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Measures, Few FCC Filings

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By Llewellyn Hinkes-Jones (<mailto:ljones@bna.com>)

Last year's campaign against Proposition 61, a drug-pricing initiative in California, cost more than \$119 million, the second-most expensive ballot initiative campaign in the U.S., according to numbers analyzed by Bloomberg BNA.

Most of the money was reported to have been spent on television advertising, which is common in high-dollar political campaigns. But the ad tracking service Kantar Media/CMAG found just a fraction of the amount reported to the state regulator.

Though more than \$77 million in TV ad spending was reported by the No on Proposition 61 campaign to the state's Fair Political Practices Commission (FPPC), only an estimated \$28 million worth of ads were broadcast, according to Kantar Media/CMAG.

Few details about how ad money was spent appeared in Federal Communications Commission (FCC) public files—made by broadcasters that list what political ads they ran, at what times, and for what charge.

The discrepancies in filings and ad tracking opens up questions about what happens to the sometimes tens of millions of dollars regularly poured into unsuccessful California ballot initiatives.

California has no limits on funding for ballot initiatives, and certain California ballot campaigns can cost as much as the most expensive U.S. Senate campaigns, according to numbers from the Center for Responsive Politics (CRP).

If Proposition 61 had passed, it would have attempted to regulate drug prices by requiring the state to pay no more for prescription drugs than the Department of Veterans Affairs does.

Scattershot FCC Filings

While some TV stations that were listed as receiving funds from the No on Proposition 61 campaign also filed with the FCC, many didn't, according to an analysis by Bloomberg BNA.

Some posted signed agreements but didn't post invoices. Some posted invoices for the Yes on 61 campaign, but not for No on 61.

An ABC station, KERO-TV in Bakersfield, Calif., posted a single contract worth \$3,765, even though the No on 61 campaign listed more than \$53,000 in payments to that station. The biggest recipient of No on 61 expenditures—KABC-TV in Los Angeles—had no invoices posted even though the campaign spent \$6 million on ads with the station.

None of the stations that Bloomberg BNA reached out to responded to requests to confirm amounts.

In comparison, ad spending for a similar initiative on drug prices in Ohio on the ballot this August—Issue 2—had many invoices posted and few discrepancies in ad spending.

Numbers from Kantar Media/CMAG, which it collects from recording broadcast programming across the country and basing cost estimates on similar ad sales—closely matched the totals with what had been filed with the FCC. In that campaign, the ad-tracking service identified over 91 percent of the ads listed in filings with the FCC.

A 2016 report from the Campaign Legal Center (<http://www.campaignlegalcenter.org/document/whos-behind-political-ad>) identified numerous instances of incomplete, inaccurate, or missing public files where the FCC neglected to enforce due diligence of filers.

Non-Candidate Issue Ads Exception

Kathy Fairbanks, a public affairs strategist for the No on 61 campaign, confirmed with Bloomberg BNA that the campaign spent about \$77 million for television advertising.

The vendor for the campaign, Target Enterprises, said it believes the discrepancy occurred because the FCC doesn't require stations to post information about spending in local and state initiatives.

But Kantar/CMAG data doesn't rely on FCC filings, and the tracking service uses numerous checks from both sides of ad sales to confirm estimates.

The FCC requires TV stations to make public filings of the political ads they ran and how much they charged, but non-candidate issue ads can fall into a gray area where the stations are only required to file when the subject is of "national importance," which state ballot initiatives might not qualify for.

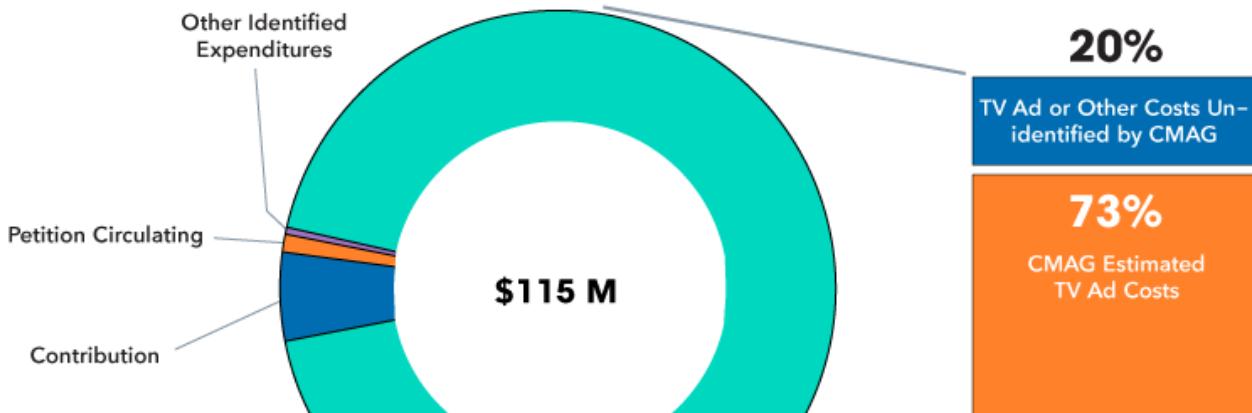
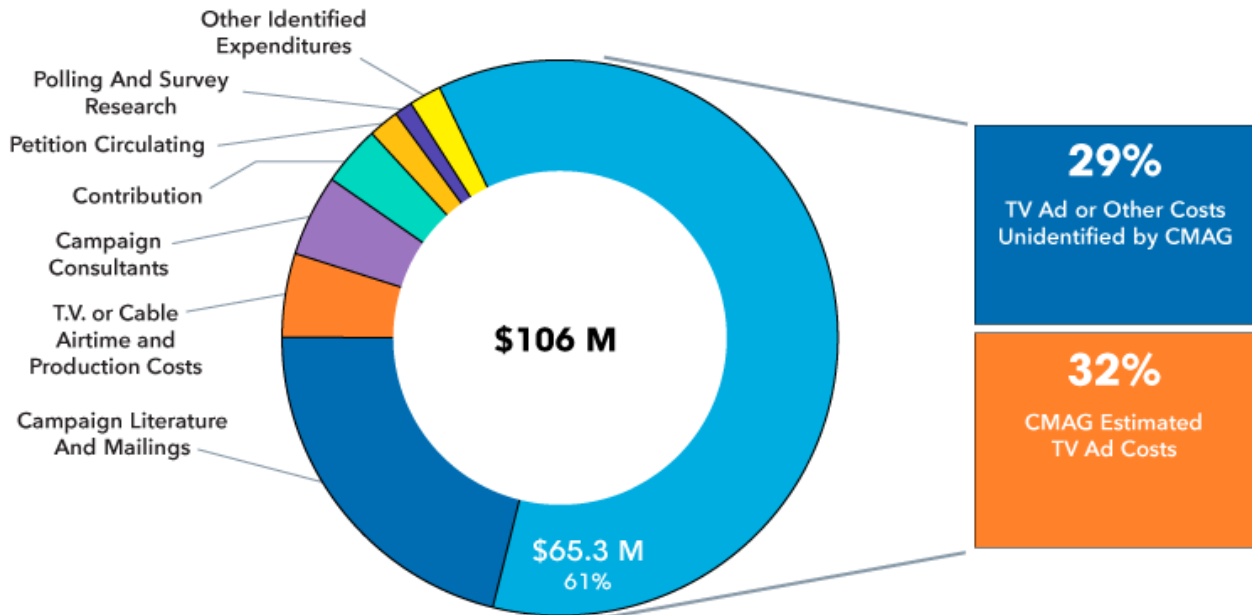
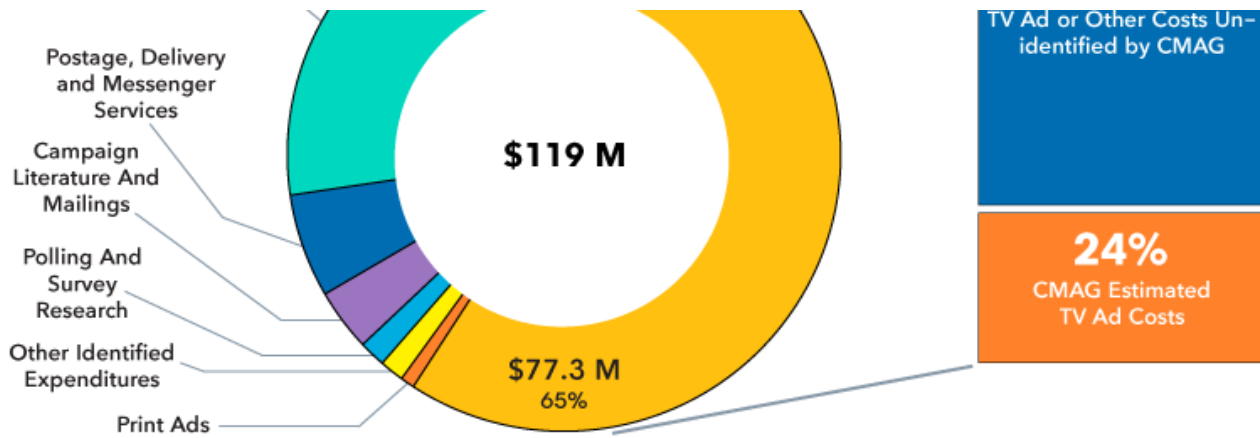
A representative for the FCC didn't respond to a request for comment.

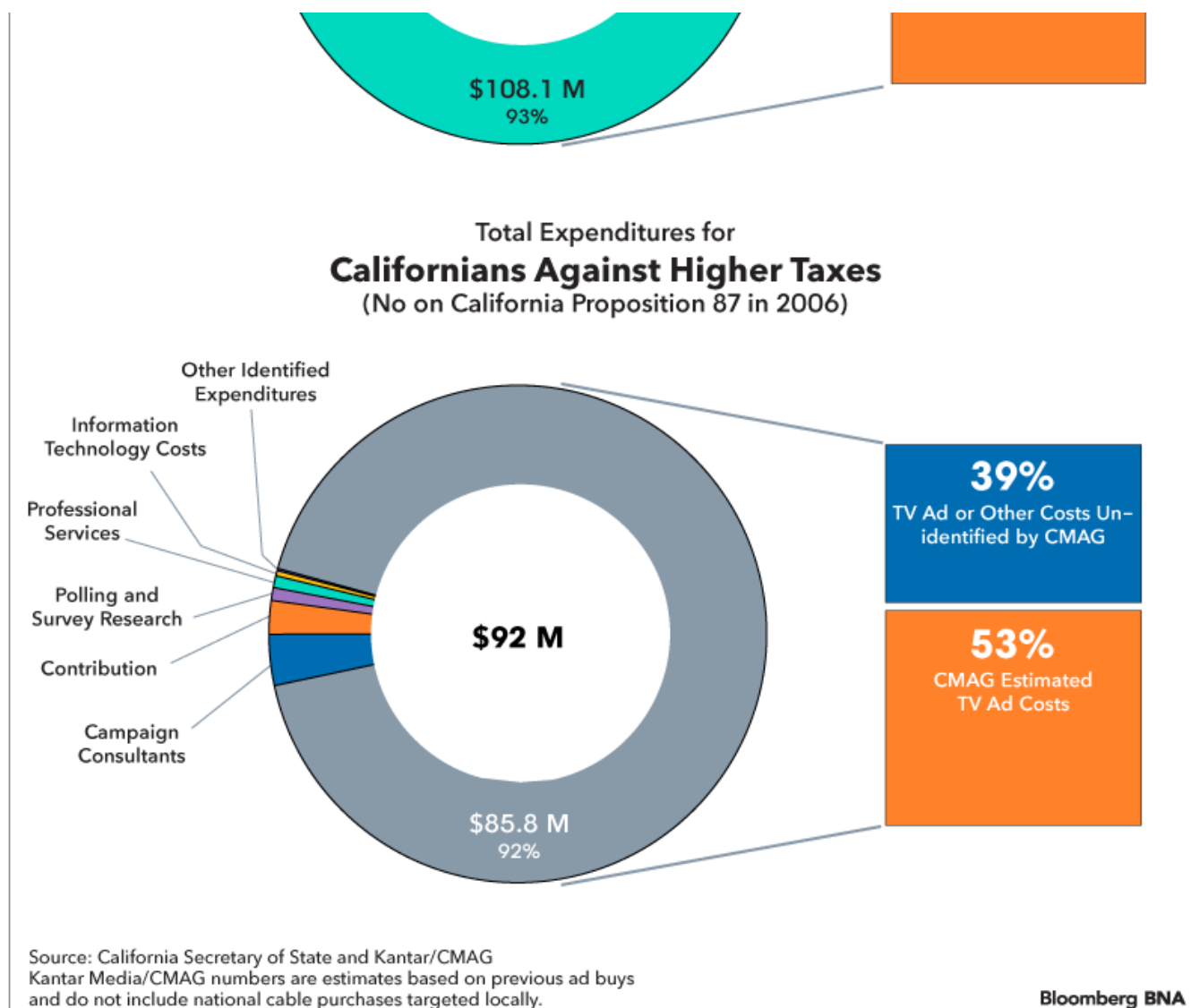
Missing Sponsorship Files

But FCC regulations still require information about the sponsoring group's directors or executives in public files for non-candidate issue ads, according to Adav Noti, senior director with the Campaign Legal Center.

Certain TV stations that were listed in state filings as receiving payments from the campaign, like KCRA-TV in Sacramento, had no filings for the No on 61 campaign at all—about sponsoring directors, ads purchased, or otherwise.







Potential Cable Buys

Kantar Media/CMAG numbers are estimates based on previous ad buys and do exclude national cable buys targeted locally. State filings list almost \$19 million paid to Access Media Services—a cable and satellite advertising firm. Access Media did not respond to a request to confirm the amount.

But Fairbanks said the campaign wasn't particularly cable-focused, and Steve Passwaiter, vice president at Kantar Media/CMAG, told Bloomberg BNA that \$49 million spent on cable ads would be highly unusual.

Additionally, FCC filings for No on Proposition 61 cable ad buys were few and didn't come close to the \$49 million discrepancy.

If the campaign did lean heavily on cable ad buys, it still wouldn't explain everything. State filings list the No on 61 campaign as spending at least \$39 million on local stations—about a \$10 million difference from what Kantar Media/CMAG identified.

Compared to Other Expensive Campaigns

For other expensive ballot initiatives, CMAG identified broadcast ads that ranged from 50 percent to 73 percent of a campaign's total expenditures. For No on 61, it was 26 percent.

Other ballot initiative campaigns in 2005 supported by the Pharmaceutical Research and Manufacturers of America (PhRMA)—Yes on Proposition 78 (Prescription Drugs Discounts Initiative) and No on Proposition 79 (Prescription Drug Discounts. State-Negotiated Rebates. Initiative Statute)—also had a large discrepancy between campaign expenditures (\$106 million) and CMAG-identified ads (\$34 million)—or only 32 percent.

Big Money

All California ballot measure campaigns are audited by the FPPC and expensive campaigns rarely appear on the FPPC's list of enforcement decisions.

"When a campaign hits a certain level of contributions, it tends to spend on anything it can and not focus on its return on investment," said Cristina Uribe, California director of the Ballot Initiative Strategy Center, an advocacy group that researches and advises on ballot initiative campaigns.

"When there's that much money, it doesn't matter if it's targeted or strategic. It's just about flooding markets," she said.

For example, the No on 61 campaign spent \$26 million on online campaigns alone—a surprisingly large sum outside of a presidential race.

Another example, the 2006 No on Proposition 87 campaign which sought to stop a tax on oil and gas production to support alternative energy sources, spent almost \$10 million on consultants alone.

According to Uribe, "campaigns can spend heavily on consultants—people who specialize in labor outreach, or the African or Latino community—just so they don't work for the competition."

Costly Ballot Measures Unlikely to Pass

Seventy percent of the top 40 most expensive ballot measures failed to pass, according to numbers from the National Institute for Money in State Politics.

More than \$1.3 billion was spent on 28 unsuccessful measures that ran the gamut of issues from energy and taxes to gambling. Almost all were held exclusively in California—78 percent—where fundraising limits are few.

Yes to More Gambling and Cigarette Taxes

Of the top 40 most expensive ballot campaigns, only 12 were related to measures that passed. Over half of those successful measures involved casino gambling and cigarette taxes.

Casinos and tobacco companies were also some of the largest spenders on all ballot initiatives since 2004. Public-sector unions spent the most, followed by casinos, pharmaceutical companies, tobacco companies and tribal governments, which mainly gave to gambling initiatives.

Funding Limits Debated

The Golden State has previously debated limits on ballot initiative spending, as state candidates were regularly using ballot initiatives to promote their own agendas.

The FPPC had ruled that ballot initiatives are considered ideas, not candidates, and are therefore incorruptible and not subject to contribution limits, Robert Stern, who served as the first general counsel for the FPPC and helped write some of the state's disclosure laws, told Bloomberg BNA.

"Essentially, [the FPPC decided that] you can't limit contributions because you can't corrupt a ballot initiative campaign," he said by phone.

But Stern added that the FPPC did clarify its rules to state that candidates can't appear in ballot initiative ads if they are running for office at the same time. That change followed a debate over California's then-Gov. Arnold Schwarzenegger's (R) 2005 Proposition 74 ballot measure campaign.

That year, Schwarzenegger and his ballot committee, Governor Schwarzenegger's California Recovery Team, raised over \$62 million, based on National Institute for Money in State Politics data, in support of a ballot initiative to change the waiting period for public school teachers to become permanent employees.

The measure was unsuccessful and the FPPC sanctioned the governor and his committee for using \$1.1 million in ballot committee funds for TV and internet ads about the budget negotiations at the time.

But Stern also saw the expensive ballot measures as a good thing since it brings money to a state that doesn't see campaign spending during presidential primary fights.

"Consultants love them because it's a chance to debate the issues without candidates interfering," he said by phone.

By Llewellyn Hinkes-Jones (mailto:ljones@bna.com)

— With assistance from Madi Alexander

To contact the reporter on this story: Llewellyn Hinkes-Jones in Washington at ljones@bna.com (mailto:ljones@bna.com)

To contact the editor responsible for this story: Paul Hendrie at pHendrie@bna.com (mailto:pHendrie@bna.com)

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