

blueprints for Democracy:

actionable reforms to solve
our governing crisis

AUTHORED BY LAWRENCE M. NOBLE,
Campaign Legal Center General Counsel,
Former Federal Election Commission General Counsel



contents

Foreword	2
Executive Summary	3
Introduction	5
The Problem	7
Everyone Participates	11
Everyone Knows	31
Everyone Plays By Common-Sense Rules	47
Everyone Is Held Accountable	59
Everyone Has A Voice	64

foreword

The fight to preserve our representative democracy is as old as the country itself. However, the scale of the crisis facing our republic today is unprecedented. Our country is immersed in the most expensive election cycle in history, one that will see presidential and congressional candidates raising billions of dollars from a tiny sliver of the wealthiest Americans. It's no surprise the vast majority of Americans see politics as a rigged game that prevents everyone from having a voice and that civic participation is in a free fall.

It is within this context that we, the undersigned, deliver a different, more hopeful message: the growing problem of money's outsized power in politics and policymaking can be solved. Those who say otherwise are cynics. Indeed, not only do solutions exist, but they are already working in communities across the country. These reforms are systematically reorienting government back where it belongs: in the hands of Main Street Americans.

We hope this report, which details the very best of these ideas, will serve as an introductory resource for legislators and advocates in towns, cities and states from coast to coast who long to address this issue.

There are three critical takeaways from "Blueprints for Democracy: Actionable Reforms to Solve our Governing Crisis." First, it demonstrates concretely that despite *Citizens United* and other misguided court decisions that have made this problem worse, there are many tangible solutions that can preserve and protect our democracy—right now. This is a problem with a solution; a problem that can, and must, be fixed.

Second, these policies have strong bipartisan support. Outside of the hyper-partisanship that defines today's "inside the Capital Beltway" politics, none of these ideas should strike anyone as controversial, neither liberal nor conservative. Instead, they represent the ideals toward which any high functioning democracy should strive. From the Founders' fervor to limit corruption to Teddy Roosevelt's crusade against corporate cronyism, from Barry Goldwater's stern warning against the distorting influence of campaign expenditures to Ronald Reagan's embrace of funding for elections, these concepts span our nation's history and transcend party lines.

Finally, we hope this report sounds the alarm for all those who recognize the governing crisis that threatens our republic. Democracy requires constant vigilance, and we have reached the tipping point: Together, we must either implement these common-sense solutions and regain our liberty, or risk watching the lights go out on self-governance itself.

The time is now. Join us in this most American fight to ensure our government of, by and for the people does not perish on our watch.



A handwritten signature in black ink, appearing to read "Alan Simpson".

Sen. Alan Simpson



A handwritten signature in black ink, appearing to read "Bill Bradley".

Sen. Bill Bradley

executive summary

American democracy has, since its inception, remained an extraordinary experiment in self-governance. There is perhaps nothing more fundamental to the nation than the ability of all citizens to participate in their government.

But, as we are all increasingly aware, a relatively small number of people and organizations—often while remaining in the shadows—have gained overwhelming power over our political system through their ability and willingness to spend large amounts of money to influence who runs for office, who is elected and the issues that will be discussed. We all pay a price for such an imbalanced system, not the least of which is loss of faith in public institutions that no longer represent everyone.

However, contrary to outspoken cynics or conventional wisdom from Beltway pundits, there are a myriad of solutions that can ensure policymakers are focused on their constituents, not wealthy special interests. Not only are these common-sense fixes enthusiastically supported by Americans of all political stripes, but in many cases, they have already been implemented and are making democracy work for everyone in states and localities around the country.

This report, developed jointly by Issue One and the Campaign Legal Center, chronicles these solutions, and provides real-world examples that can be used as a blueprint for reformers who want to enact real change in their communities. Most importantly, these ideas have undergone strict legal review to ensure they present the strongest case for constitutional viability; the resulting report lays out a suite of money-in-politics reforms that are both popular and could pass muster with the current Supreme Court.

The key findings of this report have been broadly separated into five categories that represent the basic principles of any high-functioning democracy:

everyone participates, everyone knows, everyone plays by the same common-sense rules, everyone is held accountable, and everyone has a voice.

Everyone Participates

In order for a democracy to truly represent all people, everyone needs to participate in it. That's why the single most important fix to our system is to enact some form of citizen funding that incentivizes small donors to give to political campaigns they support. Whether through matching funds for contributions, or block grants directly to the candidates, citizen funding programs democratize political money, free politicians from the never-ending money chase and empower more people to run for office. Best of all, in the places where they're implemented, these systems enjoy extraordinary levels of public support.

For example, the report examines the extremely successful Clean Elections program in Connecticut. With more than 80 percent of qualified candidates participating, the program is the best-in-the-nation for elevating all voices and ensuring elected officials are focused on their constituents, not fundraising.

Everyone Knows

Everyone deserves to know who funds our politics and how the money is spent. Disclosure is one area of campaign finance law the Supreme Court continues to uphold because it provides critical information for voters at the ballot box. The most effective disclosure regimes are those that clearly reveal all types of election-related spending in an immediate and user-friendly way while balancing privacy rights of individuals. Additionally, they are often effective at pulling back the curtain on secretive dark money that has permeated our elections. In doing so, enforcement agencies, journalists and the public can more clearly see who is trying to influence elected officials and how that money flows through the system.

This report highlights California's Fair Political Practices Commission, particularly its efforts to tackle dark money spending in elections. Because its regulations attempt to capture political spending regardless of the type of entity making the expenditure, California has been extraordinarily successful at revealing the true sources behind much of the money spent in the state.

Everyone Plays by Common-Sense Rules

Next, everyone needs to play by the same common-sense rules so we know the scales are not tipped in anyone's favor. Easy fixes include regulating gifts to elected officials, ensuring contributions are not being traded for policy and cracking down on lobbyists skirting the law. These simple ideas prevent corruption, ensure an even playing field, engender faith in public institutions and reduce barriers to political participation.

South Carolina's lobbyist fundraising restrictions are notable not just for their stringency, but the time period to which they apply. By prohibiting lobbyists from ever giving "anything of value" to a politician—even a cup of coffee—the Palmetto State has essentially banned any and all campaign contributions from lobbyists.

Everyone is Held Accountable

Laws need teeth, so everyone should be held accountable for breaking the rules. In part, that means emboldening nonpartisan enforcement agencies like the Federal Election Commission to proactively go after bad actors and ensuring they have all the resources necessary to do so. This is a critical aspect of any campaign finance system, because it instills confidence in the democratic process and discourages malfeasance by demonstrating that rule-breakers will be punished.

New York City's Campaign Finance Board has the ability to audit all campaigns and levy penalties against those who skirt the rules. The report details all the ways the Board has elevated city politics and established itself as a model administration and enforcement agency.

Everyone has a Voice

In the long term, America needs a democratic system in which everyone has a voice. The main avenue through which this goal can be achieved is the court system. Specifically, we need to protect our existing campaign finance laws while finding new opportunities to expand and clarify, such as expounding the definition of "illegal coordination" between super PACs and campaigns. Furthermore, we need to develop a new pro-reform jurisprudence in lower courts, law schools and legal scholarship, and we need to encourage the appointment of judges and Supreme Court justices who recognize how critically important these laws are to the functioning of our democracy. This will take time, but as other reforms mentioned in this report are enacted across the country, a new legal landscape will follow.

The most fertile ground for reform is through legislatures and citizen-driven ballot measures at the state and local level—the laboratories of democracy. At the federal level, the best opportunities to rack up victories center around strengthening and expanding disclosure and transparency laws. In both cases, with each victory, the public will become more convinced that reform is not just feasible, but necessary.

This report is just the first step in a larger strategy to overcome entrenched cynicism and assist lawmakers as they push for change. When we win, we will have a government that is truly of, by and for the people.

The descriptions of campaign finance, lobbying and ethics laws in this document are intended to provide a general summary of reform options. They do not capture all of the nuance and exceptions in the law. They should not be relied upon as legal advice for particular circumstances or situations. If you have specific questions, or if you would like assistance drafting legislative language, please contact the Campaign Legal Center at (202) 736-2200.

introduction

There are few things more fundamental to the health of our democracy than the right of all Americans to fully participate in their government by electing and interacting with their leaders. Protecting that right involves ensuring the First Amendment's guarantees of the right to petition the government, right to free speech and right to freedom of association are truly available to all and are not undermined by the real and apparent corruption that arises when those rights are made available only to a small class of wealthy political donors. This is no easy task as it involves the complex interaction of rights, interests, money and power.

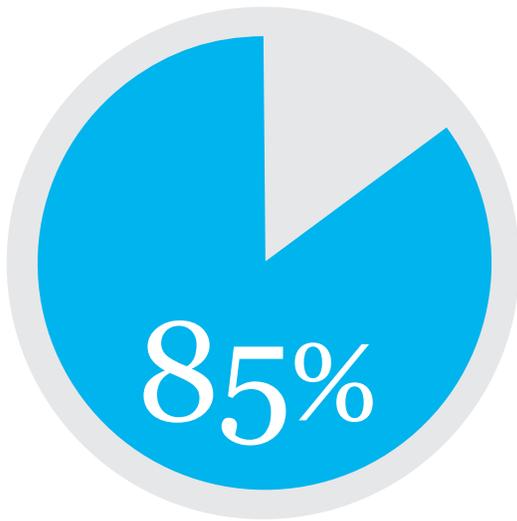
Unfortunately, as is documented every day, a relatively small number of people and organizations—often while remaining in the shadows—have gained overwhelming power over our political system through their ability and willingness to spend large amounts of money to influence who runs for office, who is elected and the issues that will be discussed. As candidates and elected leaders become increasingly more reliant on the financial support of a small number of individuals and interests, the public is losing faith that our elected leaders represent the interests of all Americans. The public fears that the rights guaranteed by the Constitution as fundamental to our democracy are becoming available only to the wealthiest and most fortunate among us. And that fear is not unfounded.

In recent years, the Supreme Court has put the chase for political money on steroids. That is why ef-

forts to amend the Constitution and develop a new jurisprudence for the time when we have a different Court are underway and have widespread support.

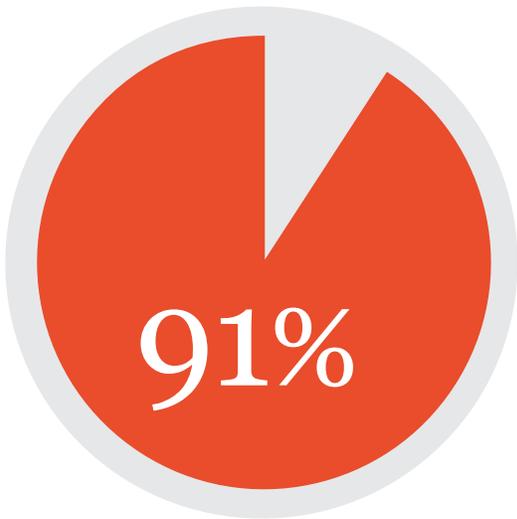
But the conventional wisdom that nothing else can be done about the growing power of money in our elections is not just pessimistic, it is untrue. Americans are not ready to let democracy fail. All across the nation, in cities, states and at the federal level, average citizens, together with civic, business and elected leaders, are working to find realistic bipartisan solutions that can be implemented now to create a new civic and political reality that returns power to all Americans. The efforts vary widely, with some cities and states already proudly utilizing existing strong campaign finance laws, including forms of small donor empowerment programs, while citizens in other localities are fighting for everything from greater transparency in elections to cracking down on special interests that try to skirt the rules. And while some of these reforms have been championed by elected officials, many other efforts are organized by citizens themselves—grassroots Americans from both sides of the political spectrum who are taking their ideas directly to the voters through ballot initiatives and local campaigns.

Of course, enacting laws is just part of the challenge. Care must be taken to ensure these laws are written in a way that provides the best chances for surviving inevitable legal challenges. And once a law is passed, it cannot be allowed to become the victim of a weak or even hostile enforcement authority or



% OF AMERICANS WHO BELIEVE CANDIDATES
"SOMETIMES" OR "MOST OF THE TIME" PROMOTE
POLICIES THAT DIRECTLY HELP DONORS.

SOURCE: NEW YORK TIMES AND CBS NEWS POLL, JUNE 2015



% OF AMERICANS WHO AGREE
MONEY IN POLITICS IS A MAJOR PROBLEM

SOURCE: GLOBAL STRATEGY GROUP POLL, NOV. 2013

the inevitable campaign to roll back reforms. That's why, from Florida to Maine, South Carolina to California, the American people are actively pushing to expand existing laws, fighting for new reforms and protecting the rules already on the books from the opponents of free and open democracy. If there is one thing to be taken from this report, it is that solutions to this problem exist, and they are working all across the country.

In fact, the biggest roadblock to a renewed reform movement is not a lack of solutions, it is the cynicism that so many Americans feel. According to one poll, 91 percent of Americans agree that money in politics is a major problem, but just nine percent feel it will ever be solved. Reformers must combat this cynicism by demonstrating just how feasible solutions are.

This report is intended to provide an overview of those opportunities and possibilities to restore the power of "we, the people." Think of it as a "Zagat guide" for money-in-politics reform: not a comprehensive review or analysis of all of the current laws or possible options, but rather, an overview of some of the best examples of the types of reforms currently in place or being refined. It is intended to inspire action, more critical thinking and ideas.

the problem

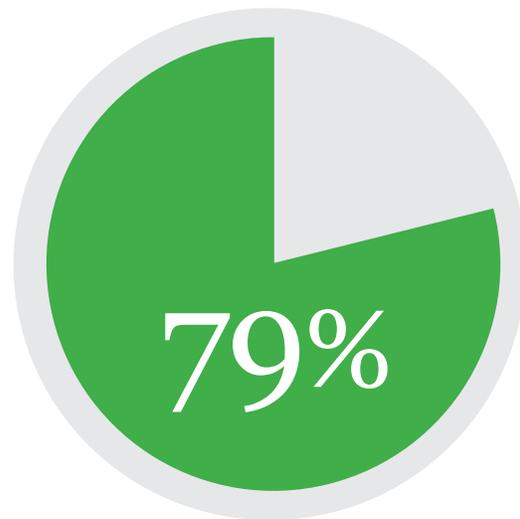
Republican, Democrat, third party or independent, we can all agree that the current pay-to-play campaign finance system is keeping us from collectively addressing the most basic problems facing our country. When the interests of big campaign donors and lobbyists are favored over the needs of the public, we all pay the price—whether it be inadequate schools, rigged markets, rising deficits, climate change, government waste, crumbling infrastructure or a host of other pressing issues we just cannot seem to fix. But what can be done?

Watching super PACs and dark money “issue groups” (funded by wealthy interests and working closely with candidates to win elections) and hearing about how the courts have rejected campaign finance rules, it is easy to believe that there is no longer a place for the provisions that have traditionally constituted the backbone of our campaign finance system. But look closely and you will see that those proclaiming reasonable reforms are doomed are often the same people who have the most to gain from a system without limits and disclosure.

In some recent court cases, the most well-known of which is *Citizens United v. Federal Election Commission (FEC)*,¹ a divided Supreme Court overruled decades of previous decisions and gave corporations and unions the right to make unlimited independent expenditures in political campaigns. Likewise, in *McCutcheon v. FEC*,² the Court struck down the overall limits, established by the Federal Election Campaign Act of 1971³ (FECA), on what an individual can give in the aggregate to all candidates, party committees and political action commit-

tees (PACs). In so doing, the Court rejected the long-held view that the prevention of the appearance and actuality of political corruption was sufficient justification for reasonable campaign finance laws. Instead, the Court now believes the only valid justification for campaign limits and prohibitions is the prevention of real or apparent quid pro quo corruption. To put it bluntly, this Supreme Court believes that an elected official feeling beholden to large donors is just part of a healthy democracy.

However, that is just part of the story. For example, both *Citizens United* and *McCutcheon* left untouched laws prohibiting direct or indirect corporate contributions to a candidate or limiting the amount



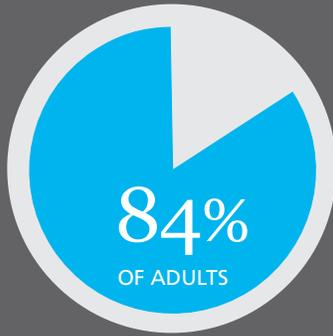
% OF VOTERS WHO AGREE LARGE POLITICAL CONTRIBUTIONS PREVENT CONGRESS FROM TACKLING IMPORTANT ISSUES

SOURCE: LAKE RESEARCH GROUP / TARRANCE GROUP, FEB. 2009

¹ 558 U.S. 310 (2010).

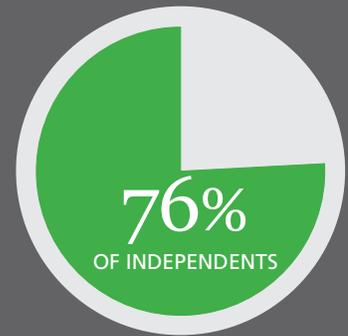
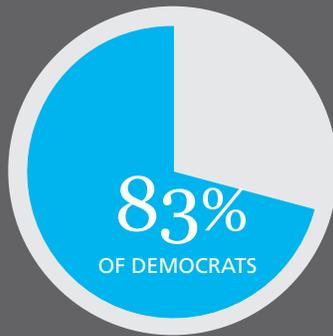
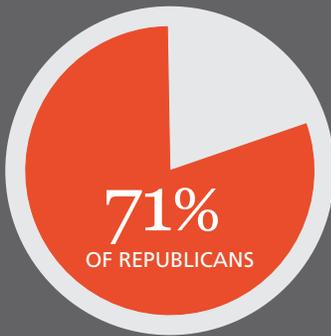
² 134 S. Ct. 1434 (2014)

³ 52 U.S.C. § 30101, et. seq.



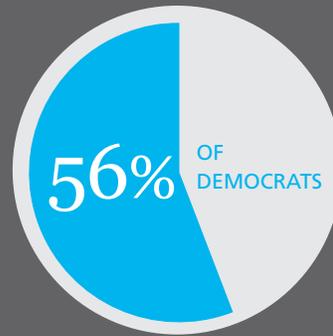
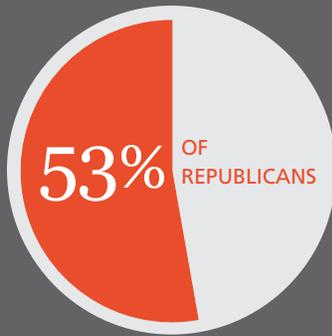
% WHO THINK MONEY HAS TOO MUCH INFLUENCE IN AMERICAN POLITICAL CAMPAIGNS

SOURCE: NEW YORK TIMES AND CBS NEWS POLL, JUNE 2015



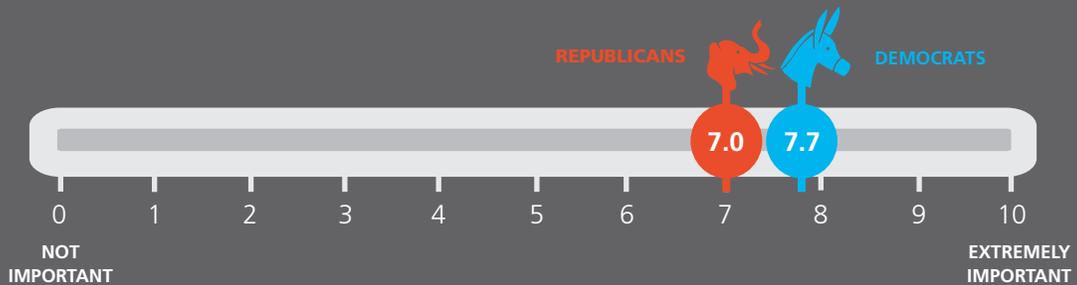
% WHO FAVOR CAMPAIGN CONTRIBUTION LIMITS

SOURCE: NEW YORK TIMES AND CBS NEWS POLL, JUNE 2015



% WHO THINK POLITICIANS ARE MORE LIKELY TO REPRESENT THE MONEYED INTEREST THAN DO WHAT IS IN THE PUBLIC GOOD

SOURCE: GLOBAL STRATEGY GROUP POLL, NOV. 2013



HOW IMPORTANT IS REDUCING THE INFLUENCE OF MONEY IN POLITICS?

SOURCE: PUBLIC CITIZEN POLL, SEPT. 2014

an individual can contribute to a candidate. At the same time, the Court has consistently endorsed full and timely public disclosure of campaign spending. Even while striking down limits on independent expenditures and narrowing the type of activity that can be regulated, the Court has repeatedly said that “independent expenditures” have to be truly and completely independent of the candidates. This Court never envisioned candidates having their own super PACs or working hand-in-hand with those supposedly “independent” campaign spenders.

Most importantly, starting with *Buckley v. Valeo*,⁴ the Supreme Court has upheld campaign funding systems that allow candidates to voluntarily agree

to limit or restrict their fundraising and spending in return for partial or complete public funding of their campaigns. These systems can reduce or eliminate a candidate’s reliance on money and empower small donors.

What this means is that while the road forward may be harder than it was 10 years ago, there are many short-term and long-term solutions and strategies available that will allow us to start fixing the problem. These solutions share common values and can certainly pass muster with the current Supreme Court. Taken together, they can go a long way toward creating a much more responsive, collectively governed democratic republic.

everyone participates

New systems of financing elections are enacted that empower small donors and strengthen civic participation

everyone knows

There is full transparency and immediate disclosure of political contributions and expenditures

everyone plays by common-sense rules

Political conflicts of interest are diminished and new ethical norms take hold

everyone is held accountable

Candidates, elected officials and organizations are held accountable for breaking campaign finance laws

everyone has a voice

Congress is constitutionally empowered to make laws governing the flow of money in and around politics

⁴ 424 U.S. 1 (1976).

everyone participates

CITIZEN FUNDING OF ELECTIONS

[PUBLIC FINANCING OF ELECTIONS IS DESIGNED] TO REDUCE THE DELETERIOUS INFLUENCE OF LARGE CONTRIBUTIONS ON OUR POLITICAL PROCESS, TO FACILITATE COMMUNICATION BY CANDIDATES WITH THE ELECTORATE, AND TO FREE CANDIDATES FROM THE RIGORS OF FUNDRAISING. *BUCKLEY v. VALEO 1976*

According to the Center for Responsive Politics (CRP) and the Sunlight Foundation, nonpartisan nonprofit organizations, less than one quarter of one percent of the U.S. population gave more than \$200 in contributions in federal elections in the 2014 election cycle, while 0.04 percent gave contributions in excess of \$2,600.⁵ In fact, CRP and Sunlight report that “31,976 donors—equal to roughly one percent of one percent of the total population of the United States—accounted for an astounding \$1.18 billion in disclosed political contributions at the federal level.”⁶ Diving deeper into the numbers, they found that “[a] small subset—barely five dozen—earned the (even more) rarefied distinction of giving more than \$1 million each. And a minute cluster of three individuals contributed more than \$10 million apiece.”⁷

What this means is most Americans take no part in providing financial support to their preferred candidates, super PACs or any other type of political committee, whether because they cannot afford

even a small donation or because they believe that a small donation is a meaningless drop in the flood of money made up of large contributions provided by very few people. The corollary is that candidates feel compelled to spend a large percentage of their time fundraising from these large donors prior to the election and being responsive to them after the election. The result is that those who can give or raise hundreds of thousands or millions of dollars—“bundlers”—hold a tremendous amount of power in our political system, while average citizens end up marginalized.

Citizen funding systems provide monetary support to political candidates. Some refer to these systems as “public financing,” but many reformers find the phrase laborious and bureaucratic. Citizens are the real agents of democracy in this country and should be recognized as such. These programs provide the vast majority of Americans with an incentive to participate. Either by limiting the amount and type of fundraising a candidate can do or by providing

⁵ <http://www.opensecrets.org/overview/donordemographics.php>.

⁶ <http://www.opensecrets.org/news/2015/04/the-political-one-percent-of-the-one-percent-in-2014-mega-donors-fuel-rising-cost-of-elections/>

⁷ *Id.*

U.S. POPULATION
2014 FEDERAL ELECTION CAMPAIGN CONTRIBUTIONS

LESS THAN
1/4 of 1%

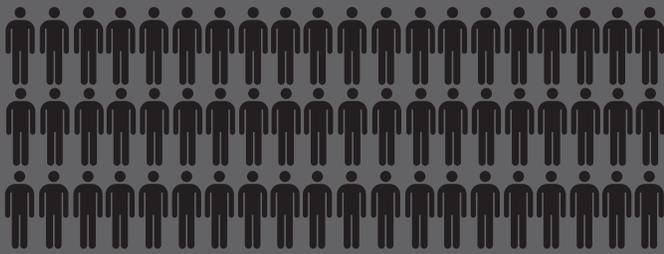
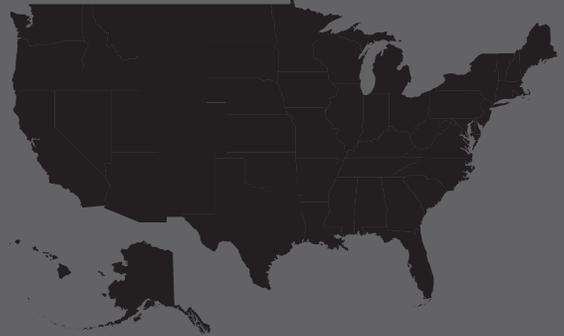


GAVE
MORE THAN
\$200

0.04 %



GAVE
MORE THAN
\$2,600

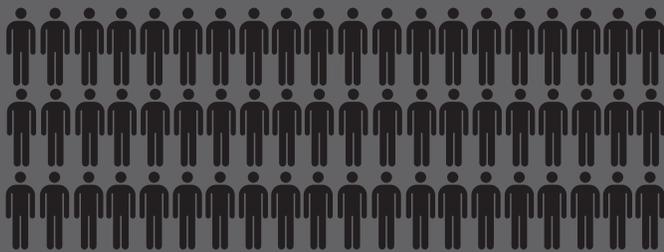


1 icon = 500



31,976 DONORS

ACCOUNTED FOR
\$1 BILLION
IN CONTRIBUTIONS



60 DONORS

GAVE MORE THAN
\$1 MILLION
EACH



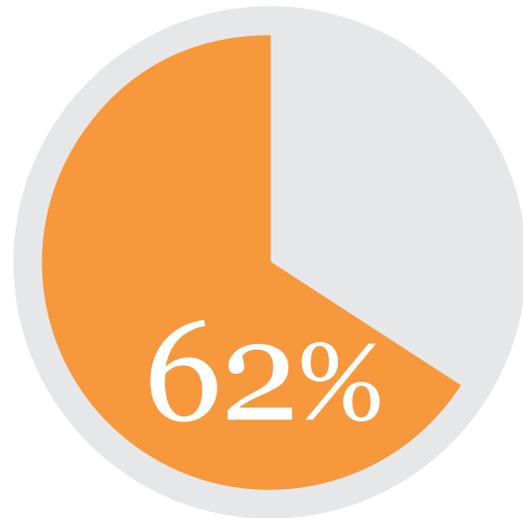
3 DONORS

GAVE MORE THAN
\$10 MILLION
EACH

constituents with funds to contribute as they please, the government is able to redirect a politician's attention to citizens who cannot donate thousands of dollars to politics.

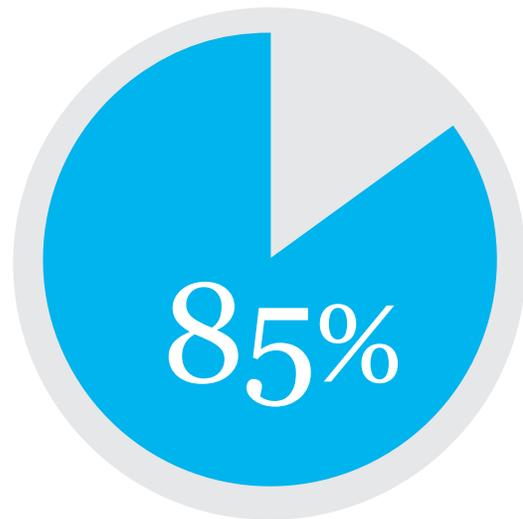
Many states and municipalities now provide some form of citizen funding option for at least some public offices, and a system has been available for eligible presidential candidates since 1976, with matching funds for contributions for the primaries⁸ and full public funding for the general election.⁹ Even though participation in the public funding system is optional, from 1976 until the 2000 election, every major party candidate utilized the matching fund program for the primaries and accepted full public funding for the general election.¹⁰ However, there were structural defects built into the system and the law was not updated as campaigns changed to incorporate advances in media and technology as "independent" groups began to play a bigger role in elections. This ensured candidates would eventually decide to forgo what has become an outdated citizen funding system. Nevertheless, for two decades the federal system was a success. States and municipalities have continued to enact public funding programs, serving as laboratories for different types of systems. At the same time, bills have been introduced in Congress to make the presidential citizen funding system viable once again and to create systems for the House and Senate.

What is truly impressive about the continuing efforts to enact citizen funding is that it has often been pursued through citizen-driven referenda and ballot measures—demonstrating widespread support for these programs. One 2014 poll found almost two-thirds of Americans support such a system.¹¹ and a 2015 poll from the New York Times and CBS News found that 85 percent of the country would support "fundamental change" to the way campaigns are financed.



% OF AMERICANS WHO SUPPORT A CITIZEN FUNDED SYSTEM

SOURCE: DEMOCRACYCORPS.COM, JULY 2014



% OF AMERICANS WHO SUPPORT A FUNDAMENTAL CHANGE TO THE WAY WE FINANCE CAMPAIGNS

SOURCE: NEW YORK TIMES AND CBS NEWS POLL, JUNE 2015

⁸ Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031, et. seq.

⁹ Presidential Election Campaign Fund Act, 26 U.S.C. § 9001, et. seq.

¹⁰ In 2000, George W. Bush became the first major party candidate to turn down public funding in the primaries and in 2008, Barack Obama became the first major party candidate to turn down public funding in the general election.

¹¹ http://www.democracycorps.com/attachments/article/985/dcor%20PCAF%20memo%2007282014_FINAL.pdf

I GOT TO SPEND TIME WITH VOTERS, AS OPPOSED TO DIALING FOR DOLLARS, OR TRYING TO SELL TICKETS TO \$250-A-PLATE FUNDRAISERS. [CITIZEN FUNDING] WAS MUCH BETTER. - GOVERNOR JANET NAPOLITANO (D-AZ), THE ROAD TO CLEAN ELECTIONS VIDEO

Types of Citizen Funding

There are several types of citizen funding programs, ranging from so-called “Clean Elections” programs that provide qualified candidates with total citizen funding to those that simply provide tax deductions for small political contributions. Systems that provide full citizen funding are intended to reduce the opportunity for corruption while freeing politicians from the fundraising race. Programs that provide citizens with public money then match some multiple of the small contributions multiply the impact of these donations. These programs do so by providing a tax incentive for those capable of making small contributions, and are intended to limit the influence of large contributions while encouraging and empowering the average citizen to make a donation to the candidates of their choice. Programs that provide funding directly to participating candidates (e.g., Clean Elections, matching funds and vouchers) can also require participating candidates to agree to abide by certain conditions, such as limits on how much they can spend on their campaign and/or contribution limits that are lower than those imposed on nonparticipating candidates. Because spending limits cannot be constitutionally mandated, participation in these citizen-funding systems must be voluntary.¹² The most common citizen funding programs are:

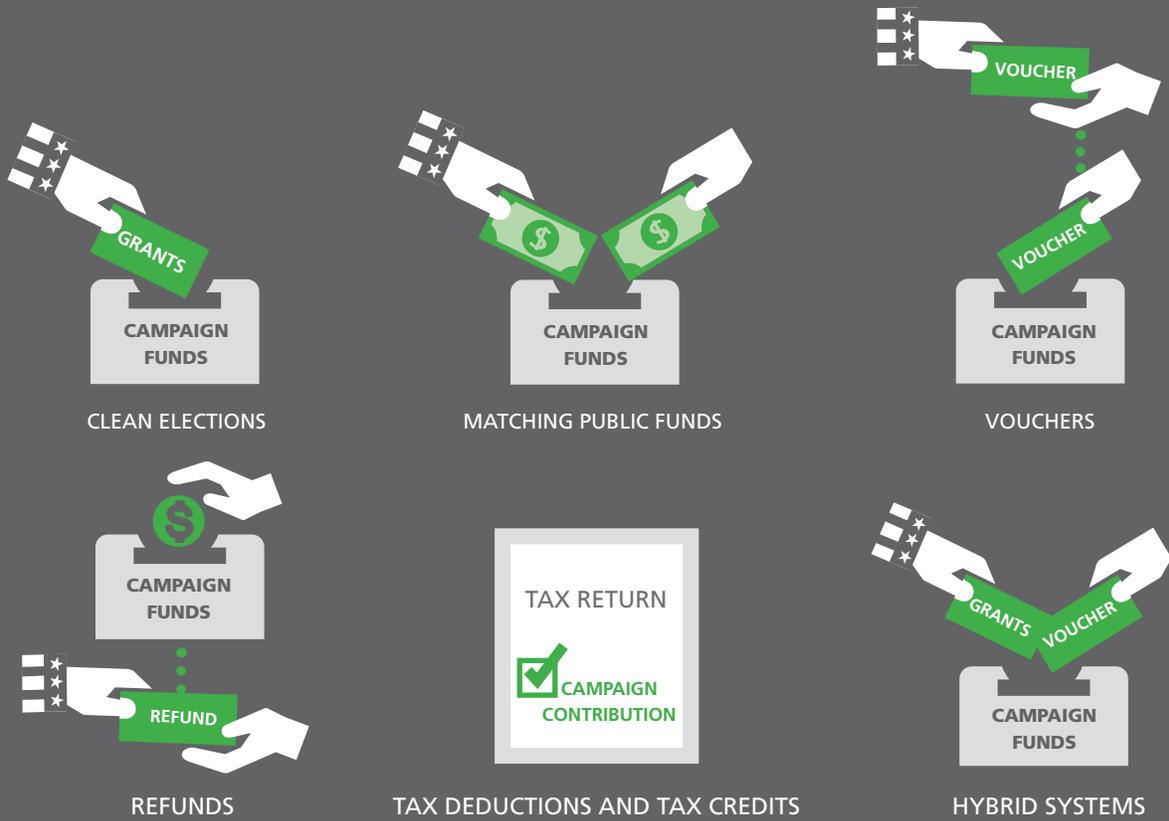
- 1. Clean Elections (or Full Public Funding):** A flat grant is provided to fully fund a qualifying candidate who voluntarily participates in the program. The candidate will generally be required to demonstrate sufficient support to receive funding, such as by raising a threshold

amount of small (e.g., \$5) donations. The candidate may also have to agree to certain conditions, including not raising private contributions other than any amount needed to qualify, limiting the amount he or she spends to the amount of the grant, participating in candidate debates and an audit of campaign spending.

- 2. Matching Public Funds:** The government matches small private contributions that a candidate raises. Depending on the jurisdiction, contributions up to a set amount may be matched dollar for dollar or at some multiple, such as six dollars or more in public money being provided for every private dollar contributed. Generally, there is a limit on the size of the contribution that will be matched (e.g., up to \$100). Some systems require the participating candidate to agree to certain conditions, which may include lower contribution limits than apply to nonparticipating candidates, overall limits on what the campaign can spend, participation in candidate debates or an audit of campaign spending.
- 3. Vouchers:** The government provides citizens or registered voters with vouchers that they can, in turn, use to make political contributions to candidates of their choice. Candidates can then redeem vouchers for campaign funds. This system does not require the contributor to use his or her own funds and then obtain a reimbursement and, therefore, can allow economically disadvantaged people to make small contributions to campaigns. Participating candidates may have to agree to certain conditions.

¹² *Buckley*, 424 U.S. at 54-58.

TYPES OF PUBLIC FUNDING



- 4. Refunds:** Individuals can make small contributions up to a certain amount and then apply for a refund from the government, which may be made immediately upon application. This system requires the individual to be able to initially make the contribution, but does provide him or her with a reimbursement.
- 5. Tax Deductions and Tax Credits:** Contributors may deduct from the taxes they owe, or receive a tax credit for, their political contributions up to a set amount. The contributor only sees the benefit when they pay their taxes and must have taxable income for the deduction to apply.
- 6. Hybrid Systems:** Any two or more of the above systems can be combined. For example, a matching fund system for small contributions can be used in the primary, while a full grant can be made available in the general election, as was done with federal public funding for the presidential election.

WHEN YOU THINK ABOUT CLEAN ELECTIONS, THE FIRST WORD THAT COMES TO MIND IS FAIRNESS, BECAUSE IT BRINGS ABOUT INCLUSIVENESS. IT ALSO BRINGS ABOUT A GOOD AMOUNT OF COMPETITIVENESS, AND IT OPENS IT UP IN DIVERSITY AS WELL. - REPRESENTATIVE LEAH LANDRUM TAYLOR (D-AZ), THE ROAD TO CLEAN ELECTIONS VIDEO

The goal is to design public funding to limit the potential corrupting influence of large contributions, encourage and empower small donors and make the campaign finance system more transparent, all while ensuring participating candidates are not at a disadvantage and have enough resources to run competitive campaigns.

Elements of Public Funding

Public funding programs can be designed to reduce the influence of large contributions, facilitate communication by candidates with the electorate and free candidates from the rigors of fundraising. As noted, tax credits, tax deductions and refund programs for political contributions provide incentives for people to make contributions, but generally do not require any opt-in by the candidate. Public funding systems that do require participation by the candidate, such as Clean Elections, matching funds and voucher programs have the advantage of not only empowering small donors, but can also support a more comprehensive campaign finance system involving additional limits and requirements for candidates. Candidate participation in public funding may include some of the following elements:

- Required small dollar fundraising to establish eligibility for the program;
- Limits on what a participating candidate can spend on the campaign, including limits on a candidate's use of personal wealth;
- Lower limits on contributions to the campaign;
- Prohibition on participating candidates soliciting soft money (unregulated) contributions;
- Audit or review of campaign spending to ensure public funds are not misspent;
- Special reporting requirements to provide greater transparency or
- Candidate agreement to participate in debates.

Limitations on Public Funding

The Supreme Court has imposed two major limits on public funding programs. First, since candidate participation in public funding programs requires candidates to abide by rules that would be unconstitutional (according to the current jurisprudence) if unilaterally imposed by the government—such as limits on overall campaign expenditures or the candidate's use of personal funds—such programs must be voluntary. The second limit, which is really a corollary of the first, is that nonparticipating candidates cannot be in any way penalized or disadvantaged by the decision not to participate in public funding.

As a practical matter, requiring the system to be voluntary has the advantage of enabling the programs to require candidates abide by meaningful restrictions aimed at reducing the negative influence of large contributions, facilitating communication by candidates with the electorate, freeing candidates from the relentless burden of fundraising and empowering small donors. On the other hand, given the rise of so-called “outside money” in the form of super PACs, dark money groups and sham issue organizations pouring money into our elections, many candidates are nervous about agreeing to limits or any other rules that they feel may put them at a real financial disadvantage in an election. That is why any successful system must provide adequate funds for participants, and may also provide additional support for qualifying candidates near the end of the campaign to respond to outside spending.¹³

¹³ The Supreme Court ruled unconstitutional “triggered matching funds,” or additional funds provided to candidates who faced self-funded opponents or big-spending outside groups. However, advocates believe a voluntary system that provides additional funding for candidates who can demonstrate support (often through raising additional small donations) would pass muster with the Court.

The challenge has been made more difficult by the Supreme Court's expansive view of the second limitation on public funding; that it not in any way burden a nonparticipating candidate. For example, although not limited to public funding, the Supreme Court has found unconstitutional provisions that increase the contribution limits for a candidate who is facing a wealthy self-financed candidate.¹⁴ In the context of Arizona's public funding system, the Supreme Court also struck down a provision that provided a publicly funded candidate additional money to respond to campaign activities of privately financed candidates and independent expenditure groups.¹⁵

These restrictions have made the development of truly effective public funding programs more challenging. The goal is to design public funding to limit the potential corrupting influence of large contributions, encourage and empower small donors and make the campaign finance system more transparent, all while ensuring participating candidates are not at a disadvantage and have enough resources to run competitive campaigns. But, it can and has been done. In fact, successful public funding systems already exist at the state and municipal levels, and there are intensive efforts underway to design new public funding systems.

It is important to note that public approval of these systems is and remains very strong anywhere they are implemented, such as in Maine, Arizona and Connecticut. Additionally, studies have found that they are effective at meeting their stated goals: broadening the donor pool, allowing public officials to hear from constituents, increasing the number and diversity of candidates running for office, reducing the influence of special interests and lobbyists and strengthening the connections between elected officials and their constituents.

Note: As this report was going to print, voters in Maine and Seattle passed important campaign finance reform initiatives to empower small-dollar donors. Visit blueprintsfordemocracy.org for more information.

BEFORE PUBLIC FINANCING, TO GET DONATIONS YOU HAD TO CALL PEOPLE. THAT WOULD GO ON. YOU'D SPEND HALF OF YOUR TIME IN THE ELECTION CYCLE CALLING UP PEOPLE, RAISING MONEY INSTEAD OF GOING OUT AND KNOCKING ON DOORS. NOW, YOU'RE GETTING IT FROM THE PEOPLE AND HEARING WHAT THEY WANT AND NOT FROM SPECIAL INTERESTS.

- CONNECTICUT STATE REP. AL ADINOLFI (R)

¹⁴ *Davis v. FEC*, 554 U.S. 724 (2008).

¹⁵ *McComish v. Bennett*, 131 S. Ct. 2806, 564 U.S. (2011).

Connecticut Citizens' Election Program (CEP)

What is it?

According to the state of Connecticut, its voluntary program provides full public financing to qualified candidates and is designed to improve the electoral process by:

- Allowing candidates to compete without reliance on special interest money;
- Allowing statewide officers and legislators the ability to make decisions free of the influence of, or the appearance that they have been influenced by, donations from special interests;
- Restoring public confidence in the electoral and legislative processes;
- Increasing meaningful citizen participation and
- Providing the public with useful and timely disclosure of campaign finances.

How is it funded?

Citizens' Election Fund receives most of its funding from the sale of abandoned property in the State of Connecticut's custody. The Fund may also accept voluntary contributions.

Who may participate?

Candidates for governor, lieutenant governor, secretary of the state, treasurer, comptroller, or attorney general ("statewide office") or for state senator or state representative ("General Assembly").

What are the requirements to participate?

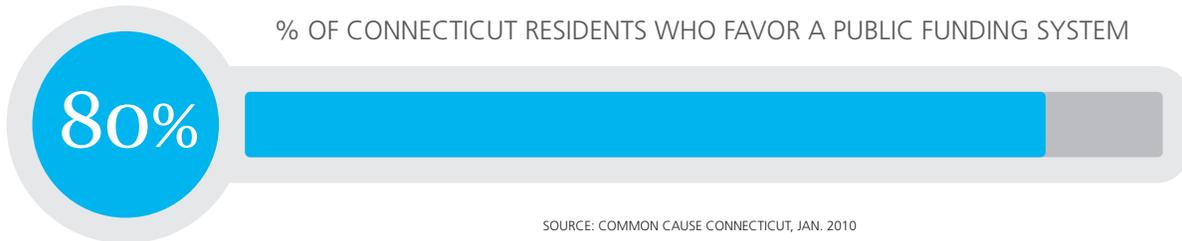
Candidates must agree to abide by restrictions on fundraising and spending, including contribution and expenditure limits and mandatory financial disclosure, as well as other requirements.

How does a candidate qualify?

- Candidates must demonstrate substantial public support by raising an aggregate amount of small-dollar monetary contributions (between \$5 and \$100) from individuals residing in their district (for General Assembly) or the state for statewide office:
 - Governor: \$250,000 of which \$225,000 must be raised in-state;
 - Other statewide offices: \$75,000, of which \$67,500 must be raised in-state;
 - State Senator: \$15,000. Minimum of 300 individual residents of municipalities in district and
 - State Representative: \$5,000. Minimum of 300 individual residents of municipalities in district.
- Use of personal funds: Candidates may provide a limited amount of personal funds to their committees only before applying for a grant. Any allowable personal funds provided will reduce the grant by a corresponding amount.

PUBLIC FINANCING ALLOWS FOR A GREATER NUMBER OF PEOPLE TO RUN FOR HIGHER ELECTED OFFICES. THIS IS BECAUSE THERE IS A LEVEL PLAYING FIELD IN TERMS OF FUNDRAISING. I BELIEVE THIS ALSO OPENS THE DOOR TO HAVING MORE MINORITY CANDIDATES RUN FOR THESE ELECTED OFFICES AS WELL.

- CONNECTICUT STATE REP. AUDEN GROGINS (D)



What are the amounts of the grant?

The grant amount is based on the level of public support as demonstrated by how each candidate qualifies for the ballot, and, in some instances, the number of nominating petition signatures a candidate obtains. Here were the grant amounts for 2014:

- Primary:
 - Governor: \$1,354,250
 - Other statewide offices: \$406,275
 - State senator: \$38,990
 - State representative: \$11,140
 - Note: Candidates in “party-dominant” districts are eligible for larger grants in primary campaigns.
- Full General Election Grants:
 - Governor: \$6,500,400
 - Other statewide offices: \$812,550
 - State senator: \$94,690
 - State representative: \$27,850
 - Note: Grant amounts for candidates nominated by a major party may be reduced to 30 percent of the full amount if the candidate is unopposed in the general election, and may be reduced to 60 percent of the full amount if the candidate faces only a minor party or petitioning opponent who has not raised an amount equal to the qualifying threshold level for that office.

Are there problems?

There are concerns that candidates who enter the system will not have enough money to respond to the growing amount of money being spent by outside groups, including super PACs. This has given rise to legislative efforts to modify the limits and restrictions applicable to candidates and political parties. Without a prohibition on raising soft money, a publicly funded candidate can receive public funds and still raise contributions for other committees outside the program’s limits.

Do Connecticut residents support the system?

Yes. According to the executive director of Common Cause Connecticut, 80 percent of residents favor CEP. Additionally, the system has been successful in encouraging candidates to use citizen funds (77 percent of successful candidates in 2012 opted in), and one elected official interviewed by the non-profit Demos stated, “I think it is fantastic. I get all my fundraising done early in the summer and then spend the rest of the time door knocking and talking to constituents, which is where I should be spending my time.”

New York City’s Matching Funds Program

What is it?

The New York City Campaign Finance Board's Matching Funds Program was established in 1988 to counter the rapidly-growing cost of running for public office in the city by encouraging candidates to finance their campaigns through small donations from average New Yorkers instead of wealthy special interests. Under the program, in exchange for agreeing to campaign spending limits and increased financial oversight, participating candidates for city office receive six dollars of matching funds for every one dollar they raise through small (under \$175) donations from New York City residents. As a result, as one study found, “by pumping up the value of small contributions, the New York City system gives [politicians] an incentive to reach out to their own constituents rather than focusing all their attention on wealthy out-of-district donors, leading them to attract more diverse donors into the political process.”¹⁶

How is it funded?

Matching funds under the program are paid out from the New York City Campaign Finance Fund—a separate, dedicated account administered by the Campaign Finance Board (CFB)—which is itself funded by the City Council's annual budget, as well as private donations.

Who may participate?

Any candidate for municipal office—mayor, comptroller, public advocate, borough president or city council—is eligible to participate in the matching funds program, though candidates for state and federal office are not.

What are the requirements to participate?

To participate in the Matching Funds Program, a candidate must:

- Appear on the ballot along with at least one opposing candidate;
- Agree to increased financial oversight from the CFB and
- Abide by campaign spending limits (that vary depending on the office sought).

How does a candidate qualify?

To qualify for the Matching Funds Program, in addition to the requirements above, candidates must demonstrate a basic level of community support by meeting a two-part minimum fundraising threshold by:

1. Raising a minimum amount of funding through only match-eligible donations (i.e., donations of \$175 or less) and
2. Receiving contributions (of \$10 or more) from a minimum number of residents living in the area they seek to represent.

CAMPAIGN SPENDING LIMITS
(VARY DEPENDING ON THE OFFICE SOUGHT)

OFFICE	OUT-YEAR LIMIT	PRIMARY ELECTION	GENERAL ELECTION
Mayor	\$ 328,000	\$ 6,969,000	\$ 6,969,000
Public Advocate, Comptroller	\$ 328,000	\$ 4,357,000	\$ 4,357,000
Borough President	\$ 146,000	\$ 1,569,000	\$ 1,569,000
City Council	\$ 49,000	\$ 182,000	\$ 182,000

¹⁶ <http://www.brennancenter.org/publication/donor-diversity-through-public-matching-funds>



TWO-PART MINIMUM FUNDRAISING THRESHOLD
(VARY DEPENDING ON THE OFFICE SOUGHT)

OFFICE	MINIMUM FUNDS RAISED	NUMBER OF CONTRIBUTORS
Mayor	\$ 250,000	1,000
Public Advocate, Comptroller	\$ 125,000	500
Borough President	\$ 10,000 – \$50,094 (depending on borough)	100
City Council	\$ 5,000	75

Both requirements of the fundraising threshold vary depending on the office sought.

What are the amounts of the grant?

As with any matching funds program, the amount of the grant will vary based on the number of eligible donations a candidate receives. The maximum amount of matching funds that can be paid out for a single donation is \$1,050 (matching the maximum \$175 private donation), and there is a cap on the total amount of public matching funds a candidate can receive, equal to 55 percent of the total expenditure limit.

Has the program worked?

The Matching Funds Program has been remarkably successful in its goal of ensuring that the individuals

giving to campaigns represent the city's racial and economic diversity, in addition to encouraging campaigns to reach out to communities which may have otherwise been ignored. A 2012 study by the Brennan Center for Justice found 90 percent of census blocks in New York City included at least one small (under-\$175) donor to a candidate for City Council, compared to the merely 30 percent of census blocks which had a small donor to a candidate for the New York State Assembly (who cannot receive CFB matching funds for small donations).

The study similarly found that the communities which donated to City Council races were more likely to have lower incomes and greater racial diversity than those that gave to State Assembly candidates, and that the pool of small donors grew by 40 percent. Said one elected official, "[S]ince the multiple match increases reliance on small donors, there is less need for a candidate to cozy up to special interests."¹⁷

Additionally, a study from the Center for Urban Research at the CUNY Graduate Center found that registered voters who contributed to a 2013 New York City campaign were far more likely to vote in those elections than voters who did not make a contribution, certainly a welcome side effect of the program.

GRANT AMOUNTS
(VARY DEPENDING ON THE OFFICE SOUGHT)

OFFICE	MAXIMUM PUBLIC FUNDS
Mayor	\$ 3,832,950
Public Advocate, Comptroller	\$ 2,396,350
Borough President	\$ 862,950
City Council	\$ 100,100

¹⁷ Brennan Center report (<http://www.brennancenter.org/sites/default/files/legacy/Small%20Donor%20Matching%20Funds-The%20NYC%20Election%20Experience.pdf>) Interview by Angela Migally with David Yassky, Commissioner/Chair, N.Y. City Taxi and Limousine Commission, New York, NY (June 25, 2010).

Minnesota's Public Subsidy Program

What is it?

The State of Minnesota has been experimenting with public financing measures for more than 40 years. In 1974, in response to the Watergate scandal, the state enacted a public financing program for candidates for statewide office, financed through an income tax check-off. The 1974 reforms also provided a tax credit for individuals who contributed to candidates and political parties.¹⁸ The current version of the state's public financing system consists of a partial grant to candidates who agree to spending limits. Contributors to publicly funded candidates are eligible to have up to \$50 of their political contribution refunded by the state.

How is it funded?

The public subsidy grant is paid for by legislative appropriation and a state income tax check-off.

Who may participate?

Candidates for governor, attorney general, secretary of state, state auditor, senate and state representative.¹⁹

How does a candidate qualify?

There are several requirements to qualify for the public subsidy program:

- The candidate must sign and file a public subsidy agreement and abide by the applicable campaign expenditure limits;
- The candidate must raise a set amount of monetary contributions. Only the first \$50 contributed by people eligible to vote in Minnesota count toward the total. The amount that must be raised varies by office;
- The candidate must have an opponent in either the primary or general election;
- The candidate's committee must file the required pre-primary report and
- The candidate must appear on the general election ballot.

What is the amount of the grant?

The amount of the public subsidy grant varies by year and the office sought by the candidate.²⁰

CONTRIBUTIONS REQUIRED TO QUALIFY FOR THE PUBLIC SUBSIDY PROGRAM

2016 ELECTION CYCLE

OFFICE	AMOUNT THAT MUST BE RAISED
Governor	\$ 35,000
Attorney General	\$ 15,000
Secretary of State	\$ 6,000
State Auditor	\$ 6,000
Senate	\$ 3,000
State Representative	\$ 1,500

¹⁸ <http://www.senate.leg.state.mn.us/departments/scr/treatise/campfin.htm>

¹⁹ http://www.cfboard.state.mn.us/handbook/handbook_const_leg_candidates.pdf

²⁰ http://www.cfboard.state.mn.us/publicsubsidy/2014_Public_Subsidy_Payments.pdf



2014 PUBLIC SUBSIDY PAYMENTS

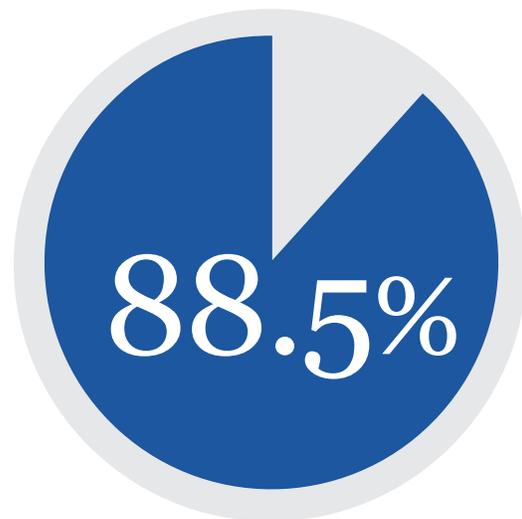
OFFICE	AMOUNT OF GRANT
Governor	\$ 267,161
Attorney General	\$ 35,621
Secretary of State	\$ 20,355
State Auditor	\$ 20,355
State Representative	\$ 2,560

Who is eligible for the refund?

Contributors to candidates participating in the public subsidy program may be eligible for a contribution refund. The refund is equal to the amount contributed up to a maximum of \$50 (\$100 for married couples).

How has the program worked?

A vast majority of candidates have opted into Minnesota's public financing system. In 2014, 312 candidates ran for an office eligible to participate in the program. Of those 312 candidates, 88.5 percent (276 candidates)²¹ signed voluntary agreements to abide by the spending limits and other requirements to be eligible for the subsidy. The spending limit requirement includes some modifications, giving the program some flexibility to accommodate different candidates and races: First-time candidates get a 10 percent spending limit increase; candidates with a closely contested primary may receive a 20 percent increase and in certain circumstances, a candidate can be released from the spending limit agreement if their opponent does not sign a public subsidy agreement.²² The Minnesota public financing program has been revised several times since its enactment in 1974, keeping it an attractive and viable option for candidates.*



% OF 2014 CANDIDATES WHO OPTED INTO MINNESOTA'S PUBLIC FINANCING SYSTEM

SOURCE: MINNESOTA CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD, DEC. 2014

²¹ *Id.*

²² http://www.cfboard.state.mn.us/handbook/handbook_const_leg_candidates.pdf

*Minnesota enacted a budget bill that suspended the political contribution refund program for contributions made between July 1, 2015 and July 1, 2017.

SOURCE LIMITS AND PROHIBITIONS

IT IS UNNECESSARY TO LOOK BEYOND THE ACT'S PRIMARY PURPOSE—TO LIMIT THE ACTUALITY AND APPEARANCE OF CORRUPTION RESULTING FROM LARGE INDIVIDUAL FINANCIAL CONTRIBUTIONS—IN ORDER TO FIND A CONSTITUTIONALLY SUFFICIENT JUSTIFICATION FOR THE \$1,000 CONTRIBUTION LIMITATION...TO THE EXTENT THAT LARGE CONTRIBUTIONS ARE GIVEN TO SECURE A POLITICAL QUID PRO QUO FROM CURRENT AND POTENTIAL OFFICE HOLDERS, THE INTEGRITY OF OUR SYSTEM OF REPRESENTATIVE DEMOCRACY IS UNDERMINED.²³ *BUCKLEY v. VALEO*, 1976

Contributions and Independent Expenditures

Some frame the goal of campaign finance reform as getting “money out of politics.” However, the reality is that effective political discourse through ads, publications, speeches and debates requires the expenditure of money. Therefore, it may be more realistic to focus on addressing the problems caused by the need for money in political campaigns. Look at it this way: The problem is not that candidates have to spend money to run for office, but how much they have to raise, who they have to raise that money from and what they must promise or do in return for that money. A campaign finance system that allows a candidate to fund his or her campaign by raising large contributions from individuals, corporations, labor unions and other interest groups will naturally limit who can run for office, resulting in the candidate being more responsive to these donors and increasing the opportunity for corruption.

One way to begin to address this problem is to limit the amounts an individual or political committee can contribute to a candidate, political party or PAC and to limit or prohibit contributions from corporations

or labor unions. Contribution limits will encourage candidates to reach out to more constituents and feel responsive to a larger number of people. In addition, with reasonable limits, a voter who can only make a small contribution to a campaign—be it \$10, \$25 or \$50—is more likely to feel a stake in the election and more likely to vote. The problem is that under the current system, many individuals who can only afford to make small contributions believe they are virtually meaningless.

Of course, contribution limits and prohibitions have to fit within the Supreme Court's current constitutional analysis of the regulation of money in politics. In *Buckley v. Valeo*²⁴ the Court created a legal framework that distinguishes between contributions made directly to a candidate or political party and money spent by an individual independently of a candidate or political party. In its controversial decision, the Court said that when a person spends money on his or her own speech independently of a candidate, his or her First Amendment rights are at the highest, while the danger of corruption is at its lowest because the independence from the candidate made it less likely the expenditure would

The problem is not that candidates have to spend money to run for office, but how much they have to raise, who they have to raise that money from and what they must promise or do in return for that money.

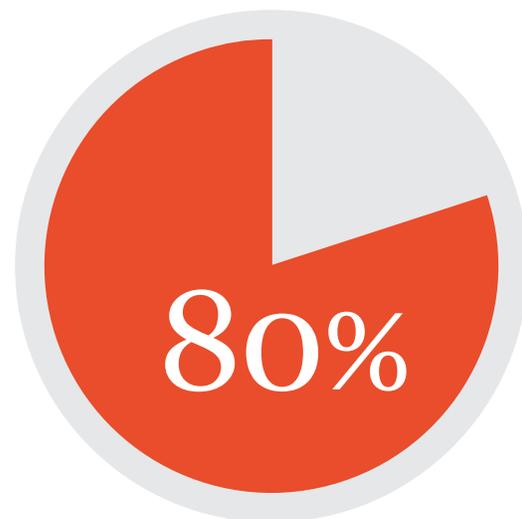
²³ *Buckley*, 424 U.S. at 26-27.

²⁴ 424 U.S. at 25-51.

give rise to a potential quid pro quo arrangement. Therefore, a limitation on the amount an individual can spend independently of a candidate is unconstitutional. In contrast, the Court said that direct contributions to a candidate involve giving money to someone else to turn into speech, which is more of a symbolic act of support through association. At the same time, direct contributions raise the greatest concern for potential corruption because of the involvement of the candidate. Using this framework, the Supreme Court held that the government can limit the amount and sources of contributions to candidates, but cannot limit what an individual can spend independently of a candidate. The same concept was extended to corporations and labor unions in 2010 in *Citizens United*, though that decision was extremely close, with five justices in the majority and the remaining four dissenting. Additionally, *Buckley* notwithstanding, the *Citizens United* decision was an aberration in the history of campaign finance law, and bucked the trend of more than 100 years of established case law, much of which was written by conservatives on the bench. Many scholars, judges and politicians decried the decision; Republican Senator John McCain (R-AZ) called it the Court's worst decision ever.

Public opinion concurs: 80 percent of Americans disapprove of the decision, including supermajorities of Democrats, independents and Republicans.²⁵ A 2015 New York Times/CBS News poll found that "Americans of both parties fundamentally reject the regime of untrammelled money in elections made possible by the Supreme Court's *Citizens United* ruling," and that "Republicans in the poll were almost as likely as Democrats to favor further restrictions on campaign donations."²⁶

Nevertheless, even though the Court's argument here seems far removed from what is going on in the real world, it is the framework within which we have to work, until that framework is changed.



% OF AMERICANS WHO
DISAPPROVE OF SUPREME COURT
CITIZENS UNITED RULING

SOURCE: WASHINGTON POST – ABC NEW POLL, FEB. 2010

²⁵ Washington Post 2/8/10, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/17/AR2010021701151.html>

²⁶ http://www.nytimes.com/2015/06/03/us/politics/poll-shows-americans-favor-overhaul-of-campaign-financing.html?_r=0

The limit should be low enough to give the public confidence that large contributions are not corrupting the election, while high enough to allow candidates to raise sufficient funds to run for office.

Contribution Limits

Federal law limits how much an individual or PAC can give to a federal candidate per election, with the primary and general considered separate elections. For the 2016 election, an individual can give \$2,700 per election to a candidate and a PAC can give \$5,000 per election. An individual has separate contribution limits on what they can give to the political parties and PACs. (There is no limit on what an individual can give to a PAC that only makes independent expenditures, commonly referred to as a super PAC.²⁷) Up until 2014, there was also an aggregate limit on what a person could give to all candidates, political parties and PACs in an election cycle. However, in *McCutcheon v. FEC*, the Supreme Court struck down these aggregate limits. Nevertheless, the Supreme Court has never suggested that it is prepared to overrule its holding in *Buckley* that limits on contributions to candidates are constitutional. Therefore, contribution limits remain an important tool in a campaign finance system.

Many states have limits on what an individual can give directly to a candidate, political party or PAC that makes contributions to candidates, while some states do not limit contributions. States that do so have relatively wide discretion in setting limits. The Supreme Court in *Buckley* said that it is not the Court's role to second-guess the legislative determination as to the appropriate limit on contributions to candidates.²⁸ However, that discretion is not without its limits. In *Randall v. Sorrell*,²⁹ the Supreme Court held that Vermont's individual contribution limits, which ranged up to \$400 per two-year election cycle depending on the office, were unconstitutional because, taken together with other restrictions on

individual support for candidates, they effectively became a prohibition on contributions.

As there is wide, though not unlimited, discretion in setting contribution limits, it is important to consider not only the dollar amount of the limit, but also whether different limits should be set for different entities. The limit should be appropriate to the specific context, such as the nature of the race and the general cost of an average campaign for a specific office. For example, a limit for a county council race may be lower than the limit for gubernatorial race in the same state. The contribution limit may reflect the varying costs of running for office in different states. But, in the end, the limit should be low enough to give the public confidence that large contributions are not corrupting the election, while high enough to allow candidates to raise sufficient funds to run for office. Americans, wealthy or not, have a fundamental right to participate in the political process, including through contributions to campaigns. De facto bans on contributions should certainly trigger review by the courts, and reformers must be vigilant in avoiding such pitfalls.

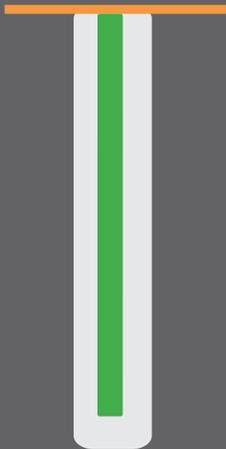
As noted, contribution limits do not have to be a one-size-fits-all proposition. For example, you can have separate contribution limits set for what an individual can give to a candidate, political party and PAC, while political parties and PACs can have a different limit on what they can give to candidates or each other. Likewise, lobbyists and those doing business with the government may be subjected to lower contribution limits and other restrictions (See Everyone Plays by Common-Sense Rules.)

²⁷ *SpeechNow v. FEC*, 599 F.3d 686 (D.C. Cir. 2010)

²⁸ 424 U.S. at 30.

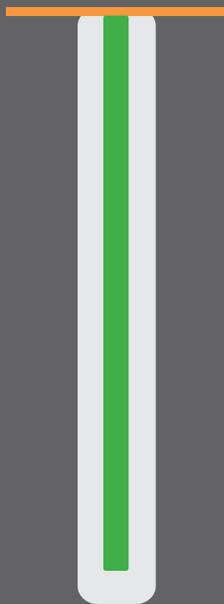
²⁹ 548 U.S. 230 (2006)

\$2,700
TO A FEDERAL CANDIDATE
PER ELECTION



CAMPAIGN

\$5,000
TO A FEDERAL CANDIDATE
PER ELECTION



PAC



SUPER PAC



501 (C) 4
NONPROFIT

2016 INDIVIDUAL CONTRIBUTION LIMITS

Prohibitions on Contributions From Certain Sources

Because of concerns about large aggregations of wealth being amassed by corporations and the potential that such wealth will be used to corrupt officeholders, federal campaign finance laws prohibit corporations and labor unions from using their general treasury funds to make political contributions to federal candidates or political parties. In *FEC v. National Right To Work Committee* the Court held:

The first purpose of [prohibition on corporate and labor contributions and expenditures], the government states, is to ensure that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political “war chests” which could be used to incur political debts from legislators who are aided by the contributions. The second purpose of the provisions, the government argues, is to protect the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed. We agree with the government that these purposes are sufficient to justify the regulation at issue.³⁰

At the same time, state and local regulation of corporate and union contributions to state and local candidates vary, with some states banning corporate and/or labor union contributions, while others limit such contributions or allow them entirely. However, even where corporations and unions are prohibited from making direct political contributions, they can set up PACs, which may be funded by individuals affiliated with the corporation or union.

As previously discussed, in *Citizens United*, the Supreme Court held that it was unconstitutional to prohibit corporations (and labor unions) from making independent expenditures, but did not call into question the longstanding ban on corporate and union contributions to candidates. Given the public’s reaction to the Court, allowing corporations and labor unions to make direct contributions to candidates only increases the public’s perception that our campaign finance system is riddled with opportunities for corruption.

There are a number of issues that should be considered when determining whether to prohibit or limit corporate and/or labor contributions to candidates. Among these are:



1. Treating All Corporations the Same:

Corporations are creatures of state law, which define the requirements to be a corporation and a corporation’s obligations to the state. However, federal law determines how a corporation is treated for certain purposes, such as paying federal taxes or involvement in federal elections. Corporations can take numerous forms, including for-profit, nonprofit and limited liability companies (LLC). Still further, corporations often have subsidiaries, parent corporations and sibling affiliates, all under common ownership.

³⁰ *FEC v. National Right to Work Committee*, 459 U.S. 197, 207-208 (1982) (internal citations omitted).

Citizens United did not call into question the longstanding ban on corporate and union contributions to candidates.

In addition, two or more corporations can come together as a joint venture or partnership, which is not incorporated. Any effective ban or limitation on the use of corporate funds to influence elections will have to take into account all of the different ways corporate money can enter the process.



2. Other Forms of Corporate Support:

Corporate support of candidates does not have to be in the form of a contribution of money to a candidate. Corporations may establish PACs to raise funds from certain employees to be contributed to candidates, hold fundraisers for candidates on the corporation's premises and other "in-kind" support, help solicit contributions from their executives or employees and urge their employees to vote for a candidate. Some corporations are also involved in get out the vote activity. While it is clear that certain independent corporate activity is no longer subject to regulation after *Citizens United*, other forms of corporate support for election activity is still subject to regulation.



3. **Foreign National Corporations:** Federal law and FEC regulations prohibit foreign nationals, including foreign national corporations, from contributing to any local, state or federal election and from making independent expenditures or electioneering communications.³¹ Some states have similar prohibitions. Therefore, even if a state does not have such a prohibition and does allow corporations to make contributions to candidates, a foreign national corporation cannot contribute in state or local elections. However, the FEC does not apply the prohibition to wholly owned subsidiaries of foreign national corporations, as long as no foreign national money is used to support the U.S. corporation's political activity and no foreign national individual is involved in the decision making regarding such activity.³² Given this, extreme concern exists that the FEC's rules do not really prevent foreign national involvement in U.S. elections. This should be a chief concern for any reform advocates, particularly in ballot initiatives where the FEC has ceded its regulatory power almost entirely.³³

³¹ 52 U.S.C §30121; 11 C.F.R.§110.20

³² 11 C.F.R.§110.20(i)

³³ <http://www.usatoday.com/story/news/politics/elections/2015/05/18/federal-election-commission-foreign-donations-ballot-initiative-concerns-adult-films/27530379/>

everyone knows

DISCLOSURE

PUBLICITY IS JUSTLY COMMENDED AS A REMEDY FOR SOCIAL AND INDUSTRIAL DISEASES. SUNLIGHT IS SAID TO BE THE BEST OF DISINFECTANTS; ELECTRIC LIGHT THE MOST EFFICIENT POLICEMAN. ³⁴ - SUPREME COURT JUSTICE LOUIS BRANDEIS

Disclosure of the sources of the funding of our elections and candidates, and how that money is spent, has long been considered central to the free and transparent functioning of our democracy. In fact, the Supreme Court has continued to uphold the constitutionality of disclosure laws, finding they serve broad important purposes.

As the Court has repeatedly recognized, disclosure provides the electorate with critical information about the candidates. For example, knowing who is financially supporting a candidate may tell voters more about where the candidate stands on issues than do party labels and campaign speeches. Re-

searchers, the press and interested citizens can look at the relationships between contributors and the candidate, analyze patterns of giving and expose the relationship between contributions and the candidate's positions. In addition, disclosure helps detect actual corruption and prevents the appearance of corruption by shining a light on large contributions and expenditures. Information about a candidate's most generous supporters allows us to look for any post-election special favors that may be given in return and may deter donors seeking favors. Finally, the record-keeping and reporting that is required for disclosure allows for the enforcement of the contribution limits and prohibitions.

REQUIRING PEOPLE TO STAND UP IN PUBLIC FOR THEIR POLITICAL ACTS FOSTERS CIVIC COURAGE, WITHOUT WHICH DEMOCRACY IS DOOMED.

- SUPREME COURT JUSTICE ANTONIN SCALIA

³⁴ L. Brandeis, *Other People's Money* 62 (National Home Library Foundation ed.1933).

501(c)(4)

NONPROFITS ARE INCREASINGLY UNDERTAKING ACTIVITIES THAT SUPPORT OR OPPOSE CANDIDATES IN ORDER TO HIDE THE TRUE SOURCES OF THE FUNDS SUPPORTING THAT ACTIVITY.

I THINK WHAT WE OUGHT TO DO IS WE OUGHT TO HAVE FULL DISCLOSURE, FULL DISCLOSURE OF ALL OF THE MONEY THAT WE RAISE AND HOW IT IS SPENT. AND I THINK THAT SUNLIGHT IS THE BEST DISINFECTANT.

- SPEAKER OF THE HOUSE JOHN BOEHNER (R-OH), 2007

In fact, for a long time even opponents of contribution limits argued all that was needed were disclosure laws so that the public would know who was supporting the candidates. For example, in 2000, Senator Mitch McConnell, who recently began opposing disclosure, said:

There's a serious constitutional question, whether you can require people engaged in what's called issue advocacy to disclose. But if you're going to do that, and the Senate voted to do that, and I'm prepared to go down that road, then it needs to be meaningful disclosure...And so what we ought to do is broaden the disclosure to include at least labor unions and tax-exempt business associations and trial lawyers so that you include the major political players in America. Why would a little disclosure be better than a lot of disclosure?³⁵

More recently, in 2007, Speaker of the House John Boehner called for increased disclosure: "I think what we ought to do is we ought to have full disclosure, full disclosure of all of the money that we raise and how it is spent. And I think that sunlight is the best disinfectant."³⁶

Unfortunately, despite broad agreement in support of transparency in the funding of our elections on both sides of the aisle, disclosure is now under assault from two directions by a small group of well-funded opponents.

The New Attack on Transparency

1. Dark Money Groups

501(c)(4) groups—which often have a generic good-government sounding name that tells you nothing about who they are or who is funding them—are increasingly undertaking activities that support or oppose candidates in order to hide the true sources of the funds supporting that activity. The anonymity they promise their contributors is a major draw to wealthy individuals and corporations who do not want their support for a particular candidate or association with negative ads made public. Non-disclosure can also benefit a candidate who does not want to be publicly associated with certain donors. More importantly, it leaves the public in the dark as to who is financing our candidates for elected office.

These groups base their ability to operate in the shadows on the claim they are "social welfare" organizations under section 501(c)(4) of the Internal Revenue Code (IRC). While the tax laws do not require 501(c)(4) organizations to publicly disclose their contributors, political activity is explicitly excluded from the definition of promoting "social welfare." Groups primarily involved in directly or indirectly attempting to influence elections should register as political organizations under section 527 of the IRC, which does require them to disclose the identity

³⁵ Senator Mitch McConnell on Meet the Press, June 18, 2000, as quoted in *Mitch McConnell Disagrees With Norm Ornstein. And With Mitch McConnell*. Bloomberg View, June 25, 2013. <http://www.bloombergview.com/articles/2013-06-25/mitch-mcconnell-disagrees-with-norm-ornstein-and-with-mitch-mcconnell>

³⁶ NBC's Meet the Press, February 11, 2007. A copy of the transcript can be found at <http://votesmart.org/public-statement/238455/nbc-meet-the-press-transcript#.Vcoeq2dRFI5>.

Rebuilding the disclosure system requires proper leadership and legislative action to require enforcement of the rules in effect and enactment of new disclosure laws where needed.

of anyone who contributes in the aggregate \$200 or more in a calendar year.³⁷ And, if their major purpose becomes influencing candidate elections, federal law and many state laws also require the organizations to register as political committees and disclose their contributors. Thus, many of these groups should be publicly disclosing their contributors.

The rise of the dark money groups is often attributed to the Supreme Court's decision in *Citizens United* holding unconstitutional the prohibition on corporations and labor unions making independent expenditures. Therefore, it is argued, that the only solution is a change in the Supreme Court or a constitutional amendment overruling *Citizens United*. This is patently false.

While it is true that the ruling did fuel a dramatic increase in the use of dark money groups to influence elections for both legal and strategic reasons, *Citizens United* in no way undermined laws requiring the disclosure of the true funding of activity that supports or opposes a candidate. In fact, in *Citizens United* and other recent Supreme Court cases, such as *FEC v. Wisconsin Right to Life*³⁸ and *McCutcheon v. FEC*,³⁹ the Supreme Court underscored the importance of disclosure rules, even while striking down certain limitations and prohibitions on the sources of funds.

If anything, these recent Supreme Court cases should serve as a call for the enactment and enforcement of broad disclosure rules. Many

of these rules are already on the books or can easily be enacted.

Even where groups do not disclose all of their contributors, federal law and many state laws require that anyone spending more than a threshold amount for an independent expenditure or electioneering communications place a disclaimer on the ad and file reports disclosing who paid for the ad. Federal and state laws also require super PACs to disclose their contributors. However, in a game of "hide the contributor," a 501(c)(4) organization is listed as the source of the funds for an ad or contribution to the super PAC when the organization is acting as a conduit for a handful of wealthy donors—sometimes only one—who want to remain anonymous.

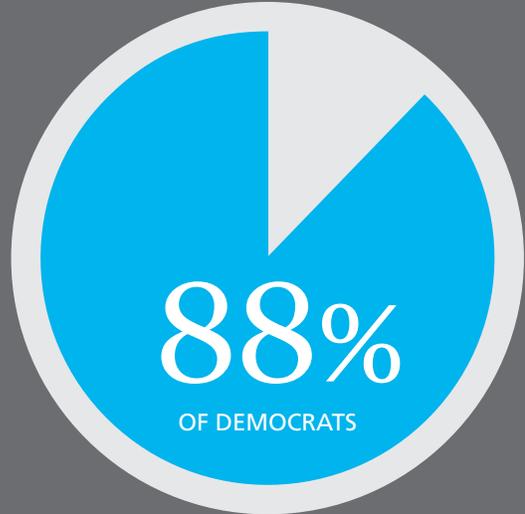
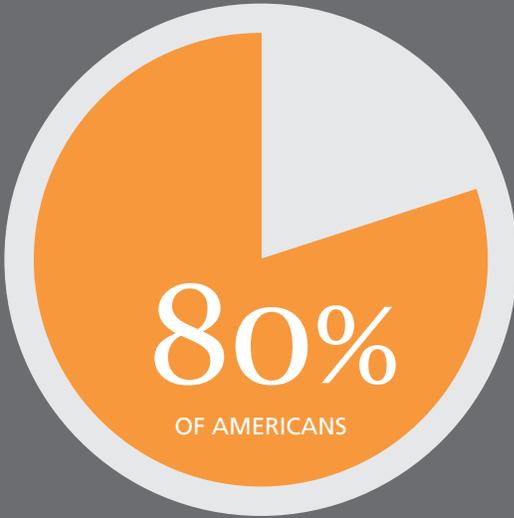
Unfortunately, the IRS, FEC and some state agencies have interpreted their laws to give these groups cover to argue they do not have to disclose the real source of their funds and, even then, fail to enforce their weak interpretations of the disclosure laws. At the same time, many in Congress and in the state legislatures are perfectly happy to let disclosure laws die on the vine.

The bottom line is that transparency in the financing of our elections has the full support of the Supreme Court and the collapse of the disclosure system has, in large part, been due to weak laws and even weaker enforcement efforts. That means rebuilding the disclosure system requires proper leadership and legislative

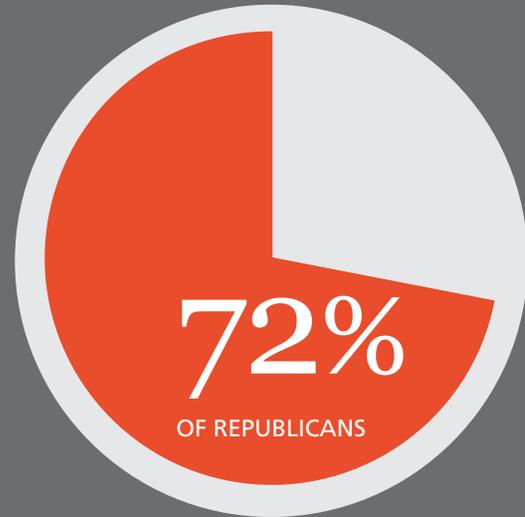
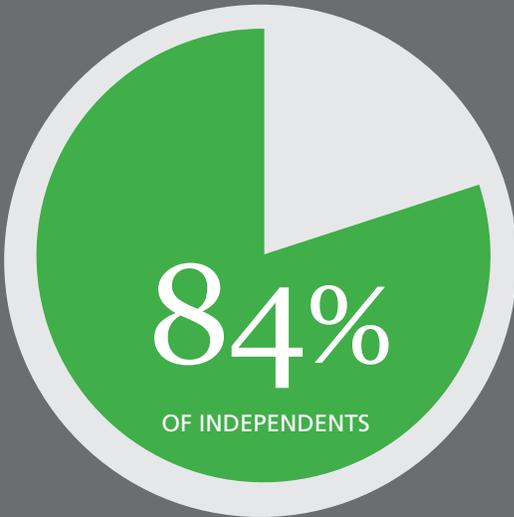
³⁷ 26 U.S.C. § 527(j). If an organization publicly discloses its state and local contributions or expenditures under state law, or its federal expenditures and contributions under FECA, it does not have to file the same information with the IRS. 26 U.S.C. §527(e)(5) & (i)(6).

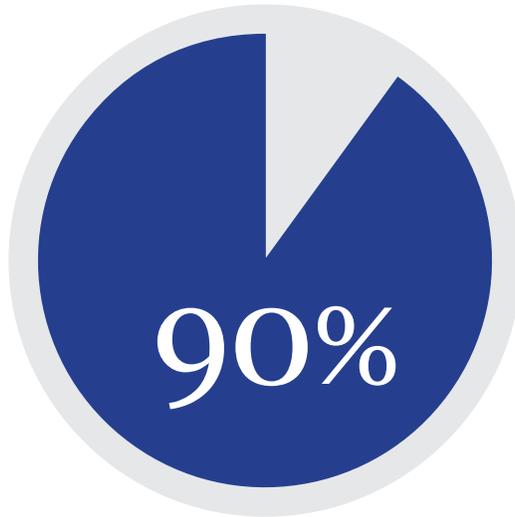
³⁸ 551 U.S. 449 (2007)

³⁹ 134 S. Ct. 1434 (2014)³⁹ *Doe v. Reed*, 561 U.S. ____ (2010) (Slip Opinion p. 9).



THOSE OPPOSED TO
DARK MONEY GROUPS'
NON-DISCLOSURE
PRACTICES





% OF BUSINESS EXECUTIVES WHO SUPPORT DISCLOSURE REFORMS

SOURCE: AMERICAN BUSINESS LEADERS ON CAMPAIGN FINANCE/REFORM
HART/AMERICAN VIEWPOINT, JUNE 2013

action to require enforcement of the rules in effect and enactment of new disclosure laws where needed.

This is an area where liberals and conservatives can find common ground, from New Jersey Governor Chris Christie to President Barack Obama to Chief Justice John Roberts, who said that disclosure, “promotes transparency and accountability in the electoral process to an extent other measures cannot.”⁴⁰ A staggeringly large majority of Americans (80 percent) are opposed to these dark money groups “abusing and taking advantage” of unclear IRS rules, including 88 percent of Democrats, 84 percent of independents and 72 percent of Republicans.⁴¹ And 90 percent of business executives support reforms that disclose all individual, corporate and labor contributions to politics.⁴²

2. Dimming the Light on Existing Disclosure

Long-standing rules requiring the disclosure of contributions to candidates, political parties,

PACs and other political spenders are being called into question by various politicians and advocacy groups, both in the courts and in the legislatures. While the legal challenges are generally being rejected by the courts, there is a growing political battle to limit the disclosure of the identity of those making political contributions. The opponents of transparency, a small but vocal group, now argue that wealthy donors, organizations and businesses that finance political campaigns will be harassed, embarrassed or intimidated by those who oppose their activities if their support is made public. Analogizing their situation to that of NAACP members in Alabama during the mid-1950s, they cite the case of *NAACP v. Alabama*,⁴³ where the Supreme Court found that Alabama’s attempts to force the NAACP to make public a list of its members violated the First Amendment.

The potential for harassment for unpopular political views is a legitimate concern. But the Supreme Court in *Buckley* found that “[t]he

⁴⁰ *Doe v. Reed*, 561 U.S. ____ (2010) (Slip Opinion p. 9).

⁴¹ <http://www.citizen.org/documents/Memo%20IRSrulemaking%20f%20093014.pdf>

⁴² American Business Leaders on Campaign Finance/Reform – June 2013 – Hart/American Viewpoint

⁴³ 357 U.S. 449 (1958).

Laws must require the disclosure of the true sources of political spending to prevent wealthy contributors from using conduit organizations to hide their efforts to buy elections.

governmental interests sought to be vindicated by [FECA's] disclosure requirements" are of sufficient importance "to outweigh the possibility of infringement, particularly when the 'free functioning of our national institutions' is involved."⁴⁴ Nevertheless, according to the *Buckley* Court:

There could well be a case, similar to those before the Court in *NAACP v. Alabama* and *Bates*, where the threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that the Act's requirements cannot be constitutionally applied. But no appellant in this case has tendered record evidence of the sort proffered in *NAACP v. Alabama*. Instead, appellants primarily rely on the clearly articulated fears of individuals, well experienced in the political process... On this record, the substantial public interest in disclosure identified by the legislative history of this Act outweighs the harm generally alleged.⁴⁵

Thus, according to the Court, the ability to grant an exemption from disclosure case-by-case based on specific facts is sufficient to protect the important interests at issue.⁴⁶ However, some activists worry that the current disclosure floor of \$200 may indeed discourage participation by small donors, while increasing compliance burdens for campaigns.

There are important substantive issues to be resolved with any disclosure system, such as what is the appropriate threshold for reporting individual contributions, so real reform must balance the Supreme Court's recognition of how disclosure furthers the interests of a democracy while protecting small donors.

Elements of Effective Disclosure

Depending on the specific context, there are several approaches to increasing transparency in the funding of our elections. Some involve working with campaign finance agencies to strengthen their rules and enforcement and others focus on changes to the law. In some cases, agencies may have to be taken to court to force them to enforce the laws as written.



Consider: a donor says he wants to give money to elect a candidate but will give through groups that claim not to be electing candidates.

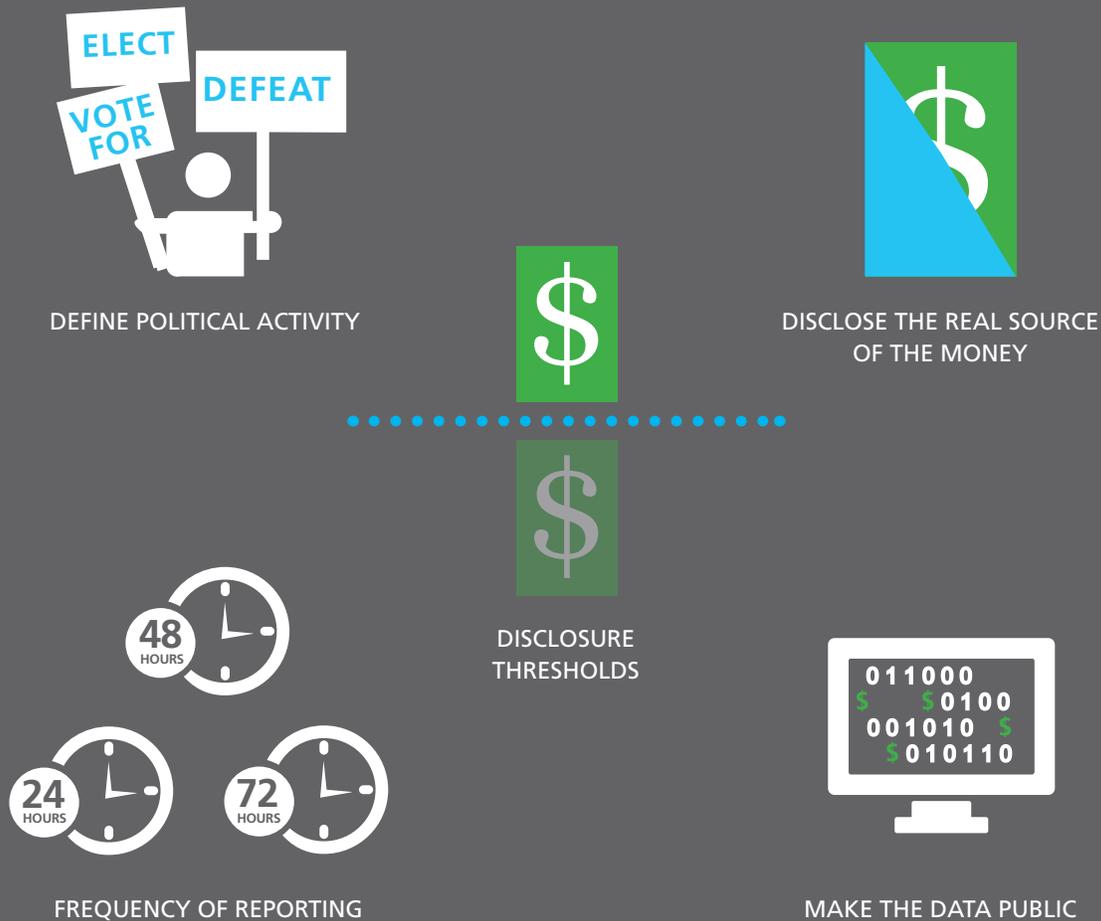
<https://twitter.com/nickconfessore/status/603919417802645505>

⁴⁴ 424 U.S. at 66.

⁴⁵ *Id.* at 71-72 (Citations and internal quotes omitted).

⁴⁶ In fact, exemptions from disclosure have been granted in several cases. [SWP, Hall-Tyner]

ELEMENTS OF EFFECTIVE DISCLOSURE



There are a number of substantive issues to be considered when addressing disclosure, including the types of groups and activities covered, the level of disclosure and whether disclosure is transactional (e.g., applies to specific ads) or organizational (e.g., a group has to disclose all of its activity) or both. And while there is little current evidence of harassment due to the disclosure of large campaign contributions, the problem must be accommodated if such persecution arises. These are all important issues as they will impact the effectiveness of the disclosure rules and how vulnerable they are to constitutional challenges, as well as the level of support the reforms get.

- 1. Defining Political Activity:** There should be no question that expenditures made by a candi-

dates, political parties or PACs are election related. However, the funding of true issue advocacy unrelated to an election by individuals and non-political groups is not subject to campaign finance disclosure laws. Therefore, one of the ways organizations try to ensure donor anonymity is to claim that they are not actually involved in trying to influence elections. Opponents of transparency argue that unless an ad “expressly advocates” the election or defeat of a candidate by use of such words as “vote for,” “elect” or “defeat,” the First Amendment prohibits any requirement that the funders of the ads be disclosed.

However, while ads do have to be election related to fall within campaign finance disclo-

sure rules,⁴⁷ the Supreme Court has never read disclosure laws so narrowly as to only apply to “express advocacy.” For example, the Supreme Court upheld disclosure requirements as applied to broadcast ads that mention the name of a candidate within 30 days of a primary or 60 days of a general election and are targeted to the candidate’s electorate.⁴⁸ Plus, when an organization coordinates an ad with a candidate, disclosure requirements can be applied to a much broader range of ads.

2. **Disclosing the of Real Source of the**

Money: As discussed above, laws must be enacted and/or enforced to require the disclosure of the true sources of political spending and to prevent wealthy contributors from using conduit organizations to hide their efforts to influence elections.

- ## 3. **Disclosure Thresholds:** Most political organizations and candidates use software to keep their financial records, so it is possible to require public reporting of most contributions, regardless of amount. On the other hand, disclosure does implicate privacy issues and there are questions about the information value of reports that include the identity of the donor of every dollar, especially with large campaigns. Currently, at the federal level, a person’s identity must be disclosed if, in the aggregate, he or she contributes in excess of \$200 to a candidate for an election or to a PAC or party committee in a year. Many states have lower thresholds for disclosure, while others have higher. Where the exact threshold is set requires the balancing of what would be the most useful type of data for the public to have to ensure true transparency with an individual’s privacy interests and any burden on a political committee.

- ## 4. **Frequency of Reporting:** Few would seriously argue that disclosing donors only after an election results in true transparency. To serve the function of providing voters with information about the candidates and the people who support them, there must be pre-election reporting. However, depending on the nature and length of campaigns, it may be practical to require more frequent reporting in an election year than in the year when an election is not taking place. In some reporting systems, political committees may only be required to report twice a year in years in which there is no election. Whether this is adequate may depend, in part, on when the campaigns actually start and the level of activity in a non-election year. Another option is requiring quarterly reports in non-election years, moving to monthly reporting in the election year. The most transparent systems require more frequent reports (e.g., within 72, 48 or 24 hours) for contributions to a candidate right before an election and for committees making independent expenditures.

- ## 5. **Making the Data Public:** It is not enough to require candidates and political committees to gather the data and file reports. The law should also require that the reports be made publicly available on the Internet in searchable, downloadable form as soon as possible after filing. This means that the agency that is responsible for receiving and making public the reports must be sufficiently funded and staffed and should be prepared to work with the public and the press to sort and analyze the data as it comes in. Finally, all but the smallest and underfunded campaigns should be required to file the reports electronically. It is the only way to ensure information is made publicly available quickly and, since most campaigns fill out their reports using software, it is easier on the campaigns and the disclosure agency.⁴⁹

⁴⁷ Ballot measure committees can be required to comply with disclosure rules.

⁴⁸ *McConnell v. FEC*, 540 U. S. 93 (2003). *Citizens United*, 558 U.S. at 315-316.

⁴⁹ Amazingly, candidates for the United States Senate are not required to file the reports electronically. The result is that the data about Senate candidates is made public weeks later than other candidates and at a higher cost to taxpayers.

California's Fair Political Practices

What contributor information must be disclosed and what triggers disclosure?⁵⁰

For contributions of \$100 or more, a committee must disclose the name, address, occupation and employer of the contributor.⁵¹

When do candidate and party committees file their disclosure reports?

Most committees file semiannual reports disclosing contributions received and expenditures made in the preceding six months. The report deadlines are July 31 (for activity between January 1 and June 30) and January 31 (for activity between July 1 and December 31 of the preceding calendar year).

In addition to the semiannual reports, which are filed even in non-election years, committees must file two pre-election reports before primary and general elections. The deadlines for pre-election reports for the November 4, 2014 election were: October 5 (for activity between July 1 and September 30) and October 23 (for activity between October 1 and October 18).⁵²

In addition to the scheduled reports, are there any event-driven reports candidates and parties must file?

Yes, depending on a committee's contributions and expenditures, it may be required to file additional reports. Here are a few examples:

For Candidate Committees:⁵³

- Election Cycle Report: these reports cover certain activity in the 90-day window before an election. Candidate committees must report contributions aggregating \$1,000 or more from a single source within 24 hours of receipt;
- \$5,000 Report: for any time outside of the 90-day window before an election, candidate committees must report contributions of \$5,000 or more within 10 business days of receipt.

For Party Committees:⁵⁴

- Election Cycle Report: these reports cover certain activity in the 90-day window before an election and reports must be filed within 24-hours of the triggering event. These events include: receipt of contributions aggregating \$1,000 or more from a single source; making certain independent expenditures of \$1,000 or more; making a contribution of \$1,000 or more in connection with a candidate or ballot measure or to another party committee and contributions of \$1,000 or more to a ballot measure committee.
- Issue Advocacy Report: In the 45 days before an election, if a party committee receives a payment (or promise of payment) of \$50,000 or more, for a communication that identifies a state candidate but does not expressly advocate for the election or defeat of that candidate, the committee must disclose the payment within 48 hours.

⁵⁰ <http://fppc.ca.gov/manuals/manual1state.pdf>

⁵¹ <http://www.fppc.ca.gov/bulletin/007-Dec-2014StateContributionLimitsChart.pdf>

⁵² <http://www.fppc.ca.gov/filingschedules/2014/state/november/2014%2001%2011-4%20State%20Cand%20cfhdlchw.pdf> . The reporting period for the second pre-election report ends 17 days before the election, with the report due no later than 12 days before the election.

⁵³ These requirements only apply to candidates who have reached the \$50,000 contribution or expenditure threshold. These candidates are also required to file electronically.

⁵⁴ <http://www.fppc.ca.gov/filingschedules/2014/state/november/2014%2004%2011-4%20PP%20cfhdlchw.pdf>



Dark money

In an effort to shine light on the underlying sources of dark money contributions—and millions of dollars flowing into the state’s elections through nonprofit organizations—the California Assembly amended the state’s laws in 2014.⁵⁵ The new law requires “multipurpose organizations” to provide some disclosure if they meet a threshold of political activity in California. The law is intended to capture the political spending—and the source of that spending—of organizations that typically receive and spend money for purposes other than political activity in California and to keep these organizations from becoming conduits for dark money.

What is a multipurpose organization?

A multipurpose organization typically receives and spends money for purposes other than making political expenditures in California. Multipurpose organizations include:

- Nonprofit organizations
- Federal and out-of-state PACs
- Trade and professional associations
- Civic and religious organizations
- Fraternal societies
- Educational institutions

These organizations may occasionally engage in political activity in the state. When this activity reaches the monetary thresholds established by the new law, a multipurpose organization is required to register as a political committee, disclose its political expenditures and the underlying source of those expenditures.

Under the new law, when will a multipurpose organization be required to register as a political committee and disclose its donors?

California law now requires a multipurpose organization to register as a political committee and disclose its donors in the following circumstances:

- The organization receives donations of \$1,000 or more specifically for political purposes;
- The organization makes contributions or expenditures of more than \$50,000 in a period of 12 months or
- The organization makes contributions or expenditures of more than \$100,000 in a consecutive four-year period.

Is the multipurpose organization required to disclose all of its donors?

No, only the following donors must be disclosed:

- Donors who made payments to the organization specifically for political purposes in California;
- Donors who knew all or a portion of their contribution would be used for political purposes in California;
- If the first two categories do not capture the full amount of the organization’s political expenditure or contribution, the organization must disclose its most recent donors until the full amount of the expenditure is accounted for.

⁵⁵ <http://www.fppc.ca.gov/forms/2014/059-11-2014%20Campaign%20Changes%202014.pdf>
http://www.fppc.ca.gov/factsheets/057-8-2014_Multipurpose_Organizations.pdf

Washington State’s Public Disclosure Commission

Washington State’s Public Disclosure Commission (PDC) was established in 1972 when voters passed Initiative 276—the “Washington Public Disclosure Act”—by an overwhelming majority, with 72 percent in favor of the law. Since its creation, the PDC has become a model of how to disseminate campaign finance data to the voting public, hailed by the Campaign Disclosure Project as offering the most accessible and user-friendly database of campaign finance information of any state.⁵⁶ The following describes some of the features and services offered by the PDC.

What is the public disclosure database?

Like many other states, Washington makes all campaign contributions and expenditures publicly available in an online database. As with other, similar systems, the PDC’s database allows users to search for contributions to, and expenditures by or on behalf of, candidates using several different search criteria.

What search criteria can be used?

These criteria include searching based on contributors’ names and zip codes, or by the date or dollar amount of the contribution.

Are there other features available to help make the funding of Washington state elections more transparent?

Yes, the PDC also offers a number of features that significantly increase the database’s usefulness to journalists, researchers and members of the public:

- 1. Data grouping and stratification:** In addition to listing all filed contributions and expenditures, the PDC allows users to break down the

data using several different criteria. For example, its public database of contributions not only lists the total amount raised or spent in all state elections (including referenda), but also allows users to group the data using other variables, such as by contributor type (e.g., individual, PAC, corporate), candidates’ parties, or whether expenditures were made in support of or in opposition to a candidate.

- 2. Data visualization:** The PDC’s website can automatically generate data visualizations (such as pie charts and bar graphs) using the information in the database, even enabling users to generate their own charts and graphs based on user-defined parameters. For example, users can generate pie charts to show the breakdown of campaign expenditures in a given election year and further narrow the chart’s dataset to specific candidates, organizations or elected positions. (See Figure 1.)

- 3. Exportability:** For many social scientists and other researchers, publicly disclosed campaign finance data can be an invaluable resource for studying the influence of money on campaigns and elections. The PDC’s database integrates buttons that allow users to export the data on their screen into a number of different formats, including PDF and CSV files, the latter of which is compatible with Microsoft Excel and most statistical software packages. By allowing users to export its campaign finance data quickly and efficiently for use in other programs, the PDC enables researchers to organize and analyze the data in greater depth while avoiding the time and cost associated with manual data entry.

⁵⁶ <http://www.campaigndisclosure.org/gradingstate/accessfindings.html>



CONTRIBUTION TOTALS FOR CONTINUING COMMITTEES FOR 2014: \$19,595,981.59

CONTRIBUTOR TYPE	AMOUNT
Anonymous	\$3,027.21
Business	\$3,924,730.36
PAC	\$4,072,067.07
Individual	\$5,846,744.88
Caucus	\$1,785,150.00
Other	\$2,281,814.30
Party	\$1,300.00
Self	\$0.00
Minor Party	\$0.00
Union	\$1,681,147.77

Grid above shows contribution totals from all contributor types

CONTRIBUTION TOTALS FOR 2014 BY CONTRIBUTOR TYPE

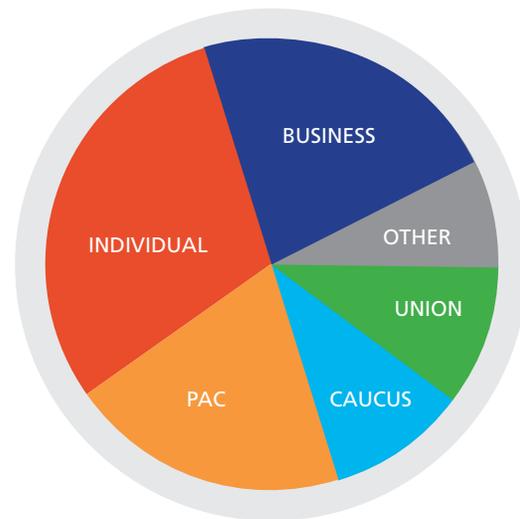


Chart above shows contributor types with four percent or more of total contributions

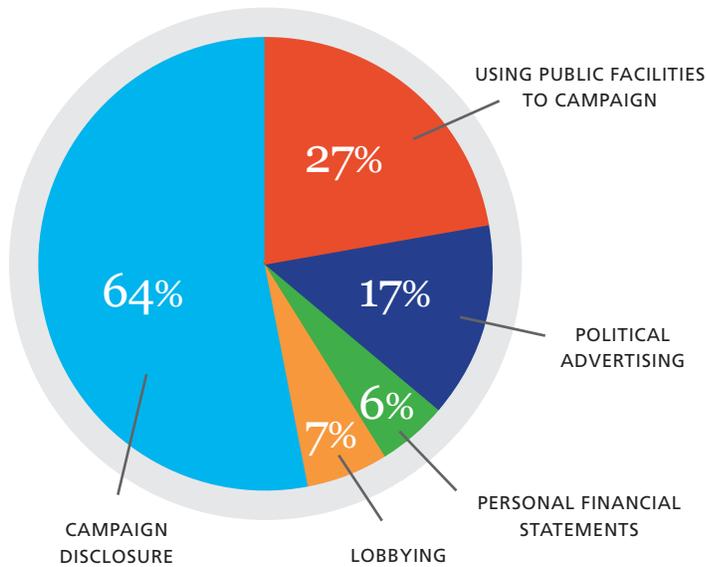
Figure 1: A table describing contribution amounts to PACs stratified by contributor type and an automatically-generated pie chart illustrating the breakdown.

4. Last-minute contributions: Under Washington law, contributions in excess of \$1,000 that occur less than either 7 days (for primary elections) or 21 days (for general elections) prior to the election constitute “last minute contributions” (LMCs). Rather than only listing them alongside other contributions in the database, the PDC separates out LMCs to candidates on a dedicated page in order to increase access to information that is otherwise much more likely to escape scrutiny in the days leading up to an election.

5. Widgets: Integrated into the disclosure database are a number of “widgets”—reproducible code that media outlets and private citizens can integrate into their own websites—that detail financial data from a given campaign or election. Using these widgets, journalists, bloggers and other members of the community can quickly and easily include illustrative statistics that update automatically with data from the PDC.

Washington State Public Disclosure Commission

FY14 COMPLAINTS BY SUBJECT



In FY14, 116 complaints were received and the Attorney General referred five citizen action letters for investigation. The majority of the allegations were related to campaign finance disclosure, confirming that the public is monitoring the data collected by the Commission.

STATUS OF FY14 COMPLAINTS:

Under review	72
Formal investigations undertaken	30
Closed/minor action	6
Returned/no action	13

Figure 2: An excerpt from the enforcement section of the PDC Annual Report for FY2014

What other reports, summaries and studies are available?

Beyond simply reporting contributions and expenditures, the PDC also prepares and publicizes reports intended to provide a more “holistic” view of the role money plays in state elections:

1. **“Most Money” journal:** The PDC produces and periodically updates a “Most Money” journal, which provides historical context and longitudinal data on the amount of money raised and spent in Washington elections. The journal includes lists detailing (from 1976 onward), among other things, the candidates for state offices who raised and spent the largest

amounts of campaign funds, the most expensive state elections and the candidates who have spent the largest and smallest amounts on their campaigns.

2. **Annual reports:** Every fiscal year, the PDC releases an annual report summarizing its activities and the campaign finance-related resources it makes available to the public. This report includes statistical overviews of the year’s campaign spending and fundraising, descriptions of Commission rulemakings and other regulatory actions, and summaries of enforcement actions and litigation taken in response to citizen complaints. (See Figure 2.)



WASHINGTON STATE TOTALS

FOR ALL CANDIDATES: \$25,145,615.35

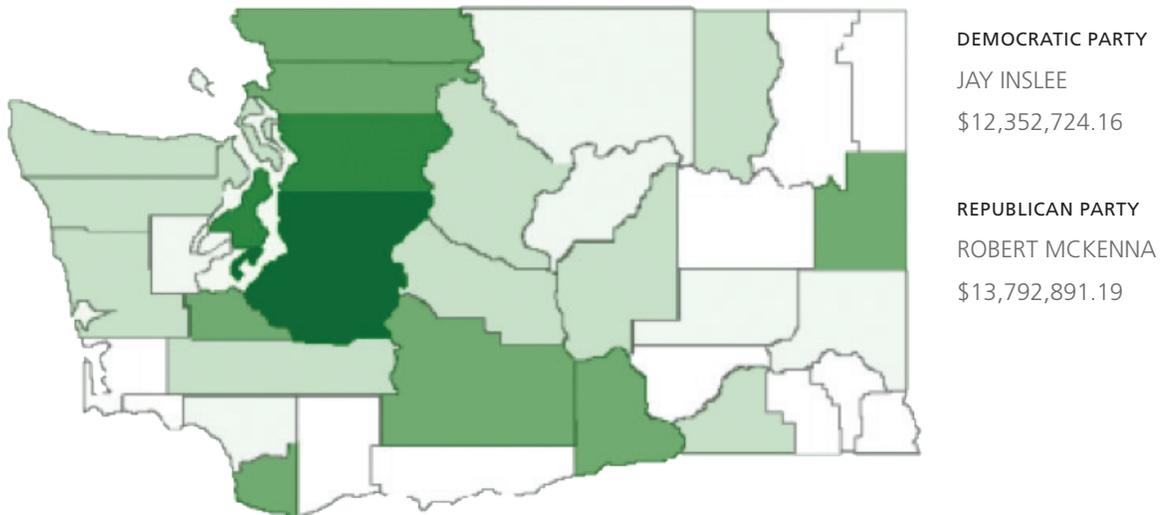


Figure 3: An example of a PDC money map, showing contribution totals by county for the 2012 WA Governor's race.

3. PACronyms: Since official campaign filings and other disclosure data often make use of organizational acronyms and technical terms that are unfamiliar to most members of the public, the PDC publishes and maintains an index of "PACronyms." This index lists all registered political committees alongside the acronyms with which they are associated in official filings, as well as the full names, addresses and contact information for the PACs themselves.

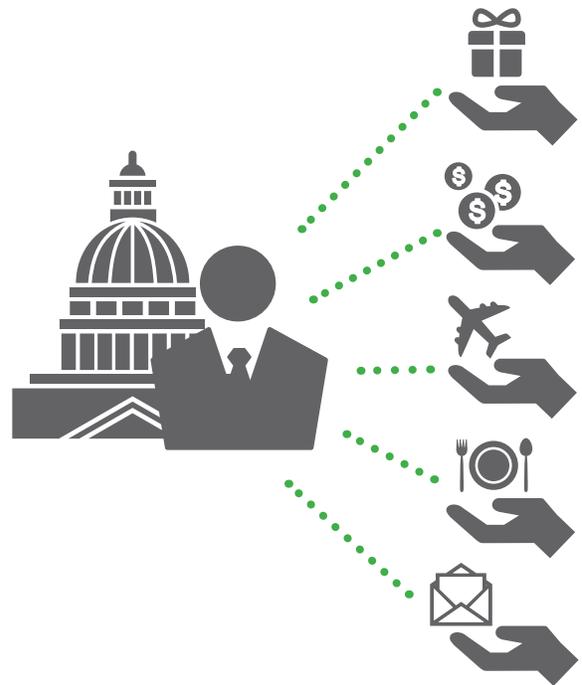
4. Money maps: One of the unique features offered by the PDC is its money maps, which geographically break down contribution totals for gubernatorial and legislative elections, as well as statewide ballot initiatives, and then display the contribution data projected onto a county map of the state. (See Figure 3.) Visual representations of data allow members of the public to quickly discern and understand patterns and trends in data that otherwise may be less apparent.

everyone plays by common-sense rules

ETHICS RULES RELATING TO ELECTION FUNDING

Regulating Gifts to Elected Officials

Most jurisdictions have ethics rules limiting or prohibiting elected officials from accepting gifts, meals, travel or other “benefits” from outside sources, including lobbyists. Rules that require gifts or benefits received to be reported exist at the federal level and in many states and localities. (Political contributions are generally exempted from the definition of gift.) These laws should be regularly reviewed to ensure that they not only prevent actual corruption, but also the appearance of corruption and provide complete transparency for any favors. From the public’s perspective, the acceptance of any gift or benefit from someone seeking favor with an elected official may raise the potential for corruption. Therefore, the definition of a gift, deciding who may give a gift and the limit on what can be accepted, and ensuring



The acceptance of any gift or benefit from someone seeking favor with an elected official may raise the potential for corruption.

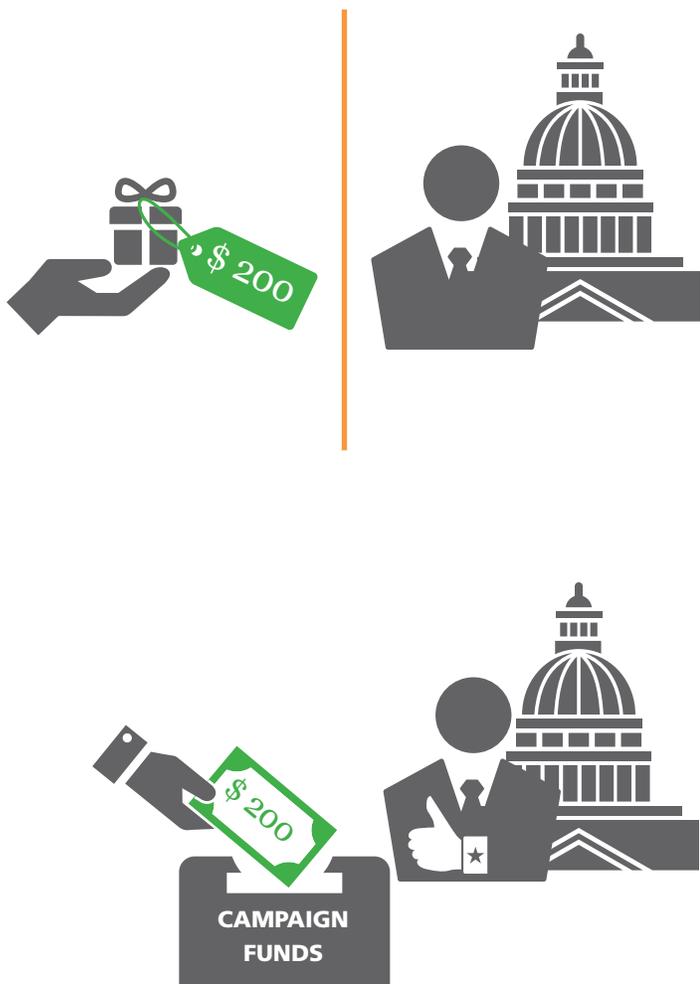
transparency, will all impact the public's confidence in their elected leaders. When setting the limit for the acceptance of gifts by elected officials, consideration should be given to whether it should ever be acceptable for an elected official to accept a gift of any value from a lobbyist or anyone seeking to influence the official. In fact, given the unique role elected officials have in our democracy, thought should be given to whether an elected official should ever accept a gift from any source other than a family member or someone with a close personal relationship unrelated to the office the elected holds.

The Ethics of Soliciting and Accepting Political Contributions While Legislating

Campaign finance laws regulate the conduct of individuals, organizations, corporations, political committees and candidates in the context of elections for public office by limiting or prohibiting certain contributions to candidates. At the same time, ethics rules for elected officials generally set the limits on gifts they can accept, but do not cover campaign contributions. This means that an individual seeking influence with an elected official may be prohibited from buying the elected official a \$200 gift, but can make a contribution of \$200 (or more) to their political campaign. Other ethics rules that apply to candidates may include:

- Restrictions on soliciting or receiving contributions on government property;
- Prohibitions on use of government property to campaign;
- Restrictions on receipt of honoraria.

Ethics rules for elected officials generally set the limits on gifts they can accept, but do not cover campaign contributions.





California

Are there fundraising and campaign restrictions that apply to elected officials once in office?

Yes, the following restrictions are intended to curb the misuse of office and public funds:

- Contributions may not be received or delivered in the California Capitol or in a state office building;⁵⁷
- Elected officials may not use state office equipment, staff time and other public resources for campaign purposes.⁵⁸

Are elected officials and candidates required to disclose potential conflicts of interest?

Yes, candidates and elected officials must file a Statement of Economic Interest, disclosing their personal assets and income.⁵⁹ This disclosure is intended to help identify potential conflicts of interest. Additionally, elected officials with a prohibited conflict of interest may not participate in making a governmental decision or use his or her office to influence that decision.⁶⁰

Are there gift and honorarium payment restrictions for elected officials and candidates?⁶¹

Yes, the following restrictions apply to elected officials and candidates:

- Elected officials and candidates may not accept gifts aggregating more than \$460 (2015-2016 limit) in a calendar year from a single source;
- Elected officials and candidates may not accept gifts aggregating more than \$10 per month from a lobbyist;
- Payment or reimbursement for travel is generally considered a gift and subject to the gift limits and
- Elected officials and candidates may not accept honorarium payments. This includes any payment made in consideration for a speech given, article published or attendance at a public or private event.

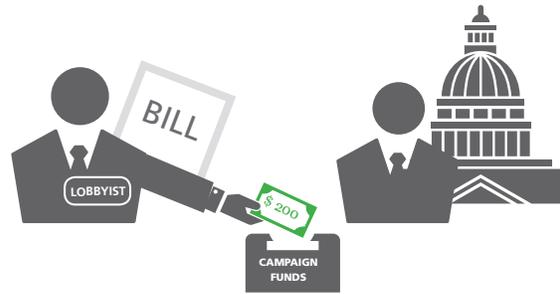
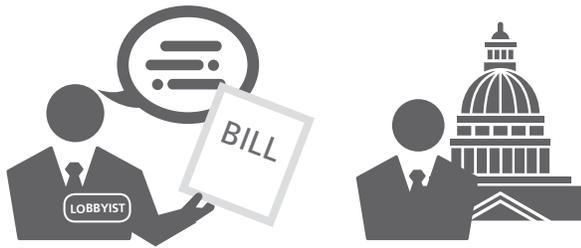
⁵⁷ Gov. Code § 84309

⁵⁸ Gov. Code § 8314

⁵⁹ <http://www.fppc.ca.gov/forms/700-14-15/Ref%20Pamphlet%202014-2015.pdf>

⁶⁰ <http://www.fppc.ca.gov/legal/coi/18700.pdf>

⁶¹ <http://www.fppc.ca.gov/factsheets/StateGiftFactSheet2015.pdf>



LOBBYISTS AND ELECTION CAMPAIGNS

Contribution Restrictions and Disclosure

Putting aside the practice of lobbying as it has evolved, or at least as it is perceived by the public, a lobbyist is someone who tries to influence government officials to make decisions for or against something, usually acting as a representative of a particular interest group.⁶² With that simple definition, it is fair to say that a lobbyist is exercising the First Amendment right “to petition the Government for a redress of grievances,” which is fundamental to our democracy. The problem is not that we have lobbyists; it is the tools and methods they use to persuade our elected representatives to take whatever action they are advocating.

Rather than relying on the persuasiveness or soundness of the merits of their case, or even the argument that they are representing the will of the

legislator’s constituents, too many lobbyists depend on the ability to make or control large political contributions, which can be used as a promise or threat. This promise of financial support or threat of financial opposition usually comes from special interests with little or no direct ties to the legislator’s real constituents. Acting in this way, lobbyists are not just “petitioning the Government for a redress of grievances.” Rather, they are undermining representative democracy by wielding disproportionate power through political contributions to try to ensure that their “petitions” are heard and their “grievances” rise above the interests of the elected official’s real constituents.

The federal government, as well as most states and many local governments, have laws regulating paid lobbyists.⁶³ While the definition of lobbyist as well as the nature of the regulations varies, these

IF YOU CHOOSE TO LOBBY YOU NEED TO ABSTAIN FROM CAMPAIGN CONTRIBUTIONS. IT’S YOUR CHOICE EITHER WAY. BUT YOU HAVE TO CHOOSE ONE, NOT BOTH.

- JACK ABRAMOFF, NOTORIOUS FORMER LOBBYIST

⁶² See, <http://www.merriam-webster.com/dictionary/lobbying>

⁶³ See, *How States Define Lobbying and Lobbyist*, National Conference of State Legislatures, <http://www.ncsl.org/research/ethics/50-state-chart-lobby-definitions.aspx>. (Last visited 8/10/2015) NCSL notes that its “table is intended to provide general information and does not necessarily address all aspects of this topic.” Moreover, it “reflects in summary form statutes in effect as of 12/31/13 or statutes set to take effect shortly thereafter.”

The problem is not that we have lobbyists; it is the tools and methods they use to persuade our elected representatives to take whatever action they are advocating.

laws generally require lobbyists and/or their clients to register and report certain lobbying activities, including money spent on lobbying and the issues or bills being lobbied. Some laws also require lobbyists to separately report political contributions or place additional limitations as to amount or timing of political contributions. Some states prohibit lobbyist contributions altogether. For example, in South Carolina (see page 52), elected officials may not accept contributions from lobbyists registered to lobby by their office. Likewise, candidates may not accept contributions from lobbyists registered to lobby the office the candidate seeks. The laws are aimed at preventing the real or apparent corruption that can arise when the special relationship lobbyists have with elected officials is combined with political contributions. Lobbying reforms directed at the potential corrupting influence of political contributions may include:

- Broad definition of lobbying activity;
- Low thresholds for triggering registration as a lobbyist or lobbying firm;
- Regular and detailed reporting of lobbying activity, affiliations and standardized descriptions of issues and bills;

- Separate reporting of direct political contributions, as well as fundraising of lobbyists, lobbying firms and those who employ lobbyists and
- Separate limits or prohibitions on lobbyist contributions.

While some jurisdictions separately limit or prohibit lobbyist contributions, there are also proposals for ethics rules that set the parameters for permissible activities of elected officials who accept political contributions or other support from those seeking influence or access. For example, reforms that have been proposed include:⁶⁴

- Prohibiting elected officials from fundraising from lobbyists or their paying clients;
- Prohibiting elected officials from taking actions to benefit special interests that provide them with large contributions and
- Preventing the expectation of obtaining a lobbying position from influencing an elected official's or senior staff's decision-making while in office by enacting stringent "revolving door" rules prohibiting employment as a lobbyist for up to five years after leaving office.

⁶⁴ These provisions are part of a reform proposal entitled The American Anti-Corruption Act <https://represent.us/wp-content/uploads/2015/04/AACA-Full-Provisions.pdf>



South Carolina

What are the contribution limits for lobbyists?

A registered lobbyist is prohibited from making a contribution to a candidate if that lobbyist engages in lobbying the public office or public body for which the candidate is seeking election.⁶⁵

Are there lobbyist fundraising restrictions?

Yes, a lobbyist is prohibited from soliciting a campaign contribution to any member of the general assembly, the governor, the lieutenant governor, any other statewide constitutional officer, any public official of any state agency who engaged in covered agency actions or any of their employees. A lobbyist,

a lobbyist's principal or a person acting on behalf of a lobbyist or a lobbyist's principal may not host events to raise funds for public officials.⁶⁶

Is there a revolving door provision for former elected officials?

Yes, the governor, the lieutenant governor, any other statewide constitutional officer, a member of the General Assembly and a member of the immediate family of any of these public officials may not serve as a lobbyist during the time the official holds office and for one year after such public service ends.⁶⁷



Connecticut

What are the contribution limits for lobbyists?

- Lobbyists may contribute up to \$100 to statewide and General Assembly candidates, candidate PACs and party committees.⁶⁸ This limit applies to candidates participating in the state's public funding program and those not participating;
- All contributions to publicly funded candidates are capped at \$100—lobbyist contributions to publicly funded candidates are subject to the same limits as all other contributors. Lobbyist contributions are still capped at \$100 for contributions to non-publicly funded candidates, although these candidates may accept greater amounts from other contributors.

Are there lobbyist fundraising restrictions?

Yes, lobbyists may not make or solicit contributions during a legislative session.⁶⁹ Additionally, lobbyists are prohibited from hosting fundraisers for candidates, parties and political committees and "bundling" contributions. Bundling means forwarding five or more contributions to a single political committee.⁷⁰

Is there a revolving door provision for former elected officials?

Yes, elected officials are subject to a one-year "cooling off" period—they must wait one year after leaving office before lobbying the state.⁷¹

⁶⁵ Section 8-13-1314. <http://ethics.sc.gov/Campaigns/Pages/CampaignPracticesLawandPenalties.aspx>

⁶⁶ Section 2-27-110(F). <http://ethics.sc.gov/Lobbying/Pages/LobbyingLaw.aspx>

⁶⁷ Section 2-17-15(b). <http://ethics.sc.gov/Lobbying/Pages/LobbyingLaw.aspx>

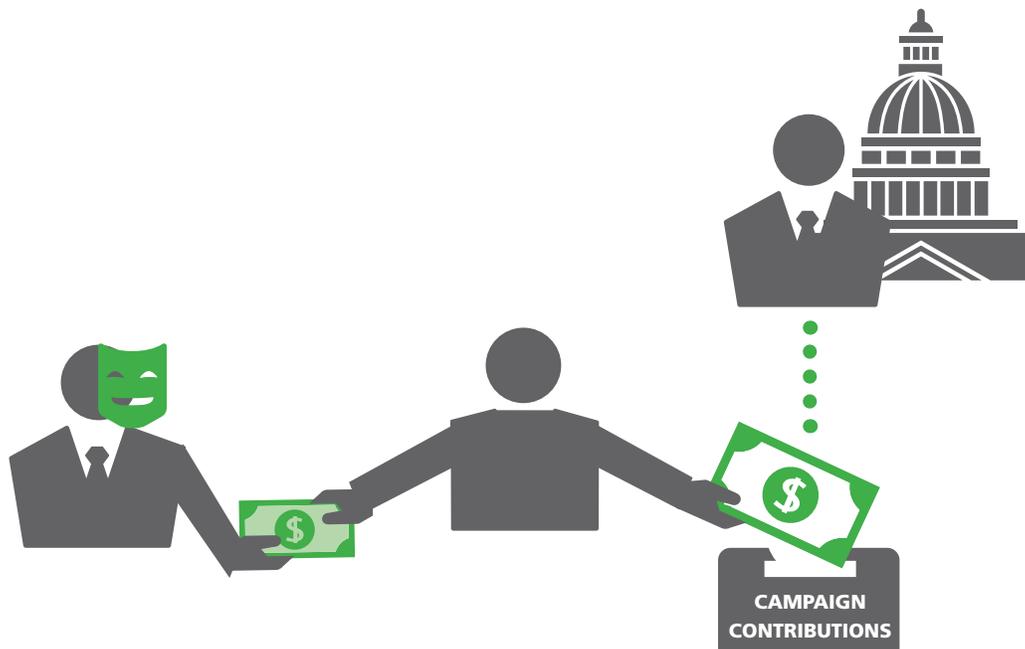
⁶⁸ http://www.ct.gov/seec/lib/seec/publications/2013_contribution_chart_final.pdf

⁶⁹ Connecticut law distinguishes between "client lobbyists" and "communicator lobbyists." A client lobbyist is someone on behalf of whom lobbying takes place and who makes expenditures for lobbying. A communicator lobbyist is someone who is actually doing the lobbying, communicating directly with legislative and executive branch officials and their staff for the purpose of influencing legislation or administrative action. The sessional ban applies to both types of lobbyists. The \$100 contribution limit and the bundling restriction apply solely to communicator lobbyists. The restrictions described here apply to lobbyists and members of their immediate family.

⁷⁰ http://search.cga.state.ct.us/surs/sur/htm/chap_155.htm#sec_9-601, (27)

⁷¹ [http://www.ct.gov/ethics/lib/ethics/guides/2013/legislators_guide_to_the_code_of_ethics_\(1-2013_rev\).pdf](http://www.ct.gov/ethics/lib/ethics/guides/2013/legislators_guide_to_the_code_of_ethics_(1-2013_rev).pdf)

PREVENTING EVASION OF DISCLOSURE RULES, CONTRIBUTION LIMITS AND SOURCE PROHIBITIONS



Coordination

As discussed, the Supreme Court in *Buckley* and *Citizens United* established a constitutional framework for campaign finance reform legislation that permits limits on contributions but allows unlimited expenditures by individuals and corporations for campaign activity undertaken independently of a candidate. However, the Supreme Court has been very clear that the constitutional distinction between independent expenditures and contributions rests on the presumption that independent expenditures are truly independent of the campaign. In *Buckley* the Court held:

Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of pre-arrangement and coordination of an expendi-

ture with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.

There is little question that the relationships that exist between many so-called independent super PACs and the candidates they support in no way comports with the Supreme Court's understanding of what it means for an expenditure to be "independent" of a candidate.⁷²

Within this framework, money spent on activity that is "coordinated" with a candidate is considered an "in-kind" contribution to the candidate and is sub-

⁷² *Buckley*, 424 U.S. at 47.

The relationships between many so-called independent super PACs and the candidates they support in no way comports with the Supreme Court’s understanding of what it means for an expenditure to be “independent” of a candidate.

ject to any contribution or source prohibitions, as well as reporting requirements, applicable to contributions. For example, if coordinated with a candidate, an expenditure in excess of the contribution limits that would be legal as an independent expenditure becomes an illegal excessive contribution that is not properly reported by the candidate. If that coordinated expenditure is made with corporate funds in a jurisdiction that prohibits corporate contributions, it also violates that prohibition. Therefore, clear and effective rules ensuring that activity is truly independent of the candidate is critical to enforcement of the contribution limits. These rules should address treating expenditures made in support of a candidate as contributions if:

- Made by any committee or organization that is established, maintained, financed or controlled by the candidate, or his or her agents;
- The candidate, or his or her agents, raised funds for the committee or organization making the expenditure;
- The candidate, or his or her agents, shared the campaign’s plans, projects, strategy or needs with the individual, committee or organization making the expenditure;
- The individual, committee or organization making the expenditure employed or utilized the services of former staff of that candidate and
- Any other facts or circumstances exist that suggest “prearrangement and coordination” with the candidate.

California's Coordination Regulations

What is it?

The California Fair Political Practices Commission—an agency that has consistently been a model of effective campaign finance enforcement and regulation—updated its coordination regulation⁷³ to more effectively capture activity that was flying below the radar of the legal definition of coordination but was coordinated in any common-sense understanding of the word.

What activity is considered coordinated?

An expenditure by a group will be considered coordinated with a candidate if it is made at the request, suggestion, or direction of, or in cooperation, arrangement, consultation, concert or coordination with the candidate or if the candidate participated in making any decision or had any discussions with the creator, producer, or distributor of the communication, the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution, frequency of placing the communication.

In addition, the regulation describes several scenarios under which the activities of an outside group will be presumed coordinated with a candidate. Those scenarios include:

- **Fundraising:** If a candidate solicits funds or appears as a speaker at a fundraiser for a group and the group then makes expenditures to benefit the candidate, the expenditures will be considered coordinated.
- **Family members and former staff:** If the group is run by the candidate's family members or former high-level staff and the group makes expenditures benefitting the candidate, the expenditures will be considered coordinated. There

is a 12-month “cooling-off” period for former staff. Twelve months after leaving employment with the candidate, a candidate's former staff member may run a group supporting the candidate without the group's expenditures being considered coordinated.

- **Campaign needs:** If the candidate provides information to the outside group about her campaign needs or plans, and the group makes expenditures accordingly, the expenditures will be considered coordinated.
- **Common consultants:** If the candidate and the outside group employ the same consultants providing professional services relating to campaign or fundraising strategy, and the group makes expenditures benefitting the candidate, the expenditures will be considered coordinated.
- **Republication:** If the outside group republishes or redistributes the candidate's campaign communications, including video footage, the expenditure will be considered coordinated.

What is so different about California's approach?

Rather than solely focusing on the prearrangement of specific expenditures—as many coordination laws have done traditionally—the California coordination regulations also focus on the relationship between the candidate and the outside spender and the back-and-forth communications inherent in such relationships. This is precisely the type of “wink and nod” coordination that has gone unregulated by most coordination laws. The California law presumes coordination in the scenarios described here. The candidate and outside group would, however, have an opportunity to demonstrate that the expenditures were in fact independent.

⁷³ [http://www.fppc.ca.gov/agendas/2015/10-15/18225.7%20\(10-14-15%20Updated%20Version\).pdf](http://www.fppc.ca.gov/agendas/2015/10-15/18225.7%20(10-14-15%20Updated%20Version).pdf)



Contributions in the Name of Another

One method used for trying to evade the contribution limits or prohibitions involves giving money to others who then make contributions in their own name. Campaign finance laws should make it illegal for a person or corporation to provide money to another person or organization with the intent that the contribution be passed on to the recipient candidate or PAC in the name of the conduit. Properly drafted, this prohibition should cover someone using an LLC or other business entity as a conduit for a contribution to a super PAC.

Doing Business with a Candidate

Any business that provides a candidate with any goods or services at less than fair market or with a discount that is not normally available to others is making a contribution to the campaign.

Oklahoma

OKLAHOMA

What are Oklahoma’s contribution limits?

Oklahoma amended its contribution limits in 2014, using the same contribution limits for state candidates and local candidates as apply to federal candidates.⁷⁴ For example, an individual can contribute \$2,700 per election to a candidate. (See chart below for more information.) This limit applies to state and local candidates.

Can corporations, LLCs and/or labor unions make political contributions in Oklahoma?

Corporations and labor unions are prohibited from making political contributions to candidates, party committees and PACs that make contributions to

candidates. Corporations and labor unions may make contributions to PACs that only make independent expenditures (often referred to as super PACs).

Limited liability companies (LLC) and partnerships may make contributions to candidates so long as none of the owners or partners are incorporated. Contributions from LLCs and partnerships are reported as contributions by each member or partner in proportion to their interest in the organization. These contributions are subject to the individual limit.

**OKLAHOMA
2015-2016 CONTRIBUTION LIMITS⁷⁵**

SOURCE	TO CANDIDATE COMMITTEE	TO POLITICAL PARTY	TO LIMITED PAC
Individual	\$2,700 per election ⁷⁶	\$10,000 per calendar year	\$5,000 per calendar year
Party Committee	\$25,000 for statewide office \$10,000 for any other state office ⁷⁷	Transfers between political party committees	Prohibited
Limited Committee	\$5,000 per election	\$10,000 per calendar year	\$5,000 per calendar year
Unlimited Committee ⁷⁸	Prohibited	Prohibited	Prohibited
Anonymous Donor ⁷⁹	\$50	\$50	\$50
Corporation/ Labor Union	Prohibited	Prohibited	Prohibited

⁷⁴ http://www.ok.gov/ethics/Campaign_Finance_Reporting/2015_&_2016_Contributions_Table/index.html
<http://www.ok.gov/ethics/documents/2015%20Guide%20for%20Candidates.pdf>

⁷⁵ Contribution limits are adjusted for inflation every two years.

⁷⁶ A candidate may face three elections in an election cycle: a primary, runoff primary and general election. In that case, the candidate would be able to accept a maximum amount of \$8,100 from a single contributor—\$2,700 per election. If a candidate is unopposed throughout an election cycle, he or she may only accept \$2,700 from a contributor.

⁷⁷ The contributions from a party’s various committees—state committee, county committee, etc.—will be aggregated. In the aggregate, candidates cannot accept more from a party than the amount listed here.

⁷⁸ Unlimited committees can make independent expenditures and electioneering communications. They may receive unlimited contributions and make unlimited expenditures; however, they may not contribute directly to candidates. This is essentially Oklahoma’s equivalent of a super PAC.

⁷⁹ Candidate, party and limited committees may accept anonymous contributions up to \$50. For contributions in excess of \$50, the committee must report the name, address, occupation and employer of the contributor and the date and amount of the contribution.

everyone is held accountable

ENFORCEMENT

The most clearly written, comprehensive, nonpartisan, fair and effective laws are useless unless they are supported by comprehensive, nonpartisan, fair and effective administration and enforcement. In fact, the failure to enforce the law may be more dangerous than not having the law at all, as it leads people to conclude that laws are ineffective in stopping the corruption of democracy. On the other hand, having an effective enforcement agency with credibility gives the public more faith in the campaign finance system and encourages candidates to comply with law. An effective campaign finance agency is also critical to the success of any public funding system. That is why creating mechanisms to ensure the proper enforcement of the law is critical.

Who is Responsible for Enforcement?

In many states, enforcement of the campaign finance and lobbying laws is the responsibility of the attorney general, while administration of the laws may be the responsibility of the secretary of state or another agency. Ethics rules may be found in

laws under the jurisdiction of the attorney general, as well as in regulations enacted and enforced separately by the legislative, executive and judicial branches that cover their respective members.

The Makeup of The Agency

Creating an independent agency to oversee the administration and enforcement of the campaign finance, ethics and/or lobbying laws is often the best way to try to ensure comprehensive, nonpartisan, fair and effective administration and enforcement of the law. The agency can be headed up by a board or commission made up of appointed members. Whether they are appointed by the chief executive, legislature, other body or combination there of may be determined by the state's constitution or by other administrative law requirements. Most agencies have an odd number of commissioners who serve for a term, while some agencies, such as the FEC, have an even number of commissioners (the FEC has six), with no more than half of the commissioners being from the same political party. In theory, since

An effective enforcement agency with credibility gives the public more faith in the campaign finance system and encourages candidates to comply with law.

every action takes a majority of four commissioners, the actions of the FEC should be nonpartisan. However, the FEC's structure has resulted in deadlock and inaction, causing the FEC's chairwoman to acknowledge the agency has become "worse than dysfunctional."⁸⁰ It has now been proposed that the FEC be revamped or replaced with a new agency with an odd number of commissioners, including a strong chair who would serve for 10 years and be able to direct much of the agency's actions.⁸¹ With the proper safeguards, a commission made up of an odd number of commissioners may be the most effective. Regardless of the actual structure of the commission or agency, the quality, temperament and commitment to enforcement of the law of the commissioners is critical. That is why some proposals include having a "blue ribbon" panel—possibly made up of judges, academics or other individuals without partisan ties—provide a list of possible appointees for the agency.

Independence of the Agency

The real and apparent independence of an enforcement agency is critical to its functioning. This is especially important where the agency is enforcing rules regulating the conduct of the people who control their budget, the appointment of their members and their very existence. Ways to protect the agency and its staff from political retaliation should be seriously explored. These could include protections in the agency's enabling statute or even in the state's constitution. It is also important that the agency find the correct balance between protecting the rights of those it is investigating and transparency to ensure the public is aware of its activities.

Issues with Establishing an Enforcement Mechanism

Among the issues involved with establishing an effective enforcement mechanism are:

- Determining where the enforcement responsibility should reside, e.g., attorney general, secretary of state or independent regulatory agency. While an independent agency may provide the best structure for effective and nonpartisan enforcement, legal, resource and political issues may affect where the responsibility is placed;
- Ensuring independence of the regulatory body or official. Wherever the responsibility is placed, the enforcement of the law must be protected, in appearance and reality, from partisan influence or undue control from those subject to the laws;
- Selecting individuals who are respected, nonpartisan, knowledgeable and independent to oversee enforcement;
- Deciding when criminal vs. civil enforcement is appropriate;
- Providing for remedies and penalties consistent with the nature and seriousness of any violation.
- Avoiding the reality or appearance of politically motivated enforcement;
- Avoiding inherent conflicts arising from enforcing laws governing the activities of people who wrote the laws and who have to enforce the laws;
- Providing transparency so the public can monitor the enforcement of the laws and
- Providing sufficient resources for timely and effective enforcement.

⁸⁰ Eric Lichtblau, F.E.C. Can't Curb 2016 Election Abuse, Commission Chief Says, N.Y. Times, May 2, 2015, <http://www.nytimes.com/2015/05/03/us/politics/fec-cant-curb-2016-election-abuse-commission-chief-says.html>.

⁸¹ Restoring Integrity to America's Elections Act, H.R. 2931, 114th Cong. (2015), http://www.campaignlegalcenter.org/sites/default/files/BILLS-114hr2931ih_0.pdf.

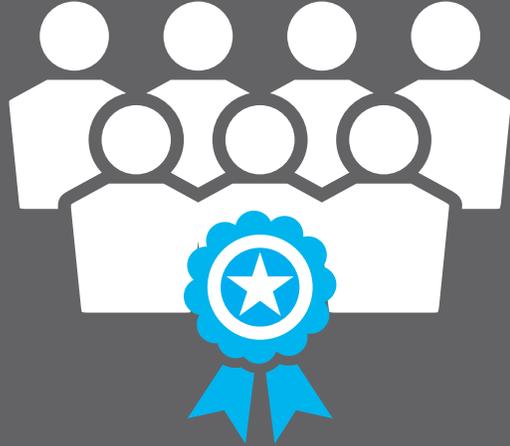
ELEMENTS OF EFFECTIVE ENFORCEMENT



INDEPENDENT ENFORCEMENT AGENCY



EVEN-NUMBERED COMMITTEE



BLUE RIBBON COMMITTEE

CIVIL



**CAMPAIGN
FINANCE
& LOBBYING
LAWS**



CRIMINAL



DETERMINE APPROPRIATE ACTION

New York City's Campaign Finance Board

What is the New York City Campaign Finance Board?⁸²

In 1988, New York City voters passed a series of campaign finance measures through a city referendum. The referendum created a public financing program for city candidates and established the New York City Campaign Finance Board (CFB). The CFB consists of five members, each appointed to serve staggered five-year terms.⁸³ The mayor and the Speaker of the City Council each appoint two members. The mayor's appointees—and likewise the Speaker's appointees—may not be members of the same political party. The Chair is selected by the mayor in consultation with the Speaker.

The CFB administers the public financing program, publishes a voter guide and provides public disclosure of campaign finance information. Additionally, the CFB provides free, web-based financial reporting software, C-SMART, for all candidates for city office. The CFB's commitment to committee training and compliance as well as the CFB's

role in assessing and recommending necessary legislative updates, makes it a model campaign finance administration and enforcement agency.

Does the CFB provide training and guidance?⁸⁴

Through the Candidate Services Unit (CSU), the CFB offers several varieties of support to candidates and their campaigns. CSU provides a series of in-person trainings and provides one-on-one guidance to campaigns. The CFB also makes its guidance, laws, rules, advisory opinions and enforcement decisions available on its website. Each candidate committee is assigned a liaison to help them throughout the election cycle. The CFB provides C-SMART training for all candidates. The CFB also provides additional compliance resources for candidates participating in the city's matching funds program. The CFB provides similar resources to groups and individuals making independent expenditures.⁸⁵ Upon request, the CFB issues advisory opinions interpreting the law and the CFB's rules.

⁸² <http://www.nyccfb.info/about/history>

⁸³ <http://www.nyccfb.info/about/board>

⁸⁴ <http://www.nyccfb.info/candidate-services/trainings>

⁸⁵ <http://www.nyccfb.info/independent-expenditures/independent-spender-resources>
<http://www.nyccfb.info/independent-expenditures/guidance>



How does the CFB enforce the law?

All campaigns—those that received matching funds and those that did not—are subject to a post-election audit. The CFB provides an optional training to help campaigns navigate this process. During the audit process, committees have an opportunity to amend their disclosure statements and provide additional explanations to bring their disclosure reports into compliance.⁸⁶

The CFB also considers outside complaints of potential campaign finance law violations. Anyone may file a complaint with the CFB. The CFB may investigate potential violations and levy penalties for violations of the law.

How has the CFB helped keep New York City's public funding program viable?⁸⁷

Part of the CFB's mandate is to analyze its data and make legislative recommendations for how the public financing program should be modified to adapt to the constantly evolving way campaigns are run. Following each election, the CFB is required to

produce and submit a report to the mayor and city council reviewing and evaluating the public financing program. The report provides statistical information about the number of candidates who used public financing and the amount of public funds distributed. The report also includes the CFB's legislative recommendations for updating and maintaining the public financing system.

In order to assess the program, the CFB holds hearings following each election to solicit feedback on the public financing program. The hearings are open to the public. In the 2013 post-election hearing, the CFB heard testimony from a variety of individuals, including candidates who participated in the public financing program, citizen group leaders, New York City residents and campaign finance experts. This feedback helps the CFB identify aspects of the public funding program that are working and what needs to be changed to keep public financing a viable option for city candidates. Based on the CFB's recommendations, the city council has updated the public financing program.

⁸⁶ <http://www.nyccfb.info/candidate-services/post-election/audit>

⁸⁷ <http://www.nyccfb.info/law/charter-act/reports>

<http://www.nyccfb.info/media/reports/people-new-york-city-campaign-finance-program-2013-elections>

<http://www.nyccfb.info/media/testimony/2014-02-13-000000/testimony-campaign-finance-board-2013-post-election-hearing>

everyone has a voice

EMPOWERING CONGRESS TO MAKE LAWS TO GOVERN CAMPAIGN FINANCE
WE ARE NOT FINAL BECAUSE WE ARE INFALLIBLE, BUT WE ARE INFALLIBLE ONLY
BECAUSE WE ARE FINAL.⁸⁸ - SUPREME COURT JUSTICE ROBERT H. JACKSON, DESCRIBING THE COURT

If you believe that our democracy only works when all citizens are given an opportunity for their voices to be heard, you were likely dismayed when in 2014, by a 5-4 vote, the Supreme Court declared that an elected representative's "responsiveness to [the] concerns" of his or her wealthiest contributors "is at the heart of the democratic process" and "key to the very concept of self-governance through elected officials."⁸⁹ However, those who disagree with the Supreme Court's declaration that the Constitution protects the right of the wealthy to buy a government responsive to their needs must remember that this declaration reflects a relatively recent retreat from the Supreme Court's previous decisions upholding campaign finance laws. It is crucial that advocates develop a long-term strategy to reverse these recent Supreme Court campaign finance decisions, including developing a new jurisprudence and advancing a constitutional amendment, while at the same time pursuing current opportunities

for reforms to give ordinary citizens a voice in our democracy.

When the Supreme Court in *Citizens United*⁹⁰ invalidated a prohibition on corporate independent expenditures in 2010, it had to expressly overrule its 1990 decision in *Austin v. Michigan Chamber of Commerce*,⁹¹ which upheld the constitutionality of a prohibition on corporate independent expenditures. In *Austin*, the Supreme Court said the government could enact a law for the purpose of preventing a corporation from taking "an unfair advantage in the political marketplace" through the use of its wealth "amassed in the economic marketplace."⁹² *Citizens United* similarly overruled much of the Supreme Court's 2003 decision to uphold virtually all of the reforms Congress enacted as part of the Bipartisan Campaign Reform Act in *McConnell v. FEC*.⁹³ Citing what was by then almost a half century of decisions, the Supreme Court there noted that:

⁸⁸ *Brown v. Allen*, 344 U.S. 443, 540 (1953).

⁸⁹ *McCutcheon v. FEC*, 134 S. Ct. 1434, 1462 (2014)

⁹⁰ 558 U.S. 310 (2010).

⁹¹ 494 U.S. 652 (1990).

⁹² 494 U.S. at 659.

⁹³ *McConnell v. FEC*, 540 U.S. 93 (2003).

We need to continue or work to enforce and expand existing disclosure rules and coordination laws to expose the sources of dark money and break the connections between super PACs supported by wealthy individuals and the candidates they support. Much of this work is taking place on the state and local level, where citizens are demanding reform.

Many years ago we observed that to say that Congress is without power to pass appropriate legislation to safeguard ... an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. We abide by that conviction in considering Congress' most recent effort to confine the ill effects of aggregated wealth on our political system.⁹⁴

It was only after Justice Sandra Day O'Connor—who supported campaign finance reform legislation—stepped down from the Supreme Court in 2006 that the Supreme Court's concept of democracy began to change, and it began to embrace a view of democracy distorted by wealth, leading to it overrule all or part of several previous decisions and ignore the rationale of others.

Thus, the admonition of Justice Jackson that the Supreme Court is "not final because we are infallible, but we are infallible only because we are final" is both comforting in its recognition that the Supreme Court is not always correct and, at the same time, not completely accurate. The truth is that a Supreme Court ruling on a matter is final until the Supreme Court can be convinced to change its mind. It has happened before and will happen again.

Working to that end, while maximizing current opportunities for reforms that give more people a voice in our democracy, must be our goal.

Limiting the Damage and Finding New Opportunities

In order to limit the damage of recent Supreme Court decisions, we have to implement a strategy embracing both legislation and litigation to strengthen the areas of the law where the Supreme Court had been more supportive of reform. For example, the Court continues to be very supportive of disclosure laws. Likewise, the *Citizens United* decision allowing corporations to make independent expenditures assumes that those making such expenditures will be acting truly independently of the candidates. Nowhere has the Court ever suggested that candidates must be allowed to establish, fund-raise for and have a close working relationship with, super PACs and other organizations claiming to make "independent" expenditures on their behalf. Nevertheless, such relationships have become the hallmark of today's campaigns.

We need to continue our work to enforce and expand existing disclosure rules and coordination laws to expose the sources of dark money and break the connections between super PACs supported by wealthy individuals and the candidates they support. Much of this work is taking place on the state and local level, where citizens are demanding reform. These efforts must be supported with expert legal resources to ensure that the best cases are brought under current laws and new laws are drafted to maximize the likelihood that the current Supreme Court will find them constitutional.

⁹⁴ 540 U.S. at 224. Internal citations and quotes omitted.

Changing the Supreme Court

Of course, it would be naïve to expect the current Supreme Court to change its fundamental view that the First Amendment creates constitutional right to buy influence and access in a democracy. It could happen, but we shouldn't bet our democracy on it. That said, the composition of the Supreme Court will eventually change. Therefore, it is important to ensure that the selection process for new Supreme Court justices, as well as lower court judges, focuses on the potential jurist's views regarding the power of money in elections and the people's interest in expanding participation in our democracy.

Preparing for a Better Court

Changing the Supreme Court is only a start. We also have to ensure that we are prepared to make the best arguments and present the courts with a new and compelling legal framework and analysis that supports the reforms needed to heal, expand and protect our democracy. This requires us to continue to develop a new jurisprudence and a litigation strategy to bring the cases to present that jurisprudence to the Supreme Court when it does change. This work has to be supported by experienced lawyers, reform advocates, legal scholars and public policy experts. And to help increase the odds of future success, we have to open the minds of the generation now studying law and public policy to the ways in which the laws and policy choices can support a democracy that encourages greater participation.

Finally, a perhaps most importantly, success will also require educating the public as to the true mean-

ing of the Constitution and the rights it provides all Americans, as well as the tools and arguments to demand those rights. Fortunately, much of that work has already begun, but there is still much more to do.

A Constitutional Amendment

Despite what the current Supreme Court says, our current Constitution not only supports, but requires, laws that prevent our democracy from being responsive to only the wealthiest interests. But if the Supreme Court cannot be convinced of that simple proposition, we will have to look to changing the Constitution to make even clearer what the Supreme Court refuses to see: if a citizen's ability to exercise constitutional rights is dependent upon wealth, then only the wealthy truly possess those constitutional rights.

That is why efforts are already underway in the states and at the national level to amend the Constitution to make it clear that it is individuals who have First Amendment rights, and the exercise of those rights are not dependent on wealth. Even though there is already widespread support for a constitutional amendment, getting an amendment passed is a long and difficult process. And once an amendment is enacted, there will be a pressing need to pass laws and develop a jurisprudence to ensure the new amendment is properly interpreted and applied. Fortunately, the work that must be done to save our democracy absent an amendment to the Constitution can also serve as the foundation for the laws and legal analysis that will serve an amended Constitution.

Success will also require educating the public as to the true meaning of the Constitution and the rights it provides all Americans, as well as the tools and arguments to demand those rights.

FUTURE OPPORTUNITIES AND STRATEGIC CONSIDERATIONS

WELL, DOCTOR, WHAT HAVE WE GOT—A REPUBLIC OR A MONARCHY?

*A REPUBLIC, IF YOU CAN KEEP IT.*⁹⁵ – BENJAMIN FRANKLIN

Strengthening what Already Exists

There is no endgame in the struggle to ensure that our leaders are selected by Americans speaking at the ballot box and not by the few whose money, if unrestrained, will shape our electoral choices and the decisions our leaders make. The fight to limit the corrosive and corrupting influences that large aggregations of wealth have on our democracy has been going on for well over 100 years. During that time, there have always been periods of major scandals and abuse, followed by periods of major reforms. The truth is, no matter how successful the reform efforts are at any given time, those who have the most to gain by a political system responsive to wealth will always look for new ways to gain back their power.

But the efforts to dominate our democracy eventually reach a point where it also becomes clear to most Americans that the resolution of the issues they care about depends on controlling the power of money in elections. Each generation learns that our republic cannot survive if our elected leaders are mainly responsive to the wealthiest among us, and that it has to be willing to constantly work to keep the power of money in check. Building on previous reforms

that worked, learning from what did not and adapting to evolving culture, law and technology, new reforms must be crafted and enacted. This requires commitment, resources, tenacity and learning how to work with whatever tools and opportunities we have, while designing new tools and creating new opportunities to advance the principles and practices of a democratic government. It is a fight that takes place at the intersection of democratic ideals and political reality.

What can be thought of as the modern era of campaign finance reform was a result of the Watergate scandal in the early 1970s, which culminated in the resignation of President Nixon in 1974. While the scandal began with the break-in at the headquarters of the Democratic National Committee in the Watergate office building, the resulting investigation exposed a major money-in-politics scandal involving the funding of President Nixon's reelection campaign. Having just enacted the Federal Election Campaign Act of 1971, Congress revisited the law in 1974 and created a comprehensive campaign finance system that included contribution and expenditure limits, stronger disclosure rules, public funding for the presidential election and created the

The fight to limit the corrosive and corrupting influences that large aggregations of wealth have on our democracy has been going on for well over 100 years. During that time, there have always been periods of major scandals and abuse, followed by periods of major reforms.

⁹⁵ Benjamin Franklin, according to notes by Dr. James McHenry, from the final day of the Constitutional Convention in 1787. <http://www.bartleby.com/73/1593.html>

Each generation learns that our republic cannot survive if our elected leaders are mainly responsive to the wealthiest among us, and that it has to be willing to constantly work to keep the power of money in check.

FEC to enforce the law. In 1976, in *Buckley v. Valeo*, the Supreme Court upheld the contribution limits, but struck down the limits on candidate expenditures (outside of public funding) and independent expenditures. Congress reenacted the law in 1976, incorporating the Supreme Court's new framework distinguishing between contributions and expenditures. At the same time, many states began to enact their own campaign finance reforms to govern state elections.

While far from perfect, these laws did bring about major improvements in the campaign finance system over the next 20 years. However, some enforcement agencies, often designed to be weak and subject to political pressure through the appointment of commissioners and control of their budget, were too willing to go along with candidates, political parties, PACs, corporations, labor unions and wealthy donors who were constantly searching and probing for ways to get around the law's limits on their ability to buy access and influence. Things came to a head with the "soft money" scandal in the late 1990s, prompting Congress to pass the Bipartisan Campaign Reform Act of 2002 (BCRA), which resulted in new reforms to the campaign finance system. All of the major

provisions of this sweeping law were upheld by the Supreme Court in 2003 in *McConnell v. FEC*.⁹⁶ Then, in 2006, Justice Sandra Day O'Connor, a strong supporter of the campaign finance laws and a crucial fifth vote in campaign finance cases, resigned from the Supreme Court. She was replaced by Justice Samuel Alito, and the Court's jurisprudence began to change.

Since 2006, in a series of 5-4 decisions, the Court has narrowed the definition of corruption, overruled prior Supreme Court cases upholding campaign finance restrictions (including portions of *McConnell*), declared that corporations have a constitutional right to make unlimited independent expenditures and struck down the aggregate contribution limits. At the same time, the FEC has become mired in deadlocks and inaction, and some state campaign finance agencies have come under attack. The result has been elections dominated by unlimited contributions by a few wealthy individuals and corporations, often hiding behind secretive nonprofit organizations.

It is now time to redouble our efforts and once again rebuild and strengthen the foundation of our democracy.

⁹⁶ 540 U.S. 93 (2003)

MOVING FORWARD

Taking back our democracy requires us to strategize and fight on several fronts with different timelines. For example, important long-term work is being done on developing a new campaign finance jurisprudence. But in the short-term, we have the legislative tools to bring about important reforms, even under the recent Supreme Court rulings.

As outlined in this report, while the Supreme Court has limited the reach of some of the campaign finance laws, it continues to strongly support disclosure and insists that independent expenditures must be truly independent of candidates. It has also left intact the ability to enact and enforce core contribution limits and prohibitions, as well as the ability to enact voluntary public funding of elections. This gives us a number of excellent options for reforms to make the laws stronger and more effective in response to the new campaign finance abuses we are seeing. Also, we should always remind ourselves that the Supreme Court does not exist in a vacuum; many decisions have been overturned, like *Plessy v. Ferguson*, which codified racial segregation in our Constitution. This Court will change, and we are confident that *Citizens United* and its ilk will be reversed, like other misguided decisions of the past.

While work on campaign finance reforms at the federal level continues, the most fertile area for real reform in the immediate future may be at the state and local level, whether through legislatures or citizen driven ballot measures.

As before, reformers of all political stripes will have victories and defeats, but with each victory, our republic will be stronger.

Almost 250 years ago, this country fought a bloody revolution centered on the ideals that ultimate power rested with we, the people, and that citizens have certain unalienable rights to self-governance. Those ideals resonated around the world, serving as inspiration for the French Revolution to the Arab Spring. The world looks to America as an example of what can be accomplished when government is truly of, by and for the people. And so the problem of money usurping the political power of the many is not merely a process issue, or a “good government” issue, or a Beltway issue. As Stein Ringen, a professor emeritus at Oxford University, laid out in the Washington Post, it is a matter of protecting the right of self-governance everywhere: “If the lights go out in the model democracies, they will not stay on elsewhere.”⁹⁷

So if you are wondering when we will be able to turn our attention away from ensuring our politics are free from the corrupting influence of money, the answer is simple: never. Just as a garden always requires attention, so does our system of self-governance. We must never let the lights go out on democracy in America.

We, the people have the tools at our disposal to reclaim our government. Now we must use them. We hope this report, and the further information and support that can be found at www.BlueprintsForDemocracy.com shines some light on the possibilities for the road forward.

⁹⁷ https://www.washingtonpost.com/opinions/is-american-democracy-headed-to-extinction/2014/03/28/f8084f8e-aa34-11e3-b61e-8051b8b52d06_story.html

Thanks to the staffs of Issue One and the Campaign Legal Center for working so diligently on this report, particularly to Catherine Hinckley Kelley, associate counsel, and Nate Blevins, Campaign Legal Center fellow. Thanks, too, to Nicole Gordon, who got the ball rolling with her copious research and thoughtful insights, and to Ellen Burns for her clean layout and design of the final product.

