It has been said that "the purification of politics is an iridescent dream." ¹ This pessimistic view aptly describes the multitude of state laws that attempt to regulate the solicitation, collection and disbursement of money in political campaigns.² Historically, state regulation of political finance began in 1883 with a New York statute prohibiting the solicitation of contributions from state employees. In 1890, the Empire State broadened its regulatory scheme with legislation requiring the filing of sworn financial statements by candidates. In 1893, California commenced regulation of political committees, established a list of legitimate campaign expenses and limited the amount of money that might be spent on behalf of a candidate.³ By 1905 fourteen states had some sort of campaign finance regulation,⁴ and today only seven states are without extensive legislation in the area.⁵ The extent of regulation varies among jurisdictions. South Carolina, for example, only requires the candidate to promise that he has not and will not use alcoholic beverages to influence voters and that he will render an account of the funds expended in the campaign.⁶ At the opposite end of the spectrum are states like Minnesota and Florida which have comprehensive statutory schemes regulating the amount and type of contributions and expenditures, imposing controls on the financial management of the campaign, and providing for the disclosure of the sources of contributions and the purpose of the expenditures.⁷ Although most states have some regulation, few have regulatory machinery which is effective and comprehensive.

¹ John J. Ingalls, cited in Bartlett, Quotations 607 (1949).
⁴ Overacker, Money in Elections 289-97 (1932).
Campaign finance laws are typical of attempts by politicians to regulate their own affairs, and, although the statutes create the impression that regulation has been attempted, they all too often embody carefully drafted loopholes which drain them of any substance.

I. A Survey of the Statutes

A. Limitation of Campaign Expenditures

One of the more common statutory schemes attempts to limit the amount that may be spent in a campaign. Twenty-nine states have such limitations, fixed either as a dollar amount, a percentage of the salary of the office being sought, or a percentage of the vote in the last election. Preliminarily, it is questionable whether setting an arbitrary limit on the amount which may be spent in a campaign is feasible or wise; but, assuming that such a limit is an appropriate means by which to regulate campaign finance, the fact is that the statutory limits which now exist are riddled with loopholes and exceptions. Typically, the statutes exclude certain costs from consideration. Most states exclude traveling and lodging expenses. And in three states the ceiling regulations are totally emasculated.
by exclusion of the major cost item of any campaign—radio, television and newspaper advertising.  

More often than not the ceilings on expenditures are rendered ineffective by means more subtle than mere exceptions. In Arizona, Idaho, Vermont and Virginia, the limitations only apply to spending in the primary election, leaving the general election unregulated. In several states the ceilings affect only what the candidate himself spends, leaving political committees and groups unhampered by any restrictions. Others make the candidate responsible for limiting his own expenses and the amounts he knows are being spent on his behalf. While the latter is seemingly a stricter standard, it can be avoided by keeping the candidate ignorant of the sources of his financial support.

In summary, the loopholes and omissions render all but six state statutes ineffective, by eliminating some major item, covering candidates but not committees, or covering primaries but not general elections.

B. Disclosure Statutes

The second major legislative weapon used to control abuses in political financing is compulsory disclosure of amounts contributed and expended during the campaign. The purpose of these statutes is to expose to the public all of the financial transactions of politicians, as well as the sources of their funds. Such statutes are premised on the belief that an aware public will not vote for a candidate who has participated in questionable financial transactions, or who is tied to dis-


21 The scope of transactions to which the statutes address themselves and to which the discussion in this Comment will be limited, comprehends only the receipt and disbursement of funds raised to further the candidacy of the politician, and does not include transactions common to all persons. Thus, unless campaign funds are involved, the financing of a home or of a college education need not be disclosed.
In general, these laws require the candidate or his campaign manager (and sometimes the treasurers of political committees) to submit reports to certain state officials, setting forth each contribution and disbursement, the name of each donor and the purpose of each expenditure.

Forty-three states require some disclosure of political finance. Unfortunately, these statutes are often futile exercises in form-filing endured by politicians only because they give the appearance of self-regulation. The most glaring deficiency in these laws is that they do not require enough data. To reflect accurately campaign contributions and expenditures, all persons or groups collecting and spending money for political purposes should be required to report their financial dealings during the primary and general election campaigns. Yet eight state statutes apply only to candidates, one state regulates only committees, and, of these nine states, only five require the

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22 Some countries regard political contributions as a private matter and do not have any disclosure statutes. Heard, The Costs of Democracy 355-56 (1960).

23 See, e.g., PA. STAT. ANN. tit. 25, § 3227(a) (Supp. 1966). For a copy of the form on which these reports are filed see Md. ANN. CODE art. 33, § 223A (Supp. 1966).


25 Elected officials have often used their position to extract "contributions" in return for political favors. See generally Mayor's Ad Hoc Committee on Improvement in Municipal Standards and Practice, Final Report 17-19 (Philadelphia, Pa. 1962). Although this form of extortion and bribery is properly a concern of the criminal law, it should be noted that practices of this nature can be combated by periodic disclosure by all committees, cf. 43 Stat. 1071 (1925), 2 U.S.C. § 244(a) (1964), and by yearly disclosure of each elected official's income and expenditures. Unfortunately, present law only provides for disclosure during the campaigns. See note 24 supra.


27 Ala. Code tit. 17, §§ 278 (Supp. 1965) (candidate regulated indirectly because required to name committees to handle his financial transactions and committee must file reports).
reporting of expenditures in the primary. Among the states that require reports by both candidates and committees for both the primary and general election, fifteen fail to provide standard forms. Consequently, the number of accounting systems displayed in the reports is limited only by the number and imagination of the candidates. To complicate matters further, six states require only disbursements to be listed, leaving undisclosed the names of the donors and the amount the candidate received but did not spend.

As a result of the loopholes listed above, at least one-third of the states have defective disclosure statutes. Despite these deficiencies, however, the laws do have some value. They expose certain aspects of political finance and give some idea of a candidate’s financial support. Unfortunately, the financial reports fail to accomplish their main objective—effectively informing the voter—because most of the laws require the reports to be filed after the election. Deadlines for filing vary from ten to forty-five days after the election. Regardless of the accuracy of the information contained therein, reports are obviously going to have little impact on the voters if they must wait until a candidate runs for re-election to register their disapproval.

Although once filed the reports are technically public property, in practice, they are often protected from inspection by the statutes that require them and by the bureaucracy that receives them. In

28 Arkansas, Idaho, Mississippi, Vermont and Washington have statutes that only apply to primary elections. See note 24 supra.
29 The reporting statutes in Arkansas, Georgia, Hawaii, Idaho, Kansas, Missouri, New Hampshire, North Dakota, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming do not require standard reporting forms. ALEXANDER & DENNY, REGULATION OF POLITICAL FINANCE Table 1 at 55 (1966).
33 See, e.g., Ind. Ann. Stat. §§ 29-5707 to 8 (Supp. 1966) (45 days after the election); Ohio Rev. Code Ann. §§ 35-17.10 (Page 1960) (same). Thus the reports for a November election in these states would be filed between December 16th and 22d. It seems that the holiday season would not be the most opportune time to insure widespread dissemination of the information contained in the reports.
diana, Michigan and Missouri, the law requires the reports to be filed where the candidate resides, which results in some campaign finance statements being filed in obscure places. In most states the reports are filed with other elected officials, a situation which insures neither the enforcement of the laws nor the accessibility of the reports. Tennessee's technique for insuring that the reports for the primary elections receive "adequate" exposure is to compel their filing with the executive committee of the candidate's party. Only two states have assumed that most voters will not go to the filing office and inspect the statements. Oregon and Kentucky have legislation which requires that a summary of each candidate's and committee's statements be published. It is indeed significant that the one technique which insures that the disclosure statutes will fulfill their avowed purpose has been so consistently avoided.

Only Kentucky and Maine have legislation authorizing a special body to examine, audit and investigate the financial transactions listed in the reports. Both are five-man committees, drawn from the two major parties in a manner which insures minority party representation. In Maine, the Campaign Reports Committee is composed of two members from the state senate and three from the state house of representatives, who are appointed by the presiding officers of the respective houses. The committee is authorized to meet before and after the election to review all campaign reports and to fine or disqualify those who have failed to file. The committee may also investigate the financial transactions of candidates and political committees either upon its own initiative or upon request by the voters. Although the committee has functioned well, it does have some shortcomings, the most obvious one being that the members of the committee are

38 For one researcher's experience in gaining access to the federal campaign reports, see Heard, The Costs of Democracy 965 (1960).
legislators, who not only are subject to partisan pressure but also are the same people who are to be regulated.

The Kentucky approach to the problem is somewhat different. The five-man Registry of Political Finance is appointed by the governor—two from each major political party and the chairman from a list submitted by the other four members.\(^4\) Although a majority of the registry will probably have the same political affiliation as the governor, it is an independent agency of the state\(^4\) with its own permanent staff.\(^4\) It thus does not suffer from the defect of its Maine counterpart—legislators do not enforce the laws against their elected colleagues. Furthermore, the registry is empowered to develop regulations for the filing of campaign reports, to publish appropriate forms, to distribute a summary of each report, and to investigate violations of the disclosure laws. The Kentucky legislation also authorizes the registry to receive all campaign reports, to register all political committees, and to develop internal financial controls over contributions received and disbursements paid out by political committees.\(^5\) With the exception of Maine and Kentucky, no states have made any serious attempt to make their disclosure statutes effective.

C. Internal Financial Controls

Along with ceilings on spending and disclosure statutes, the states have developed several other financial controls. By far the most common are those which centralize responsibility for handling the candidate’s financial transactions during the campaign. Such statutes insure that there will be a responsible agent who will use standard accounting methods and controls, maintain accurate records and comply with the disclosure statutes. Typically this type of statute requires the candidate or political committee to name a treasurer\(^6\) who is to receive all contributions and authorize all disbursements.\(^6\) Thus all funds are accounted for and revealed to the public through the disclosure statutes.

To guide the treasurer in making disbursements, over one-half of the states limit the type of expenditures to those authorized by statute.\(^5\) In general they permit expenditures for advertising, clerical help, telephones and the other normal expenses of running a campaign,\(^5\) so that they do not, in fact, limit the candidate in spending his money.


To insure that all funds are accounted for, this type of legislation often requires anyone who receives a contribution in the name of the candidate to report it to the treasurer. Furthermore, the number of persons authorized to handle the funds is limited by statutes which require the candidate to designate in writing his political agents. To provide accurate information about the sources of political finance, there is often legislation requiring the treasurer to note the names and addresses of all contributors and the purpose of all expenditures. Likewise, anonymous contributions are generally forbidden. Finally, a few states make the debts incurred by political committees and candidates unenforceable unless presented within a few days after the election in order to force creditors to present their bills quickly so that an early and accurate picture of the liabilities of the candidate or the committee is available.

Despite the variety of legislation on the subject, financial controls are limited in their application, easy to avoid and generally ineffective. The present statutes attempt to accomplish their purpose by centralizing responsibility for financial matters in a few officials and by requiring that accurate records be kept. The major defect in this approach is that the responsibility for these duties rests exclusively on partisan campaign officials who are often tempted to avoid the law in their quest for an election victory. Four states have recognized this, and now require the candidate to name a bank as the official depository of his campaign funds. The treasurer is required to deposit all contributions in the bank within a short time after receipt, and all deposits are to be accompanied by slips showing the name and address of the contributor and the amount donated. Likewise, withdrawals are permitted only upon written authorization, which shows the purpose of the expenditure and to whom the money will be paid.

These deposit and withdrawal slips are retained by the depository and, along with a statement of the account, are forwarded to the appropriate filing official.\textsuperscript{62} Requiring the candidate to use a depository has obvious advantages. It forces him to provide the bank with some information in order to use its facilities, and these records, kept by non-partisan officials, provide a check on the other statements filed by the candidate. However, there are also disadvantages—the depository does not provide any information about strictly cash transactions, and the information on the deposit and withdrawal slips is only as complete as the treasurer makes it. The depository laws have been further hobbled by drafting loopholes. In some states the laws apply only to some candidates and generally not to all committees.\textsuperscript{63} Despite these deficiencies, the use of the depository promises to be the best mechanism to achieve some effective regulation of the internal financial management of a political campaign.

D. Limitations on Contributions and Solicitation

State regulatory schemes usually include statutes designed to reduce the impact of certain vested interests on political campaigns and finances. In this group are statutes which prohibit or limit contributions by corporations, labor unions\textsuperscript{64} or individuals.\textsuperscript{65} Conversely, there are laws designed to reduce the impact of politics on certain groups. Hence, candidates and committees in many states may not solicit contributions from state employees.\textsuperscript{66} Likewise, in many states

\textsuperscript{62} FLA. STAT. ANN. § 99.161(10) (1960) (15 days after the election); KY. REV. STAT. § 123.091 (Supp. 1967) (same); MASS. ANN. LAWS ch. 55, § 17(c) (1964) (the 5th and 20th day of each month during the account's existence).

\textsuperscript{63} FLA. STAT. ANN. § 99.161(3)(a) (1960) (candidate for office in the state); KY. REV. STAT. § 123.071 (Supp. 1967) (each candidate in an election); MASS. ANN. LAWS ch. 55, § 17(a) (1964) (statewide offices, federal officers, treasurer of state political committees and committees authorized by the candidate); N.J. STAT. ANN. § 19:40-1 (1964) (the governor, United States Senators and Representatives).

\textsuperscript{64} See, e.g., MICH. STAT. ANN. § 6.1919 (1956); MINN. STAT. ANN. § 211.27 (1962); PA. STAT. ANN. tit. 25, § 3225 (1963), all of which prohibit contributions by corporations. IND. STAT. ANN. § 29-5712 (1949); N.H. REV. STAT. ANN. 70:2 (III) (Supp. 1965); PA. STAT. ANN. tit. 25, § 3225 (1963), all of which prohibit contributions by labor unions.

\textsuperscript{65} FLA. STAT. ANN. § 99.161(2)(a) (1960) ($1,000); MD. ANN. CODE art. 33, § 219(b) (Supp. 1966) ($2,500); MASS. ANN. LAWS ch. 55, § 6 (1964) ($3,000 each to individuals, political parties and non-elected political committees); N.H. REV. STAT. ANN. § 70:2(V) (Supp. 1965) ($5,000); W. VA. CODE ANN. § 3-8-12(f) (1966) (same).

\textsuperscript{66} See, e.g., ARK. STAT. ANN. § 3-1403 (1956) (state employees); ORE. REV. STAT. § 260.230 (1965) (non-elected public office holder).
charitable organizations may not solicit contributions from candidates. This type of legislation enables politicians to ask for contributions without being deluged with requests from various citizens to give to their favorite charity.

E. Enforcement of the Laws

The fatal flaw in state campaign finance regulation is that the lawmakers are regulating themselves. The temptation to protect one's own and to avoid reprisals from the other party have produced some fine examples of loophole legislation. Not only do some politicians draft the laws, but other elected officials are required to enforce them. A majority of the states have no specific enforcement machinery and the election laws are enforced by the district attorney in the same manner as other penal laws. Unfortunately, and perhaps not unexpectedly, elected officials seem noticeably reluctant to enforce the regulatory measures against their campaigning colleagues. This lack of initiative among law enforcement officials has prompted over one-third of the states to provide alternative means of enforcing their political regulations.

A few states authorize private citizens to bring suit if the prosecuting attorney fails to act. However, a more common type of legislation permits the voters, usually a minimum of five to ten, to petition the courts for an investigation of alleged violations. Some states

67 See, e.g., ALA. CODE tit. 17, § 286 (1959); MINN. STAT. ANN. § 211.07 (1962); MISS. CODE ANN. § 3140 (1957); OHIO REV. CODE ANN. § 3517.09 (Page 1960).

68 See, e.g., MISS. CODE ANN. §§ 3182-85 (1956). Before there is a judicial investigation of alleged violations in Mississippi, the plaintiff must file with the state executive committee, and, if there is an unreasonable delay, he may then petition the court to investigate, if two practicing attorneys will swear that the petition should be granted. These procedural devices almost preclude enforcement of the law by private action.


70 Pettengill, Regulation of Campaign Finance, 19 Md. L. Rev. 100 (1959); Comment, 41 Calif. L. Rev. 312 n.105 (1953). The Federal Corrupt Practices Act also suffers from inadequate enforcement. In 1962, fifty-four candidates for Congress failed to file the required statements, and the Justice Department would not prosecute without a request from the House or Senate. 24 Cong. Q. 59 (1966).


require a preliminary hearing to determine the strength of the charge. Further proceedings are not authorized unless strict standards of proof are met. Thus, Massachusetts requires that there be a reasonable belief that a corrupt practice has been committed which has materially affected the results of the election. Indiana law requires that the interests of justice and the purpose of the law be served before permitting further inquiry, while Utah and Wisconsin demand that there be sufficient evidence that a proceeding under the law may be successfully maintained.

Once this hurdle is overcome, the case is accepted by the court for investigation and disposition. Procedural practices vary among the states. In Florida, after the court's jurisdiction is invoked, the district attorney investigates. If violations are found, he begins litigation to unseat the elected official. In Pennsylvania the procedure is initiated by a request for a judicial audit of the candidate's records. If violations are uncovered, quo warranto proceedings are begun. Regardless of the procedural differences, this type of legislation permits the electors to bypass reluctant law enforcement officials and to call into question the financial transactions of candidates. Unfortunately, most citizens possess neither the resources nor the initiative to investigate and initiate prosecutions against suspected violators.

Even if there are citizens who are both willing and able to vindicate the public interest, violations of the political finance laws will not be prosecuted unless these citizens are made aware of them. Along with the disclosure laws discussed above, another means of uncovering violations is implemented by statutes which require various state officials to inspect all campaign reports for errors or misrepresentations. Typically the filing officer inspects the forms and notifies the candidate of any errors. Failure to correct the defect within a short time results in notification of the prosecuting attorney; legal action follows. Unfortunately, the large number of reports to be examined and the short time available prevent the filing officer from discovering

79 Rather than invoking the court's power, Maine and Oregon require the complainant to proceed before other elected officials. In Maine, he may petition the Campaign Reports Committee to investigate the alleged violation, Me. Rev. Stat. Ann. ch. 21, §1401(1) (1965), while in Oregon requests for investigations are begun by notifying the filing officer, who then forwards them to the Secretary of State, who, in turn, appoints the Attorney General to investigate the alleged misconduct, Ore. Rev. Stat. §260.105 (1964).
81 Realistically, election day is a time limitation, for after that date prosecutions against successful candidates are difficult politically, and there is little incentive to pursue the losers. Some states allow the filing officer up to 60 days to report violations. Mass. Ann. Laws ch. 55, §23 (1964); Mont. Rev. Codes Ann. §94-1433 (1949).
more than the most obvious errors. Moreover, the statutes often limit the scope of the examination. The broader laws authorize the filing officer to ascertain whether the reports are filed, whether they conform to the law and to examine the complaints filed by private citizens. However, three states permit the filing officer to report only a failure to file the campaign reports; the Board of Elections in Oklahoma ascertains only whether the limits on expenditures have been exceeded. These procedural and practical limitations on the filing officer preclude an intensive study of the reports, and, consequently, the examinations become only a check on the number of reports filed and the accuracy of their arithmetic.

F. Sanctions

Finally there are the statutes which authorize various sanctions for violations of the campaign finance laws. Typically these statutes permit the imposition of one thousand dollar fines and prison terms of one year. A few states provide for cumulative fines for each day's delay in filing the required campaign reports. Besides the normal criminal penalties, many jurisdictions provide for forfeiture of office if a violation is proved. Several states disqualify violators from public office for varying periods, and a few states disenfranchise them. Likewise many jurisdictions will withhold a candidate's name from the ballot if he is convicted before the election. To insure

Suits brought by private individuals are often hampered by short statutes of limitations. See, e.g., Mont. Rev. Codes Ann. § 94-1459 (1949) (40 days after election); N.D. Rev. Code § 16-20-23 (1960) (same); Pa. Stat. Ann. tit. 25, § 3231 (1963) (20 days after the reports are filed).

that the disclosure statutes are obeyed, the filing of campaign reports is often a condition precedent to assuming the duties of office, and, perhaps more important, to receiving salary.\textsuperscript{90} Two states, California and Texas, have taken the novel approach of making the candidates civilly liable for violations of the law.\textsuperscript{91}

As with most of the legislation in the field, the problem with the statutes imposing sanctions is not with the theory, although there are some practical limitations,\textsuperscript{92} but with the drafting of the statutes. Perhaps the most blatant example is the high burden of proof required by the statutes providing for forfeiture of office. Normally the candidate cannot be convicted if the offense was trivial,\textsuperscript{93} or if it did not affect the outcome of the election.\textsuperscript{94} New Jersey allows the candidate to disavow illegal transactions made by his supporters and thus escape responsibility for them.\textsuperscript{95} While some restrictions are necessary to avoid politically motivated harassment and to prevent elections from being overturned needlessly for technical violations, the present statutes unnecessarily emasculate the forfeiture sanctions.

As this survey indicates, present law is clearly inadequate. Revision is essential if the abuses of financial power are to be eliminated from the political scene.

**II. The Magnitude of the Problems**

There is no doubt that the regulation of political finance today is more loophole than legislation. At the same time, it is also true that the means for providing effective regulation have been proposed, but apathy has generally preserved the inadequacies of the present system. A few states have overcome this, but inertia remains the biggest roadblock to reform.

In fairness to the legislators who grapple with these problems, it must be noted that politics has inherent characteristics which make it difficult to regulate. Political campaigns are basically struggles for power through the mobilization of public opinion. The nature of democracy, with its emphasis on convincing the individual voter, neces-


\textsuperscript{91} Calif. Election Code §§ 11890-91; Tex. Election Code Ann. art. 14.05 (1967). In both states the effectiveness of these statutes is limited. California only provides for a $1000 recovery, which in many cases would not cover the expense of bringing the suit. The Texas law limits the cause of action to each opposing candidate whose name shall appear on the ballot at the next election. For a proposal that remedies some of these defects, see text accompanying notes 127-31 infra.

\textsuperscript{92} See discussion at the beginning of section II infra.


sarily generates pressures to reach the maximum number of voters with one's message. Any legislation that impedes or attempts to limit this drive will be unenforceable. Consider for example the statutory limitations on the amount that may be spent in a campaign. Such ceilings, if enforced, obviously restrict the number of people who will be exposed to a candidate. Faced with the alternatives of not reaching and thus failing to convince a majority of the voters, or violating the limitations, candidates have always chosen the latter course.

The style of life in the mid-twentieth century also has an impact on practical politics and its regulation. Although radio and television enable candidates to reach all voters, it is difficult to make personal contact with them. Both major political parties have attempted to remedy this by organizing large numbers of people into various committees to give them a sense of involvement in the campaign. This makes regulation more difficult because more people are handling the money and there are more opportunities for evasion of the law; violations are harder to uncover and substantiate when they are hidden in a maze of transactions.

Perhaps the most frustrating problem in regulating political finance lies in developing effective enforcement machinery that provides appropriate sanctions for violations of the law. Most enforcement of present law depends upon the initiative and discretion of local, elected officials, who have a natural reluctance to bring suit against their colleagues. There are also other practical problems that hamper enforcement of the law. For example, candidates are unlikely to know of violations and, in such cases, are not responsible for them under present law. Furthermore, the complexity and number of transactions involved in a campaign serve to hide most of the misdeeds committed by a candidate's supporters. The inability to document violations by anonymous campaign helpers and the unwillingness to hold candidates responsible for acts beyond their control, are two further reasons why enforcement officials are unwilling to prosecute violations. These difficulties are not inherent in the regulation of the political process. They could be solved if there were more and better means of controlling and disclosing the financial transactions of candidates during campaigns.

The problem of developing appropriate sanctions is a complicated one. The normal penalties are fine, imprisonment, exclusion of the candidate's name from the ballot and forfeiture of office. Unfor-
fortunately, these penalties have inherent limitations. Fines, for example, are generally small and can be considered a campaign expense by cynical politicians.\textsuperscript{99} Imprisonment may be imposed for many violations, but the harshness of the measure and the prominence of the defendant severely limit its use. Striking the name of the candidate from the ballot is an effective punishment only in certain circumstances. Only winning candidates, those who are required to file disclosure reports before an election, and those actually prosecuted before an election need fear the possibility of having their names deleted from the ballot. Statutes providing for forfeiture of office upon conviction are hobbled by poor drafting\textsuperscript{100} and also by a limitation inherent in our representative system of government: the federal constitution and the constitutions of the states provide that the legislatures shall be the sole judges of their own elections.\textsuperscript{101} Consequently, some states have concluded that they should not void the elections of Congressmen or their own state legislators when they have been convicted of violating their laws. Rather, these states inform the presiding officers of the respective bodies and leave the disciplinary action to them.\textsuperscript{102} This approach rejects any state responsibility for enforcing its own laws and leaves it to individual citizens to contest the elections in the legislatures. On the federal level, experience has shown that Congress is noticeably reluctant to enforce the Federal Corrupt Practices Act against its own


\textsuperscript{100} See notes 93-94 supra and accompanying text.

\textsuperscript{101} U.S. Const. art. I, § 5, cl. 1; \textit{Index Digest of State Constitutions} 638 (2d ed. 1959). The right of a state legislature to judge its own elections is not unlimited. A state legislature cannot exclude a duly elected member if such exclusion violates a federally protected right. See Bond v. Floyd, 385 U.S. 116 (1966).

The current litigation by Adam Clayton Powell to regain his seat in Congress will test whether the power of the House of Representatives to exclude a duly elected individual is subject to judicial review. Unlike the Bond case, the Powell litigation involves a confrontation between two co-equal branches of the federal government. In the past the Court has avoided such conflict when it believed that a constitutional decision should, more properly, be made by another branch of the federal government or when assuming jurisdiction over the controversy would disturb the balance of power among the three branches. See Coleman v. Miller, 307 U.S. 433, 456-60 (1939) (concurring opinion of Mr. Justice Black) (Congress, not the Court, has sole power over amending the Constitution). See generally, Scharpf, \textit{Judicial Review and the Political Question—A Functional Analysis}, 75 Yale L.J. 517 (1966). Thus, even if Mr. Powell is correct in his assertion that he was unconstitutionally excluded, the Court might refuse to overturn the determination of the House on that issue. When faced with this problem, state courts have refused to assume jurisdiction. Danielson v. Fitzsimmons, 232 Minn. 149, 44 N.W.2d 484 (1950); State v. Zimmerman, 249 Wis. 237, 24 N.W.2d 504 (1946).

members, and it is unlikely that the state legislatures are more diligent.

To say that there are inherent difficulties in regulating political finance is not to say that there cannot be an effective statutory scheme. The answer involves the intelligent drafting of statutes and the use of innovations already developed by some states.

III. THE PROPOSALS

Regulation of political finance has three aims: limiting the amount spent; controlling the collection and disbursement of that money; and informing the voter of how the money was raised and spent. The first goal, limiting the amount spent in campaigns, was probably unenforceable and unrealistic from the beginning. The arguments against it are both theoretical and practical. The limitations are clearly arbitrary and bear little or no relation to actual campaign costs. Placing an artificial ceiling on spending makes regulation more difficult, because it forces a decentralization of authority and creates strong pressures to falsify the reports filed under the disclosure laws. On the theoretical level, the ceilings attempt to limit the candidate's ability to reach the public and as such are in direct conflict with an electoral process that depends upon an informed voter. Moreover, there are constitutional problems which probably prevent a ceiling from being imposed on the amount that all persons could spend on behalf of a candidate. Experience has shown that the laws attempting to limit the amount spent in a campaign are unworkable, even if they are well drafted, which they are not. Consequently, it is apparent that this type of statute should be repealed.

Eliminating the restrictions on campaign expenditures, however, does not mean that the goals of these statutes should be abandoned. Originally ceilings were enacted to prevent politics from being dominated by economic interests. One alternative to limitations is to

104 Compare N.J. STAT. ANN. § 19:39-2 (1964) (governor limited to $100,000 for the general election) with N.Y. PEN. LAW § 781 (1) (governor limited to $20,000). Not only do the two neighboring states have radically different ceilings, but the spending of the candidates exceeds these limitations. For example, it has been estimated that Governor Rockefeller spent $4,500,000 in his successful bid for another term. Newsweek, Oct. 31, 1966, p. 36.
106 If only a limited amount is to be spent by all groups supporting a candidate, inevitably there will be someone or some group which will not be able to express its opinion because others have already spent the allotted amount. This restriction probably violates the first amendment. See Note, 66 HARV. L. REV. 1259, 1266-67 (1953). Without some control over the aggregate expenditures, individual limitations on groups or candidates lose their effectiveness because they can be evaded by increasing the number of committees. Therefore, in reality, there can be no effective control over the total amount spent in a campaign.
107 A presidential commission found the limitations unworkable. ALEXANDER & DENNY, REGULATION OF POLITICAL FINANCE 10 (1966). This opinion is shared by several states which have repealed their limitations in recent years. See HEARD, THE COSTS OF DEMOCRACY 351 n.21 (1960).
provide a government subsidy to political parties. Such a system has been working for some time in Puerto Rico, and a variation of this approach was recently suggested in Congress. The availability of government money to finance political activity naturally reduces the dependence of candidates on other sources of funds and would accomplish what the limitations unsuccessfully attempted—to free politics from the monied interests.

The second group of laws are those which require the candidate or committee treasurer to observe certain accounting procedures, restrict the sources of funds and the number of people who handle the money and prohibit certain types of disbursements. Limiting the number of people with access to the money obviously reduces the opportunities for malfeasance and makes it easier to expose violations. No theoretical problems are presented here; it is just a matter of enacting legislation which centralizes financial matters in a few persons who are accountable. Such laws, of course, are effective only if there are independent means of checking the records of the candidates and committees. Four states provide such a check by requiring candidates to funnel their funds through a particular bank. Legislation requiring depositories is an essential part of any regulatory scheme, not only because it would bring some order to the financial affairs of minor candidates, but also because the records maintained by the bank furnish a check on the candidate's own books and on the reports filed under the disclosure statutes.

Depositories are not the final answer for they only provide information about funds actually deposited in the bank. To uncover the amount contributed but not deposited, it is suggested that the states grant a deduction in their state income taxes for any contributions to political parties or candidates. Such a provision would serve the

109 See Pub. L. No. 809, 89th Cong., 2d Sess. §§ 301-05 (Nov. 13, 1966), which permits each taxpayer to designate $1.00 be paid into the Presidential Election Campaign Fund, which is then distributed in varying proportions to political parties that poll over 5,000,000 votes. The Senate, however, recently voted to repeal this legislation and it is unlikely that comparable legislation will be reenacted this year. New York Times, April 14, 1967, p. 1, col. 1. See also note 117 infra and accompanying text.
110 The effectiveness of any government subsidy in freeing politics from monied interests depends upon the number of state and federal offices covered and the amount of the subsidy for each office. If a subsidy was in effect in 1964, it would have cost $200 million dollars to finance the elections held for all state and federal offices. U.S. News & World Report, Nov. 9, 1964, p. 41.
111 See text accompanying notes 51-59 supra.
112 Part of this goal can be realized by repealing the limitations on campaign expenditures, which will remove the principal reason for the increasing number of committees and should result in a centralization of authority in campaign finance.
113 See note 60 supra.
114 One state already has legislation which permits deductions up to $1000 for contributions to political parties. MINN. STAT. ANN. § 290.213(e) (Supp. 1966). See also, Lobel, Federal Control of Campaign Contributions, 51 MINN. L. REV. 1, 50-60 (1966) for some proposals for federal action in this area. This suggestion can be implemented on the state level only in those states which have an income tax.
twofold purpose of encouraging individual contributions and providing information on the amount actually contributed. The tax deduction combined with the depository would enable enforcement officials to trace contributions from the donor to the ultimate payee. Such a system is not foolproof—some contributors might not claim their deductions and some candidates might not deposit the money in the depositories—but the amount that would escape detection would be far less than under existing law.

The third major aim of existing legislation is to inform the voters of the sources of campaign funds and of what these contributions actually purchase. Without this type of legislation, any regulation of political finance loses its impact because candidates do not have to consider public opinion in arranging for and spending their funds, and enforcement is left to the inadequate processes authorized by law.

Most of the difficulties with these statutes revolve around poor drafting. To be effective disclosure statutes should require all candidates and all committees to report all of their contributions and expenditures. These reports should be filed and published periodically throughout the election year so that the electorate can be continually informed of the basis of a candidate's financial support. These suggestions are obvious but have been ignored by legislatures, and the result has been ineffective regulation.

Besides the drafting problem, existing legislation has failed to provide an adequate means of reviewing the data in the financial reports. As a result this information is unreliable or is hidden within the bureaucracy and is therefore useless. To insure that the reports filed under the disclosure statutes actually disclose correct information to the public, an independent agency should be created in each state to receive and audit the financial reports and to investigate suspected violations. With access to all of the relevant information contained in the financial reports, the data supplied by the bank depositories and the claims for tax deductions for contributions, the agency would be able to provide the public with an accurate account of any candidate's financial status. Moreover, the correlation of this data would uncover discrepancies which would lead to further investigations and possible prosecutions.

Because an agency is so essential to effective regulation, it is necessary to insure that it is beyond political pressure. Thus, it should be an independent body staffed by permanent civil servants and care should be taken to select top administrators who are not closely identified with partisan politics. With such protection from the political

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115 See text accompanying notes 24-39 supra.  
116 Modern data processing procedures would enable the agency to tabulate all of this material, discover errors and print the reports in a relatively short time. Cf., Meet the "Monster" That Checks Your Tax Return, Reader's Digest, Jan. 1967, p. 177.  
winds, the agency could operate without fear of reprisal. The mere knowledge that the agency examines all of the reports would be a great deterrent to illegal financial deals, while at the same time the agency would be providing the voter with a complete picture of every candidate’s financial support.

The extent to which a central reporting agency will deter illegal transactions is probably limited since deterrence depends upon the electorate’s exercising its disapproval of such transactions at the polls, and the public forgets easily and forgives much. Effective deterrence can be established only through strong enforcement of the laws in legal proceedings. Unfortunately, this has been the greatest failure of present law. The reasons for this are clear. It is difficult to uncover violations amid the numerous transactions, and more difficult to prove them in court. Secondly, political considerations often cut against any prosecution regardless of the party of the defendant. The first problem can largely be solved by the institution of an independent agency to review the campaign finance reports. The problem of political pressure against prosecutions is much more serious because enforcement and prosecution officers, in general, are also elected individuals and hence reluctant to prosecute members of their own party, or even members of the opposing party, for fear of reprisal.

The solution rests with the creation of a means of enforcing the statutes outside the normal enforcement channels. Several states now authorize their citizens to initiate proceedings by petitioning the prosecuting attorney, the courts or other investigatory bodies. Such procedures are inadequate because enforcement officials still exercise considerable discretion in deciding whether to prosecute. Other states require the prosecuting attorney to bring suit or forfeit his office, but these provisions are also ineffective because they force the citizen to bring legal action and spend money to prod the prosecuting attorney into doing his job. A few states now permit the citizen to by-pass the normal enforcement channels and prosecute the suit himself if the district attorney fails to act. The difficulty with this type of statute is that few voters have the time and the financial resources to begin a crusade against questionable financial transactions in political campaigns. Consequently, under state law today prosecutions are solely within the discretion of state officials, and private rights of action are largely illusory because of the high cost involved.

A similar problem faced the drafters of the Securities Exchange Act of 1934. The aim there was to prevent officers and directors

118 See notes 72-78 supra and accompanying text.
120 MINN. STAT. ANN. § 211.33 (1962); MO. ANN. STAT. § 129.160 (1966) (authorizes suit by candidate with second highest vote); NEBR. REV. STAT. § 32-1109 (1960).
of corporations from making short swing profits in the stock market by using information about their enterprises which was not available to the investing public. The number of such transactions prevented the use of normal enforcement procedures, and fellow directors and officers were reluctant to bring suit against their colleagues. The solution, section 16 of the act, was to force the corporate officials to disclose their stock dealings and then to grant the stockholder the right to sue in the name of the corporation. If the stockholder prevailed, he could be reimbursed from the amount recovered from the illegal transaction.

Legislation similar in theory to section 16 of the Securities Exchange Act could be implemented to solve the enforcement problem in political finance. Thus each voter should be able to bring a private right of action against the parties involved in illegal financial transactions. The concept of the private prosecutor bypasses the great potential for delay that exists in the present legislative scheme and in alternative methods of enforcement, such as provisions for mandamus to compel the district attorney to prosecute. The other disadvantage of existing enforcement machinery is that the financial burden of bringing the suit rests upon the individual voter. To remedy this defect some provision for reimbursement of plaintiff's legitimate expenses should be made.

The proper solution to this problem, however, rests upon a balancing of two conflicting interests—the need to encourage private enforcement versus the danger of harassment to candidates and elected officials. Either payment of all the plaintiff's expenses in all cases, or the existing system, whereby the individual assumes all of the cost of the suit, have obvious shortcomings; the former because it does not discourage frivolous suits, and the latter because it discourages too many suits. Between these two extremes are many possibilities; however, two proposals present the best balancing of interests. One possibility would be to reimburse the plaintiff for all of his legitimate expenses if he proves a violation of the campaign finance laws. Under this proposal, the plaintiff can never profit by bringing suit, and he may incur expenses if he fails to prove his case. However, for two reasons, the lack of monetary gain may not affect the number of suits brought. First, the basic reason for bringing these actions may not be monetary

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123 The stockholder's right to recover his legal expenses arises because he has given a benefit to the corporation, and not as a result of the federal securities legislation. See 13 Fletcher, Private Corporations § 6045 (rev. ed. 1943); Lattin, Corporations 381-84 (1959).
124 This cause of action would differ from civil liability imposed under the Texas and California statutes. See note 91 supra.
125 For other examples of the private prosecutor concept see Note, 65 Yale L.J. 218-29 (1955).
126 Legitimate expenses include all lawyer's fees, court costs and other expenditures incidental to any court action, and may be expanded to cover expenditures incurred in uncovering suspected violations.
but rather altruistic or, perhaps more basically, vengeance. Second, repayment of legal expenses for successful prosecution is analogous to the contingent fee, and thus provides lawyers with an interest or incentive to litigate this type of case.\textsuperscript{127}

A second proposal would include repayment of expenses along with a monetary recovery which would act as an additional incentive to bring the suit, and would balance the risk of incurring legal expenses if the case is not proved.\textsuperscript{128} This suggestion, of course, will promote more litigation than the first proposal. However, both are reasonable solutions, and the choice between them depends upon the legislature's balancing the need for encouraging these suits against the danger of harassment.

Once it has been established that some method of repayment should be provided, the question remains what should be the source of these funds. The easiest and perhaps most just solution would be to make the defendant civilly liable for the plaintiff's expenses. Thus if a violation is proved, the defendant should be liable for an amount equal to the unreported or misappropriated campaign funds.\textsuperscript{129} If the recovery is not adequate, the state should pay the plaintiff's costs because it was the state's inaction that caused him to incur the expenses. If the recovery exceeds the legitimate expenses of the plaintiff, the excess could be distributed pro rata to all contributors to the campaign or put into a general state account to pay for future litigation. This right of action should be available only after the prosecuting attorney has refused to bring the suit, since this legislation is not intended to supplant existing enforcement machinery, but rather to be an alternative method of enforcement should the normal means be blocked.\textsuperscript{130}

Naturally there should be some statutory protection for politicians against suits instituted solely for harassment purposes. A few states which already have some private enforcement provisions require the plaintiff to post bond before bringing the action,\textsuperscript{131} and the requirement of a reasonable bond should be retained. To avoid the use of a threat of suit to coerce a settlement, the law should require that all

\textsuperscript{127} Providing lawyers with material incentives to bring these suits may raise ethical problems concerning champerty. See A.B.A. \textit{Canons of Professional Ethics}, Canons 27, 28. In this situation, as with section 16 of the Securities Exchange Act, the benefit of encouraging this litigation outweighs the ethical considerations.

\textsuperscript{128} The additional recovery accruing to the successful plaintiff may either be a fixed sum, see \textit{Cal. Election Code} §§ 11890-91, or a percentage of the misappropriated campaign funds.

\textsuperscript{129} If violations do not involve misuses of campaign funds, liability would be limited to a flat sum or just to the plaintiff's legal fees.


\textsuperscript{131} Md. \textit{Ann. Code} art. 33, § 230(b) (1957) (court to determine the amount of the bond); Mo. \textit{Stat. Ann.} § 129.140 (1966) ($1000 bond required); N.Y. \textit{Election Law} § 334(4) (court determines the amount of the bond).
settlements be approved by the court. Thus, a private right of action, carefully circumscribed to prevent harassment, would provide a solution to the problem created by enforcement officials who are reluctant to prosecute for political reasons.

Still to be discussed is the problem of sanctions. Present law makes it difficult to convict a candidate for violating the campaign finance laws. This is the result of several factors—the reluctance to prosecute a prominent and powerful citizen, the unwillingness to hold a candidate responsible for transactions beyond his control, and the undesirability of removing from office a person for whom the majority has voted. The last two considerations are valid and justify limiting the circumstances under which an elected official can be ousted from office. At the same time there is no reason to insulate them from liability solely because of their position. Hence, statutes punishing candidates for knowing violations of the law, including diversion of campaign funds to personal use, should be retained.

Once a candidate or elected official is convicted, there remains the question of whether he should forfeit his office. Many states have such a requirement, but several leave the disciplining to their respective legislative bodies because of the constitutional command that these bodies should be the judge of their own elections. Experience on the federal level shows that this approach nullifies these laws as applied to successful candidates because legislators are reluctant to discipline their own members. Even if a private citizen contests an election in a legislature or Congress, the proceedings are often subject to partisan pressures. Although a legislature judges its own elections (subject to an undetermined amount of judicial review), this does not mean that a state’s action does not have any impact on that decision. The mere fact that a state certifies one candidate rather than another gives the former individual an advantage because the burden then rests upon someone else to unseat him. Secondly, a legislature would be reluctant to disturb the state’s decision on certification because they would then be seating an individual convicted of violating the election law. As for congressional elections, while each house of the national legislature has control over the seating of its members under the Constitution, Congress has given effect to state statutes

133 See note 101 supra.
134 The recent exclusion from Congress of Adam Clayton Powell indicates that legislative bodies are reluctant to take any action without heavy public pressure. See generally Cong. Q. Weekly Report, Mar. 10, 1967, p. 345.
137 See note 101 supra.
138 Ibid.
when legislating in the election area. For example, the Federal Corrupt Practices Act specifically provides that state rather than federal limitations on campaign expenditures are controlling.\textsuperscript{139} All of these considerations are subtle pressures on a legislative body to accept the man the state has certified. While this pressure may be outweighed by partisan considerations, it is unlikely.\textsuperscript{140}

Forfeiture statutes are only effective against successful candidates. Defeated individuals are subject only to the normal criminal sanctions, all of which have defects in the political context. To supplement existing law there should be legislation prohibiting those who have been convicted of violating the campaign finance laws from holding any elective, appointive or party office for periods varying with the seriousness of the offense. Although some states have this type of legislation,\textsuperscript{141} its deterrent effect has not been recognized, and it has remained a secondary sanction. Any legislative revision should reverse this emphasis. Exiling an individual from political life removes the candidate or official from the political scene and substantially reduces his influence without resorting to a criminal trial and subsequent imprisonment. This type of sanction is also effective against campaign workers who might be tempted to break the law, for it removes any possibility of reward from the party, and the blot on the worker's record considerably reduces his political future. No set of sanctions is ever wholly effective, but the addition of the possibility of political exile completes a balanced set of punishments: fines for minor violations, political exile for more serious misdeeds and criminal penalties for actions that are criminal in nonpolitical contexts.

As this survey of campaign finance laws indicates all too clearly, there is much that is wrong with the present statutory scheme—the failure to draft comprehensive laws, the carefully drafted exceptions that swallow the rule and the lack of enforcement machinery. All of these defects and many more are obvious when the operation of these laws is examined. But it is an easy thing to criticize and a much more difficult task to revise the laws to silence the criticism. Revision always requires facing and solving problems which were ignored before and those which will arise in the future. Recognizing the precarious nature of the endeavor, some suggestions are offered. To make political finance laws consistent with elective politics as practiced today, the ceilings on campaign expenditures should be removed. To prevent misappropriation and misuse of campaign funds, a combination of internal financial checks, such as the campaign deposi-
tory and the disclosure statutes, and an independent agency to receive, audit and publish all the information about the financial dealings of politicians should be established. To insure effective enforcement of these laws, there should be created a private right of action in each citizen to act if the prosecuting attorney fails to do so. To provide an effective sanction and add deterrence to the law, provision for prohibiting those who have been convicted of violating the campaign finance statutes from participating in politics should be enacted and employed. These suggestions are not complete solutions and perhaps not even workable ones; they are in fact only proposals. The gap between proposals and law is bridged by the legislative process, and it is here that the task is most difficult, for the enthusiasm for change must be generated and maintained by the very people on whom the weight of the legislation must fall. If the apathy, indifference and open hostility which now surround campaign finance regulation can be overcome, these laws may be rescued from the political limbo where they now reside.