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REPORT:

CAMPAIGN FINANCE
IN OHIO

Suzanne Novak, Maneesh Sharma
and Bethany Foster

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ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a public policy institute that works to strengthen democracy and secure justice through law, scholarship, education and advocacy. With Justice Brennan, we believe that a “living constitution” is the genius of American law and politics – and that the test of our institutions is the ability to apply timeless values to a changing world.

ABOUT THE BRENNAN CENTER’S CAMPAIGN FINANCE REFORM PROJECT

The Brennan Center has long been a leader in the fight for campaign finance reform on the national, state and local levels. We helped to draft the federal Bipartisan Campaign Reform Act of 2002, published path-breaking studies of television advertising that were introduced into the congressional record, and played a key role on the legal defense team winning a major victory in the U.S. Supreme Court. After assisting in the drafting of Connecticut’s landmark public funding legislation, enacted in 2005, we were retained as lead counsel for intervenors in two consolidated cases challenging that law. We played the same role in the successful defense of the full public financing systems in Arizona and Maine.

Building on ten years of experience in the field, the Center offers top-flight legal and policy assistance to government officials and activists seeking to develop and defend effective and constitutional campaign finance bills and initiatives. We identify each jurisdiction’s core policy goals and then translate those goals into language appropriate for legislation or ballot measures. The Center reviews and analyzes text drafted by others for potential constitutional or other legal problems. Once legislation is introduced, Brennan Center attorneys accept invitations to deliver written and oral expert testimony. When campaign finance reforms are challenged in court, the Brennan Center has skilled and experienced litigators to present a vigorous defense.

Finally, the Center’s publications and public advocacy have amplified the First Amendment values in robust debate and participatory democracy served by campaign finance regulation. For advocates and legislators, we offer an accessible treatise on campaign finance law: *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, now in its fourth edition. Written by Brennan Center attorneys who have litigated campaign finance cases in federal and state courts throughout the nation, this 200-page book offers both practical tips and legal analysis for drafters of campaign finance reform bills or initiatives – both those who want to stay within current constitutional constraints and those who want to test those limits.

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FOREWORD

Full participatory democracy: it's been a national goal since America's founding. Today citizens recognize that money sometimes plays a warping role in electoral politics and hobbles progress towards full democracy. During the past decade, with Washington, D.C. mired in stalemate and in thrall to special interests, many states stepped forward and introduced innovative laws that enhance the power of ordinary citizens in the political process. States as different in political culture as Arizona and Connecticut have created bold systems to reform campaign finance laws, creating voluntary public financing and ensuring that enforcement is fair and vigorous.

This report is the third of a five-part series that examines campaign finance laws and the ways they've worked—or haven't worked—to limit the influence of money on politics in the heartland. This report assesses Ohio's campaign finance system; we have published similar reports for Illinois and Wisconsin, and reports about the systems in Minnesota and Michigan will be released soon. Throughout the last century, governments in these states often led the way for the rest of country, providing “laboratories of democracy” (in the phrase of Supreme Court Justice Louis Brandeis) that test and perfect new policies. Today, the governmental decisions made in these states affect millions of people and set the tone for the rest of the nation.

The campaign finance studies are part of a comprehensive evaluation of democratic institutions that has been undertaken by the Midwest Democracy Network, a collaboration among national research and policy institutions and state-based advocacy organizations that work for honest and accountable government. With generous support from the Joyce Foundation, the Network is examining campaign finance, election administration, redistricting procedures, state courts, and local news coverage of politics in the five Midwestern states.

In recent years, Ohio has risen to national prominence as a paradigm of dysfunctional democracy. Investigations into the 2004 elections have uncovered that Ohio voters—disproportionately African-Americans—were subjected to lines with waits reaching eight hours, severely understaffed polling places, and inaccurate ballot counts. The state also has been rocked by repeated corruption scandals. “Coingate” shook up the state's political leadership and led to various convictions. Gov. Bob Taft pled “no contest” in 2005 to charges of failing to disclose lobbyists' gifts. In 2006, several political fundraisers were found guilty of theft, money laundering, and corrupt activity. Also in 2006, Congressman Bob Ney pled guilty to corruption charges stemming from the Jack Abramoff scandal.

With this troubled legacy, Ohio's campaign finance laws plainly need reform. This study finds:

- The state's limits—on contributions from individuals, political committees, or political parties to state legislative candidates, on individual contributions to statewide candidates, and on political party donations to candidates—rank among the highest in the nation.
- The weak limits that do exist are undermined by significant loopholes that allow wealthy donors to launder contributions through intermediaries.
- For the first time since 1908, corporations may now contribute to political parties.
- The only public financing system is a tax refund of no more than \$50 for individual contributions to candidates.

Now Ohio has a chance to turn the page, change its laws, and become a model for effective democracy. After recent scandals, Ohio improved its disclosure laws in 2004. Those laws recently ranked eleventh best in the country. But Ohio must do much more. Its disclosure laws mandate insufficient reporting for expenditures, have inconsistent and confusing provisions, and impose some requirements with questionable policy and legal underpinnings. Contribution limits must be drastically reduced, and loopholes eliminated. And a public financing system would go a long way towards making public officials less beholden to special interests, and more accountable to constituents.

Now there is a new Congress in session in Washington and a new hunger throughout the country for honest, accountable government officials who answer the basic economic, health, and education needs of ordinary citizens. This is the time to revive laws consistent with public interest in government that is elected by—and answers to—ordinary citizens, not big-money interests. Nowhere is this more true than in the heartland, in what was once and can be again the testing ground for progress.

Michael Waldman

Executive Director, Brennan Center for Justice at NYU School of Law

March 2007

CAMPAIGN FINANCE REFORM: WHY DOES IT MATTER?

Campaign finance laws seek to make government more honest and accountable to ordinary people, so that bread-and-butter issues—such as education, taxes, and health care—are not held hostage to moneyed interests. By placing limits on the influence of money on elections, campaign finance laws make it easier for elected officials in Ohio to respond to their constituents' concerns, rather than those of wealthy political supporters.

While all voters are equal in the voting booth, all voters are not equal in their ability to influence elections and policy. In states with inadequately regulated campaign finance systems, only wealthy individuals and special interests can make the substantial political contributions and advertising expenditures that move public debate and affect electoral outcomes. And although a \$5 contribution from a low-income constituent may represent a much greater commitment than a \$10,000 contribution from a millionaire, the latter usually has more power to influence the outcome of the election and to secure access to the candidate, once elected to office.

Suppose, for example, that the coal industry wants the Ohio legislature to reduce corporate taxes. If contributions from that industry, its executives, and its lobbyists represent a large proportion of a candidate's campaign funds, that candidate may risk her political future if she resists industry pressure. She may find it hard to keep a promise to deliver tax relief for the middle class if small donations from moderate-income supporters cannot compensate for the loss of corporate largesse. The temptation to support industry rather than relieve ordinary taxpayers will be even greater if there is no way for the public to learn exactly who is financing the candidate's campaign and to connect the dots between corporate contributions and corporate tax breaks.

When wooing wealthy supporters is the key to political success, honest government is difficult to sustain. Although many candidates and officeholders are people of high integrity, political corruption is a chronic problem. Money has been at the heart of political scandals throughout American history, from Teapot Dome to the indictment of Jack Abramoff. Recent scandals in the states have also involved campaign contributions made in exchange for political favors. Combating corruption is crucial to ensuring that the government's policies on everything from the economy to the environment serve the public interest, not special interests.

Campaign finance laws can have other benefits as well. Public funding helps to ensure that whether a citizen can run for public office and conduct an effective campaign is determined more by the force of his ideas in the public arena than by his personal fortune or access to wealthy supporters. Such laws also free candidates and government officials from the rigors of fundraising so they can spend more time listening to their constituents and formulating the best policies for the State. Regulations that reduce this influence of money help voters hold their representatives accountable for policy-making that serves the common good.

HOW DO CAMPAIGN FINANCE LAWS PROMOTE HONEST GOVERNMENT?

One of the most important and least controversial elements of campaign finance law is a requirement that certain political contributions and expenditures be reported to regulatory agencies for disclosure to the public. Reports of the sources and amounts of contributions to candidates from lobbyists, political action committees, and others give the public clues to the candidates' likely political leanings on key issues and flag the interest groups to which the candidates are likely to be responsive. Voters may also glean such information from reports of large independent expenditures made in support of or opposition to candidates. The objective information in the official reports can provide a badly needed supplement to campaign advertising, especially if the reported information is easily accessible to the media and interested citizens in searchable, web-based databases. With more information, voters are better able to choose candidates who share their values and to hold politicians accountable for failures to represent their constituents' interests. Reporting requirements open contributions and expenditures to public scrutiny, making it easier to detect exchanges of political favors for political donations.

Contribution limits also help to protect governmental integrity. A large donation presents a much greater temptation to stray from campaign promises than a small contribution. Limiting the potential benefits of corruption may help to keep candidates and elected officials honest. Public financing also helps in this respect, by ensuring that candidates will be able to run effective campaigns without becoming beholden to private donors.

Of course, none of the campaign finance tools will keep government honest without consistent and vigorous enforcement of the law. If candidates and contributors know that they can break campaign finance rules with impunity, they will have no incentive to follow legal requirements. An agency that is able and willing to enforce the law without regard to the partisanship of any candidate is essential to protecting the integrity of government.

HOW DO CAMPAIGN FINANCE LAWS KEEP OFFICIALS RESPONSIVE AND ACCOUNTABLE?

A variety of campaign finance measures can be crafted to ensure that elected representatives are accountable to their constituents, not wealthy interests. Disclosure requirements identify candidates' financial supporters and allow voters to call elected officials to account if the policies they enact bear a suspiciously close resemblance to the policies favored by special interest contributors.

Contribution limits of various kinds also promote accountability. Limits on the size of contributions to candidates, and of contributions to entities (such as political action committees or political parties) that may serve as conduits to candidates, reduce the potential influence of

particular wealthy donors on particular cash-hungry candidates. Aggregate limits on contributions may prevent such donors from purchasing influence by spreading largesse across entire legislatures. Low contribution limits also encourage candidates to reach out to a broader base of supporters, including low- and moderate-income constituents. A candidate who needs widespread support from ordinary people is more likely to respond to their needs.

In addition, generous public funding systems break the ties between access to wealth and electoral success, allowing candidates to respond to the full spectrum of voters. Arizona Governor Janet Napolitano, twice elected under Arizona's full public financing program, has explained how public financing was connected to her executive order creating a discount prescription drug program for the people of Arizona:

If I had not run [under the public funding program], I would surely have been paid visits by numerous campaign contributors representing pharmaceutical interests and the like, urging me either to shelve that idea or to create it in their image. . . All the while, they would be wielding the implied threat to yank their support and shop for an opponent in four years.

With public financing in place, government officials need not worry that honoring campaign promises popular with ordinary voters will translate to a lack of funds for their next campaign.

Public financing programs, which provide partial or full grants for a candidate's campaign in exchange for limited spending, also permit candidates and officeholders to spend time on tasks more valuable than fundraising, such as studying and attempting to find the solutions to public policy problems and listening and responding to the concerns of ordinary citizens. Moreover, many qualified, dedicated individuals will not run for office if doing so forces them to dial for dollars all day. By lifting that burden, public funding encourages public service by people who care about constituents, not contributors.

Finally, public funding opens doors to public service for individuals of modest means who cannot self-finance their candidacies and do not have wealthy friends to bankroll their campaigns. For example, Deborah Simpson, now in her fourth term in the Maine State Legislature, was a politically active single mother and waitress, who never considered running for office before Maine implemented public financing for its elections beginning in 2000. But she realized that with public funding she could run for office "without having to figure out how to ask for money from donors when [she] really didn't live in that world." Because the public holds the campaign purse-strings, Rep. Simpson's constituents can keep her accountable for her legislative record and turn her out of office if she fails to respond to public needs.

OHIO'S LAWS IN PERSPECTIVE

CONTRIBUTION LIMITS

Placing limits on contributions to candidates is an effective way for states to reduce the influence of moneyed interests on elected officials. Contribution limits free candidates from a dependency on a small number of wealthy donors, reducing the risk of actual or perceived corruption. Equally important, contribution limits force candidates to reach out to a larger portion of the populace, engaging a greater number of ordinary citizens in the political process.

Contribution limits must meet certain requirements to be effective. The limits must be low enough to encourage a broad-based fundraising strategy, while high enough to allow candidates to run an effective campaign without spending all their time fundraising. Effective contribution limits also require strong protections against their circumvention. Loopholes that allow large amounts of money to flow to candidates undermine any contribution limit system. For example, limits must apply not only to contributions to candidate committees but also to donations to political action committees (“PACs”) and political parties, to ensure that wealthy donors cannot evade the basic limits by funneling additional contributions to candidates through such groups.

Ohio's laws lack the necessary elements of an effective contribution limit system. The combination of the state's high contribution limits and a number of loopholes in the statutory system creates easy opportunities for abuse. The flow of money between parties and candidates is nearly unlimited, potentially allowing wealthy donors to circumvent the already high individual limits by sending large contributions to candidates through political parties.

The state's limits often rank amongst the highest in the nation. Ohio has the highest limit in the country for contributions to state legislative candidates, whether the contributions come from individuals, PACs, or political parties, and the third highest for individual contributions to statewide candidates. Limits on political party donations to candidates are so astronomically high that they barely constitute limits at all, and no limits are placed on what candidates may donate to political parties or what state political parties may give to county political parties.

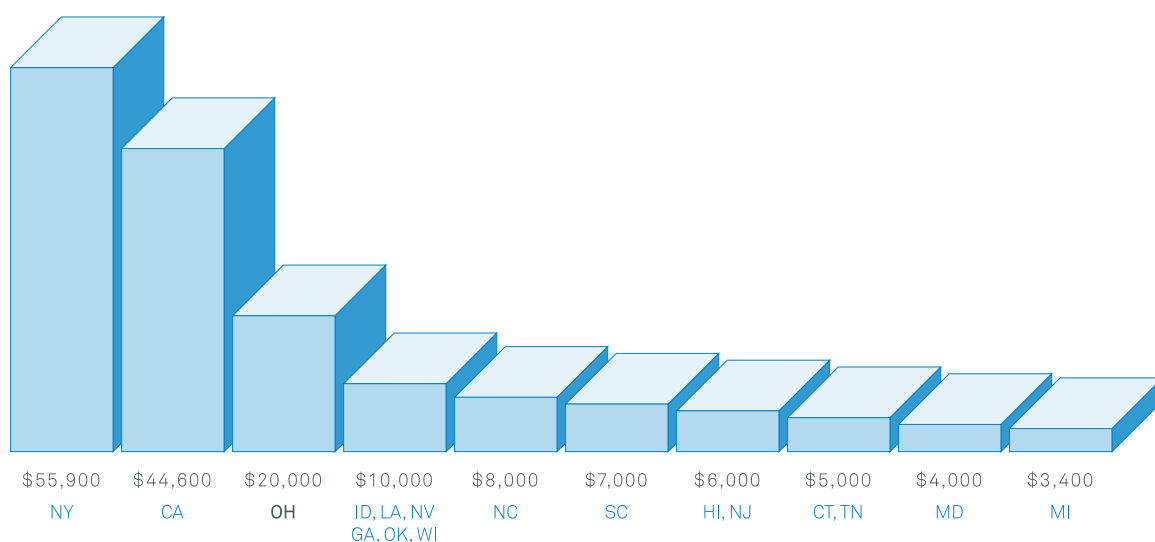
Sadly, Ohio has been moving in the wrong direction with its contribution limits. The current contribution limits are a result of a massive overhaul of campaign finance measures in 2004, known as House Bill 1.¹ Limits on individual contributions to statewide candidates rose from \$2,500 to \$10,000 per election. In addition, the new law allows corporations to contribute to political parties, reversing a ban that had been in effect since 1908.

On a more positive note, the General Assembly recently tightened Ohio's “pay-to-play” laws by passing Substitute House Bill 694 in December 2006.² This new law closed up loopholes in Ohio's former law regarding contributions by state contractors, and provides new restrictions on the solicitation and giving of contributions by state contractors and prospective state contractors.

CONTRIBUTIONS FROM INDIVIDUALS

Ohio's limits on individual contributions are consistently among the highest in the nation. Individual contributions to statewide candidates are limited to \$10,000 per contested primary or general election for a total of up to \$20,000 over an election cycle.³ Of those states that limit individual contributions to statewide candidates, Ohio's limit is the highest in the Midwest, and the third highest in the nation.⁴ See Figure 1.

FIGURE 1:
LIMITS ON CONTRIBUTIONS FROM INDIVIDUALS
TO CANDIDATES FOR GOVERNOR^a
TOP 10 HIGHEST LIMITS^b

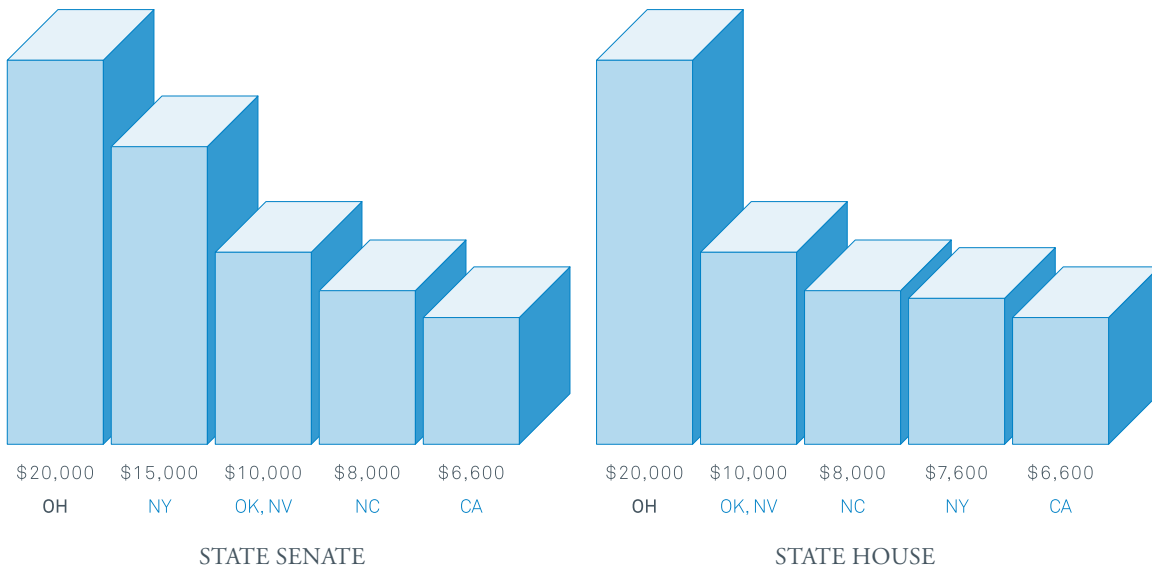


^a Limits are per election cycle.

^b States without contribution limits are not included in this comparison.

Ohio sets its individual contribution limits for State Senate and House candidates at the same \$10,000 per election as for statewide candidates, even though legislative candidates run in much smaller districts. That \$20,000 limit for an election cycle ranks as the highest limit in the country for state legislative candidates. The limit for candidates for State Senate is 32% larger than the next highest, which is New York's at \$15,500. See Figure 2. Like individual contribution limits for statewide candidates, the limits on contributions to state legislative candidates were quadrupled by House Bill 1, the 2004 legislation that overhauled Ohio's campaign finance provisions. Ohio is the only state in the Midwest to set its limits on contributions from individuals to state legislators at the same level as those to statewide candidates.

FIGURE 2:
 LIMITS ON CONTRIBUTIONS FROM INDIVIDUALS
 TO LEGISLATIVE CANDIDATES^a
 TOP 5 HIGHEST LIMITS^b



^a Limits are per election cycle.

^b States without contribution limits are not included in this comparison.

Ohio places a limit of \$10,000 per calendar year on contributions from individuals to PACs, tying Ohio with the District of Columbia for the fourth highest limit in the country. These limits were doubled by the passage of House Bill 1. While this limit is high, Ohio is one of only twenty-four states (including Washington, D.C.) that place limits on these types of contributions, and is the only state in the Midwest to do so.

Twenty-three states (including Washington, D.C.) limit contributions from individuals to political parties, and Ohio is one of only two Midwest states to do so. Ohio's individual limits on contributions to political parties are so exceptionally high, however, that they are unlikely to be effective. The state allows an individual to give \$30,000 per year to state political parties, ranking the state second in the nation among states that have such limits, behind New York.⁵ In addition, House Bill 1 greatly increased limits to political parties, now allowing individuals to contribute up to \$10,000 per year to the political party of the county in which the individual resides, and \$15,000 per year to legislative campaign funds, which are auxiliaries of state political parties that support the parties' candidates for a particular house of the General Assembly.⁶ Prior to House Bill 1, individuals were allowed to contribute up to \$5,000 to a county political party or a legislative campaign fund.

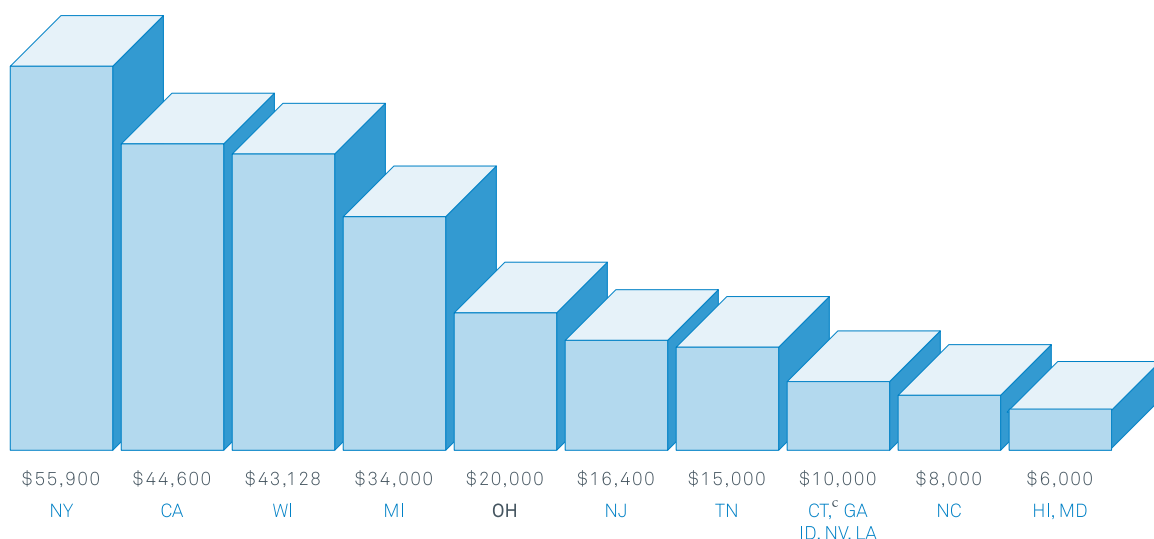
CONTRIBUTIONS FROM CORPORATIONS AND LABOR UNIONS

Aside from giving to parties' restricted funds and Levin funds, discussed below, corporations are banned from contributing to candidates, political parties, PACs not set up solely to support ballot issue campaigns, and legislative campaign funds. Labor organizations, however, are allowed to use their funds in support of candidates, political parties, PACs, and legislative campaign funds, pursuant to Ohio court decisions striking down bans on partisan political activity by labor organizations as an unconstitutional impingement on First Amendment rights.⁷ Labor organizations must form a Political Contributing Entity ("PCE") in order to make contributions. PCE contributions are limited in the same way as PAC contributions.

CONTRIBUTIONS FROM POLITICAL COMMITTEES

Ohio's limits on contributions from PACs also rank among the highest in the country. The contribution limits applied to PACs largely parallel those applied to individual donors. PACs are allowed to contribute up to \$10,000 per election to statewide candidates. This limit ranks fifth highest for gubernatorial candidates among those states with such limits. *See* Figure 3. Ohio has company in the Midwest, however, as two of the states with higher limits on these types of contributions are Michigan and Wisconsin.⁸

FIGURE 3:
LIMITS ON CONTRIBUTIONS FROM POLITICAL ACTION COMMITTEES
TO GUBERNATORIAL CANDIDATES^a
TOP 10 HIGHEST LIMITS^b



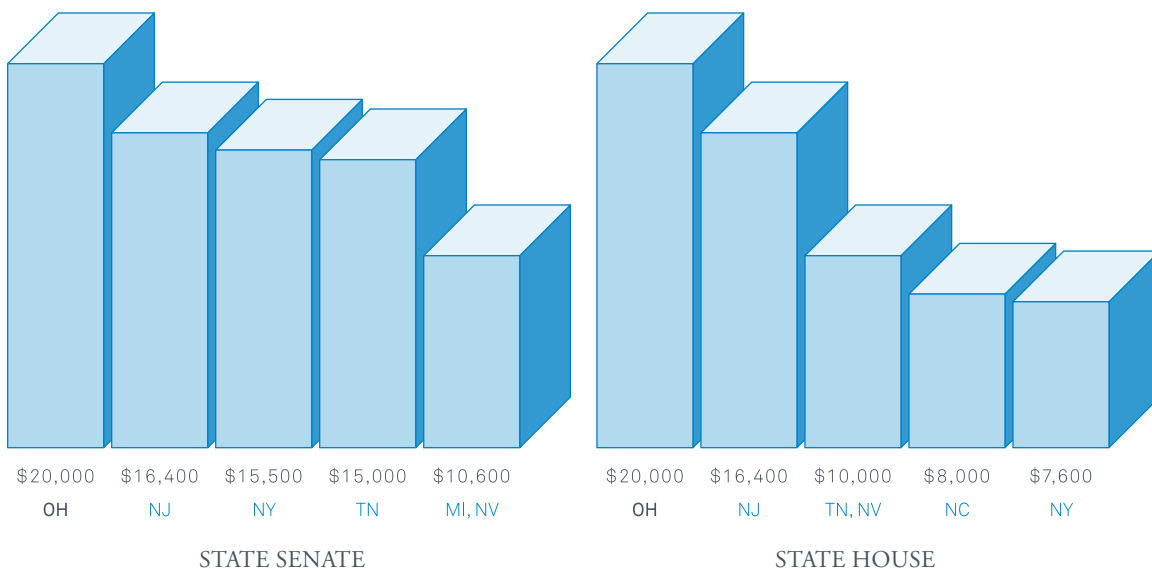
^a Limits are per election cycle.

^b States without contribution limits are not included in this comparison.

^c This limit applies to PACs established by business entities. Other PACs in Connecticut are limited to \$5,000 per election cycle.

Ohio's \$10,000-per-election limit on contributions from PACs to state legislative candidates places it highest on the national list for limits of this type. The limit for PAC contributions to State Senate candidates is double the next closest limit of this kind in the Midwest. Ohio's limit for PAC contributions to State House candidates is at least double that of 94% of the states with such limits. See Figure 4.

FIGURE 4:
LIMITS ON CONTRIBUTIONS FROM POLITICAL ACTION COMMITTEES
TO LEGISLATIVE CANDIDATES^a
TOP 5 HIGHEST LIMITS^b



^a Limits are per election cycle.

^b States without contribution limits are not included in this comparison.

Ohio limits PAC contributions to state political parties to \$30,000 per year, and \$15,000 per year for contributions to legislative campaign funds. PACs are prohibited from contributing to county political parties. The \$30,000 limit on contributions to state parties is the third highest in the country, behind only New York and California.

PACs in Ohio may contribute up to \$10,000 per year to other PACs. Of the states that limit such contributions, Ohio's limit is the highest in the nation.⁹

Limits on Contributions from Individuals to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$3,400/election cycle*	\$3,400/election cycle	\$1,000/election cycle
Minnesota	\$2,000/election year**	\$500-\$1,000/ election year	\$500/election year
Ohio	\$10,000/election***	\$10,000/election	\$10,000/election
Wisconsin	\$10,000/election cycle	\$10,000/election cycle	\$1,000/election cycle

Limits on Contributions from PACs to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$34,000/election	\$34,000/election	\$10,000/election
Minnesota	\$2,000/election year	\$500-\$1,000/election year	\$500/election year
Ohio	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities
Wisconsin	\$43,128/election cycle	\$8,625 - \$21,560/election cycle	\$1,000/election cycle

Limits on Contributions from Political Parties to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$68,000/election cycle	\$68,000/election cycle	\$10,000/election cycle
Minnesota	\$20,000/election year	\$5,000-\$10,000/election year	\$5,000/election year
Ohio	\$1,628,000/election cycle from state and county party units, including legislative campaign funds	\$1,628,000/election cycle from state and county party units, including legislative campaign funds	\$618,500/election cycle from state and county party units, including legislative campaign funds
Wisconsin	\$700,830/election cycle from all committees including political parties	\$140,156 - \$350,350/election cycle from all committees including political parties	\$22,425/election cycle from all committees including political parties

Limits on Contributions from Corporations to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	Prohibited	Prohibited	Prohibited
Ohio	Prohibited	Prohibited	Prohibited
Wisconsin	Prohibited	Prohibited	Prohibited

Limits on Contributions from Labor Unions to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	\$100/year	\$100/year	\$100/year
Ohio	\$10,000/election	\$10,000/election	\$10,000/election
Wisconsin	Unlimited	Unlimited	Unlimited

	Entities		
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$500/election cycle	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election	\$10,000/year	\$30,000/year to state political party	\$10,000/year to any political contributing entity; \$10,000/year to any county political party; \$15,000/year to any legislative campaign fund
\$500/election cycle	\$10,000/year	\$10,000/year	

* Election cycles may differ by state and by office (i.e. 4-year cycle for governor, 2-year cycle for state senators).

** States with limits per election year also have lower limits on non-election year contributions.

*** Primary, general, and special elections are considered separate elections.

	Entities		
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$5,000/election	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election from political action committees or political contributing entities	\$10,000/year from one political action committee or political contributing entity to another	\$15,000/year to any one legislative campaign fund; Prohibited to county political parties	
\$500/election cycle	Prohibited	\$6,000/year	

	Entities		
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$5,000/election cycle	Unlimited	Unlimited	
\$5,000/election year	Unlimited	Unlimited	Party expenditures that do not name any candidate or that fund mailings, phone calls, fundraising or party committee staff that benefit three or more party candidates are not counted toward the contribution limits for individual candidates.
\$309,000/election cycle from state and county party units, including legislative campaign funds	\$10,000/year to any one political action committee or any one political contributing entity	Prohibited from county political party to another county political party; Unlimited from legislative campaign fund to state candidate fund of political party	Individual Limits differ for contributions from county parties; Individual limits differ for contributions from legislative campaign funds
\$11,213/election cycle from all committees including political parties	Unlimited	Unlimited	

	Entities		
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	

	Entities		
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	
\$100/year	\$100/year	\$100/year	
\$10,000/election	\$10,000/year to another PAC or political contributing entity	\$30,000/year to any state political party candidate fund	Other limits apply for legislative campaign funds and contributions to Levin accounts
Unlimited	Unlimited	Unlimited	

RESTRICTED FUNDS AND LEVIN ACCOUNTS

In addition to Ohio's relatively high contribution limits, Ohio's campaign finance system contains two significant loopholes that can be exploited to circumvent prescribed limits on individuals, PACs, corporations, and labor unions. Ohio law allows wealthy donors to give unlimited sums to political parties through the parties' "restricted funds" and "Levin funds."

Under Ohio law, political parties are required to establish what are called "restricted funds." Parties ostensibly use money from this segregated account for generic party building activities and costs, such as general advertising not promoting any specific candidates, rent, facility maintenance, and staff salaries. Money in these funds may not be used to promote the election of any particular candidates, and parties may not transfer the money into any fund that may make contributions or expenditures. Such money, however, frees up other money that can be spent to promote the success or defeat of a candidate.

Gifts deposited into the restricted funds do not count as contributions under Ohio's campaign finance laws. This means that on top of the amounts in contributions allowed by law for supporting and opposing candidates, sources other than corporations and labor unions may give unlimited amounts for generic party building. Moreover, House Bill 1 permitted corporations and labor unions to give up to \$10,000 to a party's restricted funds per year. This change in the law reversed a ban on political donations from corporations that had been in place since 1908.¹⁰

Ohio law applies similar limits to "Levin funds." Parties may establish Levin funds to pay for activities related to voter registration, voter identification, get-out-the-vote drives, and generic campaign activities. Corporations, nonprofits, and labor unions may give up to \$10,000 per year to Levin funds, but can give only during years that a federal candidate will appear on the ballot. Any other person, excluding a public utility, may make gifts in unlimited amounts at any time to such funds.¹¹

CONTRIBUTIONS FROM POLITICAL PARTIES

The limits Ohio applies to contributions from political parties to candidates are so exceptionally high that they are effectively meaningless, opening significant gaps in the statutory system. These gaps are exacerbated by Ohio's lack of restrictions on money transferred between state political parties, county political parties, and legislative campaign funds. These loopholes create easy pathways for candidates to obtain money that, if given directly to the candidates, would be prohibited. For example, political parties can direct donations from a wealthy contributor to candidates to whom the wealthy contributor has already given the maximum contribution. Parties can shift money freely between the state party and the county parties, allowing the parties to circumvent the already ineffectively high limits on party-to-candidate contributions.

For example, statewide candidates are allowed to accept up to \$564,000 in cash and cash equivalents from state political parties per election and unlimited amounts of in-kind contributions. These candidates may also accept a total of \$250,000 in cash and in-kind donations

from all county political parties combined. Surprisingly, the current limits on county parties are actually an improvement over the limits that were in place prior to 2004. House Bill 1 reduced the limit on contributions from county political parties to statewide candidates from \$500,000 in cash and an unlimited amount of in-kind contributions to the current \$250,000 combined limit.

Of the twenty-seven states that limit contributions from political parties to statewide candidates, Ohio—with limits that total \$1,628,000 from state and county political parties over an election cycle—is the largest by far. It is more than three times the next highest such limit.¹² The closest equivalent contribution limit in the Midwest, found in Michigan, is one-eighth the size of Ohio's.¹³

Ohio's limits on contributions of cash and cash equivalents from political parties to state legislative candidates are extremely high as well. State Senate candidates may accept \$112,500 from state political parties per election, and another \$112,500 per election in aggregate from all county political parties combined. Furthermore, senate legislative campaign funds may contribute up to \$56,000 to a Senate candidate for the primary election and \$112,500 during the general election. Similarly, State House candidates may take up to \$56,000 in cash and cash equivalents from state political parties per election, and they may take \$56,000 per election in aggregate from all county political parties combined. They may also accept \$29,000 for primary elections and \$56,000 for general elections from legislative campaign funds.

In sum, a political party, through its state and county parties and legislative campaign funds, can give cash and cash equivalents totaling \$618,500 to a State Senate candidate and \$309,000 to a State House candidate over an election cycle. Florida, which allows its Senate and House candidates to receive \$100,000 from political parties over an election cycle, is the only other state whose limits for political party contributions to legislative candidates crack six digits. Moreover, in-kind contributions from state political parties and legislative campaign funds are unlimited.

In addition to these high limits on political party giving, another significant weakness in Ohio's campaign finance system emerges. Ohio has no limits on candidate-to-candidate or candidate-to-political-party giving. The transfer of money back and forth between candidates and between candidates and political parties offers an easy way to circumvent contribution limits. For example, individuals who have reached the contribution limit for a candidate may give to another candidate, who may then transfer the money to the original candidate. Contributions that, if given directly to candidates would violate contribution limits, also may be laundered through political parties.

DISCLOSURE

As sunlight is the best disinfectant, so campaign finance disclosure laws play an essential role in exposing corruption and maintaining faith in government. Ohio improved its disclosure laws in 2004 with House Bill 1, following several major scandals involving undisclosed donations to political parties' restricted funds. In October 2005, an independent study of campaign disclosure laws and practices awarded Ohio a grade of B- for its overall campaign disclosure system, the eleventh best in the country.¹⁴ Ohio's disclosure system has many strengths, including the frequency of reporting, the detailed information required for reported contributions, the comprehensive reach of its laws, and the electronic disclosure system. Weaknesses of Ohio's disclosure laws include insufficient reporting for expenditures, inconsistencies between the laws, confusing provisions, and questionable policy and legal underpinnings for some requirements.

GENERAL REQUIREMENTS UNDER OHIO LAW

At the beginning and end of each election year, at the midpoint of each election year, and before and after a primary and general election, candidates in Ohio are required to file disclosure reports with information about both contributions and expenditures. Candidates for statewide offices also must make monthly disclosure reports of contributions received during July, August, and September of an election year. Independent expenditures must be reported on the same filing schedule as candidate expenditures. Moreover, statewide candidates who receive or expend more than \$10,000 must file electronically, as must state legislative candidates who receive more than \$10,000 in contributions.

The candidate reports must provide detailed information about contributors who give more than \$100, including the contributor's occupation and employer. Expenditure reports, however, do not prove as useful. The reports require candidates to indicate to whom the payment was paid and for what purpose. Independent expenditure reports require a spender to indicate which candidate the expenditure supported or opposed, but Ohio law fails to require pre-election disclosure of last-minute independent expenditures. Such weaknesses led the disclosure study to award Ohio a C+ for its campaign disclosure requirements, which ranked Ohio twenty-fifth in the nation. As discussed below, Ohio received high grades for its electronic filing program, however, raising its overall grade to a B-.

Ohio's disclosure laws have been improving. House Bill 1 added several disclosure requirements. Responding to scandals involving large donations given to political parties' restricted funds, all money given to these funds must now be disclosed. County political parties must disclose all donors to their state expense accounts. House Bill 1 also added the semiannual reporting requirement.

ELECTIONEERING COMMUNICATIONS

House Bill 1 overhauled Ohio's regulations of electioneering communications, creating a unique and peculiar system.

“Electioneering Communications” Defined Under Ohio Law

Ohio defines an “electioneering communication” as a broadcast, cable, or satellite communication that refers to a clearly identified candidate and that is made during the following time periods: (1) for a primary election, the period *between* the date the candidate is certified for placement on the ballot (which occurs sixty days before the primary election) and the thirtieth day prior to the primary election (which is held on the first Tuesday after the first Monday in May); and, (2) for a general election, the period *between* the primary election and the thirtieth day before the general election. Electioneering advertisements run in the last thirty days before an election in Ohio are presumed to be “expenditures,” and must be reported as expenditures or independent expenditures, as applicable. Under Ohio law, expenditures are defined in terms of their purpose (influencing the results of an election), while electioneering communications are defined by their reference to candidates through specific media at specific times.

Ohio’s definition of “electioneering communications” flips the definition of the term found in the federal Bipartisan Campaign Reform Act (“BCRA”) on its head; BCRA defines “electioneering communications” as broadcast, cable or satellite communications that refer to a clearly identified candidate, are targeted to the candidate’s constituents, and that are made in the thirty days immediately preceding a primary election or the sixty days immediately preceding a general election. “Electioneering communications” under Ohio law encompass advertisements that clearly refer to a candidate and are run between the beginning of March and the beginning of November *except* for the 30-day periods immediately preceding the primary and general elections.

Regulation of Electioneering Communications in Ohio

Electioneering communications in Ohio are subject to a number of disclosure rules. First, any person or committee intending to make an electioneering communication must file a notice of intent with the Secretary of State’s office prior to making any disbursements for the communication. Those filing such a notice need provide only their name and address. This provision seems designed to promote compliance, as the Secretary of State’s office sends information of disclosure and disclaimer requirements to those who file such notices.¹⁵

Within 24 hours after spending more than \$10,000 on electioneering communications in a calendar year, persons or committees must file a disclosure report with the Secretary of State’s office. Weekly reports must be made for each week in which the person or committee makes any additional disbursements. Disclosure reports must include information on the person making the disbursement and any person sharing direction or control over the activities of the person making the disbursement, the amount and recipient of each disbursement, and the relevant election and candidate names. Detailed information must also be provided on persons contributing \$200 or more to the person or entity making the disbursement.

Electioneering communications must include a disclaimer clearly indicating that the communication is not authorized by the candidate identified in the ad. The disclaimer must also clearly identify the person making the disbursement.

Implications of Ohio's Definition of Electioneering Communications

As discussed above, campaign advertisements that clearly identify a candidate and are made in the last thirty days before an election in Ohio are presumed to be expenditures, and must be reported as expenditures or independent expenditures, as applicable, not as electioneering communications. These classifications result in different restrictions and requirements under Ohio's disclosure laws. Disclaimer requirements are the same for electioneering communications and expenditures, but there seems to be no prior notice requirement for expenditures. The big difference between the two, however, is that expenditures may be made only by political entities, *e.g.*, individuals, political parties, PACs, *etc.*, that are permitted to make direct contributions to candidate campaign committees, whereas electioneering communications made more than thirty days before an election may be financed by any person or entity, including for-profit and certain nonprofit corporations.¹⁶

The strange implications of Ohio's definition of electioneering communications are worth noting. Advertisements designed to affect elections often are aired prior to the thirty days before an election,¹⁷ which is presumably why Ohio added the disclosure requirements for these ads. But the further from the election, the more likely that an electioneering communication will be intended not as electioneering, but rather as genuine issue advocacy, especially if the communication is aired during the legislative session. Oddly, Ohio has stricter disclosure requirements for electioneering communications than expenditures, even though the former are less likely to be intended to influence elections than the latter. Unlike electioneering communications, which require disclosure filings for each week an ad is run, expenditures require reports only once in the thirty days before an election, and they require the disclosure of less information.

These oddities mean that Ohio's electioneering communications regulations may raise some questions under the First Amendment. There are differences between Ohio's law and the disclosure rules for electioneering communications as defined in BCRA, which were upheld by the United States Supreme Court. Most importantly, Ohio applies heightened disclosure requirements for longer periods of time, and accordingly further removed in time from an election. Such requirements may deter groups from airing ads genuinely aimed at influencing public policy and not elections, both because of a loss of donors' anonymity and because of the administrative burden involved. While recognizing the First Amendment interests in speaking anonymously, the Supreme Court repeatedly has upheld campaign finance disclosure requirements based on the public's interest in learning the sources of funding behind advertisements that influence elections. Because Ohio's regulations are more likely than BCRA's to regulate some genuine issue ads, and not just ads intended to affect elections, Ohio will need a strong record of election advertising over the longer regulatory period to justify the greater burdens.

DISCLOSURE WEBSITE USABILITY AND ACCESS TO INFORMATION

The strength of Ohio's disclosure system is its electronic filing program. Ohio received an A+ for its filing system from the national study, ranking it first in the nation. Ohio is also strong in the area of accessibility of campaign disclosure records (the degree to which the content included in disclosure reports is accessible to the public), receiving an A- in this category. That grade places Ohio eighth in the nation for best disclosure content accessibility. According to the study, "Ohio continues to offer one of the best databases of campaign finance records in the country, and gives site visitors many ways to search, sort, and download itemized contributions and expenditures."¹⁸ Ohio, unfortunately, received a D+ for its online usability (clarity of information on and user-friendliness of the state's campaign disclosure website). The study found users had difficulty finding information on the Secretary of State's website. This grade, however, was assigned before Ohio redesigned its website. The website now appears somewhat improved, providing a user with multiple ways to search and download campaign filings from as far back as 1990. However, local advocates say the site is still not sufficiently user-friendly to allow citizens to gain an accurate picture of a candidate or contributor's overall campaign activity.

PUBLIC FINANCING

By reducing candidates' reliance on private money, public financing serves many campaign finance reform goals. First, public financing is designed better than other reforms to substantially reduce the appearance and actuality of corruption, promoting accountability of elected officials to voters, rather than donors. Second, it provides a mechanism for leveling the playing field among all candidates with a proven base of support, so all voters have a fair chance of electing their candidates of choice, even if they cannot afford to make contributions. Third, it reduces time candidates must spend fundraising so that they can devote that time to interacting with voters or fulfilling official responsibilities.

There are many forms of public financing systems. Subsidies of different levels can go to candidates or parties, and the source of public funds can vary as well. While all public financing systems relieve candidates of fundraising burdens and a dependence on wealthy donors to some degree, generous partial and full public funding systems offer greater incentives for increased candidate-voter interaction and encourage a more diverse candidate pool.

While public financing systems cost money, even full public financing can be relatively inexpensive. A few dollars per taxpayer per year can cover the costs of a full public financing system for all state offices. For instance, an analysis of the cost of the public financing systems in Maine, Arizona, and New York City reveals that those systems cost a mere \$1.61 - \$6.96 per person of voting age.

The only public funding for candidates provided by Ohio comes in the form of tax refunds of up to \$50 per individual contributor (or \$100 per married couple filing jointly). The refund reduc-

es the financial burden on taxpayers who make small contributions, encouraging small-donor participation in electoral politics and modestly alleviating the candidates' fundraising burden.

There also is a public fund called the Ohio Political Party Fund, which pays for audits and provides public funds to political parties. Money provided from the Fund to political parties must be deposited in the parties' restricted funds, and must be used only for the permissible purposes of restricted funds. Despite the unlimited amount of money permitted to be given to a party's restricted funds, and the large amounts of money individuals and PACs are able to give to parties generally, Ohio has chosen to subsidize political parties rather than providing public funds to candidates directly.

The Ohio Political Party Fund is funded through a dollar check-off on state income tax forms, and is distributed as follows. First, the state treasurer takes out money required by the state auditor to pay for certain audits. The money left over is then distributed to the major political parties according to a formula. Half of the amount for each party goes to the state political party. The other half is distributed to the county political parties in accordance with the ratio of the number of check-offs in a particular county to the total number of check-offs.

ENFORCEMENT

The Ohio Elections Commission is charged with enforcing the state's campaign finance and fair campaign practices laws. The Commission was created in 1974 as a response to the Water-gate scandal. It consists of seven members, six of whom are appointed by the Governor upon recommendations by the Republican and Democratic caucuses of the General Assembly. Each party gets three members placed on the Commission. The seventh member is a nonpartisan appointee chosen by the six other members of the Commission.

Like a court, the Commission hears complaints filed before it by the Secretary of State, the county Boards of Elections, or members of the public. Complaints generally involve late filings of, or failures to file, campaign reports; lack of disclaimers on political literature; false statements in political advertising; or the political activity of corporations. The Commission also issues advisory opinions on Ohio's campaign finance laws.

The Commission has its strengths and weaknesses. On the positive side, the Commission has investigatory powers. When examining a claim, the Commission may find that there is not sufficient evidence upon which to make a decision. The Commission may, by an affirmative vote of five members, request that an investigatory attorney produce sufficient evidence for the Commission to issue a decision. To obtain the evidence, the Commission may issue subpoenas to compel the appearance of witnesses and for the productions of relevant papers, books, accounts, and reports.

The Commission also has ample enforcement authority. It may fine individuals for certain violations, with fines varying depending on the offense. Fines range from \$15 for each day the individual was in violation to a flat \$10,000. Individuals may also be fined three times the amount contributed or solicited over legal limits. The Commission may refer the issue to a prosecutor, and in the case of candidates, the Commission has the power to remove a candidate's name from the ballot.

Finally, the Commission appears to be adequately funded. It receives funds through the General Revenue Fund and also through a special fund created by the money received from candidate and ballot question filing fees. The Commission also retains payment of any fines it levies. On average, fines generate about \$70,000 per year of additional revenue. The current biennial budget for 2006-2007 allocates a total of \$636,623 to the Commission for each of those years. The Ohio Legislative Services Commission found this amount to be an adequate level of funding for the Commission to fulfill its mission. The current budget also provides more for the General Revenue Fund than in previous budgets. In FY 2004-2005, the Commission derived 51% of its budget from the special fund. This cycle, that percentage was reduced to 35% in an effort to provide more reliable funding to the Commission. This change makes it easier for the Commission to absorb uncontrolled or unforeseen cost increases.

Enforcement in Ohio, however, has its weaknesses. Only individuals who have direct knowledge of a campaign finance violation may file a complaint with the Commission. For instance, the Ohio Elections Commission recently dismissed a complaint brought against the Speaker of the Ohio House Larry Householder, alleging that Householder used county parties to launder contributions in violation of limits. The complaint was based on newspaper reports and the complainant's tracking of the money. The Commission dismissed the complaint because the complainant had no personal knowledge of Householder's violations, information that is not likely to be available to watchdogs.

Moreover, as mentioned above, the Commission is empowered to refer a case to a prosecutor, but the Commission itself lacks the authority to criminally prosecute violators and cannot force a prosecutor to pursue the case.¹⁹

RECOMMENDATIONS FOR REFORMING OHIO'S CAMPAIGN FINANCE LAWS

PUBLIC FINANCING

Ohio should create a generous public financing system that directly subsidizes candidates for statewide, legislative, and judicial office. Passage would most effectively protect against corruption and the appearance of corruption, attract a more diverse candidate pool, reduce the time candidates spend fundraising, and allow even voters who do not owe taxes a meaningful opportunity to influence elections. New legislation should:

- Implement either a full public financing program or a partial public financing system with a generous match. The full public financing programs in Maine and Arizona and the partial public financing system in New York City, which provides a 4:1 match and low contribution limits, offer alternative acceptable models.
- Include expenditure limits at high enough levels to attract wide participation.
- Have flexibility so that participating candidates who are outspent by non-participating opponents or face large independent expenditures by their opponents' supporters can adequately respond to such spending.

CONTRIBUTION LIMITS

Ohio should dramatically lower its contribution limits and close existing loopholes to prevent corruption and the appearance of corruption. Reduced limits would also encourage candidates to implement broader-based fundraising strategies. New legislation should:

- Reduce limits on contributions from individuals and PACs, particularly for state legislative candidates.
- Sharply reduce the amount of money state and county political parties and legislative campaign funds may contribute to candidates.
- Apply limits to money transferred between candidates or from candidates to political parties.
- Limit the amount of money that may be transferred between state and county political parties.
- Restore the ban on all corporate giving.
- Apply limits to gifts given to political parties' restricted funds and Levin funds.

DISCLOSURE

Ohio should require disclosure of the necessary information about contributions and expenditures to ensure that voters can make educated decisions. New legislation should:

- Require pre-election reports of last-minute independent expenditures.
- Balance regulation of electioneering communications and the First Amendment rights of interested groups and individuals by eliminating the idiosyncratic definition of “electioneering communications” in favor of a consistent regulatory scheme, potentially modeled on the federal system, for all campaign advertisements aired in the period shortly before an election.

ENFORCEMENT

Ohio should ensure proper enforcement of its regulatory system with mechanisms designed to promote compliance. Without meaningful enforcement, Ohio’s campaign finance laws would be easily violated. In particular, new legislation should permit individuals to file complaints on information and belief, if they have a good faith basis for concluding that a violation has occurred.

- ¹ The term “per election” means the amount may be contributed first for a contested primary and then for the general election.
- ² This legislation becomes effective 90 days after the January 2, 2007 date the bill was signed into law, but contributions made on or after January 1, 2007 are affected by its provisions.
- ³ A statewide candidate who competes in and wins a primary would be allowed to accept \$20,000 from an individual during the election campaign. If a candidate has no primary opponent, he may accept only \$10,000 from each individual.
- ⁴ Illinois, which has no contribution limits, is excluded from this analysis.
- ⁵ Louisiana allows \$100,000 to be contributed over 4 years.
- ⁶ The four legislative campaign funds include the Democratic House Caucus Fund, the Ohio House Republican Campaign Committee, the Ohio Senate Democrats, and the Republican Senate Campaign Committee.
- ⁷ *United Auto Workers Local Union 1112 v. Blackwell*, No. 05CVH-03-2553 (Ohio Ct. of Common Pleas, Franklin Cty. Mar. 30, 2005) (granting preliminary injunction against enforcement of Ohio Rev. Stat. § 3599.03(A), (B) as it relates to labor organizations); *United Auto Workers v. Philomena*, 700 N.E.2d 936 (Ohio Ct. App. 1998).
- ⁸ Michigan allows PACs that register as “independent committees” to contribute ten times more than other political committees, but the registration prerequisites are very easy to meet. The committees simply must register six months before the election, support or oppose at least three candidates, and collect contributions from at least 25 individuals. As a result, almost all PACs in Michigan may contribute these larger sums of money to candidates. Accordingly, for ranking purposes, we consider Michigan’s contribution limits for PACs to be those of independent committees: \$34,000 to gubernatorial candidates, \$10,000 to Senate candidates, and \$5,000 to House candidates.
- ⁹ Washington, D.C. and Missouri both limit PAC to PAC contributions to \$10,000 per election cycle.
- ¹⁰ A ban on donations by public utilities still exists.
- ¹¹ Person is not defined specifically for the provision regarding Levin funds. The only definition of the term “person” in the Elections title of Ohio law is in Section 35, Campaigns; Political Parties, relating to the definition of independent expenditure. That provision defines “person” as “an individual, partnership, unincorporated business organization or association, political action committee, political contributing entity, separate segregated fund, association, or other organization or group of persons, but not a labor organization or a corporation unless the labor organization or corporation is a political contributing entity.” Ohio Rev. Code. Ann. § 3517.01(B)(17)(a).
- ¹² Tennessee limits contributions from political parties to statewide candidates to \$500,000 per election cycle.
- ¹³ Michigan limits contributions from political parties to statewide candidates to \$68,000 per election cycle.
- ¹⁴ See Campaign Disclosure Project, Grading State Disclosure 2005, *available at* <http://campaigndisclosure.org/gradingstate/noh.html>.
- ¹⁵ A disclaimer is a notice providing required information on the face or in the script of campaign advertising.
- ¹⁶ Political entities making such communications in the thirty days before an election are also prohibited from using contributions from corporations and labor organizations.

¹⁷ Craig Holman and Luke McLoughlin, *Buying Time 2000* at 56, Figure 6-8 (Brennan Center for Justice 2001).

¹⁸ Campaign Disclosure Project, *supra* note 14.

¹⁹ Despite its investigatory authority, the Commission has little practical power over non-campaign finance related violations. For instance, according to a 1991 court decision, the Commission may investigate allegations of false statements without violating the First Amendment, but it may not impose fines or issue cease and desist orders for such actions. See *Pestrak v. Ohio Elections Comm'n*, 926 F.2d 573 (6th Cir. 1991).

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