

MEMORANDUM

TO: Commission on Strengthening Utah's Democracy
FROM: Stefan P. Brutsch of Parsons Behle & Latimer
DATE: March 2009
SUBJECT: Disclosure of Campaign Contributions and Spending

The following law summary briefly analyzes laws relating to the disclosure of campaign contributions and spending. It sets forth Utah's current law, gives an overview of other states' laws, and briefly touches on some commentary regarding disclosure laws' pros and cons.

I. Utah's Current Law

Utah requires officeholders (governor, lieutenant governor, state auditor, state treasurer, attorney general, state or local school board member, state senator, state representative, and legislative leadership races), candidates, PACs, registered political parties, and corporations to file campaign-finance reports with the Lieutenant Governor's office. Utah does not require electronic filing by these reporting individuals and entities.¹ The Lieutenant Governor must verify that each state candidate files reports and that each report contains the required information, but no mandatory or random paper or field audit is required.²

Below is more detail about Utah's content and frequency requirements for campaign-finance reporting by candidates/officeholders, PACs, and corporations. Individuals are not required to register and report campaign contributions under Utah law.

A. Candidates

Candidates must report the name and address of any individual or entity giving contributions or public service assistance³ with a fair market value over \$50. Contributions of \$50 or less must be reported, but may be aggregated and individual donors need not be listed. Candidates must also report all expenditures made, but need not report sub-vendors (e.g., name of vendor to whom a credit card company disburses funds). Candidates must file four "interim" reports each election year and a year-end report every January 10th. (Thus, only one report is

¹ Utah Code Ann. § 20A-11-101, et. seq. However, the voluntary participation rate is high: all statewide candidates and 60 percent of legislative candidates used the electronic filing option in the last statewide election. Campaign Finance Disclosure Project, <http://www.campaigndisclosure.org/gradingstate/statistics.html>.

² Utah Code Ann. § 20A-11-206.

³ "Public service assistance" includes gifts, donations, unpaid or partially unpaid loans, subscriptions, advances, deposits of money, or anything of benefit to an officeholder, as well as goods or services charged at less than fair market value. Utah Code Ann. § 20A-11-101(34).

filed for a non-election year.) The interim reports must be filed seven days before the candidate's political convention, seven days before the regular primary election date, on August 31st, and seven days before the regular general election date. "Last-minute" contributions—those made 12 or fewer days before an election—are reported after Election Day.⁴

A new provision in Utah law will soon require candidates to "report each contribution and public service assistance to the lieutenant governor within 30 days after the contribution or public service assistance is received."⁵

B. PACs⁶

Each year before January 10th, PACs (including federally registered PACs) must file with the Lieutenant Governor's office a statement of organization that identifies PAC officers and affiliated entities.⁷ Each PAC that raises at least \$750 in contributions or spends at least \$50 on "expenditures"⁸ during a calendar year must also file three reports with the Lieutenant Governor's office. These reports must be filed on January 10th (for activity during the previous calendar year), August 31st, and seven days before any general election.⁹ The report must: (1) disclose contributions received and all expenditures made since the last report;¹⁰ (2) provide the name, address, occupation, and amount donated for each individual contributor who gave more than \$50; (3) identify any publicly-identified class of individuals (union, association, or persons sharing a common occupation or interest) that contributed to the PAC; (4) list the name, address, and amount donated for any PAC, group, or entity that contributed over \$50 to the PAC; (5) estimate the fair market value of each non-monetary contribution and each expenditure; (6) supply each expenditure's amount and the name and address of each expenditure's candidate, campaign committee, party committee, PAC, or officeholder recipient and (7) present the total

⁴ Utah Code Ann. § 20A-11-204; Utah Code Ann. § 20A-11-303.

⁵ Utah Code Ann. §§ 20A-11-201(4), 20A-11-301(5), 20A-11-1301(5). "Received" means "(i) for a cash contribution, that the cash is given to a state office candidate or a member of the candidate's personal campaign committee; (ii) for a contribution that is a negotiable instrument or check, that the negotiable instrument or check is negotiated; and (iii) for any other type of contribution, that any portion of the contribution's benefit inures to the state office candidate."

⁶ Two or more persons acting together in making contributions qualify as a PAC. Utah Code Ann. § 20A-101-26(a).

⁷ Utah Code Ann. § 20A-11-601.

⁸ "Expenditure" is a potentially broad definition that includes more than direct contributions: "(i) any disbursement from contributions, receipts, or from the separate bank account required by this chapter; (ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes; (iii) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for political purposes; (iv) compensation paid by a corporation or filing entity for personal services rendered by a person without charge to a reporting entity; (v) a transfer of funds between the filing entity and a candidate's personal campaign committee; or (vi) goods or services provided by the filing entity to or for the benefit of another reporting entity for political purposes at less than fair market value." Utah Code Ann. § 20A-11-101(10).

⁹ Utah Code Ann. § 20A-11-602(1).

¹⁰ Contributions of less than \$50 need not be reported individually, but two or more contributions from the same source that total more than \$50 must be reported individually. Utah Code Ann. § 20A-11-602(2)(b).

amount of contributions received and expenditures disbursed by the PAC.¹¹ The PAC's treasurer or chief financial officer must verify each report's accuracy in a written statement.

C. Political Parties

Registered political parties' reporting requirements are nearly the same as those for candidates, with the exception that political parties are only required to file two interim reports, on August 31st and seven days before the general election, as opposed to the four interim reports that candidates are required to file.¹²

D. Corporations

Generally, corporations' reporting requirements are similar to those for PACs. Corporations making expenditures for political purposes totaling more than \$750 in a calendar year must also file a report up to three times each year (January 10th, August 31st, and seven days before a general election). Each corporation's report must include: (1) a listing of all expenditures made since the last statement; (2) the name and address of each candidate or Utah-registered political entity that received an expenditure from the corporation, and the amount of each expenditure; and (3) the total amount of expenditures disbursed by the corporation.¹³ The report must include a sworn statement from the company's treasurer that it is accurate. Corporations must also report the same information if they make expenditures in support of a ballot initiative.¹⁴

II. Statistics Concerning State Disclosure Provisions

All 50 states require disclosure of campaign contributions and spending, but their requirements vary widely with regard to reporting content, frequency, and method.

A. Disclosure of Donors' Occupation and Employer

Unlike Utah, 31 states require that candidates disclose contributors' occupations and employers, while five more states mandate that donors list only the names of employers.¹⁵ Disclosure advocates believe that occupation and employer are important because "Without occupation and employer reporting, it is much more difficult to enforce the disclosure laws and determine if certain groups may be trying to influence the political process."¹⁶

¹¹ Utah Code Ann. § 20A-11-602.

¹² Utah Code Ann. §20A-11-506, Utah Code Ann. §20A-11-506.

¹³ Utah Code Ann. § 20A-11-701.

¹⁴ Utah Code Ann. § 20A-11-702.

¹⁵ Campaign Disclosure Project, Grading State Disclosures 2008, Campaign Disclosure Laws, <http://www.campaigndisclosure.org/gradingstate/lawfindings.html>.

¹⁶ Campaign Disclosure Project, Campaign Finance Disclosure Model Law, <http://www.cgs.org/images/publications/ModelDisclosureLaw.pdf>. The Model Law is also included as Appendix 1.

B. Sub-vendor Expenditures

Unlike Utah, 24 states require candidates to report expenditures made to sub-vendors. Itemized sub-vendor expenses allow the public to view the actual expenses made by campaigns, rather than the name of a credit card company, or a consultant hired to make purchases (media, polling, etc.) on behalf of the campaign.¹⁷

C. Number of Reports Required to Be Filed

In election years, 12 states require one pre-election report, 21 states require two such reports, and 17, including Utah, require three or more reports before an election. Regular pre-election reports typically do not cover activity that occurs shortly before Election Day, so states often set additional requirements for contributions that are received by candidates in a campaign's closing days. Currently, 36 states require pre-election disclosure of last-minute contributions, while 14 states' laws do not. Utah does not require pre-election disclosure of contributions received after the last interim report, which covers transactions that occur 12 or more days before the general election.

In non-election years, 27 states require two or more disclosure reports to be filed. Twenty-three states require one campaign disclosure report to be filed, including Utah, which added this requirement in 2007.¹⁸

D. Mandatory Electronic Filing

Currently, 24 states operate electronic filing programs that are mandatory for both statewide and legislative candidates, and an additional 6 states require electronic disclosure only for statewide-office candidates. Utah is one of 12 additional states that have a voluntary electronic filing program for all candidates.¹⁹ States require electronic filing to make campaign-finance reports immediately accessible to the public in formats that are easy to read, searchable, sortable, and downloadable. Of the states with mandatory electronic filing, 93 percent have online, searchable databases of campaign contributions while only 38 percent of states with no electronic filing program provide such access.²⁰

E. Auditing Disclosure Reports

To identify campaign-finance disclosure violations, some states require their filing agencies to conduct mandatory and/or random audits. Thirty states require the filing agency to examine a candidate's or entity's filing. Twelve states require the filing agency to conduct a

¹⁷ Campaign Disclosure Project, Law Findings, <http://www.campaigndisclosure.org/gradingstate/lawfindings.html>.

¹⁸ Campaign Disclosure Project, Grading State Disclosures 2008, Campaign Disclosure Laws, <http://www.campaigndisclosure.org/gradingstate/lawfindings.html>.

¹⁹ Campaign Disclosure Project, Grading State Disclosures 2008, <http://www.campaigndisclosure.org/gradingstate/efilemap.html>.

²⁰ Campaign Disclosure Project, Grading State Disclosures 2008, Executive Summary, <http://www.campaigndisclosure.org/gradingstate/execsum.html>.

“field” audit by combing through some candidates’ and entities’ actual records.²¹ Utah requires the Lieutenant Governor to verify that each state candidate files reports and that each report contains the required information.²²

III. Examples of Alternative Approaches

A. Washington—Traditional Campaign Finance Disclosure System

Washington’s campaign-finance disclosure system is considered to be a national leader,²³ and its laws are briefly analyzed here.

1. Candidate Reporting Requirements

Candidates must itemize contributions over \$25, including occupation and employer data for those donating over \$100.²⁴ Washington requires candidates to report campaign expenditures exceeding \$50, including information about sub-vendors and accrued expenditures.²⁵ Both statewide and legislative candidates who reach a threshold of \$10,000 must file their disclosure reports electronically with the Public Disclosure Commission (PDC). Like Utah, Washington requires candidates to report all contributions seven days prior Election Day. Washington also requires that candidates report information on the 21st day prior to an election and the 10th day of every month in which a report is not otherwise required, and in which the candidate’s total contributions or expenditures exceed \$200.

2. PACs

PACs are subject to the same reporting laws as candidates if the PAC raises and spends more than \$2,000 in a year or has received or spent more than \$200 in the previous month.²⁶ In addition, a political committee is required to keep accurate records reflecting all contributions and expenditures on a current basis within one business day of receipt or expenditure, and to make these records available for public inspection during the eight days prior to any election in which it is participating.²⁷ A political committee also must immediately file a notice of last-minute contribution when it makes one or more contributions that total \$1,000 to a single entity during the seven days prior to the primary election or the 21 days prior to the general election.

²¹ Campaign Disclosure Project, Grading State Disclosures 2008, Campaign Disclosure Laws, <http://www.campaigndisclosure.org/gradingstate/lawfindings.html>.

²² Utah Code § 20A-11-206.

²³ Campaign Disclosure Project, <http://www.campaigndisclosure.org/gradingstate/wa.html>.

²⁴ Rev. Code Wash § 42.17.090.

²⁵ Rev. Code Wash § 42.17.090.

²⁶ Rev. Code Wash § 42.17.065.

²⁷ Rev. Code Wash § 42.17.065.

The notice must disclose the contributing political committee's identity, the contribution's amount and date, and the recipient's name and address.²⁸

3. Corporations

A corporation that is not a lobbyist employer and that is dealing with its own funds in making contributions is not required to report its contribution activities, unless it has made contributions exceeding \$13,500 in the aggregate, or independent campaign expenditures exceeding \$675 for or against any candidate or ballot proposition, during a calendar year. If it has made contributions in excess of \$13,500 or has made independent campaign expenditures exceeding \$675 in the aggregate, the corporation must file the same report required of lobbyist employers by the last day of February in the year after the contributions or expenditures were made.²⁹

B. Michigan Secretary of State Proposal—Real-Time Disclosure

No state has yet implemented a “real-time” disclosure system that requires candidates and committees to publicly report contributions immediately after receipt on an ongoing basis.³⁰ However, Michigan's Secretary of State, among others, has proposed a real-time disclosure system that “would replace the need for the campaign reports that committees are currently required to file on a periodic basis.” Under the proposal, all Michigan-registered candidates and committees would be prohibited from spending contributed funds until the contribution is reported electronically. Citizens would be able to view candidates' and committees' recent transactions and current cash balance, similar to an electronic checkbook register.³¹

IV. Pros and Cons of Campaign-Finance Disclosure

A. Pros

Disclosure is almost universally thought to be a necessary tool to control corruption and undue influence within the political process as all states, and the federal government, impose disclosure requirements. Without disclosure laws, it would be difficult if not impossible to know how campaign contributions were used and whether laws regarding campaign contributions were violated. Effective disclosure can help voters sort through and evaluate campaign messages. By

²⁸ Rev. Code Wash § 42.17.105.

²⁹ Rev. Code Wash § 42.17.180.

³⁰ Ontario, the Canadian province, has a close to real-time disclosure system. From the Elections Ontario website (<http://www.elections.on.ca/en-CA/Tools/FinancialStatementsandContributions/RealTimeDisclosure.htm>): “When contributions in excess of \$100 and contributions from a single source that in the aggregate exceed \$100 are made to registered political parties or registered leadership contestants, their chief financial officer must file a report with the Chief Electoral Officer within ten business days after the contribution is deposited. The Chief Electoral Officer in turn must publish the information on the Elections Ontario web site within ten business days of receiving the report.”

³¹ Michigan Secretary of State, *Full, Timely Disclosure* (2006), http://www.michigan.gov/sos/0,1607,7-127-1640_9150_15364-141453--00.html.

knowing which groups have contributed to candidates, voters gain a valuable cue about the relative positions of candidates.³²

B. Cons

Despite the fact that disclosure of campaign contributions is widely accepted, there are some potential negative aspects to disclosure. The principal negative is the loss of donors' privacy because, especially in the internet age, "any citizen can look up the candidates, interest groups, or parties to which neighbors, employees, or friends have given."³³ Second, "disclosure creates the possibility that contribution records will be scrutinized by those who can pressure citizens to change their contributing behavior."³⁴ For example, in 1982, the Supreme Court exempted the Socialist Workers Party from making the required federal disclosures due to the threat of reprisals against donors after the district court found substantial evidence of harassment.³⁵

V. Process to Amend Utah Law

All of Utah's campaign-finance disclosure rules are set forth in the Utah Code, which would need to be amended if reform is desired in this area.

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³² Clyde Wilcox, *Designing Campaign Finance Disclosure In The States: Tracing The Tributaries Of Campaign Finance*, 4 Election L.J. 371 (2005).

³³ Clyde Wilcox, *Designing Campaign Finance Disclosure In The States: Tracing The Tributaries Of Campaign Finance*, 4 Election L.J. 371 (2005).

³⁴ Clyde Wilcox, *Designing Campaign Finance Disclosure In The States: Tracing The Tributaries Of Campaign Finance*, 4 Election L.J. 371 (2005).

³⁵ *Brown v. Socialist Worker's '74 Campaign Committee*, 450 US 87 (1982)

Appendix 1