

MEMORANDUM

TO: Commission on Strengthening Utah's Democracy

FROM: Stefan P. Brutsch of Parsons, Behle & Latimer

DATE: March 2009

SUBJECT: Limits on Campaign Contributions and Prohibitions on Contributions from Specific Sources and During Specific Time Periods

The following law summary briefly analyzes the various laws relating to campaign contributions: amount limitations, source bans, and timing prohibitions. It sets forth Utah's current law, other states' laws and approaches to the issue, and touches on some of the commentary regarding the pros and cons of the various alternatives.

I. Utah's Current Law

Utah Law imposes no restrictions on the amount of donations that individuals, political parties, PACs, and corporations may make to candidates, political parties, and PACs.¹ Cash contributions are not limited.² House Bill 109, which would have placed amount limitations on these types of campaign contributions, failed in the 2009 legislative session. Labor unions are prohibited from making expenditures for political activities unless they establish a separate PAC. The PAC may not use union dues to make contributions. Unions may, however, use dues to pay the cost of establishing and administering a PAC.³

Separately, Utah restricts the timeframe in which any contribution(s) may be made. Campaign contributions may not be made or promised while the legislature is in session.⁴ Utah's other timing prohibition on contributions states that a political issues committee (a committee formed to influence the outcome of a ballot initiative) may not accept contributions from a corporation formed less than 90 days before an election if that corporation has not filed a statement of organization with the Lieutenant Governor's office.⁵

¹ Lobbying, PACs & Campaign Finance: 50 State Handbook, § 46:81, 82, 91 (2009 ed.), Peter C. Christianson, Peter J. Coyle, Edward E. Poliakoff, Jocelyn Y. Dwyer, eds.

² Lobbying, PACs & Campaign Finance: 50 State Handbook, § 46:91 (2009 ed.), Peter C. Christianson, Peter J. Coyle, Edward E. Poliakoff, Jocelyn Y. Dwyer, eds.

³ Utah Code Ann. §§ 20A-11-1403; 20A-11-1404.

⁴ Utah Code Ann. § 36-11-305.

⁵ Utah Code Ann. § 20A-11-801(6)(b)-(c).

II. Statistics Concerning Utah's Approach and Alternative Approaches to Contribution Limits, Source Bans, and Timing Prohibitions

A. Contribution Limits

- 5 states—Illinois, New Mexico, Oregon, Utah and Virginia—place no amount limitations on any contributions;
- 8 states—Alabama, Indiana, Iowa, Mississippi, Missouri, North Dakota, Pennsylvania, and Texas—have minimal contribution limits;
- 36 states, unlike Utah, limit contributions to state candidates;
 - For contributions from an individual to a statewide candidate, the national mean is \$4,000 per election cycle; the average is \$7,475 (highest is NY's \$55,900/cycle limit to gubernatorial candidates and lowest is AK/MA \$500/cycle limit to gubernatorial candidates);
 - For contributions from an individual to a legislative candidate, the national median is \$2,000 per election cycle; the average is \$3,671 for a state senate candidate and \$3,298 for a state house candidate (highest is OH's \$21,340/cycle limit and lowest is SD's \$250/cycle limit to legislative candidates);
 - 7 states have limits of \$1,000 or less to a statewide candidate;
 - 15 states have limits of \$1,001 to \$5,000 to a statewide candidate;
 - 10 states have limits of \$5,001 to \$10,000 to a statewide candidate;
 - 4 states have limits of \$10,001 or greater to a statewide candidate;
 - At least 6 states (AZ, CA, CO, GA, OH, WA) index their contribution limits for inflation;
- 37 states, unlike Utah, limit contributions to state political parties;
- 32 states, unlike Utah, limit contributions to state PACs; and
- 30 states, unlike Utah, limit cash contributions.⁶

B. Contribution Source Bans and Timing Prohibitions

- 24 states, unlike Utah, ban corporate contributions to candidates (22 additional states limit corporate contributions);
- 16 states, including Utah, ban union treasury-fund contributions;
- 5 states, unlike Utah, ban or severely restrict lobbyist contributions; and
- 17 states, including Utah, ban contributions during the legislative session.⁷

⁶ The National Conference of State Legislatures compiles each state's various laws regarding contribution limits and maintains that information on its website in table format. Those tables are provided in the attached appendix, and can be found online at http://www.ncsl.org/print/legismgt/limits_candidates.pdf for information regarding states' limits on contributions to candidates, and at http://www.ncsl.org/print/legismgt/limits_PACs.pdf for information regarding states' limits on contributions to Political Action Committees ("PACs"). See Appendices 1 and 2.

⁷ The National Conference of State Legislatures, http://www.ncsl.org/programs/legismgt/about/2008_Contrib_Candidates.htm.

III. Pros and Cons of Alternative Approaches

Examples of each alternative approach to contribution amount limitations, source bans, and timing prohibitions are found below, together with their pros and cons.

A. **Contribution Amount Limitations**

Jurisdictions have placed limits on monetary contributions to political candidates for some time, but those limits have consistently been met with resistance from those opposing restrictions on speech. In *Buckley v. Valeo*, the Supreme Court upheld the federal government's ability to impose contribution limits, but struck down limits on candidates' expenditures.⁸ Until recently, it had been widely viewed that amount limitations on contributions were always constitutionally acceptable. In 1997, however, Vermont passed a campaign finance statute that, among other things, provided for limitations on contributions to candidates by individuals, political parties, and other groups of \$200 to \$400 (depending on the office). In the complex and multifaceted opinion in the case of *Randall v. Sorrell*, the U.S. Supreme Court decided that Vermont's limits on campaign contributions constituted an impermissible restriction on free speech because their amounts were too low and were not indexed for inflation.⁹

1. Examples

i. ARIZONA—CANDIDATE-CENTERED AMOUNT LIMITATIONS

Some states only limit contributions made to candidates and officeholders, reasoning that candidate contributions are more likely than other types of contributions to yield undue "access" or "influence" over the governance process for the contributor. One such state is Arizona. Under Arizona law, candidates who do not participate in Arizona's "clean elections" public funding program may receive up to the following amount each election (primary and general elections have separate limits):

- Individuals and political committees cannot contribute more than \$840 to a statewide candidate, \$410 to a non-statewide local candidate, and \$410 to a non-statewide legislative candidate;¹⁰ and
- PACs certified by the secretary of state to give at a higher limit (a.k.a. "Super PACs") cannot contribute more than \$4,176 to a statewide candidate, \$2,080 to a non-statewide local candidate, and \$1,664 to a non-statewide legislative candidate.¹¹

⁸ *Buckley v. Valeo*, 424 U.S. 1 (1976).

⁹ *Randall v. Sorrell*, 548 U.S. 230 (2006).

¹⁰ Ariz. Rev. Stat. § 16-905(A), (B), (J).

¹¹ Certified political committees ("Super PACs") are those receiving funds from 500 or more individuals in amounts of \$10 or more in the year immediately before application. Individuals and noncertified political committees are subject to the applicable limits. Ariz. Rev. Stat. § 16-905(I).