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*Missouri State Campaign Finance Contribution Limits
Policy Memorandum*

EXECUTIVE SUMMARY

The issue at hand is whether to instill campaign contribution limits to statewide candidates (Governor, Secretary of State, Treasurer, etc...), state senate candidates, and state house candidates.

The course of action recommended is putting a cap on campaign contributions that organizations (PACs, corporations, unions) may contribute to candidates and political parties and retaining the ban, passed in 2010, on PAC-to-PAC transfers. Also proposed is an increase of resources to the MEC to allow for more self-started prosecution and investigation of compliance with statues contained in Title IX, Chapter 130, Campaign Finance Disclosure Law. Lastly, an evaluation and possible change to the process and financial limits of independent expenditures and in-kind contributions are considered. Decision is promptly needed to ensure that new campaign finance laws are in effect, understood by candidates, political parties and organizations, and are properly enforced by the Missouri Ethics Commission before the 2012 primary election occurs.

BACKGROUND¹

State campaign contribution limits in Missouri have seen a tumultuous and inconsistent history. Contribution limits, passed by the majority will of Missourians and upheld by the U.S. Supreme Court in 2000, are no longer in effect.

Between 1974 and 1978 voters passed the first disclosure law in the ballot measure Proposition 1, which was found unenforceable in the courts and struck down. Candidates, PACs, etc. filed their paperwork of existence but not much else, and little effort was given to ensuring compliance with the law. This continued until 1985. In 1985 a law was passed that gave the ability to levy fines on entities that violated disclosure laws and it was then required to file a list of contribution and expenditure sources. From 1988 to 1990 issues were cited with the ability of the Contribution Review Board to enforce campaign finance laws.

In 1991 the Missouri Ethics Commission was formed and in 1993 there were two initiative drives that began to advocate for contribution limits. In 1994 the State Legislature passed contribution and spending limits (SB 650) and then the Proposition A referendum with stricter limits passed on November ballot. The years of 1995 to 2000 saw regulations contained in Proposition A and SB 650 systematically overturned through state and federal courts. Generally, in the order listed, components removed by the courts before it reached the U.S. Supreme Court included: campaign spending limits (included in SB 650), disposing of much of candidates' funds after an election (included in both laws), limits on how much a candidate can contribute to their own campaign (Proposition A), the ban on accepting contributions during legislative session (SB 650), and Proposition A's lower contribution limits of \$100-\$300.

1994 SB 650's \$250-\$1,000 contribution limits were considered law from July 1996 to December 1998, when the U.S. Eighth Circuit Appeals Court ruled contribution limits unconstitutional. No contribution limits were enforced over the next two years until the U.S. Supreme Court, in *Nixon v. Shrink Missouri Government PAC*, ruled (6-3) that contribution limits in the amount written in SB 650 are constitutional, upholding their 1976 ruling of *Buckley v. Valeo*.

Then, in 2006, the Missouri Legislature passed legislation that was signed into law that undid all campaign contribution limits and reinitiated the ban on fundraising during the legislative session. The new reversal of no contribution limits went into effect in January 2007, the provision disallowing contributions during session were struck down in March 2007, and campaign contribution limits were reinstated by the Missouri Supreme Court in July 2007 (after six months of no limits).

In 2008 the legislature again removed contribution limits (SB 1038), and the law went into effect on August 28th, 2008 and remains intact today. In 2010 an ethics reform passed which bans PAC-to-PAC transfers and various other regulations on the ability of different types of party committees to accept various forms of contributions. This is currently being challenged in court.

ISSUES

As the background information about campaign finance contribution limits and regulations in Missouri suggest, the state legislature has faced difficulties with passing legislation that:

1. Is agreeable to what the Missouri public passed by referendum in 1994.
2. Holds constitutional in court, especially considering large differences of opinion in various courts and the inconclusive proof that contribution limits are connected to public satisfaction or trust in government.
3. Is consistent with the 2000 Nixon v. Shrink Missouri Government PAC Supreme Court ruling, as evidenced by laws in 2006 and 2008 that removed contribution limits upheld in that Supreme Court ruling.

Both parties have shown support for contribution limits in the past, including those in each chamber as well as statewide officials, such as then Secretary of State Roy Blunt and then

Attorney General Jay Nixon.² Also, wide support for campaign finance reform is evidenced in public opinion polls.³ There are groups both in support of and against campaign finance reform, most notably on a nationwide scale. Those for reform include: Brookings Institute, League of Women Voters, the Center for Governmental Studies, California Voter Foundation, MOPIRG, Common Cause, The Center for Responsive Politics, and more. Those against reform include: the Center for Competitive Politics, the CATO Institute, and more.

Researchers and professors have increasingly explored the effect of campaign finance reform on different institutions and correlating public satisfaction because of the normative concern that an increased influence of money in the political process is corrupting. Based on research findings, or lack thereof, the scholarly community has come to varying opinions; but a survey of journal publications observationally shows that while it is difficult to prove the causality of unlimited money flowing into politics corrupting legislative action or eroding public efficacy, the majority of researchers still conclude that there is justifiable reason for reform.⁴

OPTIONS

The plausible courses of action are taking no action, slight reform of the campaign finance laws, or increased reforms leading to total overhaul. Missouri's current system of campaign finance disclosure and electronic filing as administered by the Missouri Ethics Commission is well-regarded, so most disclosure issues are not discussed here.⁵ While Missouri is leading the nation in finance disclosure accessibility, the difference is negligible because of subpar enforcement of disclosure and because the state is behind in other areas of campaign finance reform.

No Action: Pros and Cons. Taking no action may be considered the easiest and least controversial route, but as the 2010 legislative session evidenced, there is bipartisan support for campaign finance and ethics reform.⁶ Taking no action will prevent opposition from anti-reform

entities, will preserve the current system, and would reduce the MEC's potential need to retrain staff and provide support to treasurers of fundraising committees. Yet given the recent support in favor of reforming campaign finance and the subsequent SB 844 passed and signed into law, which is facing court challenges for containing multiple purposes, there is good reason to reinitiate a discussion on the topic.

Slight reform: Pros and Cons of this proposition. Slight reform, as proposed in this memo, will mediate opposition facing legislators from both those for and against campaign finance reform because the proposed fixes are less radical than they could be (in comparison to reforms undertaken in other states). For example, public financing proposals often result in more fervor and are therefore less commonly adopted. Also, imposing spending limits has only shown to have constitutional defense when a public financing option is included to make the public financing fully "optional", as was the case in 1995 when the spending limits in the 1994 SB 650 were struck down in U.S. 8th Circuit Court of Appeals because no public financing was included.⁷ Slight reform is less likely to face court challenge. Slight reform will allow the legislature, public, and research entities to evaluate the reforms in a systematic way over the course of time and follows natural legislative incremental form. On the other hand, slight reform will leave the discussion open to future reforms.

Total overhaul: Pros and Cons. Total overhaul would, assuming that it is not engulfed in lengthy and drawn out court challenges as in the past, hopefully secure a long-term campaign finance law that would sustain itself for more than the common observed length of two to four years as seen in previous Missouri campaign finance laws described above. This would reduce the time that candidates and committees need to spend learning new and often changing laws.

Total overhaul has not been a popular option or seen as accomplishable in the past. Lowering the amount of money that flows into elections has shown in some initial research to reduce public participation in democracy, and public political knowledge and efficacy. As Coleman and Manna's study of Congressional elections demonstrated, large funding of elections has positive effects. Taking into account these findings and the lesser popularity of passing public financing or campaign spending limits, as noted earlier, the goal of these proposed reforms is not to reduce the amount of money in campaigns and politics overall, but to reshape the path of money through the political system. Yet, one must question must be evaluated about how Coleman and Manna's theory plays out over time, since voter turnout has been decreasing over the past half a century while campaign spending has enormously increased. Also, total overhaul, such as discussed with public financing, would be more likely to face court challenge, which is another reason this proposal is moderate.

RECOMMENDATION: REASONS TO PASS CAMPAIGN CONTRIBUTION LIMITS

Upheld by the U.S. Supreme Court. Monetary direct contributions have been upheld by the U.S. Supreme Court as *not* infringing on First Amendment rights of free speech as ruled in Buckley v. Valeo (1976) and Nixon v. Shrink Missouri Government PAC (2000).

Increases Competition and Candidate Pool. Limits increase competitiveness in elections, and competitive elections are a positive attribute to the democratic process. Empirical "analysis shows that after controlling properly for other factors that may determine election outcomes, limits on contributions lead to closer elections. Both, introducing limits and tightening existing limits increases the closeness of elections...." (Stratmann and Aparicio-Castillo 178). Not only do contribution limits increase elections's competitiveness by fostering closer elections, but

studies show that limits also motivate more people to become involved by running for office, increasing the candidate pool (Hamm and Hogan 458).

Minimizes Challenger-Incumbent Spending Disparities. Contribution limits also decrease the disparity in spending between candidates, in which incumbents, without limits, have a great advantage. “It appears that laws that limit campaign contributions from corporations decrease the difference in spending between incumbents and challengers, making elections theoretically more competitive, and laws that limit campaign contributions from individuals increase that difference, making elections theoretically less competitive” (Lynch, public abstract). It is important to note that limiting individual contributions is shown to decrease competitiveness, which is one facet to why it is not proposed here.

Campaign Spending Remains Mostly Preserved and Incumbent Advantage Equalized.

Incumbents have an inherent and often-found large advantage over their challengers because of incumbent name recognition, non-partisan affection stemming from constituent work, and because of franking, paid mail, and other advantages received while in office⁸. Additionally, while states with less restrictive campaign finance regulations exhibit higher amounts of overall campaign spending, there are many other factors that affect spending as well, such as the professionalism of the state legislature (full-time, part-time, acts as a stepping stone to higher office) and the competitiveness of the particular race (Hogan). For example, Hogan summarizes that “Campaign finance laws affect spending levels, but candidate- and district-level factors also have a large impact” (Hogan “Costs,” 941 and Hogan *Variations*).

So, although the purpose of this proposal is *not* to reduce overall campaign spending, which as discussed earlier may in fact reduce public political participation, efficacy, and knowledge (Coleman and Manna), legislators must realize that moderate limits on campaign

contributions will not drastically harm spending to the extent of these mentioned negative effects.

Equal Voice in Elections. Limits on contributions from organizations (PACs, unions, corporations) will give individuals a more equitable voice in the political process. The debate about whether organizations are considered individuals, and therefore have the right to freedom of speech, is not applicable in this case since the U.S. Supreme Court ruled that limits on monetary donations do not infringe on free speech rights. In the U.S. Ninth Circuit Court of Appeals in *Jacobus v. State of Alaska*, 2003, the court wrote: “A failure to regulate the arena of campaign finance allows the influence of wealthy individuals and corporations to drown out the voices of individual citizens ... causing the public to become disillusioned with and mistrustful of the political system” (Primo 1).

Yet, this proposal will give serious consideration to limiting independent expenditures and in-kind contributions from organizations. While the U.S. Supreme Court has upheld in *Citizens United v. FEC* that unregulated and unlimited independent expenditures is a right to speech, one must consider that independent expenditures are shown to be extremely influential in deciding close elections, influencing two to eight percent of a vote to sway towards the preferred candidate (Malbin 165). Individuals do not have the same power brokering and knowledge leverage as organizations, corporations, unions, and PACs to conduct independent expenditures, such as comprehensive advertising plans, for individuals do not have the commonly already existing public relations and advertising departments and experience seen in organizations. Because of this structural disparity between individuals and organizations, organizations have an additional upper hand on individuals in their ability to influence campaigns and the political

process, which is compounded by the larger amounts of money in general that organizations have to give.

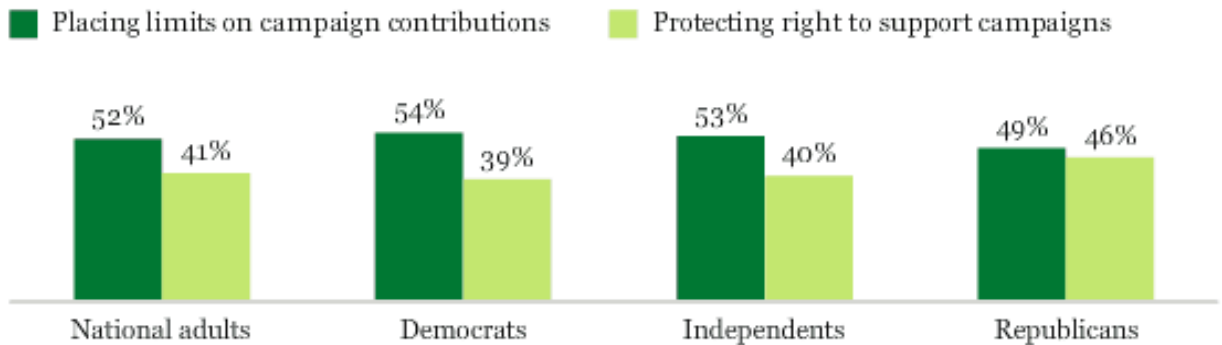
Comparison to Other States. Missouri is one of four states that have no contribution limits (National).

Grassroots Emphasis. The reduced emphasis and importance of organization money in elections may drive campaigns to increase their grassroots efforts, which could hypothetically target more of the general public and will increase mass participation in the political process.

Public Opinion. A wealth of public opinion surveys have tested the public's desire for campaign finance and ethics reform and the level that they care about the issue (Saad, Moore). While many surveys show that the public places campaign finance reform low on their list of legislative priorities, they also show majority support for campaign contribution limits. As the below results reveal, the majority of the public (52 percent) feel that campaign contribution limits are a greater priority than rights to free speech in politics (41 percent siding with free speech and 7 percent with no opinion).

Prioritizing Limits on Campaign Contributions vs. Free Speech

Thinking about political campaign contributions and free speech, which is the greater priority for you, personally -- [placing limits on how much individuals, corporations, or unions can contribute to political campaigns (or) protecting individuals', corporations', or unions' rights to freely support political campaigns]?



Gallup/First Amendment Center; Oct. 1-2, 2009

GALLUP

Additionally, Moore describes other results:

By a margin of 76% to 19%, Americans favor ‘new federal laws limiting the amount of money that any individual or group can contribute to the national political parties,’ with 51% saying they favor the idea ‘strongly’ and 25% ‘moderately.’ Also, 59% of Americans say that if new campaign finance reform legislation were passed, it would make our democratic form of government work better than it does now, while only 5% say worse, and 32% say it wouldn't matter (Saad, Moore).

While there is a significant fall off from wanting reform and believing reform will actually work, one must consider the public's overarching desire for reform.

Additional Considerations. Primo and Milyo write that, “Consequently, voter turnout, trust in government, political interest and even candidate emergence may all ultimately be affected in some way by changes in campaign finance laws” (9). Considering the changes in these factors that may occur from changing campaign finance laws, this proposal gains additional ground in that it is not a complete reversal of current law. Primo and Milyo (2006) and Rosenson (2009) are some of the most published researchers who have found that campaign finance reform does

not have a statistically significant influence on the public's perception of government corruption: media framing and attention, as well as unintended consequences of reform, have shown in these studies to not satisfy the objective of reducing perceived corruption.

REASONS TO IMPOSE STRONGER REGULATIONS AND ENFORCEMENT

It's empirically believed that disclosure laws innately increase trust and efficacy, yet studies show that increasing their regulation may increase media attention of campaign ethics issues, which can lower public efficacy in the system because of more focus on the violations of the law (Gross). Despite Gross and Goidel's findings, the overall scholarly knowledge about what affects public efficacy, knowledge, and participation ranges from media influence to heuristics to the newly explored possibility of genetics. So, since this may be seen as a short-term media reaction, it should not constitute dismissing the possibility of increased efficacy over time.

Granting the Missouri Ethics Commission increased staff and monetary appropriations will allow the MEC to, for example: initiate more overviews of compliance with the current and proposed law; possibly conduct limited public media outreach to inform voters of the current highly-rated resources available to find sources of campaign contributions so that the public could possibly satisfy some of their concern about money in politics; and further advance their technology.

Other Attainable Reforms. Sending out a pamphlet to all registered voting residences that describes candidates, possibly including a questionnaire that candidates fill out, as well as biographical information about them and additional information about ballot measures may help give voters a base of information that is not driven by advertising.

PROPOSED CHANGE IN CURRENT LAW

Contribution Limits for Organizations Increases Competition and Individuals' Say in Elections.

Organizations, including PACs, corporations, unions, businesses, and 501(c)(3) non-profit organizations shall have modest limits placed on monetary contributions given to candidate committees and political parties. Continuing disallowance of PAC-to-PAC contribution/transfers will remain in place, and a proposed ban on contributions between the above listed organizations is also proposed.

If a union or corporation wants to donate to an election, they are currently allowed to do so with their general treasury funds, although many organizations also have, or choose to solely use, PACs that are affiliated with their organization. Additionally, each of these organizations shall be required to have only two donating entities associated with it, so that organizations do not contribute general treasury funds and create multiple PACs to donate additional funds over the limits. While using general treasury funds is undesirable for the purpose of this proposal, it has been upheld in courts and may pose a challenge to the overall proposal if changes to that system were included.

Organizations will continue to be able to give unlimited monetary contributions to political parties. Under the 2010 ethics law that was passed and is currently under challenge, there may exist, per party: a state party committee, one committee per congressional district, one committee for the state senate and one for the state house. This change should remain in effect. Only these party committees will be allowed to receive unlimited contributions from organizations. The proposal shall not place limits on monetary contributions that party committees can give to candidate committees. Party committees cannot contribute to PACs or other organizations under the proposal.

Although contrary to the influence of independent expenditures explored earlier, parties are given this proposed increased authority because of findings that find that

PACs tend to contribute so as to curry favor with the likely winners (usually incumbents), rather than to target their contributions to close races. The parties, on the other hand, give a much greater share of their funds to challengers.... This maldistribution of campaign money, it is argued, hurts democracy by reducing competition and denying voters a fair choice... 'The financial resources of political parties... tend to lag far behind those of political action committees.' The implication, then, is that tunneling more campaign money through political parties would help democracy (Ramsden 179-183).

Having the majority of campaign money flow through the parties will allow the public to spend less time tracking where the dollars are coming and going. Also, because contributions from individuals to candidates, parties, PACs, corporations and the like will remain unlimited, individuals will proportionately have a greater say in this process.

The 2010 law that provided that a treasurer or deputy-treasurer of a PAC may only serve in one of those positions for one PAC should remain intact. Additionally, every PAC must file a statement of purpose with the MEC that states whether it is tied with a partisan or ideological purpose, industry, cause, business, etc... With additional resources the MEC should hire an information technology firm to create software which can check contributions made to organizations to identify possible cases of infraction, such as ten different PACs all having the same fifty contributors.

Lastly, it is urged that reconsideration of the independent expenditure process be evaluated. Independent expenditures and, to some extent in-kind donations, make the campaign process muddy and hard to follow. Advertising done on behalf of a candidate by an organization, to no monetary extent and not coordinated with the candidate can confuse voters about the

candidate's position and takes integrity away from the candidates' campaign's ability to control their message.

Independent expenditures, as previously discussed, can have a dramatic impact on election results: because they are not coordinated with or endorsed by candidates' campaigns, which is the justification for allowing unlimited amounts of independent expenditures, they pose a threat to the democratic election process. In the last weeks of campaigns there is no time to prosecute or correct misinformation, which gives organizations that put out independent expenditures tremendous ability to sway elections in truthful and dishonest ways, further corroding the political process. Many studies show that campaign finance reforms do not improve public affect and efficacy, but reforms less often include limiting independent expenditures, so this facet may be a driving force behind public perception of government corruptness. It seems inherently unlikely that the public pays attention to the "Paid for by" lines at the bottom of commercials and direct mail to determine if the message is actually coming from the candidate.

Therefore, since independent expenditures are uncontrollable and unlimited, it is proposed that either the legislature considers ending the allowance of independent expenditures or placing limits on the money that can be attributed towards them. The concerns of independent expenditures, while bringing up challenges of unconstitutionality, deserve a deep and well-considered discussion of reform.

Notes

1. Law, court rulings, and enforcement ability information was obtained from public sources of information, i.e. bill summaries of the truly passed and signed, court opinions, and newspaper accounts.
2. See editorial “Money Talks Again” and Jo Mannies’ “Campaign Finance Laws Thrown Out.”
3. See Saad and Moore *GALLUP* polls.
4. For a comprehensive review, see Ramsden’s review essay that summarizes researcher’s findings and motivations throughout the 1960’s to 1990’s. He notes that campaign finance research will continue because, despite no conclusive evidence thus far, scholars are still normatively concerned about the influence of money in politics.
5. The Campaign Disclosure Project, administered by the UCLA School of Law, the Center for Governmental Studies, the California Voter Foundation, and supported by the Pew Charitable Trusts, gave Missouri an A- (5th rank) for campaign *disclosure* law, an A+ for electronic filing program (1st rank), a B+ for disclosure content accessibility (17th rank), and a C for online contextual and technical usability (25th rank). Overall, Missouri is the fourth most improved state since *Grading State Disclosure* began in 2003.
6. For a sample of findings that there has been bipartisan support for reform, see Messenger’s “Missouri Lawmakers...” and other Missouri-based papers’ accounts of Representatives Flook, Kander, Zimmerman, and Yates’ moves to pass various reforms in the 2009 and 2010 legislative sessions.
7. See the *Shrink Missouri v. Maupin* decision affirming the unconstitutionality of spending limits in the 1994 Missouri law. May also reference Jo Mannies “Finance Law Will...” and *National Conference of State Legislature’s* findings that show while all states have some form of

disclosure law, fewer have contribution limits (46), and half of the states (25) have a form of public financing, which is noted to be declining in popularity for various reasons.

8. See Breaux for state legislative and Jacobson for congressional findings.

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