

# Issues and Legal Precedent in State Campaign Finance Reform

(and principles that apply to reform efforts at any level)



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Thanks to Pete Maysmith of Colorado Common Cause and Matt Baker of Colorado Public Interest Research Group for compiling most of this primer.

See page five for a list of further resources for campaign finance reform and a summary of the successful 2002 initiative in Colorado.

*ReclaimDemocracy.org* is a non-profit (501c3) organization working to revoke illegitimate corporate power and revive grassroots democracy. Contributions are tax-deductible.

This is one of a series of primers on electoral reform. See our Primers page online or request a full listing.

## Ingredients of Campaign Finance Reform

Primary goals of any campaign finance reform initiative we promote are: to create more equal opportunity for candidates and voters independent of their financial means; and to combat corruption and the appearance of corruption that large campaign contributions have on politics. We can diminish that corruption by reducing the influence of large campaign contributors and increasing the importance of volunteers and small donors.

In addition to dealing with corruption and the appearance of corruption, we should strive to make our politics more accessible and open to all citizens. The sections below outline many of the fundamental components of strong, comprehensive campaign finance reform that operate within the limits of existing campaign finance law, rather than challenging legal precedent. (*See our website or request our publication list for more on our campaigns to change those precedents.*)

## Banning Corporate Contributions

The presence of corporate money in politics is one of the biggest challenges facing our democracy. The federal government has long realized that corporations, as fundamentally economic institutions, have no place in the political process. Corporate contributions to federal candidates were banned in 1907. Since then, 21 states (Alaska, Arizona, Connecticut, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Montana, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming) have joined the federal government in this judgment.

There are, of course, other organizations such as non-profit corporations, labor unions, and political committees that aggregate contributions from their members and use them for political purposes. The distinction between these types of organizations and corporations is that the former raise their funds from members who purposefully are choosing to make a political decision.

While some states and the federal government also have decided to ban contributions from labor unions in order to make a ban on corporate contributions appear more politically balanced, the U.S. Supreme Court has ruled that labor unions need not be treated in the same manner as for-profit corporations. In 1990 the Court held that states have an interest in stopping the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas... [But] labor unions differ from corporations in that union members who disagree with a union's political activities need not give up full membership in the organization to avoid supporting its political activities...As a result, the funds available for a union's political activities more accurately reflect members' support for the organization's political views than does a corporation's general treasury.

Courts have also made clear that bans on corporate contributions cannot be extended to nonprofit corporations, so long as the nonprofits are formed primarily for political purposes, have no shareholders, and do not accept contributions from for-profit corporations. By the same token, corporate interests are allowed to participate in the political process provided certain conditions are met. Corporations can make political contributions if the money is from a separate, segregated fund (often known as a political action committee or PAC) comprised solely of voluntary contributions from shareholders, management and employees.

## **Contribution Limits**

Another fundamental element of campaign finance reform is limiting the amount that individuals can contribute to influence an election. Nationwide, over 91% of the total money used in elections comes from contributors whose contributions exceed \$100. This effectively mutes the voices of ordinary people. The average citizen, able to contribute \$100 or less to support a campaign, is greatly outspent by large donors and corporations.

Ideally, contribution limits should be an amount that is within striking distance of most citizens, even after they have taken care of their day-to-day expenses. For most constituencies, \$100 is a substantial amount and one beyond the reach of many. But when the upper contribution limit is \$100, even smaller contributions would be meaningful. Even a student who can only afford to give \$20 would know that his or her contribution makes a difference. This encourages both citizens and candidates. Citizens know that they have a meaningful voice in the process; candidates are given incentives to take positions that would generate public support (rather than those popular with wealthy special interests) and hold fundraisers where they could meet large numbers of citizens, rather than a few wealthy people.

Low contribution limits have become popular as a means of making the government and election process more accessible to the public. Citizens in Arizona, Arkansas, Connecticut, Colorado (since overturned by the legislature), Maine, Missouri, Montana, and Vermont have enacted legislation calling for limits ranging from \$100 to \$250 for many races. While some of these laws were invalidated by lower courts in the 1990s, in January 2000 the U.S. Supreme Court reaffirmed the rights of states to set low contribution limits. States may set limits as low as they see fit so long as they are not "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless."

In September 2000, a U.S. District Court upheld Montana's contribution limits of \$100 per election for legislative races and \$400 per election for statewide races. The court found that these limits were not so low as to make contributions meaningless, and in fact, only limited the largest of contributions. Further, the "prevention of corruption and appearance of corruption" were a sufficient justification for limiting money in politics. Courts have upheld even lower limits for statewide races: \$250 per election in Maine and \$400 per 2-year cycle (equivalent to \$200 per election) in Vermont.

To be effective, contribution limits must apply not only to candidates, but also to political parties and political action committees (PACs) that contribute to them. These limits also should apply to the parties and committees that attempt to influence election outcomes, even when these efforts are made independent of a candidate's campaign. If contribution limits in a state are high, then limiting the amounts that parties and PACs can give to a candidate make sense as well. On the other hand, when there are low limits on what citizens may give to a party or PAC, tightly limiting how much a party or PAC can give to a candidate makes less sense, since these entities simply would be helping citizens organize their resources toward a common interest.

## **Spending Limits**

Even after discussing the sources and limits of campaign contributions, the question remains of whether candidates' spending should be limited. Big spending allows candidates to communicate their 'message' directly to voters via TV and radio ads, direct mail, etc. Unfortunately, it also allows candidates to avoid more meaningful forms of campaigning such as debates, public speeches, and town hall meetings. All too

often, a frontrunner simply will refuse to debate his or her opponent, preferring instead to raise funds and buy commercials. Since challengers and underdogs are usually at a disadvantage for fundraising, interactions through an advertising war (as opposed to candidate debates) put them at a distinct disadvantage.

Aside from fairness, there are other reasons why extensive campaign coverage may not be the best way to run a campaign. Excessive campaign advertising may reduce media coverage of campaigns, which is unfortunate since such ads potentially are a less biased source of information than candidate ads. Viewers who are bombarded by advertising tend to lose interest in politics and consequently are less interested in watching news coverage of campaigns that they feel they've already seen to excess. The media outlets come out ahead because they can devote less time to covering candidates, instead reaping huge profits from selling ad time. In 1998, the television stations in California's five biggest media markets devoted less than 1% of their total local newscasts to the governor's race--arguably the highest profile race that year. Unfortunately, this approach also leaves grassroots candidates in a triple bind: their opponent won't debate them, the media won't cover them, and they cannot afford to compete with paid political ads.

Spending lots of money of media advertising is not the only way for candidates to run a campaign. If candidates could not depend on advertising to run a campaign, they would be forced to rely on the marketplace of ideas. Endorsements from civic groups, newspapers, and local officials would matter more; raising money from wealthy donors and special interests would matter less. Issues would matter more, and candidates would rely on the internet and the press to put out position papers, rather than relying on 30-second ads that relate little substance but instead play up a candidate's character or attack his or her opponent's values. Parties would be strengthened, because party platforms would again be an important means for voters to learn a candidate's stance on the issues. When candidates can raise lots of money and rely on paid advertising, they don't need to use the party platform as a means of expressing their opinions, and can, indeed, reject their parties' platforms and focus instead on less substantive issues to frame the race.

Mandatory spending limits would also prevent "millionaire candidates" from using their own wealth to vastly outspend opponents who rely on small contributions. Millionaire candidates distort the electoral process and make running for office more difficult for ordinary citizens because the level of funds needed to compete is beyond the reach of most candidates.

In the 1976 *Buckley v. Valeo* decision, the U.S. Supreme Court ruled that mandatory spending limits were unconstitutional, under the misguided logic that spending money to influence elections is equivalent to free speech. However, many legal scholars believe that ruling was unfounded and are calling on the Court to revisit the issue.

To get around the current legal prohibition against mandatory spending limits, many states have adopted schemes for voluntary limits. Candidates can be enticed to accept voluntary spending limits by providing those who do with full or partial public financing, or by noting on the ballot which candidates volunteered and which refused.

## **Encouraging Small Donors**

In addition to limiting through contribution limits the corruption and the appearance of corruption wrought by wealthy donors, policies also exist that encourage candidates to seek out small contributions from ordinary citizens. This encourages citizens to get involved in the political process, and as a result makes politicians more accountable to the regular folks who represent them, and less accountable to wealthy special interests. Here are a couple of ways to encourage the participation of small donors:

### **Tax refunds or credits**

At least 10 states provide some sort of tax refund or deduction to citizens who make a contribution to a candidate, party, or political action committee. Tax credits are superior to tax deductions because they can be utilized by all citizens--whether they owe taxes or not. Minnesota has a system of tax refunds that is superior to any of the tax credit plans. Rather than waiting until tax time, citizens can receive a refund

check (up to \$50) soon after contributing to a campaign. For families living on a month-to-month basis, this option encourages them to make contributions that might not have been feasible otherwise.

### **People PACs**

Candidates can be encouraged to rely more heavily on small donors when those donors can effectively pool their resources to compete with larger donors. One system that allows this is the small donor PAC, or "people PAC."

These are PACs that voluntarily limit the size of citizen contributions in order to be able to make larger contributions to candidates by aggregating numerous small contributions. For example, while a regular PAC might be able to take contributions from citizens of no more than \$100 and make contributions to candidates of no more than \$500, a people PAC might be allowed only to receive contributions of \$25 but then could give candidates up to \$2000. People PACs are a way of preventing the PAC system from representing only wealthy interests.

## **Disclosure of Campaign Contributions and Expenditures**

Disclosure of campaign financing allows the public, the media, and a candidate's opponent to scrutinize the source of a campaign's contributors and draw opinions about whether or not those contributors might improperly influence election outcomes. These disclosures must be timely so voters have an opportunity to evaluate candidate fundraising before they vote. Disclosure is of limited value, however, unless it is accompanied by other reforms. In a no-limits campaign finance system, the most viable candidates will be those who have raised lots of money. This forces voters to choose between candidates who all have been bankrolled by big money from special interests and leads would-be voters to the logical conclusion that they haven't been given much of a choice at all.

Complete disclosure provisions would include the occupation and employer of contributors over a certain threshold, say \$50. In addition, addressing the rise of the so-called "educational committees" is critical. These groups obviously are attempting to influence candidate elections but have been able to evade disclosure requirements to date. We should make sure that these groups are covered by the disclosure provisions so citizens can learn who is financing these groups and how much money they are spending.

## **In-District Contributions**

A recent innovation in campaign finance law restricts who is allowed to contribute to a campaign. A candidate running for office may be required to raise a minimum percentage of her campaign money from citizens living within her district. This is one way of making sure that a candidate will represent the interests of his or her constituents and not some outside interest with a vested concern in the outcome of an election. A candidate may attract outside support on account of his committee assignments or other political roles, but those interests should not be allowed to trump the concerns of the public that the candidate seeks to represent.

In 1996, citizens in Oregon voted to require state candidates to raise 100% of their funds from inside their district. That measure was struck down by a federal appeals court on a 2-1 ruling, and the U.S. Supreme Court refused to hear the case. In 1997 though, the Alaska legislature passed a law that severely limited campaign contributions from outside the state. The Alaska Supreme Court unanimously upheld that law, and in the decision emphasized that Alaskan voters' rights were diminished when non-residents influenced the outcomes of Alaska elections. The U.S. Supreme Court also refused to hear the case, leaving unclear what the final legal ruling will be on in-district limitations.

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### Further Resources on Campaign Reform

#### U.S. PIRG

218 D St. SE  
Washington, D.C. 20003  
202-546-9707  
www.uspirg.org/democracy

#### Brennan Center for Justice

at NYU Law School  
161 Ave of Americas, Flr 12  
New York, NY 10013  
212-998-6730  
brennancenter.org

#### Common Cause

1250 Connecticut Av., 6th Flr  
Washington, D.C. 20036  
202-833-1200  
commoncause.org

#### Center for Responsive Politics

1320 19th St., NW, # 700  
Washington, D.C. 20036  
202-857-0044  
opensecrets.org

#### National Civic League

1445 Market Street, Suite 300  
Denver, CO 80202  
303-571-4343  
www.ncl.org

#### Public Campaign

1320 19th St, NW, M-1  
Washington, D.C. 20036  
202-293-0222  
www.publiccampaign.org

We welcome your feedback on making this a more valuable resource.

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## 2002 Colorado Campaign Finance Reform Initiative

*Passed by Colorado voters as an amendment to the state constitution by a 2:1 margin*

### Summary of Amendment 27: (the full amendment is 12 pages)

#### Bans Direct Corporate and Union Contributions to Candidates and Political Parties

*The Federal Government has banned direct corporate contributions to candidates in federal elections since 1911. Each state should do the same.*

#### Reduce Contribution Limits to Candidates

Contribution limits are lowered from \$1,000 to \$200 for state House races, from \$1,500 to \$200 for state Senate, and from \$5,000 to \$500 for Governor. *This reduces substantially the power of large individual donors.*

#### Reduce Contribution Limits to PACs

Lower the contribution limit to Political Action Committees (PACs) from \$25,000 a year to \$500 per two-year cycle for regular PACs or down to \$50 a year for small donor committees.

Regular PACs could give no more than \$500 to a statewide candidate and small donor committees could give no more than \$5,000. *This amplifies the power of large numbers of citizens pooling small individual contributions and reduces the power of large individual donors.*

#### Voluntary Spending Limits (there are none presently)

\$65,000 for state House races. \$90,000 for state Senate races. \$500,000 for statewide offices (except Governor). \$2.5 million for Governor. Contribution limits would double for candidate whose opponent who does not abide by spending limit. *This helps discourage runaway spending and the potential advantage of a self-funded multi-millionaire.*

#### Disclosure Requirements

Full disclosure including employer/occupation for contributions over \$100.

*Allows public to know where candidates get their funds.*

Requires better disclosure of the funding sources of so-called "educational committees" that run attack ads about candidates. Direct corporate and union contributions are banned. *Prevents anonymous smear campaigns.*

#### Inflation Adjustment

Index to Consumer Price Index every 4 years (rounded off).

The legislature will be unable to repeal or amend Amendment 27 without going back to the voters for approval. This initiative was undertaken as a Constitutional amendment because a similar initiative passed by Colorado voters in 1996 was repealed by the state legislature.

The Colorado coalition was funded by: Colorado Common Cause, COPIRG, and CO League of Women Voters. ReclaimDemocracy.org, AFSCME Local 3592, Colorado Progressive Coalition, Rocky Mountain Peace and Justice Center, CO Green Party, the Interfaith Alliance and others helped develop and promote the initiative.

See [www.stopbigmoney.org](http://www.stopbigmoney.org) for details or full amendment text.