.

## UTAH

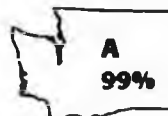


Utah's online disclosure program faces serious challenges. The Elections Office is hoping to post complete donor data for the first time in a brand new database, which is well designed and easy to use, with good search and sort options. Unfortunately, due to limited resources the Office will probably not be able to post complete data prior to the election (as of June 1, Elections Office staff had still not entered the January 5 ballot committee filings into the database). Although the Elections Office has recommended mandatory electronic filing, the legislature has yet to respond.

### Challenges:

- Without mandatory electronic filing, prompt disclosure is unlikely.
- There is no permanent feature or search option for linking ballot committees to their respective issue.
- Voters can only search by committee
- The link to the database ("Utah Reporting System") does not look like a link.
- Historical and summary data is limited to committee totals.
- Utah requires out of state committees to file according to their home state's reporting requirements.
- There is a large gap in the filing schedule, from January 5 to September 15.

## WASHINGTON



Two years ago, Washington's Public Disclosure Commission finally succeeded in convincing the legislature to appropriate enough funds for an electronic disclosure system and database. Today, Washington has a model disclosure program and the Commission is working to make it even better. There is a new mandatory electronic filing requirement for groups raising more than \$25,000; the threshold will be lowered to \$10,000 in 2004. Voters can select a ballot initiative from a scroll down bar to view committees organized for and/or against that initiative. Voters can also search and/or sort by state, city, zip code, name, employer, occupation, amount, date, and year; the raw data can be downloaded. The filing requirements are rigorous; particularly noteworthy is the restriction on contributions of more than \$5000 within 21 days of the election. Washington may have the single best overall disclosure program of any state in the country.

### Challenges:

- There is a limited amount of historical and summary data.
- The Secretary of State does not provide a clear link to the PDC site.

## WYOMING



*The Wyoming Elections Division does not post ballot initiative donor data online.* Offline data is complete, organized by issue and available the day after filing, but the filing requirements in Wyoming are the worst in the country. Voters cannot view any ballot measure finance information until well after an election because there are no reporting deadlines from early Spring (the Spring deadline varies according to the legislative calendar) until the end of December. Late filers receive a \$25 fine and there are no restrictions on anonymous contributions. Although the Elections Division may post scanned files by 2004, the current filing requirements undermine any notion of meaningful disclosure, in any form.



## THE SOLUTION: Model Disclosure Guidelines

It should be just as easy for the average voter to identify the leading contributors to a statewide ballot measure as it is to find a weather forecast online. Sadly, few state governments dedicate significant resources toward improving online initiative donor disclosure. Yet, improving initiative donor disclosure is an affordable investment in democracy. States can actually save money in the long run by implementing electronic filing — a critical component of timely, accurate disclosure — because costs associated with data entry, file maintenance, paper storage, auditing, and staff time will be greatly reduced. Furthermore, disclosing money in ballot campaigns will soon become even more critical as former federal “soft-money” donors, restricted in their ability to contribute to the political party apparatus by the recently enacted Bipartisan Campaign Reform Act of 2002 (BCRA), seek new paths to influence public policy. Ballot initiatives, already an emerging battleground for some of the most significant public policy battles of this era, may become an even more popular and powerful electoral tool. Tracking and disclosing the money behind the measures is more important than ever before.

BISC Foundation’s model disclosure guidelines can assist disclosure agency staff, reformers, and forward thinking legislators as they work together to improve donor disclosure practices in the 24 ballot measure states. While some recommendations require statutory changes and additional funding for disclosure agencies, many involve relatively minor changes in the way donor data is presented or organized. The model guidelines are based on existing disclosure requirements and practices and distilled from conversations with state based reform organizations, campaign finance researchers, and disclosure agency staff. Guidelines are separated into two sections: data gathering and data disclosure.

## DONOR DATA GATHERING GUIDELINES

### What guidelines should states use for gathering donor data?

The old computer programming adage "garbage in, garbage out" largely informed BISC Foundation's evaluation of initiative donor data input requirements. In order for disclosure agencies to effectively educate voters about money in ballot measure campaigns, ballot committees must submit complete, clear, and meaningful donor data periodically throughout the year and with increasing frequency as Election Day approaches. Campaign disclosure data is after all, public information and should be made available to voters. With this in mind, BISC Foundation supports the following recommendations:

#### IMPROVE FORMAT

- **All ballot measure states should require electronic filing for all statewide ballot committees.** Some initiative states have an electronic filing threshold (e.g. committees raising less than \$10,000 do not have to file electronically), which can help direct disclosure agency resources to viable ballot committees.
- **Filing schedules should require frequent and consistent reporting.** Filing deadlines need not be identical across state lines (though that would be ideal from a research perspective) but should adhere to the following rough schedule:
  - At least every other month through the spring and summer
  - Two or more deadlines in both September and October
  - One post election or year end report
  - States that do *not* require prompt disclosure of large donations made late in the election cycle (see below) should add filing deadlines at 14 and seven days prior to the election

#### IMPROVE WHAT INFORMATION IS REQUIRED

- **States should require committees that receive large contributions immediately before the election to disclose them online shortly after they are received.** This policy sheds light on last minute, large contributions and donors trying to fly below the political radar screen. Committees that receive cumulative contributions or make expenditures over \$50K in the 14 days prior to the election should be disclosed online within 48 hours. Once a mandatory electronic filing system is firmly in place, states can more easily adopt this requirement.
- **States should require ballot committees to file disclosure reports during the critical signature-gathering phase of an initiative campaign.** The Oregon legislature recently added additional filing deadlines that effectively capture contributions made during that state's unusually lengthy signature gathering phase. Though signature gathering periods vary across state lines, states should require that committees file disclosure reports at least twice during the signature gathering phase, once half way through the process and once at the end.

- **Ballot committees should be required to clearly indicate which ballot measure they are organized to support or oppose.** Though an initiative is not assigned a ballot number (or letter) until after qualification, each initiative qualification drive should be assigned a "qualification number" which committees should designate on their pre-qualification financial reports. This way, every committee financing a qualification drive—whether ultimately successful or not—is identified with the measure it is supporting without imposing any undue burden on the committees and the states. Assigning a number, rather than a subject or brief description, is simpler and leaves little room for confusion. Ideally, the state would assign ballot proposals one number that would identify the measure during the signature-gathering phase (pre-qualification), the campaign phase (post-qualification) and would appear next to the initiative on the ballot. This would: facilitate campaign finance research, eliminate voter confusion and reduce the chance of clerical errors, and allow ballot committees to produce signs, literature, and other campaign material with their assigned initiative number earlier in the election cycle.

Massachusetts requires that a ballot committee's name reflects the economic interests of its major contributors and/or the initiative itself. In Arizona, ballot committees are required to disclose their top four major funding sources (out-of-state donors must be disclosed as such) on any committee literature or advertisement. Both states' requirements are desirable.

When committees support more than one ballot measure, they should be required to clearly indicate how their contributions are allocated between recipient initiative campaigns.

- **States should require that ballot committees report complete donor data including: donor name, address (at least city and state), occupation, employer, date contribution was made, and amount of contribution.** Committees should not be permitted to accept a contribution without first securing all relevant disclosure information from the donor. States should also require that committees ask donors to distinguish between individual and organizational contributions so the public knows whether personal or institutional support is being lent to a ballot campaign. "Best effort" laws are woefully abused by ballot measure committees and rarely enforced by elections agencies after the election, leaving major gaps in disclosure.

- **States should require that ballot committees report all kinds of contributions including: direct financial contributions, in-kind contributions, and loans.**

- **Since, by definition, ballot committees are unaware of third party expenditures made on behalf of their initiative, states should require entities that make such expenditures, including 501 (c) and "527" organizations, to register with the state and clearly indicate the initiative number they are supporting or opposing.**

### STRENGTHEN COMMITTEE GUIDELINES

- **States should limit participation in ballot measure campaigns to ballot committees.** In South Dakota, ballot committees are the only type of committee that can participate directly in a ballot initiative. If another committee type becomes involved in a ballot initiative, it must register as a ballot committee. Restricting ballot initiative involvement to ballot committees reduces the research burden for voters and helps disclosure agencies more easily track and code contributions to ballot measures.

- **States should define committees by how much money is raised.** In this era of wealthy individuals spending for and against initiatives, defining a "committee" as two or more persons obscures true disclosure. It is not uncommon for a wealthy individual to finance an initiative's entire qualification drive and/or campaign, and under most state laws, this individual would be exempt from filing. California state law defines a committee which must register and disclose its finances as "any person or combination of persons who directly or indirectly does any of the following: (a) Receives contributions totaling \$1,000 or more in a calendar year; (b) Makes independent expenditures of \$1,000 or more in a calendar year; or (c) Makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees." [Gov't Code Section 82013] This definition captures for reporting purposes any entity playing a significant role in the financing of initiative campaigns, while avoiding to capture small contributions that could otherwise fall under the U.S. Supreme Court's McIntyre ruling.<sup>4</sup>

<sup>4</sup> In a 1995 decision, the US Supreme Court ruled that an Ohio regulation prohibiting anonymous distribution of political literature violated the First Amendment. In the case, the defendant distributed a modest number of anonymous leaflets expressing her opposition to a proposed school tax levy.

- **Out-of-state political committees that make contributions to a ballot committee should be required to follow the reporting schedule and disclosure laws of the recipient committee's state.**

## **INCREASE EMPOWERMENT AND FUNDING OF DISCLOSURE AGENCIES**

- **State disclosure agencies should be empowered to enforce reporting laws and levy fines.** In order to ensure timely disclosure and fairness, committees should follow a regular reporting schedule and disclosure agencies should have the staff and resources to enforce those requirements. The Federal Election Commission's Administrative Fine Program is a good model.
- **States must adequately fund disclosure agencies.** In order to provide high quality online donor disclosure to the public, state disclosure agencies must have the resources to hire qualified staff who can properly manage donor data, maintain disclosure websites, and pursue campaign finance violators.

## **DONOR DATA DISCLOSURE GUIDELINES**

### **How should states make donor data available?**

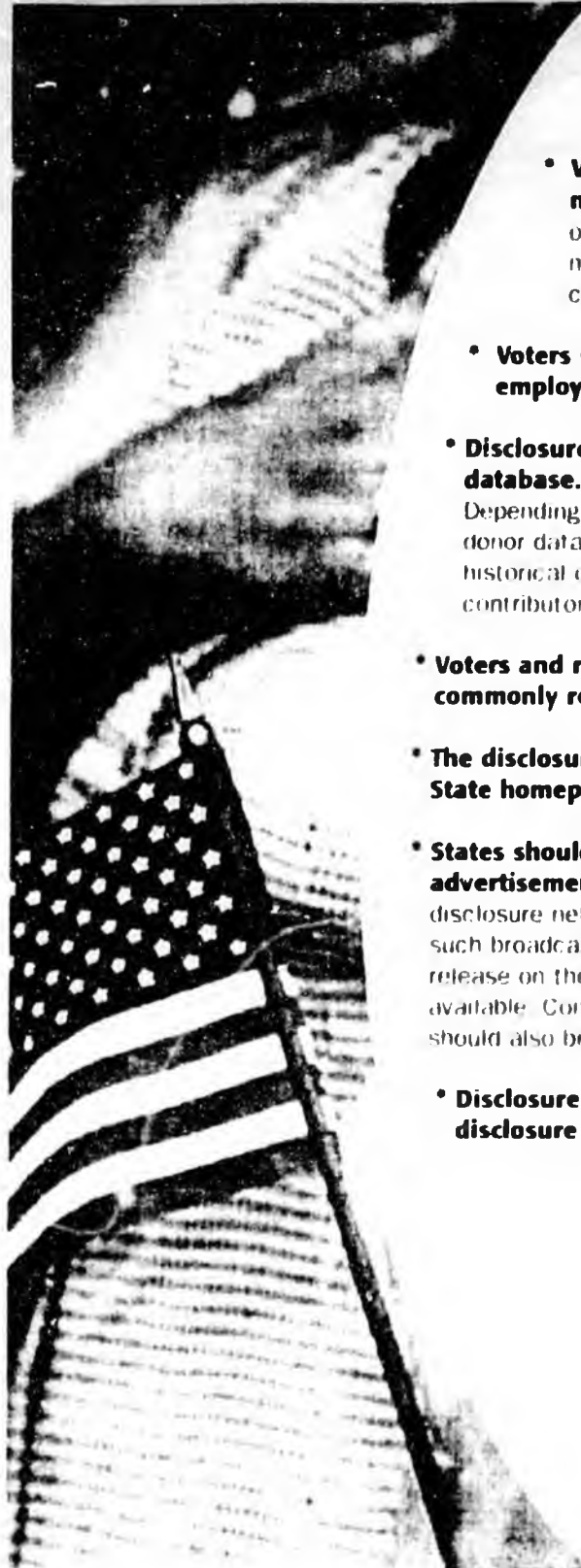
The following recommendations relate more directly to the disclosure agency's handling and distribution of initiative donor data. As such, some of these recommendations require less legislative intervention and a greater degree of disclosure staff resources and ingenuity.

### **MANDATE MORE TIMELY REPORTING**

- **Ballot initiative donor data should be posted online within 48 hours of filing deadlines** (a goal met by all states that mandate electronic filing).
- **Clearly labeled summary data for all ballot committees should be readily accessible prior to the election.** Summary data provides voters and journalists with a snapshot of ballot measure funding information. Summary data should include totals by initiative and by committee displayed in lists, charts, or graphs. Helpful donor summary features include: recurring and major contributors, contribution and expenditure totals, average contributions and expenditures, contributors by economic interest and by donation amount.

## **IMPROVE QUALITY OF INFORMATION AND HOW IT IS DISPLAYED**

- **The disclosure site should contain clear and intuitive internal links.** Voters should not have to search multiple databases to find complete donor data for one ballot measure. Disclosure sites should be as clear about what they do offer as what they do not. For example, if donor data for a particular ballot measure has not been posted because the sponsoring ballot committee failed to file a timely report that should be clearly noted. The site should contain clear and concise instructions to voters about what is required of ballot committees, when reports will be made available and what they will contain, and explicit instructions about how to use the agency's donor database.
- **Voters should be able to search for contribution information by initiative number or letter.** Linking ballot committees to specific initiatives allows voters to search for campaign finance information by initiative designation (e.g. Measure 2) rather than the often more obscure committee name (e.g. Voters for Accountability). The committee/initiative link should be a permanent feature in any donor database that should be updated frequently as initiative proposals are assigned numbers by the state, as new initiatives qualify for the ballot, and as committees form and dissolve.
- **In states that allow other committee types such as PACs to give to ballot committees, links to those committees' disclosure reports should be clearly provided.** Voters should not have to conduct multiple database searches to identify the top donors to a ballot campaign. If one of the top 10 donors to a ballot committee is the "America's Future PAC," the disclosure agency should provide a direct link to the contributor information in their disclosure database.
- **Disclosure agencies should physically separate ballot committees from other committee types on their websites.** Clearly separating ballot committees from other committee types (e.g. candidate, party, etc.) reduces voter confusion and facilitates initiative donor research. Furthermore, inactive committees or those that have raised less than \$2,000 should be separated from more active committees.

- 
- **Voters should be able to search by election year, the initiative's ballot number or letter, committee name, contributor name, amount (range), address (city and state), occupation, and employer.** The number of available search options depends, of course, on whether the state requires ballot committees to gather this much information. In states in which independent expenditures and late contributions play a role in ballot campaigns, voters should also be able to conduct searches to ply that data.
  - **Voters should be able to sort by contributor name, amount (range), address (city and state), occupation, employer, and date of contribution.**
  - **Disclosure agencies should make historical donor data for all ballot committees available in a searchable database.** Historical donor data facilitates longitudinal research and helps voters better understand ballot funding trends. Depending on whether donor data is electronically filed or submitted on paper forms to a disclosure agency, historical donor data from previous elections may be available in a searchable donor database or in a scanned format. Helpful historical donor data features include: total campaign spending by year and by initiative; list of recurring initiative contributors; and contributors by industry and by donation amount.
  - **Voters and researchers should be able to download complete raw data from the state's donor database in a commonly recognized format (e.g. quote, comma delimited).**
  - **The disclosure site should be easily accessible with unambiguous links from the Secretary of State's homepage or State homepage.**
  - **States should provide a "campaign advertisement website" for the storage and public access of campaign advertisements for and against ballot measures.** The Secretary of State should establish and maintain an on-line disclosure network of any television, radio, or other electronically distributed campaign advertisement. A digital copy of each such broadcast advertisement should be provided to the public on the disclosure agency's website within 24 hours of its release on the airwaves. A digital copy of any essentially similar printed campaign advertisement should also be made available. Committees or individuals that make third party or "independent expenditures" on behalf of any ballot measure should also be required to submit digital copies of any advertisements.
  - **Disclosure websites should allow voters to sign up to receive e-mail notices when new ballot committee disclosure reports are filed.**

## APPENDIX A: Explanation Of Disclosure Criteria

BISC Foundation developed a ranking system to evaluate the many components of effective online initiative donor disclosure. States receive a numerical score of 0-3 for each criteria depending on their performance. Every effort was made to maintain objectivity and internal consistence. The overall score is based on points earned, divided by the maximum number of points that any state could earn (13 criteria x 3 points = 39), plus extra credit. No state recorded a perfect score. Evaluation criteria are grouped into four categories: filing requirements, data quality, voter access, and data format.

Some criteria are closely related to others; a weak score in one criterion may affect scores in related criteria. For example, filing method affects a range of criteria including the quality, timeliness, and accessibility of initiative donor data.

In states where different committees file reports electronically or via paper, full credit is not awarded on a given criteria unless all committees meet the standards of that criteria. For example, in order to earn full credit for "summary data," states must post comprehensive summary information for *all* committees, regardless of filing method.

Some states have implemented a monetary threshold under which donor data from minor committees is not posted online. Given the costs of campaigning in these states, BISC Foundation found these thresholds acceptable and states were not penalized.

Unless otherwise noted, state disclosure performance is based on current (2008) donor data.

## RANKING CRITERIA

### Filing Requirements

#### Must Ballot Committees File Reports Electronically?

- 3 = Mandatory electronic filing
- 2 = Voluntary electronic filing (or mandatory electronic filing with broad loopholes that exempt most groups from electronic filing)
- 1 = No electronic filing
- 0 = N/A

#### Must Ballot Committees File Regular Reports? (Filing deadline criteria are based on a November general election)

- 3 = At least one filing in spring, summer, September, two in October, one post election
- 2 = Missing a key report from above list
- 1 = Multiple reports missing
- 0 = No reports from 60 days prior to the election until 10 days prior to the election (usually September 1 to October 22)

### Data Quality

#### Is Donor Data Posted Or Viewable For All Statewide Ballot Committees?

- 3 = All committee donor data posted
- 2 = Minor loopholes exist which may jeopardize complete disclosure
- 1 = Major loopholes exist which may jeopardize complete disclosure
- 0 = Disclosure agency does not post donor data, or cannot guarantee data will be posted

#### Is Donor Data Complete? Can voters find all relevant donor information in the state's main disclosure database or on images of scanned reports?

- 3 = State discloses name, contribution amount, address (city and state), employer, occupation, and the date the donation was made
- 2 = State discloses name, amount, and address
- 1 = State discloses name and amount only
- 0 = State discloses no individual donor data, or cannot guarantee that data will be posted

#### Is Historical Data Made Available? Does historical data include lists of major donors, a disclosure agency's current and past ballot measure campaign finance trends, charts or graphs of summary trends from current and previous elections, as well as comprehensive, searchable lists of committee totals?

- 3 = Historical data includes searchable database and written analyses, charts, or major donor lists
- 2 = Historical data includes searchable database, or any of the above features
- 1 = Historical data includes scanned files, or consisting of summary data or committee totals only

0 = Incomplete historical data posted (nothing prior to 2000 elections)

#### Is Separate, Summary Data Available? Can voters view lists of the top donors, average contributions/expenditures, and total spending per initiative for past and current elections (in addition to committee totals)? Can voters retrieve all committee totals at once or must they search individual committee files? Are summary figures available prior to the Election Day?

- 3 = Summary data (including lists, written reports or charts) posted prior to the election, as it becomes available
- 2 = Summary figures posted after the election
- 1 = Complete committee totals searchable
- 0 = Incomplete summary data posted, or aggregate committee data only available within individual committee files

### Voter Access: How Hard Is It For Voters To Get What They Want?

#### How Much Time Elapses Between Filing and Disclosure? How soon is data made available online?

- 3 = Data posted in 48 hours or less
- 2 = Data posted in less than 1 week
- 1 = Data posted in 1-4 weeks
- 0 = Disclosure agency cannot guarantee that data will be posted within one month

#### Can Voters Easily Access and Download Raw Data, Data That Can Be Sorted and Manipulated?

- 3 = Raw data can be downloaded in universal format
- 2 = Database cannot be downloaded
- 1 = Database does not contain all donor data (or scanned data not entered within 2 weeks)
- 0 = Scanned or summary data only, or disclosure agency cannot guarantee that data will be posted online within one month

#### Can Voters Easily Locate the Disclosure Agency Website and Download Historical Data?

Scores were determined using a typical Internet search engine to locate the location of the secretary of state and state homepage, to the disclosure agency, to find and identify the location, size, and clarity of overall site design.

- 3 = Disclosure website, database and relevant links can be located
- 2 = Disclosure website and/or database can be found through search
- 1 = Disclosure website and/or database can be found through search
- 0 = N/A

**Website Format: How is the Data Presented?**

Are Ballot Committees Clearly Linked To Their Relevant Ballot Initiatives? Several state disclosure agencies expressed an intention to organize ballot committees by initiative once ballot measures begin to qualify. However, states do not receive full credit unless the ballot committee/ballot initiative link is a permanent feature in their donor database.

- 3 = Ballot committee/ballot initiative link is clear within the donor database
- 2 = Ballot committee/ballot initiative link exists on a separate page
- 1 = Expressed intention to link committees to initiatives once they qualify
- 0 = No intention to link committees to initiatives

Can Voters Search and Sort Donor Data By Multiple Criteria? Can voters search donor data by ballot initiative, contributor, committee, election year, address, and other useful criteria?

- 3 = Search by ballot initiative and additional search/sort criteria
- 2 = Search or sort by at least two significant criteria (contributor, committee, election year, address, etc.) but not by ballot initiative
- 1 = Search by committee or filing date
- 0 = Committee name required for effective search, too many groups for general search

Are Ballot Committees Legally Distinguishable and Physically Separated From Other Committees Types Such as PACs, Party or Candidate Committees? Are ballot committees the only committee type permitted to campaign for or against ballot measures? Are ballot committees listed separately to reduce voter confusion?

- 3 = Committee types clearly separated legally and physically on website
- 2 = Committee types partially separated on website
- 1 = No meaningful legal distinction between ballot committees, other committee types. Voters may have to search various committee types to locate ballot measure donor data
- 0 = Committee types not separated on website

Must Voters Search Extensively, Or Search More Than One Database To Obtain Donor Information?

- 3 = Excellent database, data well organized and comprehensive
- 2 = Database organization fair, some database features difficult to find
- 1 = Database difficult to locate/view, or incomplete (or scanned data not entered within 2 weeks)
- 0 = Scanned or summary data only

**Extra Credit**

Can Voters Search Donor Data By State?

- Yes = 3
- No = 0

Are Third-Party Contributions Made On Behalf Of Ballot Measures Reported and Posted Online?

- Yes = 3
- No = 0

Is Immediate Filing/Online Disclosure Required For Large Contributions Made Late In the Campaign Cycle? (For example, a contribution in excess of \$500 made within ten days of the election must be disclosed within 48 hours.)

- Yes = 3
- No = 0

## APPENDIX B: Explanation Of Terms

**Ballot Committee** – State disclosure agencies have different names for the political entities that raise and spend money on ballot measure campaigns including ballot groups, ballot PACs, and political committees. To reduce confusion, the term “ballot committee” is used throughout this report to refer to the committee type that is primarily or exclusively organized for ballot initiative campaigns. Some states make no meaningful distinction between ballot and other committee types and, in these states, any committee may raise and spend money on behalf of a ballot measure.

**Ballot Initiative/Ballot Measure** – States have different names for ballot initiatives, the process by which citizens gather signatures to place proposals directly on a ballot for direct consideration by voters. Some states call them initiatives while others refer to them as propositions (California), Questions (Massachusetts), or Measures (Oregon). The terms “initiative” and “measure” have been used interchangeably throughout this report.

**“Best Effort” Laws** – Some states only require that committees make an effort to gather certain kinds of information about their contributors. In Massachusetts, for example, if a ballot committee receives a contribution over \$200, it must request the contributor’s employment information twice in writing. If the donor does not comply with requests for that information, the committee may keep the contribution.

**Filing Deadlines** – Ballot committees are generally required to submit registration and campaign finance reports to disclosure agencies on a predetermined filing schedule. The filing deadlines in this report refer to committees’ responsibilities to submit contribution and expenditure reports.

**Query Data** – Query refers to a voter’s ability to search for a piece or set of data within a database. Ideally, voters should be able to query data using a variety of search criteria.

**Scanned Files** – In states without electronic filing, campaign finance reports are generally scanned so that voters can view them on the Internet. While scanned files do allow researchers to view copies of original committee reports, they do not allow users to sort data since they are merely images of the submitted reports. “Adobe” brand “pdf” files of any variety share this limitation and are classified as scanned files.

**Sort Data** – Sorting refers to a voter's ability to organize retrieved data by various criteria and/or within certain parameters. For example, once a data set is retrieved, voters may want to organize donor data by contribution amount in descending order, for donations between \$500 and \$1,000.

**State Disclosure Agency** – State agencies that are charged with gathering and disclosing initiative (and candidate) donor data have different names (Public Disclosure Commission, Elections Division, Ethics Commission) and often operate under different government departments. Most fall within the purview of the secretary of state's office while others are more independent agencies. To reduce confusion, the term "state disclosure agency" is used to describe the state office that discloses donor data to the public.

**Summary Data** – Summary data provides voters and researchers with a profile of an initiative or committee's fiscal supporters. Good summary data would include: average contribution; breakdown of individual vs. organizational support; and major donors. Many states aggregate contribution totals from various committee reports. While these totals are helpful, they fall outside BISC Foundation's definition of summary data.

DISCLOSURE



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February 12, 2008

Representative Kyle Johansen

Alaska State Legislature

State Capitol, Room 13

Juneau, AK 99801-1182

Re: HB 355: Open and Transparent Initiative Act

Dear Representative Johansen:

On behalf of the Resource Development Council for Alaska, Inc., (RDC), I am writing in support of the concepts and spirit of House Bill 355, the Open and Transparent Initiative Act.

RDC is a private, non-profit business association comprised of individuals and leading companies from Alaska's oil and gas, mining, forest products, fisheries and tourism industries. The association's membership also includes construction companies, local communities, Native corporations, organized labor, and a wide range of industry-support firms. RDC's mission is to grow Alaska's economy through the responsible development of the state's natural resources.

Although we sometimes may question the appropriateness and the role of the petition process as a means of governing, RDC appreciates the democratic rights of Alaskans to change state law through the initiative process. However, as we have seen over the last several years, a number of proposed initiatives have been brought forward that do not have the best interest of the state nor its people in mind. Furthermore, tactics are often used in the signature gathering process that mislead the public and misconstrue the issues and impacts at play.

RDC believes that openness and transparency must be at the forefront of good government. This should apply when individuals are trying to gather signatures to put items on our ballots. Unfortunately, many of RDC's members have witnessed the contrary. Standards must be put in place to ensure a candid process and we applaud the bill's author and co-sponsors for introducing this bill. We look forward to working with you to advance this legislation.

Sincerely,

Jason Brune

Executive Director

Resource Development Council for Alaska, Inc.

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**HOUSE COMMITTEE REPORT**

(7)

Date Referred to Committee: February 6, 2008

FURTHER REFERRALS: Finance

Date of Committee Action: 3/26/08

The JUDICIARY Committee considered:

HB 355

HOUSE BILL NO. 355

DISCLOSURE OF CONTRIBUTIONS: INITIATIVES

"An Act requiring the disclosure of the identity of certain persons, groups, and nongroup entities that expend money in support of or in opposition to ballot initiatives and the aggregate amounts of significant contributions or expenditures made by those persons, groups, and nongroup entities."

Recommends it be replaced with  HCS or  CS for HB 355 (JUD)  
 For Senate Bills with new title:  Technical Title  New Title: HCR  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LWE  
 LAW  
 LEG  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Index	Zero
006			✓	
ADM				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<del>006</del>			✓	
<del>ADM</del>				✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
<i>[Signature]</i>	Greenberg			-	
<i>[Signature]</i>	LYNN	X			
<i>[Signature]</i>	Coyne			✓	
<i>[Signature]</i>	SAMUELS	X			
<i>[Signature]</i>	Holmes			X	
Chair: <i>[Signature]</i>	RAMRAS			X	
Chair:					

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number \_\_\_\_\_  
Bill Version HB 355  
( ) Publish Date \_\_\_\_\_

Identifier (file name) HB355-DOA-APOC-2-11-08 Dept. Affected Administration  
Title "An Act relating to the disclosure of the identity of certain " RDU AK Public Offices Commission  
Component AK Public Offices Commission  
Sponsor Representative Johansen  
Requester House Judiciary Committee Component Number 70

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation	Information						
	Required	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**CAPITAL EXPENDITURES**

**CHANGE IN REVENUES ( )**

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**ANALYSIS:** (Attach a separate page if necessary)

This bill requires groups that support or oppose a ballot initiative to register with APOC and to disclose their contribution and expenditure activities thereafter. This bill will not have a fiscal impact on APOC

Prepared by Brooke Miles  
Division Alaska Public Offices Commission  
Approved by Rachael Petro, Deputy Commissioner  
Department of Administration

Phone 907-334-1726  
Date/Time 2/12/08 12:00 AM  
Date 2/12/2008