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Phone: (310) 825-4841

August 16, 2005

Mary Dove
Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Rosemary C. Smith
Associate General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

2005 AUG 16 P 3 27

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Re AO 2005-10

Dear Commissioners,

I am writing to comment on the pending Advisory Opinion request filed by Congressmen Howard Berman and John Doolittle, seeking a Commission opinion that they are entitled to raise funds for ballot initiatives scheduled for a vote in November. The questions presented by the financing of ballot initiatives are, of course, of fundamental importance to the fairness and effectiveness of these instruments of direct democracy. I write because of my serious concerns about the approach recommended by the General Counsel. Understandably, those who do not live in California often have only a general sense of our initiative process. The harm that the General Counsel's approach would have for the fairness of California politics is not obvious and surely not intended, but it is very real.

I have been a professor of law at the UCLA Law School since 1979. During the eight years prior to my joining the UCLA faculty, I served as Deputy Secretary of State of California and then as the first chair of the California Fair Political Practices Commission. When I came to UCLA I became the first law professor in the United States to specialize in election law. About the same time I joined the national governing board of Common Cause, on which I sat for the maximum term of six years. I have published articles in numerous law journals and political science journals and anthologies on many aspects of election law, including the initiative process. In 1995, I published the first twentieth-century textbook on election law (now in its third edition and co-authored with Professor Richard Hasen). I am co-editor of the *Election Law*

Journal and director of the Law and Political Process Study Group, an interdisciplinary academic group affiliated with the American Political Science Association. A copy of my c.v. is enclosed.

Based on my work in state government, I developed a strong interest in the California initiative process in general and, in particular, in campaign spending in ballot measure elections. Because of that interest, the effects of one-sided spending in ballot measure elections became the subject of my first research project when I joined the UCLA faculty. A paper I wrote on that subject was cited by Justice White in *Citizens Against Rent Control (CARC) v. City of Berkeley*, 454 U.S. 290 (1981). A later version of that paper was published as "Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment," 29 *UCLA Law Review* 505-641 (1982). In that article I documented the major effects that one-sided campaign spending could have in California ballot measure elections, often permitting big spenders to succeed with highly misleading campaigns. I criticized the Supreme Court's decision in *CARC*, because it seemed to prevent states like California from imposing regulations that would mitigate the problems caused by one-sided big spending.

It is now nearly a quarter-century later, and I of course accept the authority of *CARC*. But the fact remains that one-sided spending can have a seriously harmful effect on the fairness and honesty of California initiative campaigns. If the First Amendment precludes certain affirmative steps that government might take to ameliorate the problem of one-sided spending, at least the government must avoid any steps, inadvertent or otherwise, that would *aggravate* the potential for one-sidedness. Furthermore, it seems extremely unlikely that the members of Congress—either those who supported the BCRA or those who opposed it—could possibly have intended to aggravate that problem, especially in circumstances as far removed from federal elections as is the case in California's special election in this odd-numbered year.

The General Counsel's proposed interpretation of the law flies in the face of these common sense considerations. The draft would build into the law the most basic inequity: allowing the governor to raise money for the initiative campaigns in this year's special election, while disallowing similar participation by California's federal elected officials. The most obvious component of a fair election is a level playing field. If, as may be the case this year, federal elected officials happen to be on the opposite side from the governor on some of the controversial initiative proposals, both sides should be subject to the same rules governing their support for their respective views, through fundraising as well as in other ways. The issues before the public in these initiatives are among the most visible, highly contested issues on the public policy agenda of the State. Federal elected officials have a legitimate expectation of involvement and indeed owe their constituents the full measure of their efforts on whichever side of the questions they favor.

Not surprisingly, there is ample evidence that Congress and this Commission have supported this obvious principle. It has always been the case, without controversy, that the federal campaign laws do not exempt federal officials from the restrictions of state and local law when the federal officials participate in state and local elections. If state law imposes requirements on officials and candidates beyond those of federal law, everyone agrees it would be manifestly unfair if federal officials were exempted from those requirements. Why? Because the same rules should apply to all sides of a campaign. How can it be imagined that this principle applies to prevent an unfair advantage for federal officials in a state campaign, but does

not apply to the same extent to prevent an advantage for state officials? At least, how can it be imagined in an election *not* involving federal campaigns?

As former chair of the California FPPC and as a former board member of Common Cause, I would not express this view if it would somehow undermine the purposes of BCRA or thwart the FEC's enforcement program. In the first instance, the circumstances in which these initiatives have qualified for the ballot are highly unusual. Ballot initiatives are typically presented to the voters in even-numbered years and appear on the same ballot as elections to state and federal office. When this is not the case, as this year, it is by the choice of the governor.

Almost by definition that means the measures being debated (or some of them) will be matters of vital political importance to the governor. It will therefore be the rule and not the exception that the governor, by far the most visible and powerful elected official in California, will exercise all the weight of his office and his political capital on one side of measures appearing on a special election ballot. Of course, it is altogether appropriate that a governor should exercise leadership in behalf of causes he believes in. But it is equally important that those on the other side of the issue should have the same opportunity to use *their* political capital so that the playing field will be level and so that the public will get the benefit of a fair and vigorous debate. Disparate treatment of federal and state officials, as the General Counsel proposes, would thus create a severe distortion in California's initiative process.

Moreover, most of the specific concerns of BCRA are far removed from the activities at issue here. Members of Congress who raise money for their side of the controversial ballot questions will not realize the sort of advantage to their campaigns that BCRA restrictions aim to limit. This is not a federal election year; the monies raised for these ballot initiatives will not be devoted to "Federal election activity," such as issue advertising or get-out-the-vote activity, that will enhance any federal candidate's competitive position if he chooses to run for reelection a full year later. It is no secret that one of the controversial measures this year involves redistricting, but the Commission has expressly and consistently declined to find that redistricting activity involves the purpose of influencing federal elections that would justify the imposition of fundraising limits.

I do not need to tell the members of the Federal Election Commission how technical and complicated are the statutory provisions at issue here. Of course you must consider the technical aspects of the question that are presented to you by the General Counsel and by others in this matter. But I ask that you also stand back, and consider this case in perspective. The governor of California, in the exercise of his responsibilities as he sees them, is leading one side of a great political struggle that will affect the lives and governance of the people of California for decades to come. Our country is based on the proposition that such issues should be freely and vigorously debated on all sides.

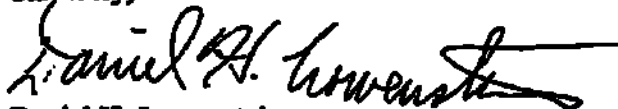
Congressmen Berman and Doolittle do not seek to control either the campaigns or the committees that will be running the campaigns on these issues. They are not running for office and cannot, in theory or practice, derive electoral benefit from the campaign activity they seek to support. They believe as strongly in their positions on these issues as the governor believes in his, and they have the same responsibilities as the governor, as public officials, to exercise leadership on such vital issues. They properly seek to exercise this leadership by speaking out on the issues and urging others to support the cause in all possible ways, including financially, as is necessary on issues of such importance debated in a state whose population exceeds that of

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most of the nations of the earth. Of crucial significance, Congressmen Berman and Doolittle have no personal, financial, or electoral interest at stake. But California has an enormous stake in a balanced and untrammelled debate. It is not possible that the United States Congress intended the BCRA to interfere in a state's political process in such a disruptive, unfair, and pointless way.

I urge you to affirm the legality of the conduct proposed by Congressmen Berman and Doolittle.

Sincerely,



Daniel H. Lowenstein
Professor of Law

June 2005

Daniel H. Lowenstein
Professor of Law
UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90095
Tel: (310) 825-5148
Email: lowenstein@law.ucla.edu

EDUCATION:

A.B., Yale University, 1964
 LL.B., Harvard Law School, 1967

PREVIOUS EMPLOYMENT:

Sheldon Travelling Fellowship, 1967-68
 Attorney, California Rural Legal Assistance, 1968-71
 Special Counsel and Deputy Secretary of the State of California, 1971-75
 Chair, California Fair Political Practices Commission, 1975-79

UCLA SERVICE:**ACADEMIC AND ADMINISTRATIVE TITLES: (§7)**

Acting Professor of Law, 1979-84
 Professor of Law, 1984-

LAW SCHOOL COURSES TAUGHT: (§8)

<u>Date</u>	<u>No.</u>	<u>Title</u>	<u>Units</u>	<u>Enrollment</u>
Yr. 1979-80	130.	PROPERTY	6	§ 3 - 89
S 1980	321.	LEGISLATION	2	53
Yr. 1980-81	130.	PROPERTY	6	§ 4 - 101
F 1980	319.	POLITICAL PROCESS	2	23
S 1981	568.	SEM-POLITICAL THEORY	2	6
Yr. 1981-82	130.	PROPERTY	6	83
F 1981	319.	POLITICAL PROCESS	2	9
S 1982	130.	PROPERTY	3	78
S 1982	568.	SEM-POLITICAL THEORY	2	18
F 1982	130.	PROPERTY	3	§ 1 - 84
F 1982	319.	LAW & THE POLITICAL PROCESS	3	22
S 1983	130.	PROPERTY	3	§ 1 - 75
F 1983	130.	PROPERTY	3	§ 2 - 71
F 1983	500.	SEM-CONSTITUTIONAL LAW	3	9
F 1983	130.	PROPERTY	3	§ 2 - 65
S 1984	577.	SEM-LAW & THE POL. PROCESS	4	11
S 1984	130.	PROPERTY	3	78

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<u>Date</u>	<u>No.</u>	<u>Title</u>	<u>Units</u>	<u>Enrollment</u>
F 1984	319.	LAW & THE POLITICAL PROCESS	3	32
S 1985	130.	PROPERTY	3	77
Yr.1985-86		Sabbatical Leave		
F 1986	130.	PROPERTY	6	71
S 1987	201.	CONSTITUTIONAL LAW	4	63
F 1987	319.	LAW & THE POLITICAL PROCESS	3	16
S 1988	500.	CONSTITUTIONAL LAW II	3	36
F 1988	201.	CONSTITUTIONAL LAW II	3	60
F 1988	500.	SEM-CAMPAIGN FINANCE	3	16
S 1989		Leave of Absence (Taught at Cal Tech)		
F 1989	130.	PROPERTY	5	32
S 1990	201.	CONSTITUTIONAL LAW II	3	52
F 1990	130.	PROPERTY	5	29
S 1991	148.	CONSTITUTIONAL LAW I	4	87
S 1991	319.	LAW & THE POLITICAL PROCESS	3	20
F 1991	319.	LAW & THE POLITICAL PROCESS	3	14
S 1992	148.	CONSTITUTIONAL LAW I	4	81
S 1992	540.	SEM-LEGISLATIVE ADVOCACY (W/LIEBMAN)	3	13
F 1992	319.	LAW & THE POLITICAL PROCESS	3	18
F 1992	540.	SEM-LEGISLATIVE ADVOCACY (W/LIEBMAN)	3	12
S 1993		Leave of Absence		
F 1993		Leave of Absence		
S 1994	319.	ELECTION LAW	3	9
S 1994	321.	LEGISLATION	3	17
F 1994	319.	ELECTION LAW	3	7
F 1994	321.	LEGISLATION	3	16
S 1995	540.	SEM-LEGISLATIVE ADVOCACY (W/LIEBMAN)	3	9
W 1995	98C.	PROF. SCHOOLS SEMINAR PROGRAM	3	9
F 1995	319.	ELECTION LAW	3	17
F 1995	592.	SEM-SCANDAL & CORRUPTION	3	15
S 1996	321.	LEGISLATION	3	17
W 1996	98C.	PROF. SCHOOLS SEMINAR PROGRAM	3	7
F 1996	319.	ELECTION LAW	3	3
F 1996	321.	LEGISLATION	3	6
S 1997	540.	SEM-LEGISLATIVE ADVOCACY (W/SINCLAIR)	3	7
S 1997	585.	SEM-LAW AND LITERATURE	3	13
F 1997	319.	ELECTION LAW	3	7
F 1997	321.	LEGISLATION	3	11
S 1998	540.	SEM-LEGISLATIVE ADVOCACY (W/LIEBMAN)	3/2	14
S 1998	585.	SEM-LAW & LITERATURE	3/2	16
S 1998	585A.	SEM-AV LAW & LITERATURE	3/2	6
P 1998	321.	LEGISLATION	3	12
F 1998	540.	SEM-LEGISLATIVE ADVOCACY (W/MARGOLIN)	3/2	12
S 1999	319.	ELECTION LAW	3	11

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Date	No.	Title	Units	Enrollment
S 1999	585.	SEM-LAW & LITERATURE	3/2	12
F 1999	319.	ELECTION LAW	3	25
F 1999	585.	SEM-LAW & LITERATURE	3/2	12
S 2000		Sabbatical Leave		
F 2000		Sabbatical Leave		
S 2001	319.	ELECTION LAW	3	13
S 2001	585.	SEM-LAW & LITERATURE	3/2	18
F 2001	319.	ELECTION LAW	3	8
F 2001	321.	LEGISLATION	3	11
S 2002	568.	SEM-POLITICAL THEORY	3/2	12
S 2002	585.	LAW & LITERATURE	3/2	12
F 2002	321.	LEGISLATION & STATUTORY INTERPRETATION	3	15
S 2003	568.	SEM-AM. POLITICAL THOUGHT	3/2	12
S 2003	585A.	ADV. LAW & LITERATURE	3/2	5
F 2003	319.	ELECTION LAW	3	22
F 2003	231.	LEGISLATION AND STATUTORY INTERPRETATION	3	27
S 2004	130.	PROPERTY	5	39
S 2004	568.	SEM- POLITICAL THEORY	3/2	15
F 2004	585.	LAW & LITERATURE	3/2	12
		UG 156 UNDERGRADUATE SEMINAR: AMERICAN POLITICAL THOUGHT	3	14
S 2005	321.	LEGISLATION AND STATUTORY INTERPRETATION	3	30
F 2005	319	ELECTION LAW	3	
F 2005	321	LEGISLATION AND STATUTORY INTERPRETATION	3	
S 2006	568	SEM-AM. POLITICAL THOUGHT	3/2	
S 2006	UG HON	JUSTICE AND MORAL RESPONSIBILITY IN LITERATURE	3/2	

LAW SCHOOL COMMITTEE MEMBERSHIP: (\$9)

Standards Committee, 1979-80
 Externship Committee, 1980-81; Chair, 1989-90
 Placement Committee, Chair, 1981-82
 Curriculum Committee, 1982-83
 Library Committee, 1983-84; Chair, 1984-85
 Computer Advisory Group, 1984-85
 Appointments Committee, 1986-87; 1987-88; 1988-89 (F); 1990-91, 1995-96; Internal Appointments,
 1998-99 (F), 1999-00 (F); 00-01 (S); Conlaw Search Committee, 2000-01 (S)
 Search Committee for Head Law Librarian, 1987
 Externship Committee, Chair, 1989-90; Chair, 1991-92; 1992-93 (F)
 Public Interest, 1993-94 (S)
 Public Interest and Loan Forgiveness, Chair, 1994-95
 Faculty Colloquia, Co-Chair, 1996-98
 Career Services, Chair, 2005-2006

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LAW SCHOOL--OTHER SERVICE: (§10)

Member of Ad Hoc Committee on Olin Program, Summer 1984
 Search Committee for Asian American Studies Center Appointment, 1989-90
 Faculty Advisor, Pro Bono Society, 1994-95
 Ad Hoc Committee for 2 Tenure Candidates, 1998-99 (Chair); 1999-00
 Con Law Search Committee, Fall 1999; 00-01 (S)
 Chair, personnel review committee, 00-01
 Member, personnel review committee, 00-01

OTHER UNIVERSITY TEACHING: (§11)

Supervised law students' independent study courses, ongoing
 Ph.D. Committees:

Priscilla Slocum, Political Science Department, 1983-85
 Neal Glen Jesse, Political Science Department, 1993
 Toshio Nagahisa, Political Science Department, 1993-94
 David Jones, Political Science Department, 1996-1998
 Robyn Wornall, Political Science Department, 1996-2002
 Brian Lawson, Political Science Department, 1996-
 Lucy Lee, Graduate School of Education, 1998-99 (Degree Awarded, Spring 1999)
 Joe Doherty, Political Science Department, 1998-
 Seth Everett Masket, Political Science Department, December 2000-
 Taught undergraduate course in Communication Studies on Theory of Freedom of Speech, Winter
 1988, Winter 1990

ACADEMIC SENATE COMMITTEE MEMBERSHIP: (§12)

Affirmative Action-Equal Opportunity Committee, 1981-84
 Independent Substantive Review Committee, 1984-85
 Academic Freedom Committee, 1984-85; 1998-99
 Law School Representative to Senate Legislative Assembly, 1987-88
 Member, Communications Studies Governing Committee, 1987-88
 Charges Committee, 1994-95
 Member, ad hoc panel of Charges Committee, 1998
 Ad Hoc Committee for Tenure, 1999-2000
 Member, Council on Academic Personnel, 2001-2002; Vice Chair, 2002-

OTHER UNIVERSITY SERVICE & ACTIVITIES: (§14)

Member, ad hoc committee regarding campus and university policy on patents, 1991-92
 Member, Committee on the Master's Degree in Public Policy of the new School of Public Policy, 1994-95
 Member, Honors Faculty Advisory Committee, 2003 -

ADDITIONAL ACADEMIC AND OTHER APPOINTMENTS: (§15)

Visiting Professor at Cal Tech, Spring 1989

SERVICE TO PROFESSIONAL SOCIETIES AND ORGANIZATIONS: (§17)

Common Cause National Governing Board, 1979-85

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Board Member, Shakespeare Society of America, 1981-1990
 Board Member, Americans for Nonsmokers Rights, 1980-1992
 Co-founder and Management Committee Member, Law & Political Process Study Group, an affiliate of the American Political Science Association, 1984-
 Executive Committee Member, National Lawyers Council of the Democratic National Committee, 1988-91
 Advisory Board Member, Interact Theater Company, 1998-2001; Chairman of the Board of Directors, 2001-

SERVICE ON EDITORIAL BOARDS: (§18)

Reviewer: University of N. Carolina Press, 1987-88; Princeton University Press, 1991; University of Michigan Press, 1996-97
 Reviewer for Manuscript, Social Science History, 1996
 Co-Editor (with Richard L. Hasen), Election Law Journal (www.libertypub.com/elj), 2001 -

SERVICE TO EDUCATIONAL AND GOVERNMENTAL AGENCIES/CONSULTING SERVICES: (§19)

Spokesperson, "Yes on Proposition 10" Committee, California General Election, 1980
 Served as public spokesperson for the "No on Proposition 39" campaign in the 1984 California general election
 Provided legal consulting services to clients and others regarding election law, 1981-
 Member of Steering Committee of National Redistricting project, 1988-91
 Consultant to Calif. Atty. Gen. regarding Eu v. San Francisco Democratic Central Committee, 1988-89
 Consultant to Commission on Ethics in L.A. City Government, 1988-89
 Spokesperson, "No on 118 and 119" Committee, California Primary Election, 1990
 Co-Chair, "No on 140" Committee, California General Election, 1990
 Main author of amicus curiae brief filed in the United States Supreme Court on behalf of the California Democratic Party et al in the case of U.S. Term Limits v. Thornton, 1994
 Sent by U.S. Information Service to Minsk, Belarus, to lecture on U.S. elections and electoral process, November 1-10, 1996
 Co-counsel to two slate mail publishers, who challenged certain provisions of Proposition 208, the campaign finance initiative passed in 1996
 Major spokesperson for campaign against Proposition 25, primary election, March 2000

INVITED LECTURES, PAPERS AT MEETINGS AND SIMILAR ACTIVITIES: (§20)

"Campaign Spending and Ballot Propositions," paper delivered to Direct Democracy Panel at annual meetings of American Political Science Association, New York City, September 5, 1981
 "California Initiatives and the Single Subject Rule," paper delivered to the Direct Democracy Panel at annual meetings of Political Science Association, Denver, Colorado, September 1982
 Presented papers on bribery law to the International Political Science Association (1982) and the American Political Science Association (1983)
 "The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?" (co-authored with Jonathan Steinberg), a paper presented to Law and Political Process Study Group at annual meetings of American Political Science Association, Washington, D.C., September 1, 1984
 Testified as an invited expert before joint committee of the California legislature regarding the Gann legislative "reform" initiative (1984) and before the California Fair Political Practices Commission regarding regulation of campaign consultants (1985)
 "The Ecology of the Japanese Electoral System," paper delivered to the Law and Political Process Study Group at the annual meetings of the American Political Science Association, Washington, D.C., August 28-31, 1986

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- "Bandemer's Gap: Gerrymandering and Equal Protection," paper delivered at the annual meeting of the American Political Science Association, Chicago, September 4, 1987
- "Constitutional Rights of Major Political Parties: A Skeptical Inquiry," paper presented to American Political Science Association, September, 1988
- "The First Amendment and Paid Initiative Petition Circulators," paper presented at conference entitled "From Gold Chips to Silicon Chips: The California Constitution in Transition," Hastings Law School (co-authored with Robert M. Stern), March 2-3, 1989
- "Campaign Finance, Corruption, and Responsible Party Government, The Case of Inter-Candidate Transfers," paper presented at Annual Meeting, Mid-western Political Science Association, Chicago, Illinois, April 18-20, 1991
- "A Patternless Mosaic: Campaign Finance and the First Amendment after Austin," paper delivered at the Symposium on Comparative Political Expression and the First Amendment, at Capital University Law and Graduate Center, Columbus, Ohio, November 7, 1991
- "Incumbency and Electoral Competition," presented at the annual meeting of the American Political Science Association, Chicago, Illinois, September 1992
- "Are Congressional Term Limits Constitutional?" presented at the annual meeting of the American Political Science Association, Washington, D.C., September 1993
- Radio Broadcast, NPR Morning Edition, November 28, 1994. Re: Constitutionality of term limits to be argued before the U.S. Supreme Court
- Television Appearance, KCET McNeil-Lehrer Newshour, November 28, 1994. Re: Constitutionality of term limits
- "The Constitutionality of Congressional Term Limits: An Overview," presented at Cato Institute conference on term limits, Washington, D.C., December 1993
- "Associational Rights of Major Political Parties -- A Political and Jurisprudential Dead End," paper presented to the short course on "Political Parties and the Law," held in conjunction with the annual meetings of the American Political Science Association, Chicago, Illinois, August 30-September 3, 1995
- "When Is a Campaign Contribution a Bribe?" paper presented at annual meetings of Midwest Political Science Association, Chicago, Illinois, April 1996
- "You Don't Have to Be Liberal to Hate the Racial Gerrymandering Cases," paper presented at annual meetings of American Political Science Association, San Francisco, California, August 29-September 1, 1996
- Television Appearance, Channel 9 News, April 28, 1998. Re: Sheriff's election
- "The Stealth Campaign: Experimental Studies of State Mail in California" (co-authored with Shanto Iyengar and Seth Maskel), presented to the annual meetings of the American Political Science Association, Atlanta, Georgia, September 2-5, 1999
- I wrote a short play that was read at the Play Development Lab of Interact Theater Co., May 1999
- Pre-performance lectures at the California Shakespeare Festival, Orinda, California, 1997, 1999
- Participant, "The Election Law Summit," Washington, D.C., June 23-25, 2002

FELLOWSHIPS AND RESEARCH GRANTS: (\$22)

Principal Investigator, PEW Charitable Trusts, "Uniform State Disclosure Standards for Political Campaign," March 2002-March 2004

D.H. Lowenstein - Resume

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BIBLIOGRAPHY

Books:

Election Law: Cases and Materials, Durham, NC: Carolina Academic Press, 1995. 2nd ed. (with Richard L. Hasen), 2001. Update available at <http://www.lls.edu/academics/faculty/subs/electionlaw-2002update.pdf> 2002.

Articles and Reviews:

"When is a Campaign Contribution a Bribe?," in Private and Public Corruption (edited by John Kleinig, Lanham, MD: Rowman & Littlefield, forthcoming, 2004)

Book Chapter, "Lessons from the Florida Controversy," in Realising Democracy, edited by Graeme Orr, Bryan Mercurio and George Williams, (The Federation Press, Australia, 2003), pp. 7-25.

"An Irresponsible Intrusion," The Forum Vol. 1, No. 3, Article 4 (2003) (on-line journal published by Berkeley Electronic Press, edited by Nelson Polsby) <<http://www.bepress.com/forum/vol1/iss4/art4>>.

Book Review, "Voting with Votes," 116 Harvard Law Review 1971-1994 (2003) (review of Bruce Ackerman & Ian Ayres, Voting with Dollars: A New Paradigm for Campaign Finance (2002)).

Shanto Iyengar, Daniel H. Lowenstein & Seth Masker, "The Stealth Campaign: Experimental Studies of State Mail in California," 17 Journal of Law & Politics 295-332 (2002)

"Initiatives and the New Single Subject Rule," 1 Election Law Journal 35-48 (2002)

"Campaign Finance, Race, and Equality," 79 North Carolina Law Review 1535-40 (2001).

"The Supreme Court Has No Theory of Politics--And Be Thankful for Small Favors," in The U.S. Supreme Court and the Electoral Process (David K. Ryden, ed., Washington, D.C.: Georgetown University Press, 2000)

"Political Reform Is Political," in The U.S. House of Representatives (Joseph F. Zimmerman and Wilma Rule, eds., Westport, CT: Praeger, 2000)

"A Role for Parties," in Money and Politics: Financing Our Elections Democratically 78-83 (Joshua Cohen & Joel Rogers, eds., Boston: Beacon Press, 1999)

"You Don't Have to be Liberal to Hate the Racial Gerrymandering Cases," 50 Stanford Law Review 779-835 (1998)

"Election Law as a Subject--A Subjective Account," 32 Loyola (L.A.) Law Review 1199-1215 (1999)

"Election Law Miscellany: Enforcement, Access to Debates, Qualification of Initiatives," 77 Texas Law Review 2001-21 (1999)

"Conflict and Corruption: Appearances and Reality," Western City (May 1999), at 10-12

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"Election Law and Rules for Using Initiatives," (with Caroline J. Tolbert and Todd Donovan) in Citizens as Legislators: Direct Democracy in the United States 27-54 (Shaun Bowler et al., eds., Columbus: Ohio State University Press, 1998)

"Political Parties and the Constitution," in Voting Rights and Redistricting in the United States 83-117 (Mark E. Rush, ed., Westport: Greenwood Press, 1998)

"Race and Representation in the Supreme Court," in Voting Rights and Redistricting in the United States 49-81 (Mark E. Rush, ed., Westport: Greenwood Press, 1998)

"A Role for Parties," 22 Boston Review 15-16 (April/May 1997)

"The Goldwater Institute and the Federalist Society: Federalism and Judicial Mandates," (with Lino A. Graglia, et al.), 28 Arizona State Law Review 17-220 (1996)

"Associational Rights of the Major Political Parties: A Political and Jurisprudential Dead End," 16 American Review of Politics 351-370 (1995)

"Campaign Contributions and Corruption: Comments on Straus and Cain," 1995 University of Chicago Legal Forum 163-92 (1995)

"Are Congressional Term Limits Constitutional?" 18 Harvard Journal of Law & Public Policy 1-72 (1994)

Book Chapter, "Congressional Term Limits and the Constitution," in The Politics and Law of Term Limits 125-140 (Edward H. Crane & Roger Pilon, eds., Washington, D.C.: Cato Institute, 1994)

"The Failure of the Act: Conceptions of Law in The Merchant of Venice, Black House, Les Misérables, and Richard Weisberg's Poethics," 15 Cardozo Law Review 1139-243 (1994)

"Associational Rights of Major Political Parties: A Skeptical Inquiry," 71 Texas Law Review 1741-92 (1993). Symposium: Regulating the Electoral Process

Book Chapter, "American Political Parties," in Developments in American Politics, at pp. 63-85 (G. Peels, C. Bailey, B. Cain, eds., New York: St. Martin's, 1992)

"A Patternless Mosaic: Campaign Finance and the First Amendment after Austin," 21 Capital University Law Review 381-427 (1992). A Symposium on Comparative Political Expression and the First Amendment

Book Review of Hadley Arkes, Beyond the Constitution, 518 Annals of the American Academy of Political & Social Science 202-3 (1991)

"A Democratic Perspective on Legislative Districting (Reflections on the Political Parties and Reapportionment: The 1990 Census and Beyond)," (with Ronald H. Brown), 6 J. of Law and Politics 673-81 (1990)

"Bandemer's Gap: Gerrymandering and Equal Protection," in Political Gerrymandering and the Courts 64-116 (B. Grofman, ed., New York: Agathon Press, 1990)

"On Campaign Finance Reform: The Root of All Evil is Deeply Rooted (Frameworks of Analysis and Proposals for Reform: A Symposium of Campaign Finance)," 18 Hofstra Law Review 301-67 (1989)

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"The First Amendment and Paid Initiative Petition Circulators: A Dissenting View and a Proposal (From Gold Dust to Silicon Chips: The California Constitution in Transition)," 17 Hastings Constitutional Law Quarterly 175-224 (co-authored with Robert M. Stern), 1989

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