Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, 51 Cal.3d 744 (1990)

[No. S012016. Supreme Court of California. Nov 1, 1990.]

TAXPAYERS TO LIMIT CAMPAIGN SPENDING, Petitioner, v. FAIR POLITICAL PRACTICES COMMISSION, Respondent

(Opinion by Eagleson, J., with Lucas, C. J., Panelli, J., and Woods (Arleigh M.), J.,fn. * concurring. Separate concurring and dissenting opinion by Mosk, J. Separate dissenting opinion by Kennard, J., with Broussard, J., concurring.)

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OPINION
EAGLESON, J.

The California Constitution provides: "If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail." (Const., art. II, § 10, subd. (b). Hereafter, section 10(b).)fn. 1 [1] Rules of statutory construction, however, require an attempt to reconcile statutory provisions relating to the same subject matter whenever possible in order to avoid conflict and give effect to every provision. The threshold question in this case is whether section 10(b) either permits application of these rules of construction to competing initiative measures, or contemplates that only. the provisions of the measure receiving the highest affirmative vote shall become effective.The question is one of first impression in the application of section 10(b).

We conclude that, unless a contrary intent is apparent in the ballot measures, when two or more measures are competing initiatives, either because they are expressly offered as "all-or-nothing" alternatives or because each creates a comprehensive regulatory scheme related to the same subject, section 10(b) mandates that only. the provisions of the measure receiving the highest number of affirmative votes be enforced. Neither an administrative nor a regulatory agency, nor

the court, may enforce individual provisions of the measure receiving the lower number of affirmative votes. Were the court to do so the result might be a regulatory scheme created without any basis for ascertaining whether the electorate understood or intended the result. In short, section 10(b) does not permit the court to engraft onto one regulatory scheme provisions intended to be part of a different scheme.

I

The issue arises in the following context. [51 Cal.3d 748]

At the June 7, 1988, Primary Election the voters approved two initiative statutes, Propositions 68 and 73, both of which regulate political campaign contributions and spending. Both measures amend and supplement the Political Reform Act of 1974 (the Act) (Gov. Code, § 81000 et seq.),fn. 2 which established the Fair Political Practices Commission (FPPC) and gives it responsibility for implementing the Act. (§ 83100.) Each proposition adds a different chapter 5, commencing with section 85100, to title 9 of the code. Proposition 73 received more votes than Proposition 68. The complete text of these measures is set forth in an appendix to this opinion.

On November 9, 1988, respondent FPPC issued an opinion responding to the question: "What, if any, of Proposition 68 (the 'Campaign Spending Limits Act') survives the passage of Proposition 73 (the 'Campaign Contributions Limits without Taxpayer Financing Amendments to the Political Reform Act') by a greater number of votes?" The FPPC concluded that because section 10(b) applied only if a conflict existed, each provision of Proposition 68 had to be examined to determine if it conflicted with any provision of Proposition 73. Where conflicts existed the provisions of Proposition 73 would prevail. After comparing the measures provision by provision, the FPPC concluded that most of the provisions of Proposition 68 conflicted with provisions of Proposition 73 or were not severable from other provisions which did conflict. The FPPC identified several provisions of Proposition 68 which, it concluded, did not directly conflict and held that those provisions should become operative.

Petitioner, Taxpayers to Limit Campaign Spending (Taxpayers), an association which sponsored Proposition 68, initiated this mandamus proceeding to compel the FPPC to enforce additional provisions of that proposition, specifically those provisions adding sections 68:85101, subdivisions (a), (c), (d), (e), (g), and (i), 68:85102, subdivisions (a), (b), (f), (g), (h), (i), (j), (k), and (m), 68:85202, 68:85204, 68:85206, 68:85305, 68:85306, 68:85307, 68:85309, 68:85311, 68:85312, 68:85313, subdivisions (a) and (b), 68:85314, and 68:85317, and amending sections 91000 and 91005 of the Government Code.fn. 3 [51 Cal.3d 749]

The Court of Appeal, like the FPPC, concluded that it was obligated to attempt to reconcile and give effect to both measures to the extent possible. It held that several additional provisions of Proposition 68 were not irreconcilable with the provisions of Proposition 73, and directed that they be enforced.

We granted review to consider the FPPC's argument that these additional provisions of Proposition 68 were in irreconcilable conflict with provisions of Proposition 73. The parties were advised, however, that the court would also consider whether the FPPC and the Court of Appeal

had properly applied section 10(b) in their efforts to give effect to those provisions of Proposition 68 which they concluded did not conflict with the provisions of Proposition 73.fn. 4

A comparison of significant differences between the two propositions in issue here, and the manner in which the Court of Appeal attempted to reconcile them, places the problem in perspective.

The official title of Proposition 73 was: "Campaign Funding. Contribution Limits. Prohibition of Public Funding. Initiative Statute." [2] (See fn. 5.) The Legislative Analyst explained and described the content of the measurefn. 5 as follows:

"Background

"Federal law limits the amount of money that an individual may give as a political campaign contribution to a candidate for federal elective office or to the candidate's campaign committee. California law generally does not impose any similar limits on political campaign contributions. Both federal law and the state's Political Reform Act of 1974, however, require candidates for public office to report contributions they receive and money they and their campaign committees spend.

"California law does not generally permit any public money to be spent for campaign activities. A few local government agencies, [51 Cal.3d 750] however, have authorized the payment of public matching funds to candidates for certain local elected offices.

"Proposal

"In summary this measure:

"Establishes limits on campaign contributions for all candidates for state and local elective offices;

"Prohibits the use of public funds for these campaign expenditures; and

"Prohibits state and local elected officials from spending public funds on newsletters and mass mailing.

"Limits on Campaign Contributions

"The measure establishes separate limits for different types of contributors.

"1. Persons. Contributions from any person to a candidate, or to the candidate's campaign committee, are limited to $1,000 per fiscal year. Contributions to a political committee or political party are limited to $2,500 per fiscal year. The measure defines 'person' to include an individual, business firm, association or labor organization.

"2. Political Committees. Contributions from any committee to a candidate or the candidate's campaign committee are limited to $2,500 per fiscal year.

"3. Political Parties and Broad-Based Political Committees. Contributions from any political party or broad-based political committee to a candidate or the candidate's campaign committee are limited to $5,000 per year. A broad-based political committee is defined as one which receives contributions from more than 100 persons and makes contributions to five or more candidates. * * *

"5. Other Provisions.

"This measure does not affect any existing limitation on campaign contributions enacted by a local government that imposes lower contribution limits. In addition, any local government may enact its own lower limitations.

"The personal contribution limits only apply to financial or other support provided to a political committee or broad-based political committee if the support is used for making contributions directly to a candidate. The contribution limits do not apply if the contributions are used by the committee for other purposes, such as administrative costs. [51 Cal.3d 751]

"The time periods over which the contribution limits apply are modified in the case of special elections and special runoff elections.

"Public Funding Prohibition

"No candidate may accept any public funds for the purpose of seeking elective office.

"Newsletters and Mass Mailings

"Public funds cannot be used by state and local elected officials to pay for newsletters or mass mailings.

"Administration and Enforcement

"The State Fair Political Practices Commission has the primary responsibility for administering and enforcing this measure.

As this analysis explained, the contribution and spending limits of Proposition 73 were to apply to all candidates for state and local elective office; none of these candidates would be permitted to accept public funds for use in seeking such office. The public funds restriction was also expressly mentioned in the title given to the initiative by the Attorney General, and in the title given by the initiative to the chapter 5 it was to establish. Thus, pursuant to the first provision of the proposed law, section 73:85100 would be added to the Government Code, and would declare: "This chapter shall be known and cited as the 'Campaign Contributions Limits Without Taxpayer Financing Amendments to the Political Reform Act.'" Section 1 of the initiative proposed the

addition of the "chapter" to which the quoted provision referred: "Section 1. Chapter 5 (commencing with Section [73:]85100) is added to Title 9 of the Government Code ...:"

Proposition 68 also proposed in its section 1 to add a chapter 5 to the Government Code, of which a section 85100 would be the first provision: "[68:]85100. Title [¶] This chapter shall be known as the Campaign Spending Limits Act."

As the Legislative Analyst explained to the voters, however, the campaign contribution and spending limits of Proposition 68 applied only to candidates for the state Assembly and state Senate, and this proposition expressly provided for public funding. The analysis of Proposition 68 described this proposal, in which the contribution and spending limits differ from those in Proposition 73, and permit contributions only in election years, as follows:

"Background

"Federal law limits the amount of money that an individual may give as a political campaign contribution to a candidate for federal elective office and to the candidate's campaign committee. California [51 Cal.3d 752] law generally does not impose any similar limits on political campaign contributions. Both federal law and the state's Political Reform Act of 1974, however, require candidates for public office to report contributions they receive and money they and their campaign committees spend.

"Proposal

"In summary, this measure:

"Establishes limits on campaign contributions that can be made to all candidates for the State Assembly and the State Senate; and

"Provides state matching funds to these candidates if they agree to comply with limits on spending for their legislative campaigns.

"Limits on Campaign Contributions

"The measure establishes separate limits for different types of contributors, and imposes other restrictions on campaign contributions.

"1. Individual Persons. Contributions from a person to a candidate, or to the candidate's campaign committee, are limited to $1,000 per election. There are also limitations on contributions to political parties, and to committees not controlled by the candidate. Also, no individual may contribute more than $25,000, in total, to all legislative candidates and their campaign committees over a two-year period.

"2. Organizations. Contributions from an organization to a candidate, or to the candidate's campaign committee, are limited to $2,500 per election. Other limitations include a $200,000

limit on the amount that an organization can give, in total, to all legislative candidates and their campaign committees over a two-year period.

"3. Small Contributor Political Action Committees. Contributions from these committees to a candidate, or his or her campaign committee, are limited to $5,000 per election. There also are other limitations including a $200,000 limit on the amount that each such committee can give, in total, to all legislative candidates and their campaign committees over a two-year period.

"4. Other Restrictions.

"Contributions may be made to any candidate for legislative office only in those years that the candidate's name appears on the ballot.

"A candidate for the Assembly cannot accept more than $50,000 in total, per election, from all organizations or small contributor political action committees. The similar limit for a candidate for the Senate is $75,000. * * *

"No transfers of funds are permitted between individual candidates or between their campaign committees. [51 Cal.3d 753]

"Legislators and legislative candidates are prohibited from accepting more than $2,000 in gifts or honoraria from any one source during a two-year period.

"Any person who makes independent expenditures supporting or opposing a legislative candidate is prohibited from accepting any contributions in excess of $1,000 from persons or $2,500 from organizations.

"5. Other Provisions. The contribution limits apply to all candidates, regardless of whether they accept public matching funds. The limits,however, are not operative until the candidate has raised $35,000. The contribution and expenditure limits, and the public matching fund provisions are adjusted each year to reflect changes in the Consumer Price Index.

"Partial State Funding for Legislative Candidates

"1. Source of Funds. State income taxpayers may voluntarily decide that part of their income tax payments (up to $3 for single tax returns, and up to $6 for joint returns) can be used to finance state campaign matching payments.

"2. Use of These Funds. Each candidate for the State Assembly may elect to receive up to $75,000 in state matching funds for a primary election, and up to $112,000 for general, and other (special) elections. Each candidate for the State Senate may elect to receive up to $125,000 for a primary election, and up to $175,000 for general, and other (special) elections.

"3. Eligibility to Receive Funds. In order to receive state funds, a candidate must comply with campaign spending limits, collect a minimum level of private contributions, and be opposed by a candidate who has qualified for state matching funds, or who has more than $35,000 available to

finance a campaign. further, the candidate may contribute no more than $50,000 per election from personal funds to the campaign.

"4. State Matching Fund Ratios. Cash contributions totaling $250 or less from a registered voter in the candidate's district are matched by the state on a five-to-one basis. Other contributions totaling $250 or less are matched on a three-to-one basis. No matching funds are available for contributions received from the candidate or the candidate's immediate family.

"5.Campaign Spending Limitations. This measure places campaign spending limits on candidates who accept state matching funds. Assembly limits are $150,000 for each candidate in a primary election and $225,000 for a general election. Senate limits are $250,000 for each candidate in a primary election and $350,000 for a [51 Cal.3d 754] general election. The spending limits do not apply, however, if an opposing candidate who does not accept matching funds receives contributions or spends more than these amounts.

"Administration and Enforcement

"The State Fair Political Practices Commission has the primary responsibility for administering and enforcing this measure. The Franchise Tax Board and the State Controller also are involved in administering this measure."

Proposition 68 also included among its provisions an amendment to then existing section 91000, which had provided that any knowing and willful violation of title 9 was a misdemeanor. As amended the section authorized felony or misdemeanor punishment for violation of "Chapter 5 of this title commencing with Section [68:]85100" without regard to the knowledge or intent of the violator.

Both the differences mentioned above, and the manner in which the two propositions were drafted and presented to the voters, clearly indicated that they were offered as alternative regulatory schemes. Each was to add a chapter 5 to title 9 of the Government Code. Each sought to add sections to that code that bore the same number, but differed in content.fn. 6 The ballot arguments also alerted the voters to the presentation of the two propositions as alternatives.

Proposition 68 was described by its supporters as the "real campaign reform initiative," while Proposition 73 supporters told the electorate that it was the "only campaign finance proposal that applies to all California [51 Cal.3d 755] Elected Offices ...." In rebuttal to the argument in favor of Proposition 73, supporters of Proposition 68 urged defeat of the former, stating:

"Proposition 68 Limits Campaign Spending.

"Proposition 73 Does Not.

"Proposition 68 Achieves Real Campaign Reform.

"Proposition 73 Does Not.

"Proposition 68 Is the Citizens' Idea for Reform.

"Proposition 73 Is the Politicians' and Special Interest Lobbyists' Idea of 'Reform.'

"Don't Be Fooled!

"Vote 'No' on Proposition 73!

And, the authors of an argument against Proposition 73 warned that "Passage of Proposition 73 could prevent Proposition 68 from taking effect," while describing Proposition 73 as a "Trick Designed to Defeat the Real Campaign Reform Contained in Proposition 68 ...."

The supporters of Proposition 73 responded to the above when they told the voters: "You Have a Clear Choice!" and offered one final comparison of the impact of the two propositions.

II

At least four attempts have been made to determine the effect of the voters' simultaneous approval of both initiative measures. In each, the agency or court assumed that section 10(b): mandated a provision-by-provision analysis of the two measures and the enforcement of each provision of Proposition 68 which did not conflict with Proposition 73, was severable from the remainder of Proposition 68, and was intended by the voters to become effective regardless of the invalidity of the remainder.

A. Legislative Counsel Opinion

The first governmental postelection opinion on the operation of Proposition 68 was that of the Legislative Counsel. In response to an inquiry from a member of the state Assembly, the Legislative Counsel advised in a July 22, 1988, opinion that none of the provisions of Proposition 68 would become operative. The Legislative Counsel concluded that both Proposition 73 and Proposition 68 proposed a "comprehensive and interrelated system of campaign finance." The system that Proposition 68 proposed, however, contemplated public funding and imposed restrictions on contributions and expenditures which the Legislative Counsel believed to be of doubtful validity [51 Cal.3d 756] absent such financing. (See First National Bank of Boston v. Bellotti (1978) 435 U.S. 765 [55 L.Ed.2d 707, 98 S.Ct. 1407]; Buckley v. Valeo (1976) 424 U.S. 1 [46 L.Ed.2d 659, 96 S.Ct. 612]; Hardie v. Eu (1976) 18 Cal.3d 371 [134 Cal.Rptr. 201, 556 P.2d 301]; Citizens for Jobs & Energy v. Fair Political Practices Com. (1976) 16 Cal.3d 671 [129 Cal.Rptr. 106, 547 P.2d 1386]. Cf. Austin v. Michigan Chamber of Commerce (1990) 494 U.S. ___ [108 L.Ed.2d 652, 110 S.Ct. 1391].) Proposition 73 expressly prohibited public financing.

The Legislative Counsel also undertook a provision-by-provision analysis and reasoned that all provisions of sections 1 through 6 of Proposition 68, which established the campaign financing scheme, either expressly conflicted with the campaign financing provisions of Proposition 73, or were logically inseparable from those that did conflict. The provisions in sections 7 to 9 of Proposition 68 could not be severed because nothing in the measure or in its history suggested

that the electorate had focused on these measures and considered whether they should be adopted independent of the invalid campaign finance scheme, and the remaining provisions found in sections 11, 12, and 13 could have no effect if the balance of the proposition failed to become operative.

B. FPPC Opinion

The opinion of the FPPC was issued on November 9, 1988. The analysis of the FPPC considered each provision of Proposition 68 to determine if any provision expressly conflicted with Proposition 73. If it did not, the provision was examined to determine if it could operate independently of those that were in conflict. If so the provision would be operative if not "inextricably linked" to provisions in conflict, but only if it could "be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the invalid portions." (People's Advocate, Inc. v. Superior Court (1986) 181 Cal.App.3d 316, 333 [226 Cal.Rptr. 640].)

The analytical approach of the FPPC was similar to that of the Legislative Counsel, and like the Legislative Counsel the FPPC concluded that the public financing and expenditure limits of Proposition 68 were irreconcilable with the financing and expenditure provisions of Proposition 73. The FPPC also examined the remaining provisions of Proposition 68 for conflict and severability; but, unlike the Legislative Counsel, the FPPC found that some provisions adding sections to and amending sections of the Political Reform Act were operative. [51 Cal.3d 757]

The FPPC summarized its conclusions in this fashion:

[Tabular Material Omitted] [51 Cal.3d 758]

Thus, the FPPC found that the operative provisions of Proposition 68 were:

[Tabular Material Omitted] [51 Cal.3d 759]

Also operative were the severability clause (section 10), the provision permitting legislative amendment pursuant to existing section 81012 (section 11), the direction for liberal construction (section 12), and the effective date (section 13).

The FPPC also concluded that it was bound by section 10(b) and Estate of Gibson (1983) 139 Cal.App.3d 733, 736 [189 Cal.Rptr. 201], to examine the initiatives provision-by-provision, and to recognize any provision of Proposition 68 as operative if not in direct conflict with Proposition 73. Unlike that of the Legislative Counsel, however, the FPPC did not conclude that the interrelationship of the provisions of Proposition 68 precluded implementation of any part of the initiative. The FPPC thus found the statement of purposes of Proposition 68 operative, while simultaneously concluding that few of the principal substantive provisions intended to accomplish those purposes were operative.

C. Prior Court of Appeal Decision

In an earlier proceeding the Court of Appeal upheld the conclusion of the FPPC that the provision of Proposition 68 that would establish a Campaign Reform Fund and a tax check-off system (§ 68:85102, subd. (e); Rev. & Tax. Code, § 18775) conflicted with Proposition 73 and could not be enforced. (Center for Public Interest Law v. Fair Political Practices Com. (1989) 210 Cal.App.3d 1476 [259 Cal.Rptr. 21].)

D. This Court of Appeal Opinion

The Court of Appeal decision in this case represents the fourth attempt to apply section 10(b) and the body of law governing judicial construction of conflicting statutes. The Court of Appeal ruled that additional provisions of Proposition 68 had become operative, in particular: [51 Cal.3d 760]

Section 68:85101, subdivisions (a), (c), (d), (e), (g) and (i) [findings]

Section 68:85102, subdivisions (a), (b), (f), (g), (h), (i), (j), (k) and (m) [purposes]

Sections 68:85202, 68:85204 and 68:85206 [definitions]

Section 68:85309 [prohibition of nonelection year contributions to legislative candidates]

Section 68:85311 [return of contributions]

Sections 68:85305 through 85307 and 68:85312/68:85313, subdivisions (a) and (b), and 68:85314 [aggregate contribution limits, family contributions, loan rules, and attribution rules as modified]

Section 68:85317 [timing/allocation of contributions among elections]

Amendments to sections 91000 and 91005 [civil and criminal penalties].

The effect of the efforts of the FPPC, which had conceded that other provisions of Proposition 68 were operative, and the Court of Appeal, was that numerous provisions that had been part of a regulatory scheme applicable only to candidates for state legislative offices, and which contemplated partial public funding, were engrafted onto a legislative scheme that applied to candidates for all state and local offices, and forbade any public funding. The result, the FPPC contends, is a regulatory scheme that neither the drafters of the competing initiatives nor the electorate contemplated.

III

The obstacles and uncertainties facing a court when called upon to reconcile provisions of competing initiative measures are illustrated by the divergent conclusions reached by the FPPC and the Court of Appeal with respect to whether the provisions of Propositions 68 and 73 were irreconcilable, and whether the voters would have adopted various parts of Proposition 68 had they not been part of that measure. The court assumed that because a majority of voters approved

both initiatives, they intended that both take effect to the greatest extent possible. This assumption, however, is incapable of proof. That some voters would have been satisfied with the adoption of either proposition does not suggest that they wanted both, or that the same voters cast a majority of the affirmative votes for each initiative.fn. 7 [51 Cal.3d 761]

One assumes that those voters who did cast ballots for both Proposition 68 and Proposition 73 did so in an effort to ensure that one or the other regulatory scheme would be adopted. It does not follow that these voters attempted to analyze the measures to ascertain which provisions conflicted, understood that the scheme ultimately operative would be an amalgam comprised of provisions from both, or anticipated the results that the Court of Appeal and the FPPC reached.

Proceeding on the assumption that section 10(b) required a provision-by-provision analysis and that a majority of voters wanted both measures implemented to the extent possible, the Court of Appeal addressed several aspects of the Proposition 68 statutory scheme as discrete regulations. It first considered the campaign contribution limitations which Proposition 68 made applicable only to legislative candidates and their committees. Those limitations prohibited acceptance of contributions in any odd-numbered (nonelection) year. (§68:85309.) Proposition 73 contained no comparable limitation, but did contain limits on the amount that could be contributed by persons, political committees,and broad-based political committees in any fiscal year, i.e., the period between July 1 of one year and June 30 of the following year. (§§ 73:85301-85303.) These provisions could both be enforced, the Court of Appeal reasoned, because the contributor could make the maximum allowable contribution to a legislative candidate during the six months of the fiscal year that overlapped the six months of the year in which the candidate's name appeared on the ballot. Thus, a candidate for the Assembly could accept the maximum contributions authorized by Proposition 73 during each fiscal year as long as the contributions were made in the half of the fiscal year falling in an even-numbered calendar year. By contrast,a candidate for the Senate could not receive any contributions during the two fiscal years that did not overlap a calendar year in which the candidate was standing for election. Senatorial candidates who would be entitled under Proposition 73 to receive $4,000 from an individual during the four-year period between elections, would thus be able to receive only $2,000 once the Proposition 68 restriction on nonelection year contributions was imposed.

The Court of Appeal reasoned that by restricting contributions in this manner, although neither proposition authorized the restrictions, it was literally possible to apply the provisions of both propositions. The court also concluded that the people had the power to single out legislative candidates for more restrictive treatment, and that the result was not inconsistent with section 68:85305, which authorizes higher contribution limits for senatorial [51 Cal.3d 762] candidates than for Assembly candidates. The court rejected the argument that the adoption of fiscal year limits in Proposition 73 served to permit separate limits for primary and general elections, concluding the limits were not "entitlements,"fn. 8 and that senatorial candidates could receive their maximum amounts for the primary election in the latter half of one fiscal year and the maximum amount for the primary in the first half of the next fiscal year. Of course, they could not receive three times as much before the primary as before the general election, as would be the case absent the Proposition 68 ban on off-year contributions, and both senatorial and Assembly candidates would be subject to the Proposition 68 contribution limits without the supplements that public financing would have offered.

All of this, the court reasoned, was permissible because the voters would have adopted the off-year contribution ban even had the public funding provisions not been included in Proposition 68, and the issue of off-year funds had been sufficiently drawn to their attention to justify a conclusion that a majority would have approved the off-year provisions. Left unexplained was the basis for concluding that a majority of voters understood and would have approved the actual monetary limits that resulted under the hybrid scheme.

Proposition 73, which banned public funding, contained no aggregate contribution limits for any candidates. Proposition 68, by contrast, provided for public funding, and limited senatorial candidates to receipt of $75,000 and Assembly candidates to $50,000 in the aggregate from all nonindividual donors except political parties and legislative caucuses. (§ 68:85305.) Section 68:85305 limits individual contributions to legislative candidates and committees to $25,000 in a two-year period, while section 68:85307 limits contributions to legislative candidates by organizations and some committees to $200,000 in a two-year period. The FPPC argued that this created a clear conflict with Proposition 73, not only because Proposition 73 does not impose aggregate contribution limits on legislative candidates, but also because section 73:85303, subdivision (c), expressly provides [51 Cal.3d 763] that there is no limit to the amount an individual may contribute to committees for purposes other than making contributions directly to candidates for elective office.

The disparate treatment of legislative candidates that resulted from imposition of the Proposition 68 limits did not trouble the Court of Appeal, which concluded that since the voters approved both measures they intended the distinction. The court concluded on the basis of the findings set out in Proposition 68 that the voters believed that more burdensome restraints on legislative candidates were justified, and reasoned that had equal treatment of candidates been intended by Proposition 73 the drafters would have expressly indicated that intent. As we have noted, however, it is the understanding and intent of the voters that must be ascertained, and the Court of Appeal identified no basis on which to conclude that a majority of voters intended the limitations on spending to operate independently, i.e., without opportunity for partial public financing.

Section 68:85312 specifies the manner in which contributions to legislative candidates by related individuals and entities are to be aggregated (considered to have come from a single donor). It provides, however, that its provisions apply for "purposes of the contribution limitations in Sections 85300-85307, inclusive, and Section 85310" (of Proposition 68). The Court of Appeal concluded that the aggregation provision could be given effect notwithstanding Proposition 73 which itself defined "person" and provided definitions for persons and entities acting in concert. (§ 73:85102.) In enforcing contribution limitations for legislative candidates, the court reasoned, Proposition 68 simply defined the "certain very specific circumstances" in which donors would be deemed a single person or entity. Therefore, although one part of subdivision (d) of section 68:85312 which did conflict with subdivision (b) of section 73:85102 had to be excised, as well as reference in the introductory portion of section 68:85312 to provisions that were concededly invalid, the remainder of section 68:85312, defining "person," could be enforced.

The Court of Appeal recognized that Proposition 68 clearly and unambiguously applied only to candidates for state legislative office. the court nonetheless held that the amendment of existing section 91000 by Proposition 68, which makes any violation of chapter 5 punishable as a felony and any violation of any other section of that title punishable as a misdemeanor regardless of whether the violation was knowing or wilful, was enforceable and thus applicable to violation of the chapter 5 created by Proposition 73. The court found no reason to believe that the voters intended to limit the more severe punishment authorized by section 68:91000 to violation of the [51 Cal.3d 764] chapter 5 which Proposition 68 would have created,fn. 9 and thus held that the amendment to section 91000 had become effective. This conclusion, the FPPC argues, cannot be reconciled with the recognition that by its terms the proposal was to apply to a different chapter 5 than that which became operative when Proposition 73 received a greater affirmative vote.

IV

Our discussion above makes no effort to summarize all of the reasoning by which the Court of Appeal reached its conclusions as to each of the provisions of Proposition 68 that it held were enforceable. Nor do we undertake an analysis of the arguments made by the FPPC and the several amici curiae who dispute the Court of Appeal's conclusion that these additional provisions are enforceable. We attempt nothing more than to illustrate the analytical difficulty and practical impossibility of implementing the presumed, but in fact unknown, will of the electorate by judicially merging competing initiative regulatory schemes.

[3a] Both the FPPC and the Court of Appeal attempted to avoid application of section 10(b), which they understood to invalidate only individual provisions within an initiative if those provisions conflicted with and were not severable from provisions of the initiative that received a greater affirmative vote. In so doing they applied standard rules of statutory construction which obligate the court to attempt to reconcile or harmonize conflicting statutory provisions in an effort to give effect to all provisions if it is possible. (See Code Civ. Proc., § 1858; Fuentes v. Workers' Comp. Appeals Bd. (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; Estate of Gibson, supra, 139 Cal.App.3d 733, 736.) The overriding concern in these rules of statutory construction is that the intent of the Legislature or the electorate in adopting a statute be effectuated. [4] (See fn. 10.) (Code Civ. Proc., § 1859; Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645 [335 P.2d 672]; Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 132 [142 Cal.Rptr. 325].)fn. 10 [51 Cal.3d 765]

[3b] In applying section 10(b), however, the question is not construction of a statute to ascertain and effectuate its meaning. The varying results of the efforts of the FPPC and the Court of Appeal to utilize rules of statutory construction to resolve the fundamentally inconsistent approaches of Proposition 73 and 68 to regulation of campaign finance and expenditure, and the arguments of the parties and amici curiae as to whether the resulting regulatory scheme is one intended by the voters, place the crucial issue not only in context, but in bold relief. Does section 10(b) contemplate enforcement of any provisions of an initiative that receives a majority of the votes cast when another initiative on the same ballot, directed to the same subject and offered as a competing regulatory scheme, receives a greater majority? We conclude that it does not.

What then does section 10(b) mean when it says: "If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail." (Italics added.) Both Taxpayers and the FPPC argue that the language is clear that "those" refers only to the individual provisions which conflict and the remaining (nonconflicting) provisions of the initiative or initiatives receiving the lesser affirmative vote are also operative if they are severable. That is not the only reasonable understanding of the section, however. It can also be read to mean that when initiatives with provisions that are in fundamental conflict receive affirmative votes at the same election, only. the provisions of the measure receiving the highest affirmative vote are operative.

The history of section 10(b) suggests that the latter construction is consistent with the intent of the electorate which adopted the constitutional amendment adding the initiative and referendum to the Constitution in 1911. When the electorate gives an affirmative vote to more than one initiative, each of which seeks to regulate the same subject, but in different or conflicting ways, the "provisions" are in fundamental conflict, and only. the "provisions" of the measure receiving the higher affirmative vote prevail. Section 10(b) does not anticipate that the court will create a hybrid regulatory scheme in order to carry into effect some of the provisions of the proposition or propositions that received fewer votes. [51 Cal.3d 766]

The people reserved the initiative power by amendment of article IV of the Constitution on October 10, 1911. That amendment authorized use of the initiative to enact laws and amend the Constitution under procedures set forth in former section 1 of article IV. Section 1 also reserved to the electors of counties and towns the initiative power, to be exercised pursuant to procedures to be provided by local ordinance. At the time of its adoption the initiative provision specified: "If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail." Although this language, too, is ambiguous, the ballot arguments suggest that inclusion of "provision or provisions" in the section did not mean that all individual nonconflicting provisions of both measures would become operative. It reflected nothing more than recognition that some proposed statutes would contain only one provision.

This construction finds support in the argument explaining the constitutional amendment by which the initiative and referendum were added to the Constitution:"No initiative measure is subject to the governor's veto, nor, when adopted, can it be amended or repealed except by the people, unless the measure itself shall differently provide. If a conflict arise between provisions adopted and approved by the electors at the same election, that receiving the highest vote shall prevail." (Ballot Pamp., argument in favor of Sen. Const. Amend. No. 22 as presented to the voters, Special Statewide Elec. (Oct. 10, 1911). Italics added.) The singular "that" in this language must refer to "measure" and not to the conflicting "provisions." Thus, the section was directed to conflicting ballot measures, and it was the initiative measure which received the higher vote that was to prevail.

Earlier in the same year, moreover, the Legislature had added section 4058 to the former Political Code to authorize the adoption of county ordinances by petition to the board of supervisors. The board was required to adopt the proposed ordinance without alteration or submit it to a vote of the people of the county. This statute authorized the submission of any number of

proposed ordinances at the same election, and specified: "If the provisions of two or more ordinances adopted at the same election conflict, then the ordinance receiving the highest number of affirmative votes shall control." (Stats. 1911, ch. 342, § 1, p. 578, approved Apr. 3, 1911.) Like the amendments to article IV, it, too, was directed to the treatment of conflicting ballot measures. Thus, precedent also provided that the measure receiving the higher vote prevailed.

The 1911 ballot argument advised the voters that the initiative was not untried, having been used in Switzerland for 50 years, and noted that [51 Cal.3d 767] several California charter cities, including San Francisco and Los Angeles, had adopted the initiative. It was clear on the face of the Political Code section which then authorized initiative ordinances that only one measure would go into effect in case of a conflict. Nothing in the argument suggested that the conflict resolution provision of the statewide initiative measure was to operate in a different manner.

The leading contemporary observer of the 1911 session of the Legislature, Franklin Hichborn, understood the 1911 constitutional provision to have the same effect as the Political Code provisions. In his monograph Hichborn summarized the conflict provision: "In the case of conflict between measures approved by the electors at the same election, that receiving the highest affirmative vote shall prevail." (Hichborn, Story of the Session of the Cal. Legislature of 1911(1911) p. 96, fn. 119.)