

Rose Institute Conference

**Governing California in the 21<sup>st</sup> Century:  
MODEL CONSTITUTIONAL AMENDMENTS**

APRIL 22, 2004

**INTRODUCTION & PANEL I:  
COMMISSION REDISTRICTING**

**RALPH ROSSUM, *Director, Rose Institute of State and  
Local Government:***

We welcome the speakers and others who are able to join us on this important issue. I'm not going to repeat at length the purposes that have guided the three conferences that we have held in this series, *Governing California in the 21<sup>st</sup> Century*. We did one last October; we did the second in February and now this one today. But let me indicate, nonetheless, the two leading ideas or understandings that motivated us when we began our plans last summer for this series of conferences.

Our plans for this, in fact, began well before the recall election occurred, and well before the open primary measure qualified for the ballot. So, what are those two leading ideas? The first is that the crisis in California government that precipitated the recall would extend well beyond the recall and inspire widespread and continuing support for major changes in government structures in California. And the second understanding, or idea, was that such major changes likely would be pressed by small groups of individual activists or single-minded groups; that they would develop their initiatives without benefit of public debate, even without compromising with one another, and often without legal scrutiny or criticism of any other kind. We believe that if the past is prologue, their initiatives would either fail to attract a broad coalition of support; would fall victim to legal challenges (a subject we explored at our first conference); or result in all kinds of unanticipated, unintended consequences (and that was also the major focus of our first conference). Language intended to do A can often do B.

So with these two understandings in mind, we at the Rose Institute tried to look ahead, guided in our deliberations by Dan Walters, who met with us repeatedly through the past year and then appeared at both our first and second conferences (and would have been here today had he not had a scheduling conflict). We sat with him and deliberated among ourselves as well to try to look at what reform initiatives would

likely follow in the wake of the successful recall of Governor Davis. And we believed the four most likely kinds of reform initiatives would be in the areas of the open primary, redistricting reform, a constitutional spending cap, and calls for a limited legislature.

Now, I hope you'll forgive me for preening just a little bit over our predicting abilities. The first of the four, the open primary, has now qualified for the ballot. Those of you who were at that first conference will remember the spirited debate that we actually had on the issue of the open primary between Tony Quinn and, in our audience here, Michael Uhlmann.

The second redistricting reform was picked up by Ted Costa immediately after the recall. He drafted an initiative that he's tried to have qualified, ultimately failing in the effort because, we suspect, he failed to submit his language to other groups, and therefore failed to gain and garner support. There are now many number of redistricting proposals out there in the atmosphere and we are here with our own redistricting reform wishing to present it to you. Redistricting reform has been endorsed by any number of the major newspapers in the state. The sense is that no longer can we continue, as we have under the sweetheart gerrymander that occurred after the 2000 census, to allow our representatives to choose their voters. We have got to get back to having our voters actually choose our representatives. The sentiment statewide for such reform is great indeed. We want to offer model language that can be picked up and usefully employed by those seeking that kind of reform.

A third reform concept is a constitutional spending cap and that also drew strong interest after the recall prompted, in no small part, by a 38-billion dollar deficit as the numbers came out. A version of the spending cap was pressed by Governor Schwarzenegger and, as we all know, passed handily this March. But that spending cap is more in name than reality and a real constitutional spending cap, with teeth in it, remains a lively focus of reform interests; and we will be hearing more on such a reform cap later this afternoon.

Finally, and perhaps most strikingly, the idea of a limited legislature has been making front-page news, especially since Schwarzenegger announced his possible interest in moving the Legislature to part-time status. It was interesting how and where he did it. He was on vacation in Hawaii, having left the Legislature to finish the work on workers' compensation; and seeing the work not focused, seeing the Legislature not showing the interest it needed, he throws out this provocative idea. Suddenly everybody is a-buzz, talking about the limited legislature. We're going to be hearing a proposal drafted by Gary Kovall later this afternoon.

Gary has been laboring in the vineyard alone on this issue for a very long time. He's kept coming to us at the Rose Institute saying, "We need to do more work on this. Focus on this aspect and the other." In part, because he's a very effective advocate, he has persuaded us to do it. But who would have thought it, as they say, that right at the time that we were having this third conference, there should be such interest and public discussion of returning to a part-time legislature?

This afternoon we are going to look at three of our four picks. Since the open primary has now qualified for the ballot, we are of the view that the decision on it can be left to the good sense of the voters of California. In each of the other three cases, we are going to hear an exposition of the reform, including thinking about different provisions, followed by commentary and criticisms of one or more of the features of this proposed reform.

After each of these three sessions, which I judge should take no more than two hours, we hope to have you out of here with a glass of wine in hand by 5:30. We will adjourn for refreshment, liquid and otherwise, and it is our hope that we will continue to have informal discussion of these topics at that time.

Next month the Rose Institute will publish a booklet in which these three model constitutional amendments will be issued. They will be revised after today's discussion, and revised and reworked or clarified by legal and constitutional specialists. Included will be appendices explaining the reasoning behind these different features plus brief analyses of alternative approaches. You should also note that at 4:00 today, there will be, posted on the Rose Institute website, the current draft language that you have in your binder. But if you wish to bring these issues to the attention of others, you might refer them to our website, which is: <http://rose.claremontmckenna.edu>.

It is our sincere hope, that through these conferences, what we are now posting on our website, and the forthcoming publication of our model constitutional amendments, we can make a contribution not only to public policy, but also perhaps to needed improvement in the way California initiatives are actually drafted.

With that said by way of background, let me now introduce the first of our three subjects which is redistricting reform. You have a draft model amendment on this subject in your conference binder. To address it, I am going first to ask the drafter of this language, Alan Heslop, to speak and then Tony Quinn to comment. We hope there will be time for question and dialogue with the audience after their

presentations. When that is complete we will move on to the other two model amendments as well.

I'm not going to take time introducing these individuals. We have in the binder, under tab two, detailed bio sketches of each of the participants and I would urge you all to read them as and when their presentations become boring.

**ALAN HESLOP:** My focus is tab three in your binder. In my remarks last time, in February, I emphasized two main points. First of all, there was a spate of redistricting reform proposals, not only those that Ralph mentioned, but many others coming from both sides of the aisle. But there is a difference between redistricting reform proposals of the '70s, '80s, and '90s, and the ones that are making their appearance today. The older reform proposals had a clear target of partisan gerrymandering: abuse by the majority party of its power to redistrict the minority party into even further minority status. The reform proposals of the current era are focused on bipartisan gerrymanders, the so-called sweetheart abuse, whereby both political parties join in drawing safe districts for all incumbents.

The second point to be made, perhaps an obvious one for those who follow redistricting, is that the reform techniques that are appropriate for solving problems of the partisan gerrymander have a strong tendency to create bipartisan or sweetheart gerrymanders. Conversely, the reform techniques that are focused on preventing the bipartisan gerrymander have a tendency to create a kind of covert partisan gerrymander. You can see what I said on that under tab 6, pages 4 and 5. If those ideas are difficult for you I think I have made them fairly clear there.

I went on to ask the conferees three fairly simple questions. First: which should be the primary target of redistricting reform, the partisan or bipartisan gerrymander? And if it's both, and that seems to be the reaction of most people, what is the appropriate mix of techniques for taking care of the partisan and bipartisan gerrymander? Second question: Should redistricting reform focus on redistricting abuse narrowly, or should it attempt to deal more broadly with redistricting as just one facet of the problems of the contemporary legislature? And, of course, that is intimately related to the question, "To what extent should legislators be left involved in the redistricting process?" Third question: I pointed out that in the '70s and '80s redistricting reform had the support of the GOP, in terms of funding and political energy; but today, when the leadership of both the GOP and the Democratic Party are committed to the current system, which has advantaged both, where is the money

coming from? Where is the political energy? Where is the funding coming from to support redistricting reform?

Last time, in an effort to stimulate discussion and to illustrate some of the alternatives, we presented two very different alternatives to redistricting reform. One, those of you who were here will remember, left redistricting in the hands of the legislators, but tightly constrained it with very detailed criteria, including nesting, geographic limits, and others. The alternative approach took it out of the hands of the legislators entirely and put it in a commission. The approach we used for that was an initiative that had been developed for Ollie Speraw by Cary Davidson and others, as well as some of the features of Proposition 39 going back into the '80s.

How were those questions answered last time? One of my questions, "Should redistricting be left in the hands of a reformed legislature, should legislators have any continued role in it?" drew mixed responses. David Ely, you remember, was very clear that legislators are the people best to draw the lines. But most other comments in response to our panel and afterwards, and in response to other panels as well, indicated a deep distrust of the legislators and their self-interest in the redistricting process. So, that being the bulk of the answer to that question, the proposal that you have before you under tab 3--and I should say that I have worked very closely on it with Doug Johnson--is for a commission-type redistricting that excludes legislators and other partisan office holders from the process.

The second question, whether partisan or bipartisan gerrymanders should be the main target, seemed to be addressed by comments throughout the conference emphasizing that the problem today in California is lack of competition. The only voice raised against this theme was David Ely's, and you can see his, I think, very intelligent comment under tab six, halfway down page 10 on that issue. Generally, however, most people that I talked with after the panel thought that both the partisan and bipartisan gerrymanders must be prevented. And so with that answer, the proposal that you have before you attempts to target both, which raises the question of the mix, of course, of criteria.

Now as to the third question, "Where's the money coming from?" There wasn't an answer given that day. Surprise, surprise! The Rose Institute is currently pursuing funding sources so that we can take this redistricting initiative in draft around the state to involve different publics in the review of its provisions. So, in light of that opportunity, we haven't finalized the proposal before you and remain open to any and all suggestions. And certainly the suggestions that, I

know, Tony Quinn is going to make with his usual force and flair.

Since the proposal runs on several drafted pages in your tab, in flagrant violation of Craig Stubblebine's injunction that constitutional language be terse, I'm going to try and summarize some of the main points and take you very quickly through its features. So, if you look at tab three, section two on page one, puts the power in the hands of Independent Redistricting Masters. Independent Redistricting Masters, that's where the authority lies.

Section three, on page two, under tab three, establishes county commissions that will draw local Units of Representation, or UR's as we call them around here, to serve as building blocks for the districts and constraints on the Masters. Leroy Hardy and I would have preferred to make much more use of the UR concept but we found little support for it. We did take into account David Ely's critique that the Units of Representation should be small. And you can see that we defined that. And we also used the opportunity to get the counties to redraw census tracts for the next census, which is a work long over due in many areas of California. Part of the basic thinking behind this provision is that cities and counties should like it because they have long been the victims of redistrictings conducted by state legislators.

Section four, also on page two, spells out the redistricting criteria; 4B begins with competition. I have already mentioned David Ely's strong reservations on this point. If you run your eyes down those criteria you get to 4K, where, to the extent practicable, the Masters are told to use Units of Representation and to respect county and city boundaries. I should say that we, or at least I, will be especially interested in comments regarding the prioritization of these criteria. Should they, in fact, give first priority to competition?

Section five spells out who the Masters are to be: they are retired appellate court judges under the age of seventy-five, who have not held partisan office and who have been chosen by lottery.

Section six spells out staffing and organizational features of the Masters' operation.

Section seven makes rather detailed requirements for public hearings.

Section eight, I'm sure we are going to hear about this one, requires an automatic referendum.

Section nine gives exclusive jurisdiction to the Supreme Court.

Section ten requires severability of the provisions and maintenance of the Masters in existence until all challenges have been resolved.

Now then, when something like this is devised, many questions remain, even in the minds of those who drafted it. What is the major unresolved question in our minds? I suppose it is the effective date of the reform. This is drafted to come into effect after the next census. That is down the road. But look, a lot of the political enthusiasm, and a lot of the energy are focused on making a change now. But set against that, many of those who would be disadvantaged by change now, are going to fight much more fiercely against any reform that comes into effect now than they would if it is postponed until next time. So, that is certainly one question on which we would appreciate comments. There are other respects also in which we are conscious that this draft still requires work. It is deficient in lacking a funding section. I am troubled by the degree to which criteria are appropriately prioritized. I personally feel some discomfort that the draft does not address the possible partisan involvement of staff. I would encourage you to look at David Ely's comments on staff power, again on page ten. I have to tell you, therefore, that this is still a work in progress. But I'm confident that Tony Quinn will tell us how to improve it, correct it, make it perfect. Tony.

**TONY QUINN:** Well, this does come closer to being perfect than what we have now, but it is not quite there. I like the notion of the Independent Commission, basically because we have a history of how that worked. We have the 1970s when, due to the partisan break-down, the three court Masters drew the lines, and particularly in the 1990s when that process was forced into being again by the Republican Governor vetoing the Democratic plan. Almost universally the media and people who look at this stuff and the political experts around the state think that the court Masters in 1991 did a very good job. They laid out in very great detail what the criteria were and how they interpreted the existing constitution. The plans that they put into effect at that time favored both parties but depending on what the voters wanted. In '94 the Republicans did very well under the plan. In '98 the Dems did. And you have the competitive seats. I think that the media now, having looked at what they've got today, is very sensitive, much more so than they were before, that we lost something when we went to this whole sweetheart deal that we have now, in which there are 53 safe congressional districts in the state of California. *The Target Book*, which I am involved with, looks at every one of these things--I just talked to the editor because our new edition will be coming out on Wednesday--shows that we have no

competitive races for Congress and three for the State Senate. I mean, that's almost none. So, the concept is a good one.

There are three areas where I think this needs to be improved. One starts with the Units of Representation. I'm not sure I know exactly what they are, but section three says "each County shall establish a commission, with representation from each city in the County, to take public testimony in order to establish Units of Representation for the County." It is probably a good idea to do this. However, I don't think it works in a state like California as a mandate on all the counties. We have one county with nine million people; we have one county with little over one thousand people. We have 58 counties; we have hundreds of cities. Many counties in California actually have twenty or thirty thousand people--the little cow counties in the north. I think that needs to be fixed. I think that it should be made voluntary, made optional. Also, Alan talked about paying the money. Well, if you tell a county they have to form a commission; they have to hire staff to do it; they don't know this area; they have to employ people. That costs money. The counties in California right now are broke; they have no money. Arnold Schwarzenegger just told them they have to give up three billion more dollars, of money they don't have, to help balance the state's budget. So I think you would get very, very strong opposition to a mandatory requirement. I think that for some counties, L.A. certainly, this would probably be a good idea--and in some of the more diverse, complex counties--but in Calaveras, Amador, you don't really need this.

I have a problem with section five, paragraph one, the Independent Redistricting Masters and alternatives, one shall be registered with the Republican Party, one with the Democrats, and one Independent. I know quite a few sitting appellate judges, some of whom I know are looking forward to hitting that twenty years when they get that fat pension and can leave. I know a few retired justices. I don't think there is a single sitting appellate justice who, probably not even any retired anymore, has ever held office. They got to where they are because they were deputy DA's or Deputy AG's, or members of a big law firm. They got their judicial qualifications--I would simply take that out. That introduces a partisan factor we don't need. I think that it is generally viewed that the three Masters, the three retired judges of the '70s did a good job. They hired a decent staff. The one in the '90s did also. There was never the slightest hint that those kinds of people came with any kind of a partisan agenda. They were much more interested in the legal issues, the way the criteria were followed. So, I would take that out.

Finally, I do think that it is absolutely mandatory to take out the reference here, Section 8D, "The Secretary of State shall also submit the enacted bill at the next general election for approval or rejection by the voters as if it were proposed as a referendum under Section 9" of the Constitution. That is just fraught with problems. I'll give you an example: the major funding source for politicians in Sacramento today is Indian tribes, Indian casinos. Indian tribes like some politicians; they dislike other politicians. Would the Indian tribes go to the staff and say, "Look, you don't draw the lines the way we want them out in Palm Springs, we are going to spend ten million dollars to defeat your thing when this is on the ballot"? You bet they would. I have been around Sacramento long enough to know that if you introduce an election into the process you are going to introduce all kinds of games playing. There is no need for it. The people of California don't want to vote on this. A group like the Masters--the 1991 Supreme Court Masters--is perfectly capable of doing a good job. You are giving this to people you believe are qualified. Having spent many years in obviously important roles, having been appellate court justices, you don't need to submit their work back to the voters. I would definitely take that out.

Finally, just to close on the matter of the staff. I do think there is a problem there. Probably having the judicial council hire the staff you will again get people that have a background in demographics, drawing districts--they have done it, cities do it, counties do it, there are people around who can do this--people that are not partisans, that are not former staffers. I would probably even say something that would prohibit recent legislative staff from doing that. There are staff people around that can do the job. That was proven by the good job they did in the 1990s and the fact that this has a lot of favorable feeling now because of that. I do think that it should only take effect for the 2012 election. I think it should be brought through the Legislature rather than as an initiative because it is going to need the bipartisan support. I think that current legislators aren't going to be around in 2012--I think you have a good chance that you could get something through the Legislature if it didn't take effect until way, way down through the process.

I think we have made lots of progress here and with a few little changes we've really got something we can go to the people and the politicians with.

**HESLOP:** But we haven't heard from the others here, so please, let us hear your thoughts.

**ROSSUM:** Should we begin with a response from you, Alan, if you wish?

**HESLOP:** No, I think it would be better to use the time, and I know there isn't a lot of time, for questions and comments from others. Believe it or not, Tony and I have talked privately.

[Laughter]

**QUINN:** He picked me up at the airport.

**HESLOP:** There is a degree of, I wouldn't call it orchestration, but we certainly know where we are coming from. Mike.

**MIKE HALLIWELL:** It occurs to me that we might get some enthusiastic support from the Legislature if we tied a redistricting reform to take place as soon as possible with a relief from term limits so that they get something in exchange [inaudible]. Doesn't do them a hell of a lot of good in Sacramento since they've got such tight term limits, so you can say you can have a longer career if you have fair elections.

**HESLOP:** Now for the record, so that the transcript shows it, Professor Michael Halliwell made this suggestion. In other words, you are saying that we should look for an immediate deal.

**HALLIWELL:** Yes.

**HESLOP:** That would put redistricting reform into place.

**HALLIWELL:** Well, as soon as possible so that these people who have careers now can look forward to continuing their careers.

**QUINN:** These legislators would drive a tank over their grandmothers to get out from under term limits. They just hate them. I mean, there is nothing worse than seeing that career get cut out after six years. It's a possible thing. It is something you might offer. The problem with term limits is that the public really likes them. My favorite survey, taken by the Field Institute a while ago, when they asked them, "Was six years too long or too short?" Eight-four percent of the people said that's too long. We should have them have shorter

term limits. So they have tried various schemes to get out from under term limits without any success. But who knows, I mean, there's a possibility that they would love anyway that could be done.

**MARGUERITE LEONI:** Thank you. Dr. Heslop, how do you envision keeping your panel on your commission independent when the funding, I would assume, would have to be appropriated by the Legislature for this?

**HESLOP:** Well, that's exactly right. And as I mentioned, one of the problems with this draft is that we have not addressed the funding issue. It needs to be given independence. Of course on the other side of that is the difficulty that if you give it enough money you raise the question to the voters as to the cost of this reform. In Arizona, I believe, Proposition 106 gave the commission \$6 million, a sum that the commission quickly went through. I don't know what the total will be in Arizona but it will be approaching \$10 million. That is a state with only six millions in population, with only a fraction of the Congressional districts that we have and far less of the complexities; so how much should be appropriated?

**LEONI:** And the second question I had was the Supreme Court review. Have you considered making it mandatory so that you could cut off litigation that the Supreme Court would automatically review and approve for consistency with the amendment? And that review would be final as to the legality of the redistricting plan, much like the Florida system?

**QUINN:** I got the impression from reading the decision that when the Supreme Court took Prop. 24 off the ballot, I thought that was Chief Justice George and his pals doing the Legislature a favor myself. The Legislature didn't like it, so they took it off the ballot. But I thought that they indicated also that they really didn't want to get involved in this. If you demanded a review don't you drag them in more?

**LEONI:** If I remember correctly, there was a single-subject problem.

**QUINN:** Well, they used that as the excuse...but people around Sacramento thought the Court knew who passed their budgets and that they would take care of their friends.

**LEONI:** But it would require an appropriate constitutional amendment if there is a concern under the California Constitution about the separation of powers. But in Florida, it is automatically reviewed...

**QUINN:** Do you see a separation of powers problem when you have the judicial council choosing the Masters by lot?

**LEONI:** I see it *only* if you don't address it in the Constitution.

**BILL RUH:** I'm Bill Ruh, and one of the questions I have, and I have not had a chance to look this completely through, and I agree that the 1990 reapportionment was somewhat or much more equitable than what we have today. But in this plan, how do we square the Supreme Court requirements that these districts must be able to be fair to the different minority groups, especially in a state such as ours where you have in real terms a decreasing African American population and a largely increasing Asian and Hispanic population, but those populations are not concentrated in one specific neighborhood but rather are spread out over large swaths of Southern California?

**HESLOP:** Well, I'm not sure that you address it in an initiative of this sort because to do so, it seems to me, raises more problems than it solves. I think the best way to approach it is the way we have used, namely to require that the plans be in accordance with the Federal Voting Rights Act, and I would worry about putting in any other language.

**QUINN:** Yeah. The Court Masters in 1991 spent a lot of their report, more than half of it, discussing the Voting Rights Act, all the issues that you brought up, the growing minorities in some areas, the decline in others, what the act told them to do at that time. The way this issue was handled, in the sweetheart deal of 2001, was everyone was bought off. The politicians simply went back to their groups, whether it was the Republicans, the Latinos, the African Americans--everyone was bought off from the White House on down and they said you are not raising any of these issues. So, the Justice Department, which was bought off, didn't do it; Latino activists didn't do it; nobody did it. But I think the Supreme Court in 1991 did a very good job and really did address all of those issues. And if you allow these Masters to hire the proper staff

and the people who understand that stuff, you will get a good product out of it.

**HESLOP:** Don Sammis.

**DON SAMMIS:** My name is Don Sammis, and I'm going to ask what is probably a naive question and I admit to being rather naive on redistricting matters; but sometimes naive questions get to the heart of the matter. You were saying that we shouldn't have a recall vote because the special interests would distort that. My question is, I wonder how Abraham Lincoln would comment about those who think that we should not have a recall vote because of special interests. Maybe we need two votes. Maybe we need a vote to correct that situation. But I have problems when we say we shouldn't have a recall vote because special interests will blow it away.

**QUINN:** Well, it's a referendum on this. But the problem is that this is a job that ought to be given to people who know how to do it; that they do it properly. And I think you bring politics and partisanship, and legislative games playing and congressional games playing back in if you introduce any politics into it at all, which is why I don't like the requirement that the judges be members of a party. I don't like the notion that you would go back to the people. It would not be a pure vote. It would not be, "Let's consider this on the merits." It would be played by whichever interest groups want to gain the system. And that would be my fear. And the public has voted on this topic about a dozen times in the last 60 or 70 years, all the way back to the '20s. They have always voted against anything that deals with redistricting because they don't understand it. They voted against three referenda in the 1980s, they voted against the old Federal Senate plan before One-Man-One-Vote in the '40s and '50s. Those were not good experiences in taking this to the voters. I think they would rather you have some people who know what they are doing and are qualified to do the job and keep the politics out of it.

**HESLOP:** Darryl Wold.

**DARRYL WOLD:** If I can follow up on this issue: one concern that I have with the automatic submission of this to the voters is that would delay the effective date of the redistricting by additional election cycle of another two years. I'm not sure if that raises any federal constitutional questions in itself in delaying the adjustment closer to one-man-one-vote by an

additional two years or not. Even so, I'm concerned about that delay. On the other hand, I'm concerned about taking this entirely out of the hands of the voters because anytime you are telling the voters you are taking the right to vote on something away from them, even by referendum, that is a problem. That is the same problem, Tony, that you mentioned about term limits. Voters love term limits, voters love the power of the initiative and referendum, as Joel Fox can tell you. I would be concerned about not having one or the other.

**QUINN:** Yeah, there is a solution to that. I think it was in Prop. 39, and probably what I should have suggested is this: what you could do is leave the referendum power there. A referendum power applies to any statute that is passed by the Legislature but you have to get 600,000 signatures within 90 days to put it on the ballot. That might solve your problem also, to retain the people's referendum power, but don't automatically submit it to the voters. If the voters wanted to vote on it, they would still have a right to.

**ROSSUM:** I think we have time for one more question.

**JAMES HALL:** Gentlemen, would you discuss the communities of interest factor? And try to describe one?

**HESLOP:** There is a very interesting discussion in David Ely's talk under tab 6, pages 9-11, in which he talks about communities of interest and makes what I suppose is the obvious point, that there are a great number of them, of very different character; that they compete with one another; and that wherever you draw the line on a map you advantage one community of interest and disadvantage another. It was his main point: that by giving priority to competitiveness, you could well subordinate local communities of interest; that you could end by depressing the significance of local issues of the sort that are embraced by communities of interest.

The trouble with the idea of community of interest is that it almost defies definition. Anyone can say, "I represent a community of interest," and not necessarily be deceptive in so saying. The issue, of course, really gets an edge, when you define a community of interest operationally.

And so, Tony here has been dismissive of the Units of Representation. One of the advantages that Leroy and I saw to the UR concept is that it allows at the very

beginning of the process, local communities to express themselves before county commissions and suggest the building blocks that should be used in the creation of districts.

**QUINN:** I was involved as an expert witness in a lawsuit against the 2001 plan on behalf of three cities in the north, all of which were divided for partisan reasons in districts that ran up and down the state. What I found was that the local community, or the city at least, as much as you can define it, they do not want to be divided. And that is pretty much a universal feeling. Also, they do not want to be taken, one little city here and run into a district that goes 600 miles, or at least 300 miles as we dealt with in one of these districts that was involved in this lawsuit. They have a pretty good idea of what they want. They have a pretty good idea of what they want, the city council, they know what their own area is. Some of the criteria in here say you should keep cities and counties whole. You do not want to bypass adjacent territory to go find far off territory. Things like that will go a long way to solve the problem.

**HALL:** You are describing other issues other than communities of interest. Now, are rich people a community of interest? Alan?

**HESLOP:** Obviously, community has something to do with geographic location. Rich people, dispersed widely across the state as they are, really don't constitute a community of interest from a redistricting perspective. But, in some cases, poor people, whose geographic concentrations tend to be large enough to assume political importance, do.

**ROSSUM:** I ask you to join me in a round of applause for the panelists.

**PANEL II:  
A CAP ON STATE SPENDING**

**RALPH ROSSUM:** With that I will invite up Craig Stubblebine and Joel Fox looking at the issue of a cap on constitutional spending. Craig, at the meeting in February, talked about sparse language and we have a constitutional amendment here that could be written on a 3 x 5 note card, which was always a standard definition of things being sparse. And Craig will take us through, followed by Joel Fox in response. And as we were just commenting earlier, Joel can relax a little bit; as a result of the signing of the workman's compensation bill he is no longer out on the road trying to get an initiative qualified. He did his good work without having to get something on the ballot. Craig, you're up.

**CRAIG STUBBLEBINE:** Thank you, I guess. I'm not exactly sure what I have to add to the discussion that has gone before in the sense that the Rose Institute thinks the time might be right for a new go at a tax spending limitation on California government. Of course, we have one. That is article 13B, which is still in the Constitution and one would certainly have to ask the question, "Why, if you already have a tax spending limitation in the Constitution, would you want to do something about it?" And the answer, of course, is that over time, the provisions of article 13B have been amended to the point where it no longer forms a tax spending limitation for California government. It, for all practical purposes, has been vitiated.

There has been a suggestion that had the Gann limits not been amended in the '90s that California would not now be in a fiscal crisis, that the limits would have held spending down and brought it in line with available revenues and there wouldn't be a crisis today. To the extent that is true, then that suggests the power of an effective amendment to stabilize the spending of various California governments. The notion that counties are out of money, that cities are out of money, strikes me as a travesty. I don't know what it means to be out of money. I suppose we could all say, I don't know, that I'm always out of money. I could always use more. And I suppose I could, I suppose that the city of Claremont would love to have some more money. But that's not the issue. The issue is what level of government are the people of a jurisdiction prepared to support? It doesn't make any difference whether I think they should spend more or less. The idea is to create a process by which the electorates of various jurisdictions, the state, the counties, the cities, the school districts, can come together and decide collectively how much they want to spend. To that

end, long ago--now it seems like a long time ago--in the early '70s, then-Governor Reagan created a task force to draft a tax spending limitation, what came to be known as Prop. 1. It was narrowly defeated. And then the Gann limits came back in 1979 and were adopted overwhelmingly--by the way, by a bigger majority than Prop. 13. And for a while they seemed to work very well until people said they are too constraining, let's figure out ways to get around them. And slowly but surely you began to see the erosion of the limits as special interest groups went to work. So, what do you do? What do you do now? Well, one is to simply adopt a new limit. That is, to repeal Art. 13B of the California State Constitution, put in new language that is not yet gutted, not yet vitiated. To that end, the Rose Institute asked me to suggest some language and you'll find it under tab 4 of the booklet. It's more than the back of a post card--nevertheless, I think it covers the major issues. Below that are some additional issues that have cropped up. In my own notes, I could think of a couple more.

The idea is that every unit of California government, every entity of California government, would have a maximum spending limit, that that spending limit would be subject to change from year to year. That's in section two. In section three, there would be some automatic kinds of things: what are subject to limitation and what are not. In section four, to make clear that the entities of government can establish two types of funds, one where the contributions to the fund are within the limit but the spending from them is outside the limit, and the other where contributions are outside the limit but the spending from it are within the limit. The idea is that fiscal stabilization funds are somehow different from trust funds, emergency reserves sinking and trust funds. As far as I'm concerned, that's all you need.

Now, the constitutional lawyers, and I would be delighted to hear comments on this because I couldn't help myself from comparing redistricting and tax spending limitation proposals under tab three, and in that I find all the usual language. Do you really need a severability clause in a constitutional amendment? I don't know. This crept in. This was never in, and then it suddenly began to appear in all these constitutional amendments and no one has ever explained to me why you need a severability clause. The courts can't figure out whether or not something is central to the amendment and when it falls the whole amendment falls or wherever it's a peripheral issue and when you adjust that the rest of the provisions keep going. Do justices really need direction to this end? I don't know. Apparently the drafters of these things think they do. But I didn't put that in, and I would resist putting that

in until somebody tells me *it's gotta go in*, or else it won't work. Joel.

**JOEL FOX:** Thank you, Craig. And let me start off by congratulating you on a very thoughtful paper. The preamble to your paper, before you talk about the spending limit, talks about the sparsity of language for a constitutional amendment. I happen to agree with you on that. I think it's very valuable, although in a few moments I'm going to embarrass myself on the issue of sparsity of language, but we'll wait until I get to that point. Obviously, those who argue for the desire to draft more language, it's because they distrust the Legislature making changes to some of the amendments or making amendments to the constitutional provisions; you also have to distrust the courts, I think. In my discussions with some of the people who are currently looking at putting together a spending limit that they hope to put on the ballot in 2006, talking about the brevity that Craig pointed out of Proposition 13, about 4 paragraphs long, pretty much one page, they point out that because Prop. 13 didn't define some terms, the courts helped define it for them. For example, the barrel case being a great example: what is a special tax? The barrel case defined for us, and the authors did not. The argument, in their opinion is that they do need more language to define these issues.

Now I would suggest one possible alternative in dealing with legislative changes to these bills. That is a clause that would dictate that changes to be made to further the purposes of the intent of the bill. And what are the purposes? Well, that would be what we find in the intent language of the amendment or the initiative or as Craig pointed out, we can always find the purposes involved in ballot arguments presented to the voters to make a decision on these initiatives. So, I think that is one way to go.

I can tell you, Ralph mentioned that I was the proponent of the worker's comp initiative that Governor Schwarzenegger embraced and we had this language that the legislature could change the statutory part of our initiative if it furthered the purposes of the initiative and the purposes were a part of the intent language at the beginning of the initiative. We did this because we knew the complexity of this issue of workers compensation and if some things just didn't quite work out there was an escape hatch, if you will, as long as it was along the lines of what we intended to do. We didn't want to give them a blank check just to change it the day after it was passed by the voters. So the further the purposes clause, I believe, has some usefulness.

Now for my embarrassing moment, I told you initially that I agree with Craig that these laws should be simple and to the point and as a point of illustration, this is the initiative for worker's comp that I just recently circulated and got 1.2 million signatures. [Unfolds the mammoth document.] The law requires that we print the initiatives so that everyone can read it before they sign the petition. And yes, it is on both sides. [Laughter]

I'm a big fan of spare language.

One last point: Craig also talked about returning fiscal control to local government. I actually agree with that. He talked about the fateful language of Prop. 13 about how the revenues should be apportioned according to law. I think it is necessary to fix that. However, I am skeptical of your fix, where the property taxes all remain with the state government and the personal income tax will be controlled by local government; but because that's not the focus of what we are talking about here, I won't get into a debate on that. But I do agree with the major emphasis.

To the initiative proposal itself, I have a couple of points--more questions than anything else. But simply when I look down at what Ralph said we could probably get onto a 3 x 5 card, I wonder if, in fact, in section 2C, for example, "the spending limit of an entity of government shall be decreased by the amount of any transfer," are we discouraging the possibility of contracting out because the governments don't want to give up the revenue?

**STUBBLEBINE:** No, and the reason for that is contracting out still has to be paid for by the government unit.

**FOX:** Alright.

**STUBBLEBINE:** The issue is whether a private employee does it or someone from the public sector--but the government still pays the bill.

**FOX:** The next section we talk about the electors of any new or existing entity of government may adjust the spending limit beyond the adjustments provided. The question I would ask is, "Is this a permanent increase?" There are no caps in this clause. Under the Gann limit, which I know Craig had quite a bit to do with, the increase was applied for four years. After four years the base would have to go back to its original base unless the people voted again to increase

or keep up the increase, or continue increasing, this limit. So that is not defined here and the question is, "Should it be?"

On section 4A we talk about each entity of government may establish a fiscal stabilization fund, but there is no discussion about how big this fund can be. There is not mandate for a refund if the fund gets too large. And I remind you that when Proposition 13 was on the ballot, one of the key issues that helped it pass was that the state was sitting on a 40 percent surplus at the time. So how big of a surplus do you put in place and do you control that with language in the initiative itself?

**STUBBLEBINE:** I'm not sure what your point is here.

**FOX:** Well, should you have a cap in that language?

**STUBBLEBINE:** Assume that it had been capped in 1978 and Prop. 13 had failed.

**FOX:** Assume what? There was no spending cap in 1978.

**STUBBLEBINE:** No. Assuming the surplus was not there and Prop. 13 had failed.

**FOX:** Okay.

**STUBBLEBINE:** Would that have been a desirable outcome?

**FOX:** I'm missing your point here because if there was a cap in 1978 then there would have been refunds to taxpayers.

**STUBBLEBINE:** Not to property tax payers. So, your point was, "How large should the fund get? Shouldn't it be limited?" And you used as an example that there was all this state surplus when Prop. 13 was passed and gee, that's part of the reason that Prop. 13 was passed. Now, would you rather that the state not have had a surplus and 13 not pass? Or 13 pass and you use the surplus to adjust 13?

**FOX:** Well, I see what you are saying but I would have rather have a cap and we wouldn't have gotten into that

circumstance in the first place. I was emphasizing the cap.

Alright, I'm going to your endnotes now. Professor Stubblebine put out a few proposals, not in the initial prototype for the constitutional amendment, but a couple of suggestions that he thought might be a good idea. The first one, "If on the first day of a fiscal year, a budget for an entity has not been signed into law, the budget for the prior year shall become law adjusted as appropriate for changes in the entity's population." I like this one. I think this one is great. I actually filed a lawsuit against the state of California because they kept missing their June 5<sup>th</sup> deadline time and again. The Supreme Court found a way to decide that case to ignore that June 15<sup>th</sup> date that's in the Constitution without penalizing the Legislature; but I think this is a great idea. I also would note that our current governor seems to have had some effect of putting tough deadlines on our Legislature to act and this would certainly be an ultimate deadline so I am very much supportive of that.

On the mandate issue of B, I don't know how it would work. You had mandates in the Gann limit; they got around them.

The enforcement question is now going to come up as I go through the next couple of issues. One enforcement idea that Craig has put forward is section C, "Any resident taxpayer shall have standing to petition courts of competent jurisdiction to enforce any provision of this Article." But I don't know if that enforcement issue is enough. Who follows it closely enough to know if the limit is being adhered to? And I have my own little anecdote on that issue: soon after Howard Jarvis had passed away and I became president of the Jarvis Association the next year in '87, I went to this conference that the California Taxpayers' Association used to put on and nobody knew me at that time. I was a pretty new face. And I sat at this table for a luncheon and a couple of people were talking. They were city employees and they were talking about their spending limits--the Gann limit that was in place at the time--and one was telling a story to the other. He said, "We realized we were coming up against our limit so I went to my supervisor and said, 'We are coming up to the spending limit, shouldn't we present this to the people for a vote to lift the limit so we can continue collecting and spending more money?' The supervisor told me, 'Son, why don't you go back and recalculate that thing or I will have someone else do it for you.'"

And my question is: who is going to know that the calculation was done in that way that we can find out that the limit was actually breached? The enforcement

question, to me, is very difficult and it sort of goes back to what Jarvis once said, and I will close with this, he was very lukewarm to spending limits, he would say, “if you don’t want them to spend the money, don’t give it to them in the first place.”

So, anyway, good job, Craig.

**STUBBLEBINE:** Thank you.

**MARGARET CLARK:** I applaud you for saying that you want fiscal control to go back to local government. My question is where you said that the Legislature could change the language...

**FOX:** If it was an initiative. Craig’s proposal talked about, should it be a constitutional amendment, can some of this stuff be done by initiative statute, and depending on how it is written of course, if there is no statement in the initiative statute then they can only make changes by initiative statute. However, there can be, and there has been on many occasions, and in the workman’s comp initiative there was, language that said the Legislature has the ability to make changes. So I was referring to that.

**CLARK:** Right, and that’s what I want to clarify. You said that if it furthers the intent. Now who decides if it does?

**FOX:** Well, that would obviously end up in a courtroom, I’m sure. But you do put intent language into the petition. You do say we are intending to do this.

**CLARK:** Ok, so if you didn’t think that it furthered your intent you could take it to court?

**FOX:** Yes, I could argue that. Well, I probably wouldn’t.

**DAVID FRISK:** I’m David Frisk, I’m a Ph.D. student at the graduate school, and I know that there has been at least one initiative in California history that permitted a provision by the Legislature but only by a supermajority vote of the Legislature, a very high supermajority if I’m not mistaken something like 75 percent, virtually making it certain that the minority party could not steamroll it. Doesn’t that make sense if

we are going to allow the Legislature a bite of the apple?

**FOX:** I think that what you are thinking of is Prop. 103, which is the insurance initiative?

**FRISK:** It was Prop. 187.

**FOX:** Well, my point on 103 is that there had been a vote on 103 to change the language that the author actually said he thought was not appropriate, but the Legislature got, or almost easily got the 75 percent to make the change. I don’t think the author challenged that. You are suggesting this would be an appropriate approach...

**FRISK:** An additional means of seeing that this is done honestly. I mean, you put some democratic check into it. You’re not only relying on the good faith of judges.

**FOX:** That doesn’t deal with the question. That deals with changing the provisions of the initiative after it’s passed. But for my own clarification, you’re not talking about changing the provisions of the spending limit?

**FRISK:** As I understand it, any provision of the initiative could be changed by the Legislature in order to make it function better, to better serve the purposes of the initiative that are stated in the initiative. But why not, in addition to the intent language in the initiative, why not put in veto by the minority party in the Legislature through means of requiring a supermajority if that was to happen?

**STUBBLEBINE:** What happens is the more detailed you make the initiative the more likely you are to need the Legislature to touch it up here and there. As long as the touch up by the Legislature furthers the intent of the initiative, then that should be allowed. To the extent that it tries to undermine, then it shouldn’t be allowed. I don’t know that that would affect any of the language here in this prototype. You wouldn’t want the Legislature to change the language of the prototype.

If you look at many, most, or all of the proposals that are currently circulating for tax spending caps, they are all very detailed. They look like redistricting cubed. And as soon as you do that you run a substantial risk that you’re going to miss something and you will have people run a new provision or let the new legislature

touch it up. I don't think you intended to say that the Legislature could come in and redraft any of this language.

**FOX:** No. No. No. Obviously I didn't make this up.

**ROSSUM:** Karen, you had a question.

**KAREN ROSENTHAL:** I should say I'm Karen Rosenthal, a former councilmember of Claremont. In response to Mr. Fox's concern about section 4A and about the size of the fiscal stabilization cuts, it seems to me that it is very rare that cities and areas have been able to put aside much money, or as much money as we would like to put aside. Usually we set a local goal, let's try to put away X number of dollars in this emergency fund. I doubt that that really is a problem. Also I would think that having this in there would serve to stimulate self-imposed spending caps in order to be able to increase your reserves as much as possible. It seems to me that in the last what, 30 years or so, every time the state got a surplus I got a check for \$71, which always seemed to be absolutely absurd.

**FOX:** Well, that happened one time.

**ROSENTHAL:** Well, but what's wrong with saving that, putting that money away and saving it for a really rainy day? I mean we did have a surplus a few years ago.

**FOX:** Here's the man who wrote the language to cut you your \$71 check.

**ROSENTHAL:** Well, I would hope to keep something like this in here to help encourage, cities, counties, whoever, to save that money for that reason.

**FOX:** I'm not opposed to having this kind of fund. I'm just concerned that it could go out of control. As I pointed out, the state itself did build up a huge surplus, an out-of-bounds surplus, at one time. So we do have a historical record that at least it can happen. And that's why I brought up the cap issue. I'm not opposed to a fund in existence.

**ROSENTHAL:** It also shows, that in the whole budgetary cycle over several generations, that surplus could just as easily disappear on its own.

**FOX:** Perhaps. Yes. Historically, I think, it came about because of the tax increase during the '70s.

**STUBBLEBINE:** To the extent that the state borrows too, you want some of this excess surplus to go to pay down the debt. We are so far in debt that I'm terribly concerned.

**FOX:** Actually, I skipped over one point I meant to ask you about. Didn't the Gann limits have exemptions for bonds, which you don't include here, and why not?

**STUBBLEBINE:** Under the Gann limits the idea was, that if you passed a bond by the required two-thirds, that the spending of those proceeds would be outside of the limits and the servicing of the bonds would be outside the limits, so both the spending and the servicing is outside the limit, under that provision. That's why that was put in. I don't think it's an issue.

**DON SAMMIS:** As a somewhat ancient graduate of CMC, I was intrigued by your comment that Mr. Jarvis didn't particularly like spending limits because he said, "Don't give them the money in the first place." I like that too. But is it really practical? Aren't there about 155 or 300 ways that we citizens get taxed? How do you stop all those hands that are reaching? The spending limit seems rather simple and so, how do you stop taxation when there are so many ways it can be done?

**FOX:** He was only lukewarm about it. Jarvis actually endorsed the Gann limit, but very late--some of that was politics, jealousy I assume. But he did endorse it. His idea, his quote--"Don't give them your money in the first place,"--was he liked tax cuts. He believed that if taxes got to a point, you should just cut them and give it back to the taxpayers. Now your point is well taken. There are so many revenue nicks that we take, and start bleeding profusely, and a spending cap is a bigger bandage that can cover a lot of that. I take that point I think it's a good point.

**SAMMIS:** But, is there a tax, like the income tax, that the citizens could say, "We're cutting the heck out of this?" I suppose, there is.

**FOX:** Sure. The major taxes of the state are income, property, and sales.

**SAMMIS:** Do you tend to be more comfortable with that than with a spending limit?

**FOX:** I think you need both. I do agree with you that we should have a spending limit, but on occasion I do think that spending limits are very valuable. But I wouldn't rely on one or the other to get to the point we want to get to.

**ROSSUM:** I think we have a part-time legislature we need to talk about in part of our time. So, we need to move on to the next panel.

**PANEL III:  
PART-TIME LEGISLATURE**

**RALPH ROSSUM:** We are turning now to an issue that probably strikes many people as a surprising issue. There has been talk about spending caps and action on that in the past. There has been a lot of talk about redistricting reform. But there has been some considerable period of time since there was a serious discussion about a citizen part-time legislature as opposed to a professional full-time legislature. Among the events that led us to the recall was a Legislature that seemed, to so many in the public, as so out of control. The Public Policy Institute of California poll, this past September right before the recall election, indicated that only 21 percent of likely voters in the state thought that the Legislature was always or generally capable of doing a good job. All of that coming together makes a discussion, about reining in that full-time legislature and going back to something pre-1966, a topic that is not only timely, but a solution that might be viable. Gary Koval is here to outline how to adjust the current State Constitution to bring us in that direction.

**GARY KOVALL:** Thank you, Ralph. First, I thought I might just recap briefly what we did at the last seminar, some of the observations. As you know, there was a white paper handed out which walked the reader historically through the reforms of 1966, 1972, and the Constitutional Revision Commission attempts of the early 1990s to look at reforming the legislative process, the Legislature if you will, of California. And I came up with a number of soft conclusions. Being co-author on the report, I think, it's unavoidable to conclude that reform is needed, that change is needed; we need to get back to maybe a Legislature that seemed to work a little better 35 or 40 years ago. But I also want to make clear, as I did then, that when you compile the research on this topic, you are really hard-pressed to find anywhere any significant amount of support for what the Legislature is doing. The types of numbers that public policy poll developed--you've got 21 percent of the people thinking that the Legislature is doing the right thing most of the time. I'm not sure that if you polled people about attorneys or used car dealers that you would get numbers as low as 21 percent. It's pretty dismal. Then the Governor is sitting back, having a cigar in Hawaii, and sort of pontificating, is, I think, the expression John Burton used about the legislature. He was musing that maybe it's time we need some reforms. And when you go back to the people and talk to the people, the individuals who were the architects of the reforms of the '60s and '70s, Bob Monagan and others, they regret what has been done. Every one of them that is still alive today looks at it

says this has not worked; it did not bring about the intended results, which were a more professional legislature, more capable of dealing with the big issues, more capable of representing California's interest even in the national political process, in the so-called backwaters of the Congress.

Briefly, what did we have? We had two panelists, Richard Katz, whom I had the pleasure--and I really do mean this--when I was lobbying in Sacramento in the '80s I had the pleasure of working with Assemblyman Katz on a number of bills. And he took his job very seriously; he got involved with substantive details. Yes, there were politics involved; there always is. But he was a very, very good legislator and I enjoyed working with him more than others in Sacramento and I really started listening to his views and he started off as your outline says, your manual, "You are asking me to defend the indefensible." I'm not sure what I can say except to quote what Richard said at the conference because even from his perspective, clearly, there are concerns. Now he happened to think that some of the criticisms were unfair: for example, that the Legislature has only adopted on time a budget four times in the last twenty-five years. He would rather attribute that failure to the fact that it requires a two-thirds vote to pass the budget. Therefore, if we had recently passed 56 we would have budgets, God forbid. He also believed, as did Mark Blitz, that term limits, perhaps, is an issue more worthy of looking at. But we know, from every time a poll is taken the sacred status term limits seem to have among the electorate.

Anyway, looking at this topic I can tell you this: of the four topics we saw debated at the conference, clearly this is the least esoteric. It is not complicated. What do you like? What don't you like? What does the public think? It is to reform the Legislature to bring it back to 1966 with, perhaps, some improvements in the process. This is a relatively straightforward and simple thing to do. And it would appear to be a relatively popular thing to do in the minds of the voters.

What I have done here, and I'll walk you through quickly--and I have a little fun with one part of this and may actually slip by you if you haven't looked at it very carefully--what we had in the Legislature in 1966, basically, is we had annual sessions; one year, the odd year, was the budget session, the even number was a policy year. What happened with the reforms in 1966 is that we extended those sessions to the entire year. What happened in 1972, Proposition 4 that Bob Monagan pushed through, is we combined the sessions into one 2-year session and we moved it to December--first, right in the kickoff year right after the election. So it went for 25 months. That is where we are; that's how we came to be where we are.

What I have attempted to do here, for your consideration, comment, reaction, is to kind of go back to the pre-'66 model which is the one year budget session, one year policy session with, of course, the option for extraordinary sessions, special sessions being called by the Governor. However, I also took seriously comments made by the panelists and more importantly, comments made by the Constitutional Revision Commission in 1993 that suggested that we should increase term limits. So I trod upon that thin ice. I think that the Constitutional Revision Commission recommended 16-year and 20-year term limits. More recent observers have said 12 years. What I did here, in fact what you have is reproduced Art. IV of the Constitution--all 28 sections of it--and I have amended in certain areas things that go with the theme of this presentation.

The first thing I did in section 2 is to increase, or at least I attempted to--we'll wait to see the comments--is to increase term-limits to an aggregate total of twelve years. You can have three Senate terms, you can have six Assembly terms, you can mix and match, but you can't be there more than 12 years. That 12-year thing came out of not only Richard Katz, I believe, and Mark Blitz, but also you see it in the literature. A lot of people say if we extend these terms a little bit it might address this concern you've seen by some of the people who have tried to defend the Legislature--those, by the way, who are currently in it--who claim that the state is so complex with 36 million people, and God knows how big the budget is now, that it just can't handle the business of the people unless these individuals can have a little bit more time to learn their jobs and to stick with it.

In recognizing that, that can be a poison pill put to anything that would be put before the voters, and this one initiative or proposal would obviously have to go to the voters. This would have to be a constitutional amendment.

What I then did in Section 3, and you will see that there are strikeouts and underlined material--being new material--I basically went back to the pre-1966 model with a couple of minor revisions. I extended the general session, which is the first session, to 150 days--it used to be 120 days; and the second year would be budget session, which used to be 30 days--I extended it to 60 days. I put in controls, which also existed in pre-1966, on the amount of per diems, the amount of interim committee time the way these legislatures can get around term limits and find themselves in constant hearings and interim hearings, and other special committees and things like that, which is limited to a maximum of 60 days additional days work per year with one minor revision: if the governor vetoes bills the

Legislature can come back for 15 calendar days and act on vetoed legislation after the governor is done. So that is pretty much in Section 3, and I would submit to you with some relatively minor changes it is pretty much what the constitution looked like back in 1966.

I have attempted also, in various areas, to lower the fiscal issues surrounding the Legislature; what I have attempted to do is say, "Listen, for the first session of the Legislature after this thing passes, you are not going to spend any more money in the Legislature than you did in the prior year. Furthermore, you are going to reduce it prorated on the actual number of legislative days versus the legislative days that existed prior to this amendment. So, we are going to see a cut in the \$99,000 a year that each legislator makes, and of course the leadership makes more; we are going to see a cap on the number of \$120 per diem days that they can continue to go ahead and get expenses for legislative work as well, so there is that attempt in here as well. Again, it might not have been properly done, but that was the intention.

The sleeper--and I have to admit that when I was fiddling around with this thing I was all done--and I don't know if it was inspiration or a fit of silliness, but, I took Section 6 and I decided to double the size of the Legislature. And I'm not sure if that's a good idea; in fact, I think it may be a bad idea. But that has been another criticism, which overflows and crosses over into all the other subject areas that you hear about in reform, is that we have these huge Assembly and Senate districts in the state of California, bigger than congressional districts in every other state and maybe it's time that we increase the size of this Legislature. What I did was basically double the number; we'll have 160 Assembly members, elect two from each Assembly district, and two senators from each senatorial district until you have the next census, when you'll draw the new lines and come up with all proper districts, and each one will have his own district. It kind of runs counter to a conservative look at what we might want to do in terms of the Legislature. So, doubling the size, I'm not sure it fits, and I tend to be someone who looks at how public opinion might effect an initiative like this and I tend to think that extending term limits to 12 years might be a bitter enough pill to put into this type of reform package. Doubling the size of the Legislature could be poison. Just something to evoke some response and comment; I have sent this around by email and I haven't gotten any comments from anyone--and I even highlighted that section, so maybe everyone really likes it.

The last thing that I did comes out of maybe more personal experience than any particular reform advocate. Having been a lobbyist in Sacramento--I

represented ARCO for a number of years--one of the more unnerving things that happened, and it troubles me till this day as a citizen, is this idea of taking a spot bill or a shell bill, running it through policy or fiscal committee, gutting it, whatever silliness was in it, and then dropping energy industry deregulation into it when the Legislature is about to go home in September. It is an awful way of making law. It's the worst. It is terrible. It has happened to me personally. You have to be so incredibly vigilant with what is going on in those conference committees; the smoke-filled rooms--what used to go on down at the Torch Club--because this is where it all happens and these simple little bills that meant nothing turn into monsters that we can't control after they get on to the governor's desk he signs them. So what I did in Section 8, which is on page 8, I put in a provision, which parallels a provision in the Missouri state constitution, which is called a principal purpose provision. Would it work? I don't know. You can read it. But what it does is it basically says that once a bill gets beyond policy and fiscal, it cannot be amended beyond its principal purpose without going back to policy or fiscal for a public debate. And that's the intention of this. I would like others to tell me if it has been done properly. And it mirrors a very similar provision in the Missouri Constitution.

And, I think, the rest of the constitution I left alone. With that I guess we'll invite comments, criticisms.

**ROSSUM:** Well, I'm going to make some comments first. I should begin by saying that I am very intrigued by everything he is proposing. To my mind, it makes a lot of sense and I do like the term limits reform. We do hear so much talk, that by the time you find out where the men's room is you are termed out. A longer term--12 years, that's to say six 2-year terms in the Assembly, three terms, four years each, in the Senate--a 12-year aggregate makes a lot of sense. And for those who are believers in term-limits, really represents, in the aggregate, a reduction in the number of years that one could serve in the Legislature. It gets rid of the professional politician right now who will serve two years in the Senate and three terms in the Assembly. It is a reduction from 14 years to 12 in the aggregate and, I think, that's a valuable thing to promote and, I also think that, it helps to sell it in term of "Yes, I'm for term limits and these are even stricter because so many have been jumping from the one chamber to the other."

Gary has taken us back to a budget session of sixty days, a general session of 150 days, limiting the per diems to 60 days of work unless they are involved in a bunch of joint committee work where they can have 60

days of per diems. Again, all of this is designed to get legislators back as citizen legislators where they actually will have to earn a living doing something else. And by having to make a living by doing something else, will have a better appreciation for the regulatory regime that they have been imposing on the public generally, but which, as full-time professional politicians, they have to some considerable degree been allowed to escape the full consequences thereof themselves. I think this all makes enormously good sense.

Gary said that he isn't certain about doubling the size of the Legislature. I am. It strikes me that more numerous legislators in Sacramento would make a lot of sense. I think it would work well with redistricting; the smaller the districts, the fewer the games that can be played with elaborate gerrymandering schemes right now. But, quite apart from that, right now we have 40 senators--each with a constituency of about 925,000 people. We have 80 Assembly seats--each with a constituency of about 462,000 people. Under Gary's scheme, we will have a Senate with those 462,000 voters and we will have an Assembly with 231,000 voters in each. Just to give some historical perspective, in 1970, every congressional district in the United States had a population of about 430,000 people, so even with this reform--even doubling the size of the State Senate in California--there will still be more constituents per California senator than there were constituents in a congressional district back in 1970.

We look at European democracies: I got the chance to be in the Balkans this past summer and was in Finland. Finland has five million people and they have a 400-member unicameral parliament. We have always emphasized the republican nature of government in the United States; republican in the sense of a form of government where representation takes place. We can certainly go towards a much more numerous representation which will allow the representative to represent more accurately the constituency than we are doing right now. So, I think, that is a very valuable proposal as well.

Also, there is the concern about shell bills and the substitution of, or pouring of, entirely new substance in at the end. Gary gave us the example, and of course it is the worst example we can think of, the so-called energy deregulation efforts of a few years ago, where this was all dumped in right at the final period and voted on, with nobody having a clue of what was in that monstrosity. And that is reason of and by itself to introduce that kind of language that he has taken out of the Missouri Constitution.

I guess I like the limited legislature because it really does introduce some discipline. One of the things that

Arnold Schwarzenegger spoke of in Hawaii, when he had his cigar and was musing about the part-time legislature, he was talking about all these strange bills that come before the Legislature. And, of course, those strange bills get in and often get acted on. Here we are, four years after the energy crisis in California, even the federal government has gotten around to indicting Reliant Energy Resources, and yet the California Legislature has managed absolutely nothing in terms of reform of this so-called energy deregulation scheme. We have the Legislature interested in such things as legislating the size of children's backpacks, the amount of water dishwashers can use; one of the finest pieces of legislation proposed would adopt Feng Sui in state building codes. John Burton, talking about the pontificating by Schwarzenegger, said that the worst bill that he could remember came when it was still a part-time legislature; what he was referring to was that there was a bill proposed to make suicide a misdemeanor. Well, let me defend that for a moment. That is right up with the Common Law. Anyone who has read his Blackstone knows that in the volume on public wrongs, Blackstone has the following to say about suicide: he says, "Suicide is a crime against both the laws of man and the laws of God." It is a crime against the laws of man in that it deprives the sovereign of a loyal subject and it's a crime against the laws of God in that it imposes on the prerogative of the Almighty in that one enters into his presence uncalled for. Phil Burton nicely left out the fact that when it comes to stupid legislation he carried a bill that would have made it a crime to be poor.

One of the big reasons that a part-time legislature might really be useful is the old saying that "Idle hands are the devil's workshop." The amount of time spent in Sacramento on fundraising activities, on proposing an ever more intrusive regulatory regime--better that they are not in Sacramento; that they are elsewhere. I can recall early on in my political science education learning the line that your "liberties are in jeopardy while the Legislature sits." And of course, with a full-time legislature, as we have in California, our liberties are perpetually so in jeopardy because it never goes home.

Public support for the Legislature is so low right now, and with Schwarzenegger having seized the public's attention on this issue by his musing, I think that there is something to be said for getting Gary's proposal here in final form and out there. Schwarzenegger was using this as a weapon against the Legislature. He knows how unpopular they are and he knows how this kind of thing resonates with the public. It strikes me, especially when we are talking about the energy issue again, there are four full-time legislatures in the county right now: California, with each one earning \$99,000 a year; New

York, with each one earning \$79,000; Michigan, with each one earning \$77,000; and Pennsylvania, with each one earning \$65,000. You'll notice that Texas is not on that list. Texas managed to do some pretty complex energy deregulation that really worked, whereas our professional full-time legislature managed to make an absolute hash of it. It is interesting, Reliant Energy, indicted just a couple of weeks ago for manipulating energy prices in California at the height of our difficulties four years ago, is a Texas-based corporation. They weren't indicted for manipulating energy costs in Texas because with a truly deregulated system you can't manipulate the market that way. They were accused of doing it in California that had set up this elaborate scheme that just invited unscrupulous individuals to take full advantage of our gullibility.

The unintended consequences of the initiative process that we looked at in our first conference a lot of times--looked at the unintended consequences of Prop. 1A and we are living daily under the negative impact of the consequences and it may well be time to go back to pre-1965. Ford Motor Company is doing retro cars of every kind. The new Mustang is the old '65 model brought up to current standards. Maybe we need to do the same thing with the California Legislature.

**BILL RUH:** Before I ask my question, Mr. Burton needs to remember one of the pieces of legislation that he introduced this year would ban the production, consumption, or sales of [inaudible] [laughter]. Having said that, I concur that going back to the part-time legislature is a good idea. One of the concerns I have is, what happens in a state like California where we have many employers who are reticent at best to let their employees have three days off for jury duty, much less, could you imagine what happens when a person wins office then the employer says, "I'm not letting you off for six months of the year. You're fired." What happens then? Or will we get a legislature only of independently wealthy individuals who can well afford to take the time off?

**ROSSUM:** I guess my first response is that well, anybody who has not demonstrated sufficient ability to take care of his own affairs ought not to be participating in the affairs of state. I want successful people in the Legislature, not otherwise. That raises all kinds of questions about the range of representation but I'm less worried about having people who have not displayed great management and income-generating ability not being in the Legislature.

**KOVALL:** I think that is a problem that would fix itself relatively quickly. There would be some discontinuity when this passed, but certainly after that--after the elections for new seats, I can't imagine why someone would run for office knowing that they would get fired, I mean, without consciously making that decision. I think that what we are calling for here is the return of the citizen legislator. Go back to your district and find out what really is happening. Don't sit up in Frank Fat's up there having fundraisers and filling up, all that time not understanding what your constituents really want. You get caught up in that club atmosphere and you start introducing silly bills.

**QUESTIONER:** Is there a limit right now on how many bills they can put in? I think it's 30, correct me if I'm wrong. And is that why they pick "what I can get my name in lights on?" If so, can you put in a limit on the number of bills they can put in?

**KOVALL:** Maybe someone else can answer that for me; I think there is a House-imposed limit on the number of bills a member can introduce. There is no constitutional limit. I think they regulate themselves. But I think the number is much bigger than 30 because they introduce like 6,000 a year.

**QUESTIONER:** Why don't you write in a real low number?

[Laughter]

**KOVALL:** We could do that. Marguerite.

**MARGUERITE LEONI:** Yeah, I wonder whether you risk government by staff and lobbyists who are not elected if you have a part-time legislature?

**KOVALL:** You know, one of the purposes in creating the full-time legislature was to also professionalize the staff. The argument was that it would make legislators more on a level playing field with the governor and more able to deal with the complexities of what is happening in Congress. So, I think, to some degree that would be an effect of this. So, we would have to look at perhaps limiting--this might be the first cut, the second cut would be starting to trim staff. For those of you who have worked Capitol Hill in Washington, I mean, how many times do you actually sit down with a Member, I mean, unless you know the Member personally? You are dealing with staff who are

incredibly powerful. They stay and stay and never change.

**NEW QUESTIONER:** Would you consider a unicameral system in your reform?

**KOVALL:** I would just answer it this way: I just read an *L.A. Times* article yesterday or a couple of days ago by a Fresno business man who has been pushing for a limited, one-house legislature in California. It was looked at by the Constitutional Revision Commission about ten years ago and it was rejected--I don't know why. Perhaps someone else can comment on why. There is only one state in the Union that has a unicameral legislature and that's Nebraska; that I know. I don't know why we stay with sort of ancient kind of system that we've had in this country for so long. I would think that if we are going to make a meaningful change it ought to be relatively on the margin right now, returning to a part-time status. By the way, I should confess that there is another sleeper in here right in section 3D--that no legislator can draw their pay or get reimbursed for expenses for any time that they don't get the budget passed after June 15<sup>th</sup>. And that has been talked about. Was it on one of the recent initiatives? It didn't pass--oh, that was the good part of 56. But this would stop them from getting paid if they don't get the budget done. I think it is something we need to look at. It's a pretty drastic move from our traditional California. It may be too much, too soon. Dan Walters has suggested that we should go to a parliamentary system instead. Would we have a House of Lords? I think we have that right now. [Laughter] Perhaps Dr. Heslop can tell us more about the Parliament-type model.

**ALAN HESLOP:** There's more turnover in the House of Lords than in the California Legislature or the Congress.

**ROSSUM:** We are trespassing on our time limit here, but we will take one more question.

**DARRYL WOLD:** Let me raise one area of concern. I fully support all of the proposals you have here. I do have one concern though that you might address. Going back to a part-time legislature, as you point out, would require the legislators to be self-supportive, they'd have to have a business or profession or what not, and with our sometimes overwhelming concern with ethical issues, conflicts of interest though, that starts to raise a substantially greater number of

potential conflicts of interest the legislators have. Those who have served on City Councils, for instance, that's a part-time position, are certainly familiar with that--the attention they always have to pay, the recusals they have to exercise because of the increasing frequency with which they run into those conflicts of interest which we have adopted because people like those too, in their efforts to get as pure a decision making process as they can by imposing rules rather than electing people they trust to do it. But that's the way we do it. That was one problem we had with the part-time legislature.

**KOVALL:** I would think you would want to watch that for possible subsequent reform. I'm not so sure we wouldn't attract people who were just dedicated. We are talking about reducing salary, and maybe no one in this room would want the job, I don't know. But I don't think that you necessarily go into this just because of the salary. I think there are people there now that do. I'm not so sure that was the case before and I'm not so sure that we can't evolve back. We have people who are dedicated public servants and they get compensated and perhaps they have a small business back at home.

**WOLD:** It wasn't that way. I was there in 1966. I first went to work for Bob Monagan in late 1966--that was the year 1A passed and they went from a part-time to full-time. But the Legislature that was elected to serve in 1966 was still the old legislature, people who worked for a living, worked in their own private enterprises at home. I mean, they didn't work in Sacramento for the Legislature. They all had professions, practices, or whatever there that they had to keep up when they weren't in Sacramento. But as time went on there came increasing concerns about the conflict of interest between the bills they were passing and their private financial interests from their businesses. Willie Brown was the only one I know of who successfully handled his private affairs with the Legislature.

**KOVALL:** That's right. I was just going to say, he would be escorted by Highway Patrol back to San Francisco at 120 mph so that he could go back there to meet with development clients. He had a very lucrative law practice.

**WOLD:** He found a way to make it work.

**KOVALL:** He sure did.

**ROSSUM:** Well, ladies and gentlemen, I want you to thank our paper giver. And I thank you all for coming. We hope that the conversation will continue. We have tables outside set up with refreshments and invite you to join us in informal conversation.