



MONEY, ELECTIONS AND CITIZENS UNITED:

CAMPAIGN FINANCE REFORM FOR COLORADO

Report of the
University of Denver
Strategic Issues Panel
on Campaign Finance



UNIVERSITY of
DENVER

STRATEGIC ISSUES PROGRAM

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Letter from the Chancellor

Dear friends,

Campaign finance has been debated for generations. A host of legislative and legal actions over nearly the entire history of the United States have attempted to balance the protection of free speech on one hand with efforts to curb corruption on the other, and the fact that this matter is still with us makes it clear that no “silver bullet” has yet been found. Indeed, both the volume of funds flowing into elections and the power of a tiny proportion of donors who provide most of these funds seem to be at an all-time high.

The complex history and nature of campaign finance in America and Colorado make it an appropriate topic for our Strategic Issues Program at the University of Denver. Past Strategic Issues panels have taken up similarly thorny issues, and the results have shown that the information-rich, consensus-based process employed in each case can lead to new and useful insights. Indeed, these previous panels, which have reflected a very broad range of backgrounds, ideas and political perspectives, have shown that when provided with hard information and an opportunity for free and open debate Colorado citizens can come to reasonable conclusions and produce common sense recommendations. This has certainly been refreshing in a time of cynicism and political gridlock.

As you read this report you will find that this has been the case once again. A realistic and pragmatic document, it presents an analysis of the current condition and its deep roots in our history along with a set of recommendations for real actions that might be taken here in Colorado. We are grateful to the members of this Strategic Issues panel and to professor Jim Griesemer, its chairperson, for their hard work on this project. I hope that you will enjoy reading this report and that it will stimulate your own thoughts and conclusions.



Robert D. Coombe
Chancellor, University of Denver



Overview from Panel Chair

Across the nation, the explosion of money in politics has become a matter of increasing concern. For citizens in a political swing state like Colorado, skyrocketing election spending is most visible in the form of a barrage of political ads on television and a surge of candidate emails and robocalls soliciting contributions. As annoying as campaign media blitzes and fundraising pleas may be, the deeper issues relate to the political and social implications of big money in the electoral process, undisclosed contributions and the uneven rules governing campaign finance.

These concerns led the University of Denver to ask the 2012–2013 Strategic Issues panel to examine the subject of campaign finance. The nonpartisan panel, comprised of accomplished Colorado citizens with varying backgrounds, spent nearly a year examining the landscape of campaign finance. In the process, the panel received more than a

dozen presentations from legal experts, advocates, academics, public officials and individuals with experience in party leadership, professional fundraising and disclosure systems. Members read papers on campaign

finance, reviewed numerous publications and discussed the topic at considerable length.

This report presents the panel's consensus findings and recommendations. In developing their recommendations, panel members sought to focus on real problems needing attention rather than trying to achieve philosophical or ideological goals. The panel looked for practical solutions, preferring direct approaches over more complex regulations, and attempted to build on Colorado's existing disclosure system in order to minimize costs and avoid creating additional bureaucracy. The panel also was mindful that future elections might increasingly be shaped as much by social media like Facebook or Twitter as by radio, television and the traditional press.

Three principal themes run through the 14 recommendations discussed in the text and summarized at the end of this report. The first is a recognition that **the rising river of money flowing into the electoral process is not likely to abate anytime soon**. Even the important and highly-publicized 2010 *Citizens United v. Federal Election Commission* case was but one step along a 35-year judicial path during which barriers to political spending and contributions



have been removed. Future campaign finance policy, if it is to be effective, must recognize the ongoing reality of money in politics.

A second theme, and a key focus of the report, concerns **the importance of public disclosure of campaign contributions.**

In a real sense, disclosure provides the transparency needed to balance the increasing amounts of money flowing into elections. Individual disclosure allows voters to understand who is supporting candidates and issues and to make informed decisions in the electoral marketplace. For this reason, a number of the panel's recommendations focus on steps necessary to make significant improvements in public disclosure.

Creating a reasonably level playing field for those involved in the political process is the third theme of the report. Independent expenditure committees with the ability to raise unlimited funds can marginalize traditional parties and candidates still laboring under strict contribution limits. A similar imbalance occurs in the case of incumbents who possess an overwhelming fundraising advantage over most new candidates. The report offers several recommendations to address some of the disparities created by current campaign finance policies.

Although the focus of this report is the state of Colorado, many of the panel's recommendations, and the principles that underlie them, have applicability to the federal government and perhaps other states as well. Some of the recommendations are synergistic, building upon one another to address problems from several angles. For this reason it is useful to think of the principles and recommendations contained in this report as an interrelated set of ideas. Taken together, the panel's suggestions offer a number of reforms designed to respond to the reality of money in the electoral marketplace and improve Colorado's campaign finance policies and practices.



James Griesemer, chair
University of Denver Strategic Issues Panel on Campaign Finance

REPORT OF THE UNIVERSITY OF DENVER STRATEGIC ISSUES PANEL ON CAMPAIGN FINANCE

ELECTIONS AND THE AMERICAN REPUBLIC

Elections are an indispensable mechanism of representative democracy. They are the unique means by which the *theory* of democracy is transformed into the *practice* of democracy. Elections allow citizens to express their will, select their leaders and, in so doing, shape the nature and direction of their society. As the principal means to ratify social change, legitimize government and allow a peaceful transfer of power, elections are a cornerstone of the American republic.

Our country's Founders understood this. The original U.S. Constitution refers to electors and elections some two dozen times. The Federalist Papers—a series of articles wherein Alexander Hamilton, James Madison and John Jay urged adoption of the then-proposed Constitution—contains literally hundreds of references to elections, with four papers being devoted specifically to the topic. As the nation matured, the matter of elections arose repeatedly as Americans sought to improve their republic.

In 1870, the 15th Amendment prohibited the denial of voting rights due to race, color or previous condition of servitude. The 17th Amendment, passed in 1913, allowed the direct election of U.S. Senators. The nation moved toward universal suffrage in 1920 with the 19th Amendment which prohibited voting discrimination based on sex. Voting rights were further extended in 1964 as the 24th Amendment prohibited the use of a poll tax and, in 1971, the 26th Amendment lowered the voting age to 18. In each case, citizens and their representatives recognized the primacy of elections as the fundamental mechanism of representative democracy.

In Colorado, protection of the franchise is unequivocal. The Colorado Bill of Rights declares: “All elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Article VII of the Colorado Constitution, which focuses entirely on elections, directs that “The general assembly shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” A

“Elections...are the unique means by which the *theory* of democracy is transformed into the *practice* of democracy.”

pioneer in election innovations among the states, Colorado was the second state in the nation to extend suffrage to women (1894) and, in 1909, passed the nation's first system of public financing for political campaigns.

As a pillar of representative democracy, the health of the electoral process is a critical matter for the nation and for states like Colorado. While elections are usually described as if they were a single event, the electoral process is actually composed of a number of parts. In recent years, an element that has received significant attention—and produced considerable consternation—is the topic of campaign finance.

The increased concern over campaign finance is due to the fact that rules governing election funding have changed significantly. These changes have, among other things, allowed a dramatic increase in the amount of money flowing into political activities. The story of how this occurred lies in the legal landscape of campaign finance.

THE CONTEXT OF CAMPAIGN FINANCE

Although the U.S. Constitution makes many references to elections, there is no specific reference to campaign finance in the founding document. Rather, campaign finance policy is an uneven blend of legislative enactments and judicial decisions. For many years, congressional regulation established the rules governing campaign

finance. In recent years, however, the center of gravity has moved from Congress to the U.S. Supreme Court—a shift that has reshaped the rules of campaign finance and the roles of various actors in the electoral process.

CONGRESSIONAL INITIATIVES

Until the mid-19th century, there were no laws specifically regulating financial contributions to election campaigns. In the early days of the nation, political activity was limited to a relatively small political elite. Candidates in U.S. elections typically financed their own campaigns, which were generally modest and geared toward a relatively small audience.

The election of Andrew Jackson in 1828 ushered in a new style and magnitude of political campaigning. With this new form of campaigning came new methods of financing campaigns by way of the “spoils system.” Campaign contributions came from assessments on current federal employees and solicitations from those who hoped to become federal employees. Public employees were rewarded with political appointments for support, and removed from office if their party lost the election.

Some argued in support of the spoils system as a way of maintaining an active party organization. But public outcry against non-merit-based political appointments led to eventual changes.

“**Campaign finance policy is an uneven blend of legislative enactments and judicial decisions.**”

An initial effort to regulate campaign finance occurred in 1867 when the federal Naval Appropriations Bill prohibited political assessments of naval yard workers. In 1883, far more sweeping reform was enacted through the Pendleton Federal Civil Service Act, which, among other things, banned politicians from assessing federal employees.

As the practice of assessing federal employees declined, corporations and wealthy individuals emerged as major sources of campaign funding. This led, not surprisingly, to accusations of favoritism and corruption. Theodore Roosevelt himself was accused of such improprieties when 73 percent of his presidential campaign funds came from corporate contributions. Nevertheless, in 1905 Roosevelt asked Congress for a ban on corporate contributions to federal campaigns to stem “bribery and corruption.” Roosevelt’s action led to the Tillman Act of 1907, which banned corporations and national banks from contributing to federal candidates.

A few years later, in 1910, the Federal Corrupt Practices Act (FCPA) limited political spending and required members of Congress to disclose the names of campaign contributors. In 1925, after the Teapot Dome scandal, the FCPA was amended with additional disclosure requirements and spending limits. Ten years later, responding to accusations that the Democratic Party was

using federal agency jobs to gain political advantage, Congress adopted the Hatch Act of 1939, which banned contributions from federal workers. This was followed in 1947 by passage of the Taft-Hartley Act, which prohibited political contributions by labor unions and barred both corporations and unions from making expenditures in federal elections.

Three features characterized this active period of campaign finance legislation that ran from 1867 through the late 1940s. First, Congress was the locus of initiative for action. Second, although

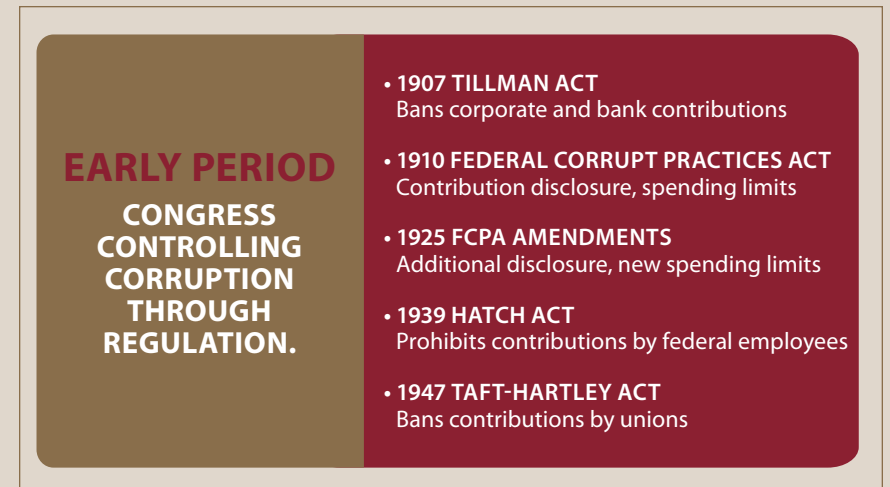


FIGURE 1: EARLY CAMPAIGN FINANCE REGULATION

“Congressional initiatives focused on regulation
as the means of dealing with corruption.”

various statutes emphasized different approaches, the common theme was controlling corruption. Finally, Congressional initiatives focused on regulation as the means of dealing with corruption. Figure 1 provides a graphical overview of this early period of campaign finance regulation.

THE JUDICIAL ERA

The legal landscape of campaign finance remained relatively stable for some 25 years until the Watergate scandal shook the nation in 1972. By 1974, the specter of Watergate moved Congress to make major amendments to the Federal Election Campaign Act of 1971. The revised law was sweeping in its scope, establishing strict disclosure requirements, limiting campaign contributions and spending, instituting public funding of presidential elections, and establishing the Federal Election Commission to oversee it all.

With the ink barely dry on the legislation, the Federal Election Campaign Act was challenged in *Buckley v. Valeo*, a case that rose to the U.S. Supreme Court in 1976. The result was a landmark ruling wherein the Court struck down limitations on campaign *spending* on the grounds that such limitations could inhibit free speech. In rendering its judgment, the Court made it clear that protection of political speech did not imply a guarantee of equal speech. The fact that some candidates would be able to spend more money than others was not deemed to be a relevant First Amendment issue.

While *Buckley* effectively removed barriers to political spending, the Court sustained limits on contributions to candidates and parties on the basis that the government had a compelling interest in preventing “corruption or its appearance.” The Court reasoned that political contributions might involve a quid pro quo, thus opening up the potential for corruption. This idea—that *spending* was necessary for effective political speech, and thus protected, while *contributions* were potentially corrupting and therefore subject to regulation—created a conceptual dichotomy that shaped the landscape of campaign finance.

In addition to creating the spending/contribution theory, *Buckley v. Valeo* provided several other important pillars of modern campaign finance policy. The opinion *supported disclosure* of campaign contributions and expenditures along with related record-keeping requirements. It also *approved public financing* for elections by sustaining the then-new voluntary program of public contributions to presidential campaigns via a checkoff option on tax forms. This cleared the way for a variety of public financing programs in various states and localities.

Congress once again addressed the issue of campaign finance reform through the Bipartisan Campaign

Frank Isenhardt
Campaign Finance Panel Member



Reform Act of 2002, often referred to as the McCain-Feingold Act. The law contained provisions intended to control so-called “soft money”—that is, political donations made to avoid federal regulations or limits such as donations to a party organization rather than to a particular candidate or campaign. The law also prohibited unions and corporations from funding “electioneering communications” during a defined period prior to primary and general elections.

In 2007, in the case of *Federal Election Commission v. Wisconsin Right to Life*, the Supreme Court greatly restricted McCain-Feingold prohibitions on corporate and union advertising before primary or general elections. In writing the controlling opinion, Chief Justice John Roberts underscored the emphasis on political speech articulated in *Buckley v. Valeo*, writing: “Where the First Amendment is implicated, the tie goes to the speaker, not the censor.”

The emphasis on free speech was expanded three years later in *Citizens United v. Federal Election Commission* (2010), a seminal case that has come to symbolize the modern era in campaign finance. In a number of ways, the case reinforced the values of *Buckley*, while expanding the protection of political speech. Although the *Citizens United*

decision did not preclude limits on contributions to candidates or parties, and continued to encourage disclosure requirements, it effectively overturned statutory provisions that prohibited or restricted independent political expenditures by corporations and unions. With its decision, the Court reinforced the fact that protection of political speech had become a dominant value in cases related to campaign finance, noting:

“Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny ...”

It is useful to note that the Court did not extend the right of political speech to corporations, unions and other organizations because of their legal-fiction status as “persons.” Rather, these entities enjoy the right of political speech, and thus political spending, because they are aggregations of *individuals*, each of whom has free-speech rights protected by the First Amendment. The rights possessed by individuals, the Court argued, did not dissolve simply because they joined together in an organization.

Only months after the *Citizens United* opinion, the Circuit Court of Appeals for the District of Columbia heard *SpeechNow.org v.*



Dick Robinson
Campaign Finance Panel Member

FEC. The Court of Appeals ruled that, while an “independent expenditure-only committee” was required to register as a political committee, it was entitled to accept unlimited contributions. Thus was born the so-called Super PAC, an independent expenditure-only committee (IEC) that was not subject to either contribution or spending limits. As in the *Citizens United* opinion, the appeals court in *SpeechNow.org* also affirmed campaign finance disclosure and reporting requirements, observing: “...in contrast with limiting a person’s ability to spend money on political speech, disclosure requirements ‘impose no ceiling on campaign-related activities’” and “do not prevent anyone from speaking.”

The principles underlying *Citizens United* were extended from the federal level to the states through *American Tradition Partnership v. Bullock* (2012). In a terse opinion, the U.S. Supreme Court effectively overruled the Montana Supreme Court. The opinion, issued without hearing oral arguments, stated: “The question presented in this case is whether the holding of *Citizens United* applies to the Montana state law. There can be no serious doubt that it does.”

Building on the foundation of *Buckley v. Valeo*, *Citizens United* and other recent cases have reshaped the rules of campaign finance. In the process, the locus of action on campaign finance has moved

MODERN ERA COURTS PROTECTING FREE SPEECH THROUGH COMPETITION.

- **1976 BUCKLEY V. VALEO**
Allowed unlimited political spending; left in place limits on contributions, disclosure of contributions and public financing of elections
- **2007 FEDERAL ELECTION COMMISSION V. WISCONSIN RIGHT TO LIFE**
Restricted McCain-Feingold ad blackout periods
- **2010 CITIZENS UNITED V. FEDERAL ELECTION COMMISSION**
Allowed independent political expenditures by corporations/unions; left in place disclosure of contributions and public financing of elections; affirmed value of marketplace of ideas
- **2010 SPEECHNOW.ORG V. FEC**
Allowed unlimited contributions to independent expenditure groups such as Super PACs
- **2012 AMERICAN TRADITION PARTNERSHIP V. BULLOCK**
Extended *Citizens United* ruling to states

FIGURE 2: MODERN ERA OF CAMPAIGN FINANCE REGULATION

“Building on the foundation of *Buckley v. Valeo*, the Supreme Court rulings in *Citizens United* and other recent cases have reshaped the rules of campaign finance.”

from Congress to the Supreme Court and the legal emphasis has shifted from concerns about corruption to the protection of political speech. The approach used has changed as well. Where legislative regulatory authority was once used to limit campaign contributions and spending, now judicial decisions focus on

protecting political speech. Figure 2 highlights these changes.

THE LEGAL LANDSCAPE

The present legal environment of campaign finance reflects the interaction of legislative actions and judicial decisions. In the

POLITICAL SPENDING AND CONTRIBUTIONS	FEDERAL	STATES	COLORADO
POLITICAL SPENDING			
Campaign spending	UNLIMITED	UNLIMITED	UNLIMITED
Independent expenditures by individuals	UNLIMITED	UNLIMITED	UNLIMITED
Independent expenditures by corporations/unions	UNLIMITED	UNLIMITED	UNLIMITED
POLITICAL CONTRIBUTIONS TO CANDIDATES AND PARTIES			
Individual contributions to candidates and parties	LIMITS	VARIES	LIMITS
Corporate/union direct contributions to candidates	PROHIBITED	VARIES	PROHIBITED
Candidate contributions to own campaign	UNLIMITED	UNLIMITED	UNLIMITED
POLITICAL CONTRIBUTIONS TO INDEPENDENT EXPENDITURE GROUPS			
Contributions to independent expenditure committees	UNLIMITED	UNLIMITED	UNLIMITED
POLITICAL CONTRIBUTIONS FROM FOREIGN NATIONALS			
Contributions from foreign nationals	PROHIBITED	PROHIBITED	PROHIBITED

FIGURE 3: CURRENT RULES OF CAMPAIGN FINANCE

“The protection of political speech has emerged as the dominant legal paradigm shaping campaign finance policy.”

process, the protection of political speech has emerged as the dominant legal paradigm shaping campaign finance policy. The net effect of court decisions and legislative actions is described in nontechnical terms below and depicted graphically in Figure 3.

Unlimited Political Spending – Candidates, parties, individuals, unions, corporations and many nonprofits can engage in unlimited political spending.

Unlimited Contributions to Independent Groups – There are generally no limits on contributions to independent expenditure-only political groups.

Limited Contributions to Candidates and Political Parties – Federal and state laws may limit contributions to candidates and parties, although not all states do so.

STATE POLICIES

The ground rules laid down by the U.S. Supreme Court generally apply to the states, not only with respect to federal elections, but to state and local elections as well. For example, the *Citizens United* decision is typically understood to mean that corporations and unions are allowed to make unlimited independent expenditures for the election or defeat of any political candidate at the federal, state or local level. While states are subject to the rules laid down by the U.S. Supreme Court and a state's own courts, within those

guidelines they have considerable authority regarding state and local elections. As one might imagine, state campaign finance laws vary among jurisdictions, and in some states municipalities can adopt their own regulations for campaigns within their locality.

Currently, 44 states regulate political contributions to candidates in some fashion, six of which limit or prohibit contributions by corporations and unions, but leave contributions from all other sources unlimited. Another six states place no limits on contributions. Figure 4 summarizes dollar limits on individual contributions to candidates for the 2013-2014 election cycle and shows the combined primary and general election contribution limits for Colorado.

States have been active in the area of disclosure of contributions and spending. Indeed, some of the earliest attempts by states to introduce campaign finance reform focused on disclosure and publication of political contributions and expenditures. Today, all states have some type of disclosure requirement and offer access to records online, although there is considerable variation in the amount of detail involved, the frequency of reporting and the ease of accessing public records.



Stephanie Foote
Campaign Finance Panel Member

To increase participation in elections, 24 states give public funds to candidates or parties, or provide tax incentives to individual contributors. Many states employ a partial public financing approach whereby grants cover a portion of the campaign costs and the candidate must raise private funds to cover the remainder. Such grant programs are always voluntary and often come with a stipulation that those who receive public funds must limit their campaign spending. Instead of providing direct state funding, some

	GUBERNATORIAL	STATE SENATE	STATE HOUSE
NATIONAL AVERAGE	\$9,084.50	\$4,496.87	\$3,957.39
NATIONAL MEDIAN	\$5,650	\$2,000	\$2,000
HIGHEST LIMIT	\$60,800 (NEW YORK)	\$24,311 (OHIO)	\$24,311 (OHIO)
LOWEST LIMIT	\$1,000 (ALASKA)	\$320 (MONTANA)	\$320 (MONTANA)
COLORADO LIMIT	\$1,100	\$400	\$400

FIGURE 4: 2013-2014 STATE LIMITS ON ANNUAL POLITICAL CONTRIBUTIONS

Source: National Conference of State Legislatures

states have chosen to provide tax incentives to citizens who make individual contributions to candidates.

COLORADO'S APPROACH

Colorado has an active program of managing campaign finance and disclosing political spending and contributions. Along with many other states, Colorado limits contributions to candidates and parties. Only one state, Alaska, has contribution limits lower than Colorado's for statewide candidates, and only Montana has limits lower than Colorado's for state legislative candidates. Figure 5 shows current contribution limits per election cycle to campaigns for various offices in Colorado.

Colorado citizens clearly care about the influence of money in politics. In 2012, voters overwhelmingly approved Amendment 65, which asked Colorado's federal legislative delegation to support an amendment to the U.S. Constitution that would allow the federal and state governments to limit campaign contributions and spending. While largely symbolic, the fact that Amendment 65 garnered support from nearly three-fourths of those voting shows a high level of interest in the topic among Colorado citizens.

In addition to contribution limits, Colorado has an active program of disclosure for political contributions and spending. Campaigns are required to report details about donors who contribute \$20 or more. For contributions of \$100 or more, campaigns must provide

“To increase participation in elections, 24 states give public funds to candidates or parties, or provide tax incentives to individual contributors.”

information about the donor's occupation and employer. Colorado's disclosure laws also include last-minute reporting requiring that contributions be disclosed before the election. Colorado reports campaign contribution and expenditure information through the state's online TRACER system administered by the secretary of state's office.

Colorado does not provide public financial support for election campaigns. Interestingly, however, Colorado was at the forefront of

the public funding conversation in 1909, when the state established the first such program in the nation. The legislation proposed giving state treasury funds to political parties for gubernatorial candidates. At the time, the Colorado Supreme Court declared the approach to be unconstitutional and the legislation was never put into practice. In 1976, however, the U.S. Supreme Court approved public financing plans in the *Buckley v. Valeo* decision. As a result, a number of states and municipalities have embraced the idea and adopted public financing programs.

	CANDIDATE RECEIVING CONTRIBUTION (PER ELECTION CYCLE)			
CONTRIBUTOR:	CONTRIBUTIONS TO:			
	GOVERNOR AND LT. GOVERNOR	STATE SENATE	STATE HOUSE OF REPRESENTATIVES	SECRETARY OF STATE, TREASURER, ATTORNEY GENERAL
NATURAL PERSON	\$550 (PRIMARY) \$550 (GENERAL)	\$200 (PRIMARY) \$200 (GENERAL)	\$200 (PRIMARY) \$200 (GENERAL)	\$550 (PRIMARY) \$550 (GENERAL)
POLITICAL PARTY	\$569,530	\$20,500	\$14,805	\$113,905
POLITICAL COMMITTEE, FEDERAL PAC AND BUSINESS ENTITY (OTHER THAN A CORPORATION)	\$550 (PRIMARY) \$550 (GENERAL)	\$200 (PRIMARY) \$200 (GENERAL)	\$200 (PRIMARY) \$200 (GENERAL)	\$550 (PRIMARY) \$550 (GENERAL)
SMALL DONOR COMMITTEE	\$5,675 (PRIMARY) \$5,675 (GENERAL)	\$2,250 (PRIMARY) \$2,250 (GENERAL)	\$2,250 (PRIMARY) \$2,250 (GENERAL)	\$5,675 (PRIMARY) \$5,675 (GENERAL)

FIGURE 5: CURRENT CONTRIBUTION LIMITS FOR COLORADO CAMPAIGNS

Source: Colorado Secretary of State

CAMPAIGN FINANCE TODAY

Contemporary campaign finance policy is the complex result of congressional legislation, Supreme Court decisions, and state policies. Decisions of these entities have interacted in an unplanned fashion, driven by competing concepts rather than a coherent underlying principle. The result is a campaign finance environment with the characteristics summarized below.

An Avalanche of Money – Over the past several decades the amount of money involved in the election process has increased dramatically.

The Growth of Large Donors – As the money in elections has increased so has the importance and access of large contributors.

Hidden Contributions – 501(c) nonprofits do not have to disclose the names of contributors, even if these groups fund major political efforts.

Organizational Screening – As contributions pass through multiple entities, the names of contributors are effectively shielded from public view.

Anonymous Leadership – CEOs and directors of corporations, unions

and other groups remain unnamed while their entities make major political contributions.

Inadequate Disclosure – Current disclosure systems have an incomplete focus on individuals and fail to track both direct and indirect political contributions.

Marginalized Candidates and Parties – Independent political organizations can raise unlimited funds, diminishing the role of candidates and parties.

False Comfort – State contribution limits provide a false sense of security as well-funded independent groups multiply in terms of numbers and impact.

Incumbent Advantage – Incumbents enjoy an overwhelming financial advantage over political newcomers.

These characteristics reflect a campaign environment that has seen significant evolution over the past several decades. The electoral process was historically dominated by candidates and parties receiving contributions from individuals and a limited number of organizations. Today the situation is very different. A broad array of political entities with the ability to raise and spend unlimited funds now occupy the electoral playing field.



Donna Boucher
Campaign Finance Panel Member

AN AVALANCHE OF MONEY

No phenomenon better illustrates the changing environment of campaign finance than the rise of money in federal and state elections. High levels of political spending have become the norm in modern elections. In the span of four presidential election cycles, total expenditures in federal elections have risen over 100 percent, from \$3 billion in 2000 to an estimated \$6.2 billion in 2012. While the rate of spending growth declined slightly in 2012, in absolute terms the amount of money involved in federal elections is very large and increasing with each election cycle. The graph in Figure 6 illustrates the rise in spending for federal elections.

Spending large sums of money is not limited to presidential elections. According to the Federal Election Commission, Colorado candidates spent more than \$26 million on U.S. House races alone during the 2012 election cycle. For House races in more populous states the amounts were much larger: California, \$143 million; Florida, \$83 million; New York, \$80 million; Texas, \$66 million and Illinois, \$54 million.

At both the national and state level, raising the amounts of money needed to mount an effective campaign requires that candidates spend a great deal of time fundraising. For elected officials, this

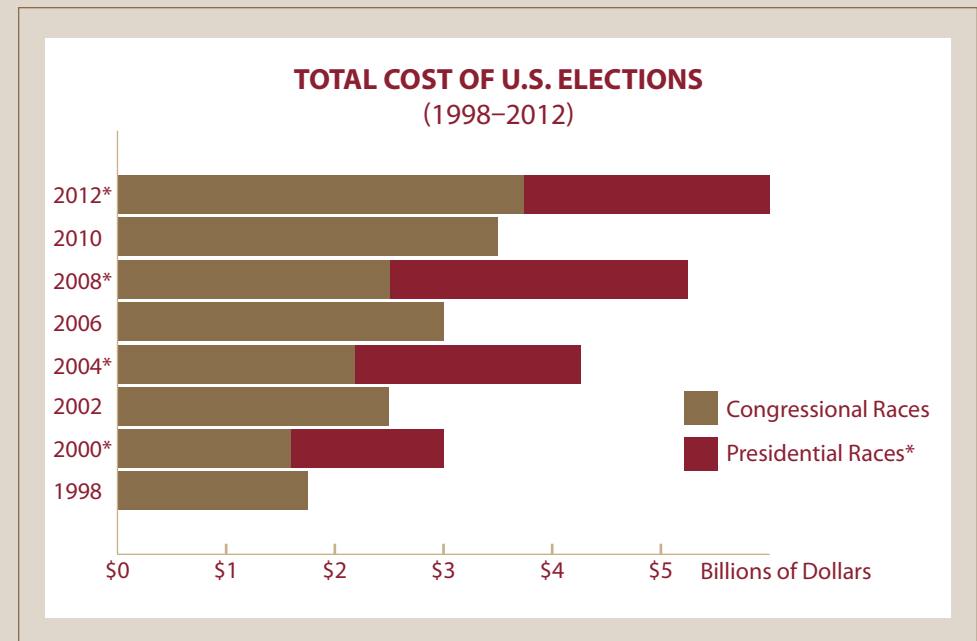


FIGURE 6: GROWTH OF SPENDING IN FEDERAL ELECTIONS

Source: Center for Responsive Politics

“High levels of political spending have become the norm in modern elections.”

may reduce time for other activities, like legislating or helping constituents; but for officials seeking re-election there is little choice. New candidates, without an established donor base or the advantages of incumbency, often face even greater challenges. Whether the candidate is new to the political process or an established incumbent, there is seldom any letup. In Colorado and across the nation, as soon as one campaign is over, fundraising begins for the next.

SPENDING BY OUTSIDE ORGANIZATIONS

In recent years, a substantial part of the money required for campaigns has been financed by so-called “outside spending.” Typically, outside spending is a result of political expenditures made by independent expenditure committees, groups that are supposed to be independent of, and not coordinated with, candidate committees.

It is estimated that spending by outside organizations accounted for nearly 18 percent of all election-related expenditures in the 2012 election cycle, amounting to over \$1 billion. This represented an increase of more than 400 percent over outside spending in the 2008 election cycle. The dramatic growth in spending by outside organizations is shown in Figure 7.

Unencumbered by contribution or spending limits, independent political spending by outside organizations has become a powerful force in electoral politics. A favored vehicle for independent political spending is the Super PAC, which, along with other independent expenditure-only organizations, is reshaping the landscape of campaign finance. While some independent expenditure organizations, or IECs, support a range of candidates or causes, in other cases the “independent” status can be a thinly

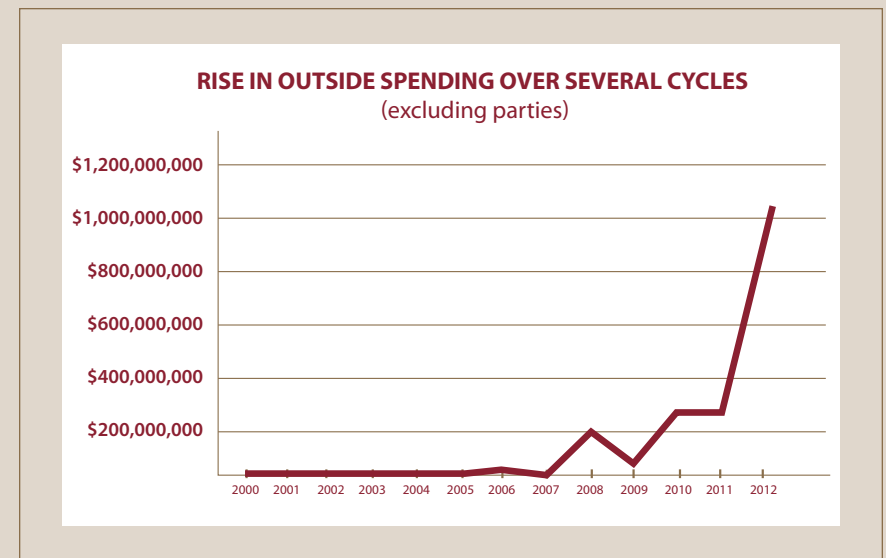


FIGURE 7: SPENDING BY OUTSIDE ORGANIZATIONS

Source: Demos and U.S. PIRG Education Fund

“Unencumbered by contribution or spending limits, independent political spending by outside organizations has become a powerful force in electoral politics.”

disguised legal fiction. When an IEC is directed by a candidate's former campaign manager and its employees include former candidate staffers, formal coordination between the independent group and the candidate is hardly necessary.

Though not all candidates supported by Super PACs and other independent groups are successful in getting elected, the influence of IECs can be significant, and candidates benefiting from their largess are often appreciative. Yet there is a flip side to the story. Some candidates express concern about losing control of their campaigns. Independent groups, sometimes far better financed than the candidates themselves, can drown out the candidates' own messages. If a candidate does not approve of an independent organization's advertising, there is little the candidate can do given the fact that IECs are not permitted to coordinate expenditures with campaigns.

THE GROWTH OF LARGE DONORS

Not surprisingly, the increasing cost of elections has expanded the role that large donors play in financing campaigns. In the 2012 federal election cycle, individuals giving \$200 or more represented less than one-half of 1 percent (0.40 percent) of the entire U.S. population. Yet, this 0.40 percent provided some 63 percent of all individual contributions to federal candidates, PACs and

political parties during the 2012 election cycle. Figure 8 graphically illustrates this relationship.

While the vast amounts raised for presidential elections grab the headlines, the pattern where a few large donors provide a

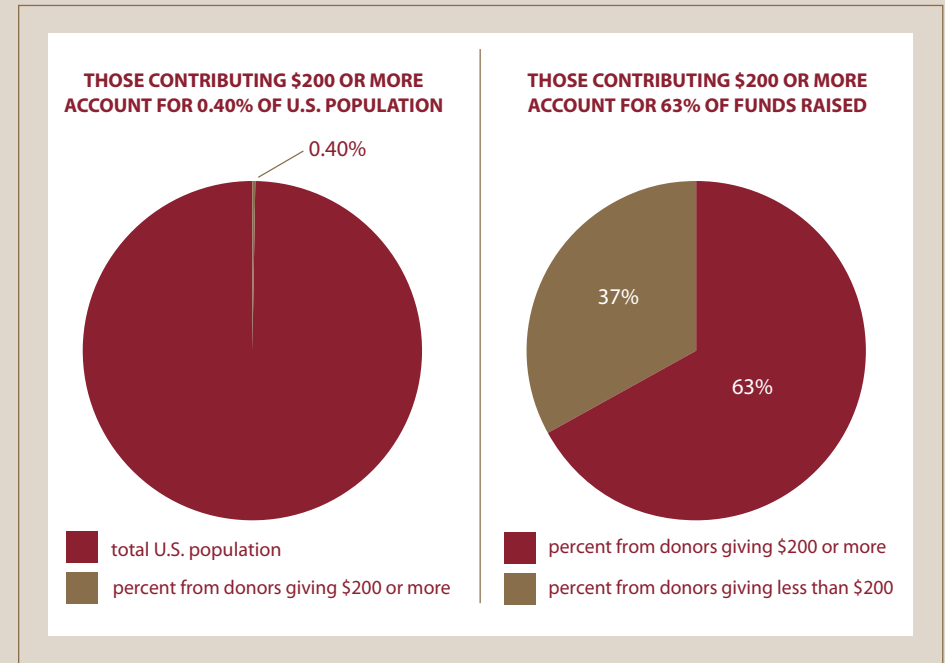


FIGURE 8: NUMBERS AND IMPACT OF LARGE DONORS, 2012 FEDERAL ELECTION CYCLE

Source: Center for Responsive Politics

majority of the funding is true for nearly all federal campaigns and major state races as well. Congressional elections provide a clear example. In the 2012 election cycle, the majority of funds for both U.S. House and Senate races came from gifts of \$1,000 or more. In Senate campaigns, 40 percent of all contributions to Senate candidates came from donors who gave at least \$2,500.

The impact of large donors is particularly evident in the case of independent expenditure organizations. According to an analysis by Demos and the U.S. PIRG Education Fund, in the 2012 federal

election cycle nearly 60 percent of Super PAC funding came from just 159 donors contributing at least \$1 million. Of all the money raised by Super PACs, more than 93 percent came from donations of \$10,000 or more. Figure 9 shows the distribution of Super PAC donors.

THE REALITY OF UNLIMITED MONEY

As members of the University of Denver Panel on Campaign Finance assessed the current electoral landscape they saw a political system awash with money, where unlimited political spending is

CONTRIBUTING AT LEAST...	\$5,000	\$10,000	\$20,000	\$50,000	\$100,000	\$500,000	\$1,000,000
NUMBER OF DONORS	4,469	3,318	2,378	1,578	1,089	304	159
TOTAL CONTRIBUTED (IN MILLIONS OF \$)	\$805.8	\$799.4	\$788.8	\$767.1	\$738.6	\$596.7	\$505.4
SHARE OF ALL SUPER PAC CONTRIBUTIONS	93.8%	93.1%	91.9%	89.3%	86.0%	69.5%	58.9%

FIGURE 9: SUPER PAC FUNDING BY LARGE DONORS, 2012 FEDERAL ELECTION CYCLE

Source: Demos and U.S. PIRG Education Fund

“Like water flowing around boulders in a stream, whatever the regulatory impediments, money has usually found a way around obstacles.”

the rule and where there are few remaining limits on contributions. The panel also recognized that *Citizens United*, while a seminal case, really represented another step along the path of First Amendment protections that began with *Buckley v. Valeo* some 35 years earlier. As a result, the idea of simply “undoing” *Citizens United*, while perhaps emotionally appealing, did not appear to the panel to be a realistic expectation.

While not every panel member was comfortable with the idea of unlimited spending in the election process, panel members recognized the need to respect U.S. Supreme Court decisions as law and understood the importance of protecting political speech under the First Amendment. Panel members were mindful that Article II of the Colorado Constitution protects the right of free speech in language stronger and more specific than the U.S. Constitution itself. The panel also acknowledged that limiting political spending, while attractive in theory, has always been problematic in terms of enforcement. Like water flowing around boulders in a stream, whatever the regulatory impediments, money has usually found a way around obstacles. Given the current legal landscape and reality of money in politics, *the panel concludes that future campaign finance reforms need to accommodate an environment where unlimited political contributions and spending are the dominant reality.*



“Future campaign finance reforms need to accommodate an environment where unlimited political contributions and spending are the dominant reality.”

THE NEED FOR A NEW VIEW

For more than 35 years, at both the state and federal levels, campaign finance policy has been caught in a clash of competing concepts: reducing political corruption versus protecting political speech. These principles may not seem inherently contradictory but, in practice, they function as mutually exclusive objectives. This lack of conceptual consistency is responsible, in part, for the disjointed nature of today's campaign finance policies.

In focusing on free speech, the U.S. Supreme Court has recognized that in a large, modern society effective political speech requires money. To reach and persuade a sufficient number of voters, campaigns must purchase ads in electronic and print media, hire staff, pay transportation costs, purchase campaign materials, conduct surveys and much more. All of these things cost money and it is difficult to refute the Court's argument that political speech requires funding.

While it is true that money is required for effective political speech, the goal of protecting speech runs head-on into the most common legislative means of controlling corruption: limiting campaign

contributions and spending. Resolving the contention between these two principles is difficult because it resembles a zero-sum game with mutually exclusive outcomes. That is, although anti-corruption laws may regulate and reduce the amount of money in campaigns, limiting money also limits political speech. Conversely, protecting political speech by allowing unlimited spending or

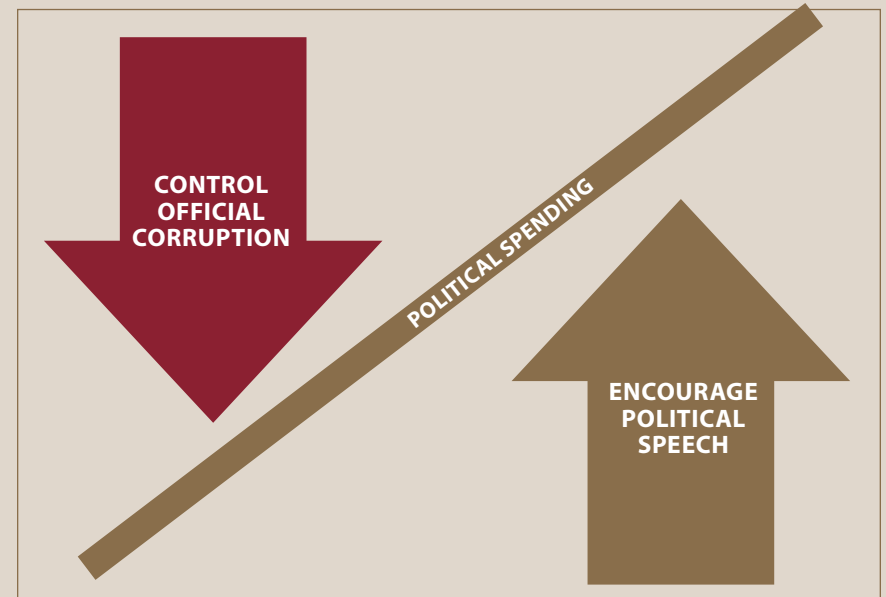


FIGURE 10: COMPETING PRINCIPLES OF CAMPAIGN FINANCE POLICY



George Simon
Campaign Finance Panel Member

contributions can dramatically increase the flow of money into politics, creating the appearance, if not the reality, of political corruption. This zero-sum dilemma is depicted in Figure 10.

The irony, of course, is that both principles espouse sound values and each is intended to advance a social and political good. So the choice, as the panel discovered, is not between a good idea and a wrongheaded notion. Rather, the challenge is to find a common conceptual framework that embraces both principles and focuses on creating an electoral process that is fair, open and encourages broad participation. The panel found such a framework in the concept of a marketplace of ideas.

A MARKETPLACE OF IDEAS

While advocates of unlimited spending differ with those who would limit money in politics, there is one point on which both agree: the benefits of an effective marketplace of political ideas. Supporters of both views favor an electoral process that encourages a healthy exchange of views and helps voters make informed political choices. Thinking about campaign finance in terms of fostering a marketplace of ideas provides a perspective that embraces both free speech and anti-corruption concepts.

The notion of a conceptual marketplace—a marketplace of ideas—is

not new. The concept permeates American values and underlies the First Amendment requirement that “Congress shall make no law ... abridging the freedom of speech, or of the press” The idea, expressed some 150 years ago by John Stuart Mill in his essay, “On Liberty,” argues that free speech, including unpopular ideas, should be tolerated because competition among ideas, through unrestricted public discourse, will allow the best ideas to come forward. The U.S. Supreme Court has embraced the concept. Direct references to a marketplace of political ideas can be found in Court opinions dating to the early 20th century and the principle is clearly evident in pivotal campaign finance cases including *Citizens United*.

The metaphorical “marketplace of ideas” is not literally a market in an economic sense, although both share certain similarities. While an economic market trades in goods and services, the “goods” of a conceptual market are ideas expressed in speeches, writing, advertisements, etc. Although different in a number of ways, both economic and conceptual markets require at least two conditions in order to operate effectively. These conditions, depicted in Figure 11, are a free flow of information and widespread participation.

INFORMATION AND PARTICIPATION

Buyers and sellers require accurate information in order to make informed decisions in a marketplace. Although the holy grail of

“Thinking about campaign finance in terms of fostering a marketplace of ideas provides a perspective that embraces both free speech and anti-corruption concepts.”

“perfect information” does not exist in either physical or conceptual markets, the more fluid and accurate the information flow, the more efficient and effective the market. In terms of the electoral process, the marketplace of ideas functions most effectively when many points of view reach voters as they make choices among candidates and issues.

In addition to a free flow of information, successful markets also require a large number of participants so that no single individual or entity has the leverage to distort the market to its own advantage. In an economic market with many purveyors, no single seller can

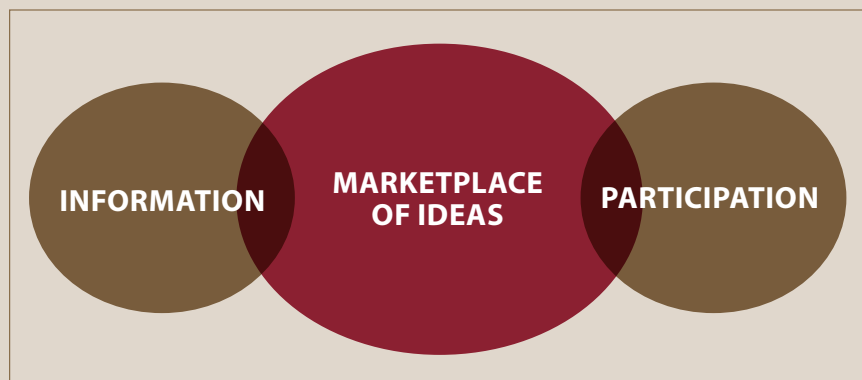


FIGURE 11: COMMON ELEMENTS OF EFFECTIVE MARKETPLACES

gain advantage because it controls a disproportionate share of the market. Similarly, in a conceptual market with many participants, no single speaker is able to overwhelm all others due to a dominant position.

To the extent that either a free flow of information or widespread participation is inhibited, markets fail to serve the interests of most buyers and sellers. Ineffective markets foster oligopolies that use their power to leverage economic or political advantage. The tendency of markets—economic or political—to become oligopolistic, to the detriment of the consumer—buyer or voter—needs to be managed by policies that encourage a strong information flow and broad participation.

Through the lens of a marketplace, the basic question for campaign finance policy becomes: “What policies will foster an open flow of information and encourage wide participation in the electoral process?” The panel believes that building campaign finance policy on the paradigm of a marketplace of ideas can help achieve those goals. For that reason, *the panel concludes that campaign finance policy in Colorado should be grounded on the principle of creating an effective marketplace of ideas, one that facilitates the free flow of information and encourages broad participation in the electoral process.*

“Campaign finance policy should be grounded on the principle of creating an effective marketplace of ideas.”

INCREASING INFORMATION THROUGH TRANSPARENCY

Strengthening public disclosure of political contributions and spending is one of the most important campaign finance reforms for Colorado and the nation. Disclosure provides the transparency needed to balance the cascade of money flooding into the electoral process. An effective policy of disclosing campaign contributions and spending is the principal bulwark against the domination of the electoral process by those applying the greatest financial resources.

Since money and political speech are analogous, those with the most money have the largest megaphones in the marketplace. Candidates with strong financial backing can drown out competitors, frame issues to their own liking and define the contours of the debate. The transparency provided by an effective disclosure system allows voters to know which individuals and interests are funding various candidates or supporting particular issues. Failure to disclose the names of all individual contributors creates a *Wizard of Oz*-like situation where the political environment is being shaped by individuals standing behind a curtain, about whom the voters know little or nothing.

BASIS FOR DISCLOSURE

There is no question that the courts favor disclosure of political

contributions and spending. In *Buckley v. Valeo* the Court acknowledged that in some cases disclosure could potentially interfere with First Amendment rights by muting the political speech of those afraid of retribution. Nevertheless, the Court set a high bar for those who would use First Amendment infringement as reason to thwart reasonable disclosure requirements.

In the *Buckley* opinion, the Court stated: “...there are governmental interests sufficiently important to outweigh the possibility of infringement [with First Amendment rights], particularly when the ‘free functioning of our national institutions’ is involved.” The panel agreed. While acknowledging the possibility that disclosure could, in unusual cases, inhibit political speech, the panel strongly supported the idea of public disclosure, noting that judicial avenues already exist for those concerned about retribution.

In the *Citizens United* case, the Supreme Court once again supported public disclosure in strong terms, saying: “The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech.” If unlimited campaign spending as mandated by the Court is the price of protecting free speech,



John Moya
Campaign Finance Panel Member

then, as the courts note, disclosure is the safeguard offered to protect the marketplace of political ideas.

INDIVIDUAL DISCLOSURE

As the panel examined practices in Colorado and elsewhere, it became clear that disclosure *at the level of the individual* is central to an effective campaign finance policy. In this regard, it is important to recognize that the Court did not extend the right of political speech to corporations, unions and other organizations because of their legal-fiction status as “persons.” Rather, the Court extended the protections of political speech, and hence political spending, because organizations are collections of individual, natural persons.

In the *Citizens United* decision, the Court noted that organizations are made up of an aggregation of citizens who, individually and collectively, have their political speech protected by the First Amendment. The Court found that individuals do not lose their

rights of free speech simply because they are part of a group or association (referred to as the “corporate form” by the Court). In protecting the speech of corporations, unions and other organizations the Court

focused on the rights of individuals, observing: “Yet certain disfavored associations of citizens—those that have taken on the corporate form—are penalized for engaging in the same political speech.” In his concurring opinion, Justice Scalia expanded upon the point, noting: “[The dissenting opinion] never shows why ‘the freedom of speech’ that was the right of Englishmen did not include the freedom to speak in association with other individuals, including association in the corporate form.”

At its core, campaign finance disclosure is about personal responsibility. It is a principle that the state constitution strongly supports. Article II, Section 10 of the Colorado Constitution endorses free speech in terms stronger than those in the U.S. Constitution and, importantly, focuses directly on individual responsibility in the exercise of free speech: “No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty...”

It is clear that corporations, unions, associations and other groups enjoy the right of political speech not as an inherent organizational right but, rather, as an extension of the free-speech rights of individuals who are associated with the organization. As a result, it is perfectly appropriate to require that individuals be the subject



Terri Binder
Campaign Finance Panel Member

of disclosure. That being the case, *the panel supports the emphasis on personal responsibility for political speech provided by the Colorado Constitution, and recommends that the principle of disclosure at the individual level guide campaign finance policies in Colorado and the nation.*

DISCLOSURE IN COLORADO

Colorado has a policy of disclosing campaign spending and contributions, one that is well regarded when compared to other states. In 2013, Colorado received a grade of “A” from FollowTheMoney.org for disclosure of independent expenditures, an improvement on its already-respectable overall grade of “B” from CampaignDisclosure.org, which placed it ninth-best in the nation in 2008. Colorado also deserves high marks for its online TRACER disclosure system (tracer.sos.colorado.gov), which allows users to search the disclosure database by candidate, contributor, political committee, candidate expenditures and across other dimensions.

Although Colorado’s policies and practices for campaign finance disclosure are certainly up to the standard of practice in other states, the standards themselves leave considerable room for improvement. There remain a number of important areas in which disclosure reforms are needed in Colorado. Areas that require action include: hidden contributions, organizational screening, multilevel and active disclosure, simplified reporting and the need

for consistent application of disclosure practices. Many of these same shortcomings, as well as additional areas for improvement, exist in other states and in national disclosure practices.

HIDDEN CONTRIBUTIONS

While independent expenditure-only committees such as Super PACs are required to report the names of contributors, certain other groups are generally not required to disclose donors. Under current laws and/or IRS rulings, a number of nonprofits that are able to engage in the electoral process are generally not required to disclose the names of contributors. These include 501(c)(4) social welfare organizations, 501(c)(5) labor or agriculture groups and 501(c)(6) business leagues. Because all of these organizations share the characteristic of being able to avoid disclosure yet participate actively in the political process, they are referred to collectively in this report as 501(c)(4) or simply (c)(4) organizations.

It is important to recognize that 501(c)(4) nonprofit organizations often play important roles in the communities in which they operate as well as at the state and national level. Groups as diverse as the Sierra Club, the American Association of Retired People (AARP) and the National Rifle Association all have some type of 501(c)(4) status. So, too, do some health maintenance organizations, volunteer fire departments, low-income housing

“Disclosure provides the transparency needed to balance the cascade of money flooding the electoral process.”

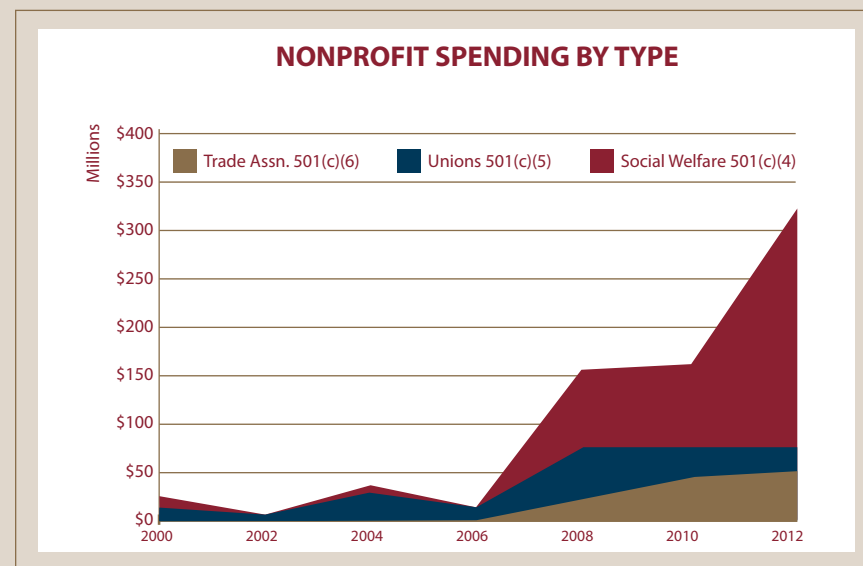
groups and homeowner associations. There is little doubt that many (c)(4) groups contribute to the social welfare of the community, state or nation.

Unlike 501(c)(3) charities, which are limited in their advocacy and cannot get involved in the electoral process at all, (c)(4) groups are permitted to participate in politics so long as it does not become their primary focus. Typically, that has meant that a group must spend less than 50 percent of its funds on political activities. The ability to shield donors from disclosure has made (c)(4) organizations a popular vehicle for financing political activity.

Total federal spending by non-disclosing (c)(4) nonprofits has skyrocketed from less than \$17 million in 2006 to well over \$300 million in 2012, multiplying nearly 18 times in just four election cycles. Of that amount, the most significant portion of the increase by far has come from 501(c)(4) organizations. Figure 12 shows the growth of political spending financed by undisclosed contributors from various (c)(4) organizations.

An example from the most recent 2012 federal election cycle is instructive. As early as August 2012, just two 501(c)(4) nonprofits (which did not have to report contributors) had spent almost \$60 million on television advertisements, an amount larger than the combined total spending at that time of all Super PACs (which

do have to report contributors). Figure 13 shows the 20 (c)-type organizations spending the greatest amount of money in the 2012 election, none of whom were required to disclose their contributors.



**FIGURE 12: POLITICAL SPENDING BY 501(C)(4)S
COMPARED TO OTHER NONPROFITS**

Source: Data from Center for Responsive Politics

“Total political spending by non-disclosing 501(c)(4) nonprofits has skyrocketed from less than \$17 million in 2006 to well over \$300 million in 2012.”

RANK	ORGANIZATION	AMOUNT	TYPE
1	CROSSROADS GPS	\$71,181,940	501(C)(4)
2	AMERICANS FOR PROSPERITY	\$36,352,928	501(C)(4)
3	US CHAMBER OF COMMERCE	\$35,657,029	501(C)(6)
4	AMERICAN FUTURE FUND	\$25,414,586	501(C)(4)
5	AMERICANS FOR JOB SECURITY	\$15,872,864	501(C)(6)
6	AMERICANS FOR TAX REFORM	\$15,794,552	501(C)(4)
7	AMERICAN ACTION NETWORK	\$11,689,399	501(C)(4)
8	LEAGUE OF CONSERVATION VOTERS	\$11,137,177	501(C)(4)
9	AMERICANS FOR RESPONSIBLE LEADERSHIP	\$9,793,014	501(C)(4)
10	NRA INSTITUTE FOR LEGISLATIVE ACTION	\$7,448,189	501(C)(4)
11	PATRIOT MAJORITY USA	\$7,013,886	501(C)(4)
12	PLANNED PARENTHOOD ACTION FUND	\$6,545,371	501(C)(4)
13	60 PLUS ASSOCIATION	\$4,615,892	501(C)(4)
14	REPUBLICAN JEWISH COALITION	\$4,595,666	501(C)(4)
15	VOTEVETS.ORG	\$3,190,540	501(C)(4)
16	YG NETWORK	\$2,874,481	501(C)(4)
17	CITIZENLINK	\$2,574,666	501(C)(4)
18	CENTER FORWARD	\$2,057,089	501(C)(4)
19	NFIB THE VOICE OF FREE ENTERPRISE	\$1,983,385	501(C)(4)
20	SUSAN B ANTHONY LIST	\$1,961,223	501(C)(4)

**FIGURE 13: LARGEST ORGANIZATIONS
NOT DISCLOSING DONORS**

Source: Data from Center for Responsive Politics

Not only did organizations with undisclosed contributors spend a great deal of money on political activities, they often created political messages with less than a complete regard for accuracy. In a series of analyses during the 2012 federal election cycle, researchers at the Annenberg Public Policy Center's FactCheck.org found that through June, 2012 some 85 percent of the ads sponsored by the four top-spending 501(c)(4) nonprofit groups contained at least one claim ruled deceptive by fact checkers. A particularly interesting irony in the world of campaign finance policy is that, while candidates and parties must disclose donors, organizations like 501(c)(4)s are able to hide the names of those financing deceptions such as those identified by the Annenberg center.

This is an untenable situation for several reasons. It creates uneven rules for various political organizations while reducing information in the marketplace of ideas. Participants in the marketplace, both sellers (candidates) and prospective buyers (voters), are disadvantaged when those shaping the information flow are hidden from view. In order to make informed choices, voters need to know the names of those financially supporting various speakers or points of view.



Sam Cassidy
Campaign Finance Panel Member

Although undisclosed contributors present a threat to the effective operation of the political marketplace, there is another dimension to consider. Many (c)(4) organizations that engage in political advocacy also engage in fundraising for their core, non-political activities. While it is perfectly reasonable to require disclosure of individuals contributing to political advocacy, it is much more difficult to make a case for disclosing the names of those supporting non-advocacy aspects of the nonprofit.

The panel is sensitive to the fact that disclosure can make it more difficult for (c)(4) nonprofits to raise funds to support their core mission. At the same time, the panel believes that individuals and organizations engaging in the most important of public activities—the election process—must do so in the light of day. Balancing these interests, the panel offers two recommendations. With respect to those making donations, *the panel recommends that all 501(c)(4),(5) and (6) organizations engaging in the political process in Colorado, whether Colorado-based or not, offer their donors the*

ability to choose whether they wish to allow their contribution to be used for political advocacy purposes.

The process to determine whether a contribution can be used for political

advocacy could be as simple as a check box on a donation form. If a contributor is comfortable with a donation being used for political advocacy, a box is checked acknowledging that the donation may be used for such purposes. Keeping track of funds that can be used for political activity is no more difficult than handling a gift designated for a particular purpose, a routine task that nonprofits handle as a matter of course.

The names of 501(c)(4) contributors allowing their donations to be used for political advocacy would be reported to the Colorado Secretary of State's office in the same manner as any other political contribution. This creates a uniform set of practices for all players in the political process: candidates, political parties, independent groups such as Super PACs and (c)(4) nonprofits. Notwithstanding current laws or IRS rulings that allow 501(c)(4) and similar nonprofits to operate by a different set of rules from others in the political process, the panel feels that, in Colorado, contributions to (c)(4) organizations used for political advocacy should be reported and disclosed. In the interest of equitable treatment among all those involved in the political process, *the panel recommends that, wherever domiciled, every 501(c)(4), (5) and (6) organization involved in political activity in Colorado be required to disclose the names of all individuals who have chosen to allow their contributions to be used for political advocacy.*



Joe Blake
Campaign Finance Panel Member

ORGANIZATIONAL SCREENING

Disclosing the names of those supporting the political advocacy of 501(c)(4) organizations is an important step in bringing sunlight into the process of campaign finance. However, by itself, even the disclosure of hidden donors is not sufficient. The reason has to do with the complexity that often accompanies the fundraising process, even when donor contributions to an organization are initially disclosed.

In practice, it is not uncommon for those involved in political operations to use multiple organizations to fund various types of political campaigns and advocacy. Thus, even though the initial donation from an individual may be disclosed, as contributions pass from one entity to another, it is the contributing organization, not the individual, that is reported as the donor. When this happens, the original individual contributor is effectively shielded from disclosure. Figure 14, from a story in *The Denver Post*, provides a Colorado example of the complexity of political funding.

Figure 14 illustrates that following the flow of political money can be a challenge, even at the organizational level. At the individual level, tracking money through a multilevel maze of organizations can be extremely difficult to accomplish. Recognizing this, some

political operators shield contributors from disclosure with a flow-of-funds labyrinth that can be nearly impenetrable. Such a maze allows individuals and organizations to make contributions that are, for all practical purposes, hidden from public view. As with undisclosed contributions to 501(c)(4) organizations, shielding the names of individuals who are financially supporting candidates, issue committees and independent groups seriously limits the information that is available to voters in the electoral marketplace.

MULTILEVEL DISCLOSURE

To reflect the reality of today's campaign finance environment, a disclosure system must be able to sort through multiple organizations and identify individual contributors. If voters are to make sound electoral choices, they need to know which individuals and organizations are providing major funding to support various candidates, issues and independent expenditure groups. With knowledge about the sources of money behind candidates, issues and advertisements, voters can gain a more complete picture of the political landscape and make more informed electoral decisions.

Achieving this goal requires a system of multilevel disclosure that identifies political contributions at two levels. The first level is that of *direct contributors*, individuals and organizations making direct

“Organizations with undisclosed contributors often created political messages with less than a complete regard for accuracy.”

527 INS AND OUTS

Three liberal 527 committees spent \$6.5 million of the \$14.1 million spent by all 527s in 2010. Many donors to these committees overlap, and each 527 gave a substantial amount to their own independent expenditure committees, which can directly advocate for the election or defeat of a candidate. The top five donors to each 527 and the top five expenditures made by each 527:

● **527 COMMITTEE**, size of circle represents amount spent in 2010 ➔ **TOP CONTRIBUTORS TO 527 COMMITTEE** ➔ **BIGGEST EXPENDITURES MADE BY 527 COMMITTEE**

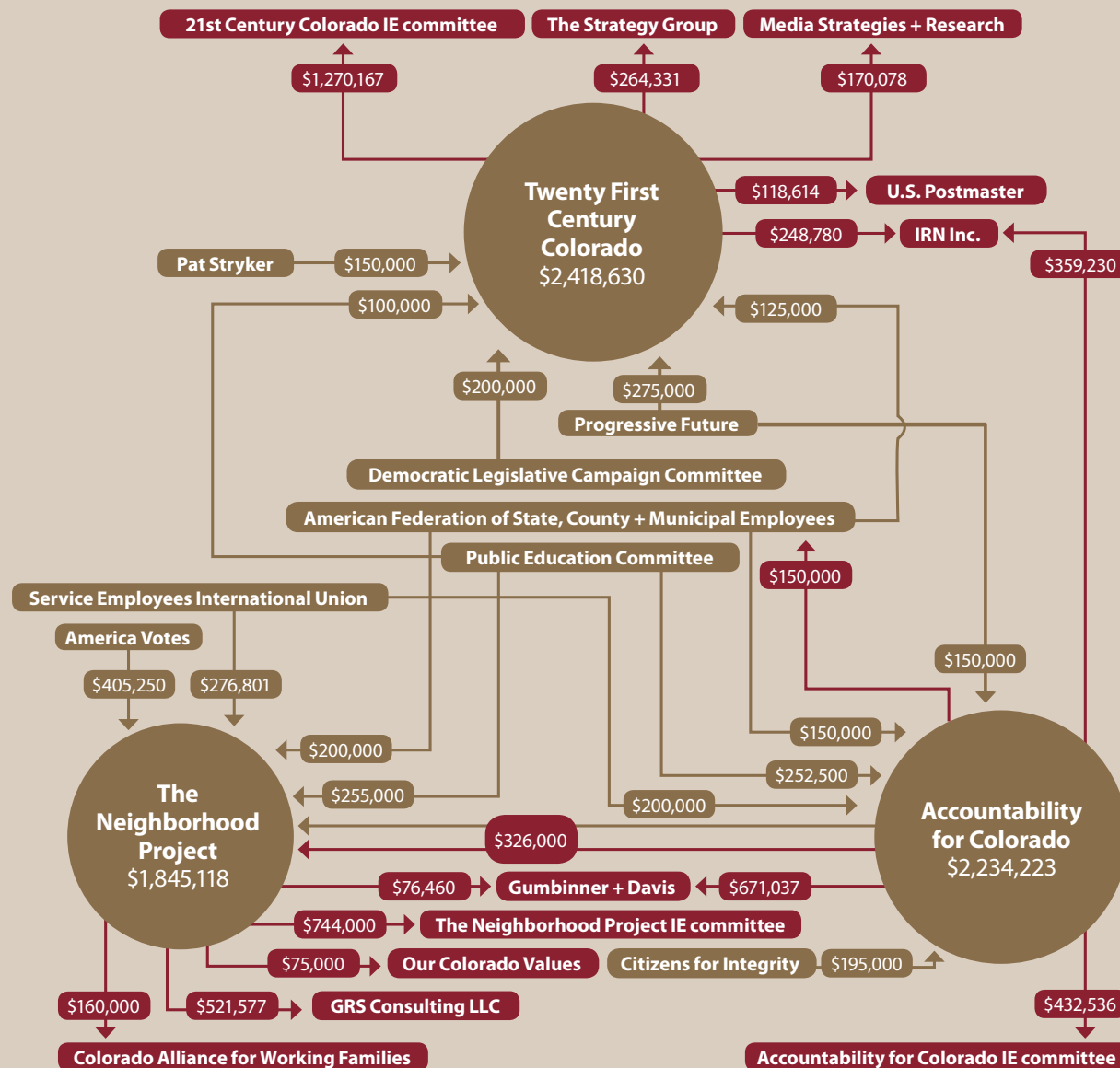


FIGURE 14:
COMPLEX FLOW OF
POLITICAL FUNDS

Source: Karen Crummy, Tomas McKay and *The Denver Post*

contributions to candidates, issue campaigns and independent political organizations. At the next level are *indirect contributors*. These are individuals making political donations to entities that, in turn, contribute to one or more other organizations through a series of transactions that ultimately lead to financial support of parties, candidates or IECs. Identifying indirect contributors is important, particularly in the case of multi-organizational funding where it is possible for indirect contributors to outnumber direct contributors. Figure 15 illustrates a framework for multilevel disclosure.

Manually tracking direct and indirect organizational and individual contributors for a large-scale campaign could become a near-impossible task. Fortunately, Colorado has the benefit of TRACER, the state's online reporting and disclosure software. The capability of the system and the data that are generated under Colorado's existing reporting requirements could, with programming modifications, permit disclosure of both direct and indirect contributions made to candidate and issue campaigns as well as donations made to independent-expenditure groups of various types.

Given the impact of large donors on the electoral process, major contributors would likely be the focus of multilevel disclosure reports. For example, the system could be programmed to identify

contributors in terms of a list of top donors (top 25, 50, etc.). Such a system also could produce reports showing the top 10 percent of contributors or those making contributions above a particular dollar threshold.

For purposes of illustration, assume the task is to disclose the "Top 50" largest contributors to a candidate running for the Colorado state senate. The required information would be developed with several "cuts" of the database. The initial data sort simply identifies the top 50 organizations and individuals contributing directly to the campaign. This is the "Top 50 List of Direct Contributors."

A second sort takes the organizations making direct contributions and identifies individuals and sub-organizations donating to the direct-contributor entity. Subsequent cuts identify individual contributors to various sub-organizations. Once all *individual* donors are identified, the 50 individual contributors who contributed the most money are selected. This becomes the "Top 50 List of Indirect Contributors."

Allowing individuals to effectively shield their involvement in the political process behind multiple organizational transfers damages



Polly Baca
Campaign Finance Panel Member

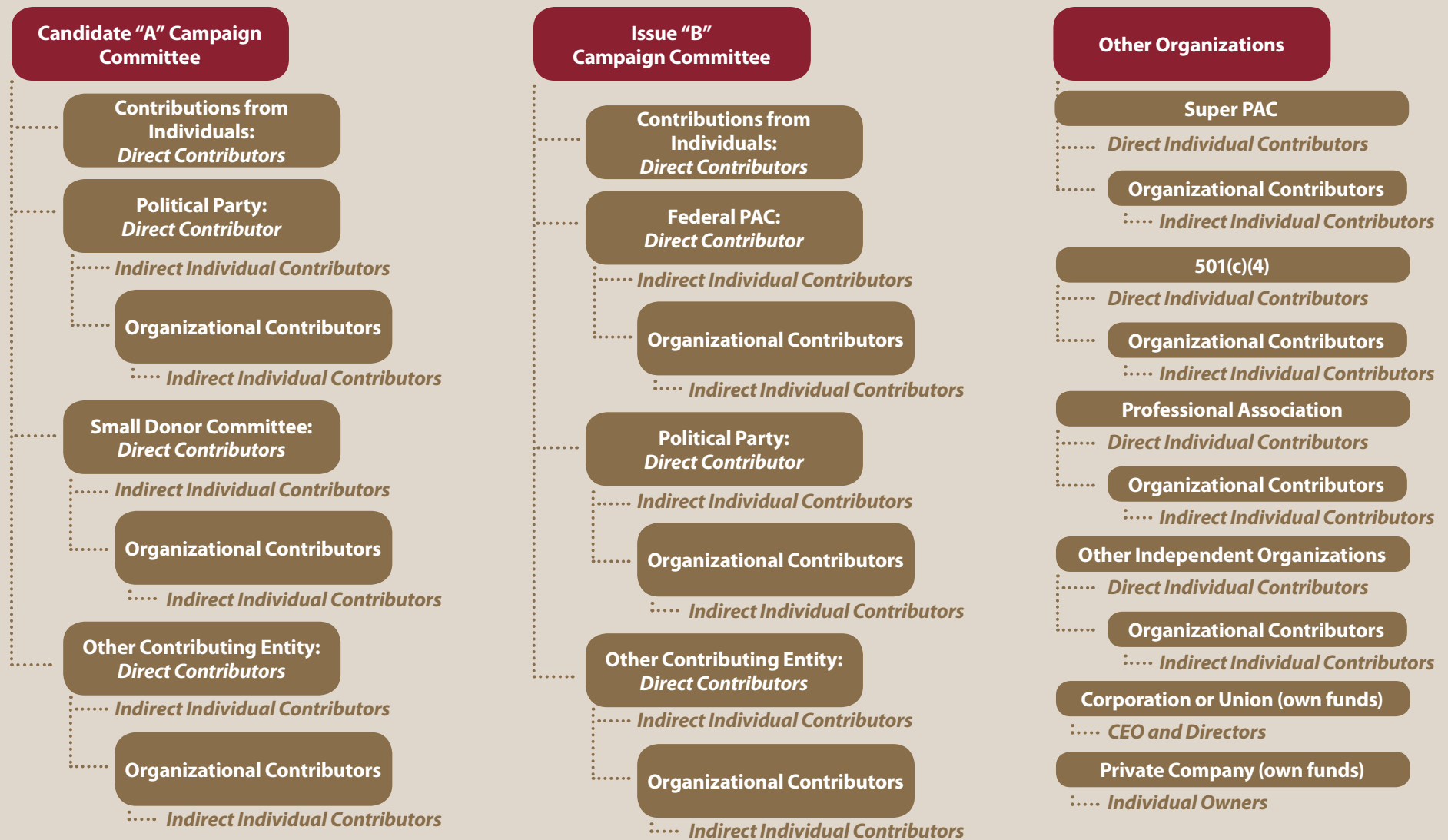


FIGURE 15: MULTI-LEVEL DISCLOSURE OF DIRECT AND INDIRECT CONTRIBUTORS

the flow of information and impairs the ability of voters to make informed choices. From the panel's perspective, full disclosure is the price of participating in the public sphere. Building on Colorado's existing TRACER system, ***the panel recommends that the Colorado legislature adopt a policy of multilevel disclosure of direct and indirect contributors to candidate and issue campaigns, parties, independent groups and other organizations engaged in the political process in Colorado.***

ANONYMOUS LEADERSHIP

When a corporation, union or other entity makes a political contribution using its own funds, the name of the organization is disclosed by the entity receiving the funds. Typically, the names of those occupying leadership roles in the organization are not revealed. This is counter to the principle of individual responsibility that underlies an effective system of disclosure and undermines the transparency required for a full flow of information in the political marketplace.

Failure to disclose the names of individuals leading a corporation or union making political contributions also compromises information available to stockholders or union members who may be completely unaware of the actions taken by the

organization. In the *Citizens United* case, when the Supreme Court rendered its opinion approving independent expenditures by corporations, unions and other organizations, it clearly expected that shareholders, the public and other interested parties would be aware of such expenditures. In its opinion, the Court said: "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions The First Amendment protects political speech; and disclosure permits citizens and shareholders to react ... in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Although political contributions may be deemed non-material in a corporate accounting sense, they can be highly material in a political sense. What amounts to small change to a large company or union can significantly influence the outcome of an election that may alter the direction of public policy. It is inappropriate for those who wish to influence the course of political events to do so behind the curtain of organizational anonymity. Therefore, ***the panel recommends that corporations, unions or other organizations making a political contribution with their own funds be required***

“With knowledge about the sources of money behind candidates, issues and advertisements, voters can make more informed electoral decisions.”

to disclose the names of the chief executive officer and directors for reporting by the receiving entity, and that closely held organizations also report the names of principal owners.

MAJOR CONTRIBUTORS

Individuals and organizations with the capacity to make large donations have long played an important role in elections. This pattern has been supercharged, however, as election spending has skyrocketed. The amounts involved in many political campaigns have become so large that candidates and political fundraisers turn, quite naturally, to those with the capacity to make major contributions: wealthy individuals, corporations, unions, nonprofits and other entities engaged in the political process. In a practical sense, this is quite understandable. The math of raising money, be it for a university, church or political campaign, requires a focus on large donors if funds are to be raised in an efficient manner.

The mechanics of raising money aside, a situation where a few individuals and organizations provide the lion's share of the funding for political campaigns raises the question of special influence. Major contributors enjoy a degree of access

to candidates unimagined by average voters. Large donors mix at small events with candidates, where the price of admission is measured in contributions amounting to hundreds, thousands or tens of thousands of dollars.

From a marketplace perspective, the concentration of large contributors constitutes an oligopoly with a disproportionate ability to shape the political conversation. A relatively few major donors—with the capacity to support extensive advertising campaigns on television, radio and the Internet—can drown out the voices of candidates and others with fewer resources. Major contributors are able to frame issues, define alternatives and influence policy decisions in a way that can limit the flow of ideas and narrow the political discourse.

Whether or not a major donor's views reflect the interests of the majority, there is nothing improper with advocating for a point of view or trying to focus public discussion on a particular issue. Indeed, such activity is an inherent part of the political process. The problem occurs when voters in the political marketplace are not able to readily identify those financially supporting the ideas they are being asked to accept. For that reason, the panel felt that large contributions required a more complete, active approach to disclosure.



Vince Lanuza
Campaign Finance Panel Member

ACTIVE DISCLOSURE OF MAJOR CONTRIBUTORS

Virtually all campaign finance disclosure systems use what might be described as a passive approach to disclosure. Colorado is typical in this regard. Information received by the disclosing authority, the secretary of state, is organized and stored in a database. The data are available for public access, but the desired information, if available, must be uncovered by the interested party. The ease of finding such information varies considerably from state to state. Colorado has a fairly flexible system, but interested citizens may still be required to invest considerable time and effort to identify anything beyond relatively basic information.

The process of multilevel disclosure as described earlier provides a means of identifying individuals who are playing an extraordinary role in financing elections either directly or indirectly. The ability to disclose major direct and indirect donors through “Top 25,” “Top 50” or other lists provides the basis for an active disclosure process. Rather than simply opening up the disclosure database for searches, active disclosure would have ready-made analyses available online.

An active disclosure approach could provide the public with regular reports of the top direct and indirect contributors to candidates, parties, independent expenditure groups, etc. An active process of disclosure would provide voters with a far more robust flow

of information on which to make electoral choices. Given such advantages, *the panel recommends that Colorado adopt a process of active disclosure to publicize lists of major direct and indirect contributors to candidate and issue committees, political parties, independent expenditure groups and other entities involved in the political process.*

REFINING DISCLOSURE POLICIES

As the foregoing reforms suggest, there are a number of opportunities to strengthen disclosure practices in Colorado and at the federal level, and possibly in other states as well. At the same time, it should be emphasized that, relative to many other states, Colorado has significant campaign finance disclosure regulations. Nevertheless, there are several areas where refinements can be made, including thresholds for contribution reporting, consistency in contributor reporting and the need for uniform campaign finance regulations across Colorado.

The state of Colorado, quite appropriately, requires that groups involved in political campaigns or advocacy report all contributions. Contributions of \$20 or more, including non-monetary (in-kind) contributions must be itemized, meaning that the name and address and of each contributor must be reported.

“It is inappropriate for those who wish to influence the course of political events to do so behind the curtain of organizational anonymity.”

Such a low threshold for itemized reporting creates a good deal of work for candidates, issue committees and independent groups with relatively little benefit. It is also far below the national election threshold of \$200 for detailed reporting of contributions. Consistent with its goal of creating campaign finance policies that are both effective and easy to comply with, ***the panel recommends that all political contributions be reported, but the threshold for itemized reporting in Colorado be increased from \$20 to \$200 and indexed for inflation.***

There are other campaign finance regulations that the Colorado legislature may wish to re-examine as well. The state is to be commended for the requirement that political committees must file a Major Contribution report in the TRACER system. That requirement, however, appears to apply only to primary and general elections which are defined by law as those held in even-numbered years. This definition has the effect of excluding major contributor reports for elections held in odd-numbered years. Odd-year elections can be very important and involve a great deal of money. For example, Colorado's TABOR amendment requires that proposals to increase taxes, often hard-fought political contests, be held in odd-numbered years. Another recent example involves two high-visibility recall elections that reportedly attracted more

than \$3 million. In neither of these instances is major contributor reporting required. For this reason, ***the panel recommends that major contributor reporting apply to elections held in both even- and odd-numbered years.***

In Colorado, independent expenditure committees also fall within campaign finance regulations, a practice for which the state is to be commended. However, unlike campaign committees that must file reports within 24 hours of receiving any contribution of \$1,000 or more, donors to IECs are required to file reports for donations of \$1,000 or more, but only within regular reporting schedules. Independent groups themselves should be required to file major contributor reports on the same terms as candidate committees and other participants in the electoral process. For these reasons, ***the panel recommends that Colorado's reporting and disclosure requirements for independent expenditure committees be at least as rigorous as those applicable to candidate and other political committees, including timely major contributor reporting.***

A fourth disclosure enhancement relates to the scope of Colorado's campaign finance regulations. At the local level, the state's campaign finance policies apply to non-home rule units of government. Home rule cities may, if they choose, establish their own regulations, albeit within the ambit of U.S. and

“Strengthening public disclosure of political contributions and spending is one of the most important campaign finance reforms for Colorado and the nation.”

Colorado Supreme Court rulings. The panel believes that, to be most effective, campaign finance policies should be applied consistently across all levels of government within the state. For that reason, ***the panel recommends that all Colorado campaign finance regulations apply to elections at all levels of government within the state, including elections held by home rule units of government.***

Karen Beye
Campaign Finance Panel Member



EXPANDING PARTICIPATION THROUGH OPPORTUNITY

Effective markets require broad participation if they are not to be controlled by an oligopoly of the wealthy, influential and powerful. To achieve broad participation there must be equitable treatment for all involved in the marketplace. In an electoral sense, this means a reasonably level playing field for political candidates and organizations. Creating such conditions will allow competition to flourish, to the benefit of candidates and voters alike.

MARGINALIZATION OF CANDIDATES AND PARTIES

Nowhere is the uneven playing field created by inconsistent campaign finance policies more apparent than in the relative position of candidates and parties compared to independent expenditure organizations. As noted earlier, the growth of independent political expenditures, often called “outside spending,” has been nothing short of astonishing. The dramatic increase in political spending by outside, independent groups is largely a result of their ability to raise unlimited funds.

Independent political groups have the ability to support candidates, as long as expenditures are not coordinated, and to mount attacks on opponents. A classic example of the latter was seen in

the advertising sponsored by the group Swift Boat Veterans for Truth, an independent organization registered as a “527 group” that attacked unsuccessful candidate John Kerry during the 2004 presidential election. The fact that “swiftboating” has become a new American neologism for political action initiated by an outside group speaks to the effectiveness of the group’s efforts.

The rising power of independent expenditure committees has not gone unnoticed by candidates and political parties. Independent groups can raise unlimited amounts of money as parties and candidates remain hamstrung by tight contribution limits. The resulting situation is more than a little ironic. Parties and candidates who must answer to voters are being crowded out by independent groups responsible for nothing other than their own self-interest.

Strict contribution limits, such as those in Colorado, offer a false sense of security. They provide the illusion of controlling money in politics when, in fact, more money is pouring into the electoral process than ever. Worse than a mere illusion, however, contribution limits on candidates and parties reduce the impact of responsible players while favoring those who are able to behave in less responsible ways. It is difficult to accept the assertion that contributions to parties and candidates are more corrupting than

“Parties and candidates who must answer to voters are being crowded out by independent groups responsible for nothing other than their own self-interest.”

those to independent expenditure committees, especially those IECs that are separated from candidates only by a wink and a nod.

There is a real question as to the wisdom of limiting an individual's contribution to a candidate or party, or prohibiting contributions by a corporation or union, when the same individual or organization can give a million dollars to an independent political group that is supporting the same candidate. In fact, given the current political environment—with the ability to hide donations to 501(c)(4) groups, shield contributions through multi-organization transfers and allow company or union officers to remain anonymous—a case can be made that fully disclosed donations to parties and candidates offer no greater risk of corruption than clandestine contributions to independent groups.

Strict contribution limits do not reduce the flow of money into elections; they simply rechannel it. The panel believes that allowing unlimited contributions to candidate committees and parties would strengthen those groups, which are, unlike IECs, actually responsible to the voters. The panel emphasizes that removing contribution limits from candidates and parties must be accompanied by comprehensive disclosure practices such as those recommended in this report. When taken together, improving disclosure and removing contribution limits can

increase transparency and provide a level playing field for all those participating in the political process. For these reasons, *the panel recommends that the Colorado legislature enact necessary legislation and/or propose necessary constitutional initiatives to remove limits on political contributions to candidates and political parties.*

INCUMBENT ADVANTAGE

Figure 16 shows the amounts spent on congressional House races in Colorado during the 2012 election cycle. It illustrates a campaign finance truism: Money flows to incumbents. In all of the 2012 Colorado congressional races except one, incumbents raised far more money than challengers. Not surprisingly, incumbents won every race in which they competed.

What is true in Colorado is also the case nationally. Figure 17 shows incumbent and challenger fundraising information for all U.S. House and Senate candidates in the 2012 election cycle. In Senate races, incumbents raised eight and a half times as much as challengers. In the House, incumbents raised \$6 dollars for every dollar raised by challengers. As in Colorado, Senate and House incumbents won overwhelmingly, with reelection rates typically more than 80 percent. While incumbent advantage is not a new phenomenon, the increasing amounts of money required

in elections create even larger hurdles for would-be challengers, especially those without independent wealth.

To some degree, of course, incumbent advantage is a natural phenomenon. Elected officials holding the power of public office attract those who wish to influence government decision making. From the perspective of the marketplace, however, the unique financial, and hence political, advantages enjoyed by incumbents effectively reduces competition. In the panel's view, the goal is not to disadvantage incumbents but to encourage broad participation in the electoral marketplace of ideas.

PUBLIC FINANCING

In the same way that removing contribution limits levels the playing field for candidates and parties vis-à-vis IECs, a program of public support may encourage new candidates, who lack the fundraising advantages of incumbency, to consider seeking public office. Public financing also has the potential to enhance the level of

engagement by voters by encouraging them to contribute to the candidates and parties of their choice. Given those advantages, the panel viewed public financing as an idea well worth considering as a means to

increase the level of participation by both candidates and voters, thus strengthening the electoral marketplace.

The notion of public financial support for candidates is not new; indeed, efforts to provide public funding date back well over 100 years. As noted earlier in the report, the legality of public financing was affirmed in the case of *Buckley v. Valeo* in 1976. Although not currently in effect in Colorado, public support for elections exists at the federal level and is supported in one form or another by a number of states.

A primary goal of virtually all public financing programs is to increase participation in the political process by both candidates and citizens. Currently, some 24 states have programs that provide some type of public support for election campaigns. Seven states have tax incentives for donors, nine offer grants to political parties and 14 offer public funds directly to political candidates. At the national level, citizens can participate in a tax checkoff program that provides federal funds to help support presidential candidates. In addition, a number of municipalities have public financing programs for candidates seeking local office.

In the case of public financing programs that offer financial grants of one type or another to candidates and political parties, participation by the candidates or parties must be voluntary. As



John Morrison
Campaign Finance Panel Member

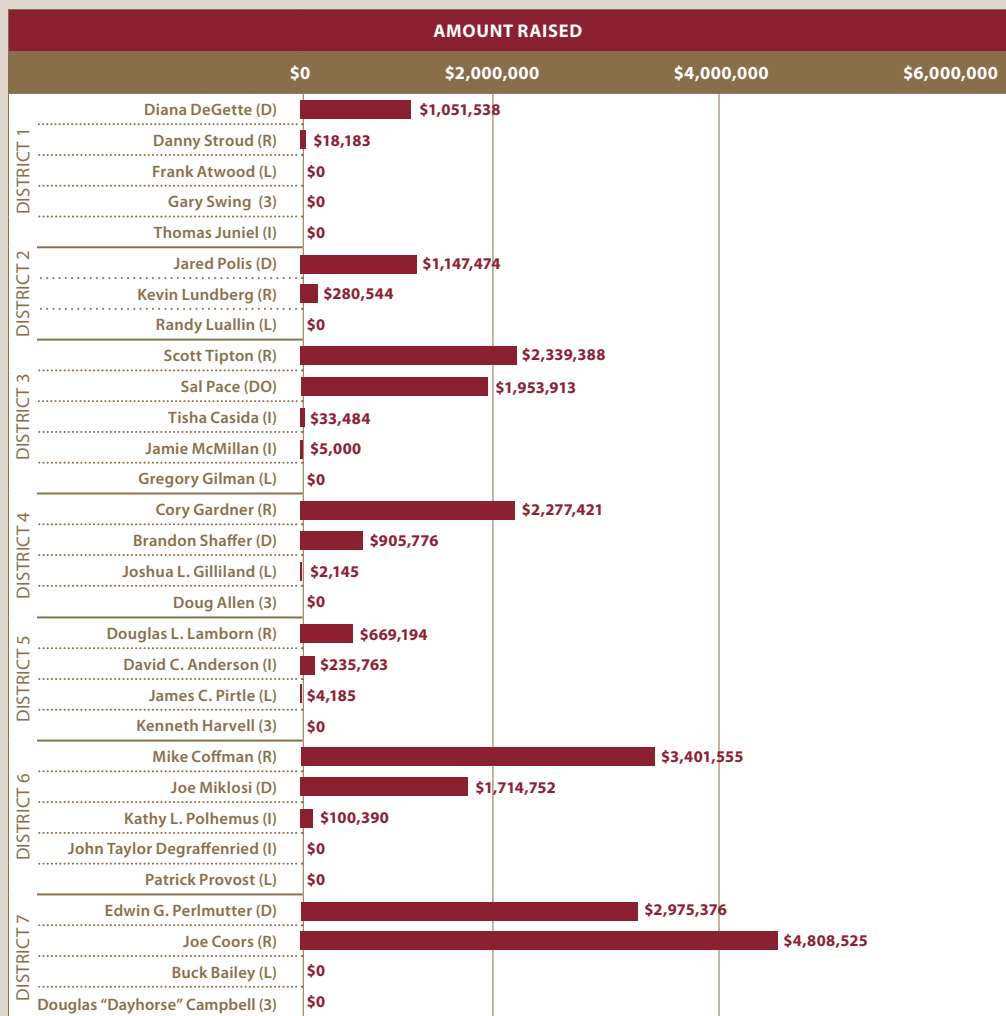


FIGURE 16: COST OF U.S. HOUSE RACES IN COLORADO, 2012 ELECTION CYCLE

Source: Center for Responsive Politics

U.S. SENATE RACES			
TYPE OF CANDIDATE	TOTAL RAISED	# CANDIDATES	AVG. AMOUNT RAISED
INCUMBENT	\$295,428,734	25	\$11,817,149
CHALLENGER	\$177,714,533	129	\$1,377,632
OPEN SEAT	\$294,029,423	103	\$2,854,655
GRAND TOTAL	\$767,172,690	257	\$2,985,108
U.S. HOUSE RACES			
TYPE OF CANDIDATE	TOTAL RAISED	# CANDIDATES	AVG. AMOUNT RAISED
INCUMBENT	\$678,820,329	418	\$1,623,972
CHALLENGER	\$221,084,546	828	\$267,010
OPEN SEAT	\$174,511,600	365	\$478,114
GRAND TOTAL	\$1,074,416,475	1,611	\$666,925

FIGURE 17: INCUMBENT AND CHALLENGER FUNDRAISING, 2012 ELECTION CYCLE

Source: Compiled by the Center for Responsive Politics

with public funding for presidential candidates, nearly all of the grant programs at the state level require that those who choose to participate must limit their campaign spending. Public funding programs that provide grants to parties and candidates always require an administrative mechanism to distribute funds and monitor expenditures. Given the requirement to limit expenditures in the face of rapidly rising campaign costs, this has the potential to discourage participation. That was certainly the case during the 2012 presidential election where both candidates declined to accept public funding.

Public financing programs that use tax credits are quite distinct from grant programs. They are automatically voluntary since a contributor must choose to file for a tax credit. Typically, the maximum tax credit available to political contributors is \$100 or less. For example, in both Oregon and Ohio the maximum tax credit is \$100 for a couple filing jointly. Tax credits for political contributions require little in the way of administrative expense since the mechanism for handling state income taxes already exists.

As the panel examined various types of public financing programs, it concluded that providing a limited tax credit to individual contributors was the least complex and most effective way to encourage participation by candidates and voters. Key elements of such a program would include:

- A 100 percent individual tax credit, not a tax deduction, for those making political contributions to candidates and major or minor political parties, excluding contributions to independent expenditure organizations
- A \$100 maximum limit per taxpayer on contributions eligible for the tax credit, indexed for inflation

The panel concluded that there were a number of reasons to consider the use of a tax credit to provide public financial support in Colorado. Tax credits allow citizens to make contributions to the candidate or party of their choice rather than having general taxes support candidates on a formulaic basis. A 100 percent tax credit provides a direct incentive—in effect, a refund—to citizen contributors, whereas the use of a deduction significantly dilutes the benefit to potential donors.

The panel does not believe that candidates or parties receiving contributions as a result of a tax-credit incentive should be required to voluntarily limit political spending. Limiting campaign spending further marginalizes the position of candidates and parties vis-à-vis independent expenditure committees. In addition, effective enforcement of spending limitations would require a regulatory agency, expanding the public bureaucracy and increasing taxpayer costs.

Consistent with its goal of simplifying campaign finance procedures when possible, the panel prefers a more direct approach. While candidates and others would report contributions as they do now, filing for the tax credit would be the responsibility of the donor. As with other tax credits, no special documentation would be required of the donor unless the tax return was audited. This approach should result in virtually no additional administrative cost to implement a tax credit program.

By limiting the maximum amount of contributions eligible for a tax credit, the public cost to the state can be held to reasonable levels. For example, in fiscal year 2011–2012, 2.65 million individual income tax returns were processed in Colorado producing net revenue of \$4,849,859,145. Estimates of utilization rates for tax credit programs in other states vary based on the particulars of the program. The range of participation rates typically falls between 2 percent and 7 percent of those filing tax returns.

Oregon's experience with tax credits for political contributions has resulted in an average participation rate of about 5 percent over several years. Based on a 5 percent utilization estimate, Colorado would experience about 132,500 tax filers claiming credits for political contributions. Assuming that each eligible tax filer claimed the maximum allowable credit of \$100, the total cost to the state

in terms of lost revenue would be \$13,250,000. Put in perspective, the estimated \$13 million cost to fund tax credits for political contributions amounts to 0.27 percent (0.0027) of individual income tax revenue or 0.18 percent (0.0018) of the Colorado FY 2011–2012 budget of \$7.27 billion dollars.

The panel believes that spending less than two-tenths of 1 percent of the state budget in an effort to expand candidate and voter participation in the electoral process is a sound experiment. Such an investment offers the potential to encourage new candidates by increasing the fundraising opportunities from small donors while engaging citizens not previously contributing to candidates and parties. To encourage broad participation in the electoral process, ***the panel recommends that Colorado adopt a limited state income tax credit for individual political contributions made to candidates and parties.***

Mike St. John
Campaign Finance Panel Member



Summary of Conclusions and Recommendations

The panel's conclusions and recommendations are interrelated and are best considered as a group. In some cases, adopting one recommendation alone could cause more harm than good. For example, allowing unlimited contributions to parties and candidates without instituting thoroughgoing disclosure requirements such as those recommended herein could adversely affect the campaign finance environment rather than improve it.

THE REALITY OF UNLIMITED MONEY

The panel concludes that future campaign finance reforms need to accommodate an environment where unlimited political contributions and spending are the dominant reality.

A MARKETPLACE OF IDEAS

The panel concludes that campaign finance policy in Colorado should be grounded on the principle of creating an effective marketplace of ideas, one that facilitates the free flow of information and encourages broad participation in the electoral process.

INDIVIDUAL DISCLOSURE

The panel supports the emphasis on personal responsibility for political speech provided by the Colorado Constitution, and recommends that the principle of disclosure at the individual level guide campaign finance policies in Colorado and the nation.

HIDDEN CONTRIBUTIONS

The panel recommends that all 501(c)(4), (5) and (6) organizations engaging in the political process in Colorado, whether Colorado-based or not, offer their donors the ability to choose whether they wish to allow their contribution to be used for political advocacy purposes.

The panel recommends that, wherever domiciled, every 501(c)(4),(5) and (6) organization involved in political activity in Colorado be required to disclose the names of all individuals who have chosen to allow their contributions to be used for political advocacy.

MULTILEVEL DISCLOSURE

The panel recommends that the Colorado legislature adopt a policy of multilevel disclosure of direct and indirect contributors



Michele Bloom
Campaign Finance Panel Member

to candidate and issue campaigns, parties, independent groups and other organizations engaged in the political process in Colorado.

ANONYMOUS LEADERSHIP

The panel recommends that corporations, unions or other organizations making a political contribution with their own funds be required to disclose the names of the chief executive officer and directors for reporting by the receiving entity, and that closely held organizations also report the names of principal owners.

ACTIVE DISCLOSURE OF MAJOR CONTRIBUTORS

The panel recommends that Colorado adopt a process of active disclosure to publicize lists of major direct and indirect contributors to candidate and issue committees, political parties, independent expenditure groups and other entities involved in the political process.

REFINING DISCLOSURE POLICIES

The panel recommends that all political contributions be reported, but the threshold for itemized reporting in Colorado be increased from \$20 to \$200 and indexed for inflation.

The panel recommends that major contributor reporting apply to elections held in both even- and odd-numbered years.

The panel recommends that Colorado's reporting and disclosure requirements for independent expenditure committees be at least as rigorous as those applicable to candidate and other political committees, including timely major contributor reporting.

The panel recommends that all Colorado campaign finance regulations apply to elections at all levels of government within the state, including elections held by home rule units of government.

MARGINALIZATION OF CANDIDATES AND PARTIES

The panel recommends that the Colorado legislature enact necessary legislation and/or propose necessary constitutional initiatives to remove limits on political contributions to candidates and political parties.

PUBLIC FINANCING

The panel recommends that Colorado adopt a limited state income tax credit for individual political contributions made to candidates and parties.

Glossary of Commonly-Used Terms

The following glossary presents nontechnical definitions of terms commonly used in connection with campaign finance policies.

Candidate Committee – accepts contributions and makes expenditures to further a candidate’s bid for public office.

Political Committee – a group that has accepted or made contributions or expenditures in excess of \$200 to support or oppose the election of one or more candidates.

Small Donor Committee – a form of political committee that may only accept contributions of \$50 or less per person per year from individuals who are U.S. citizens. Colorado law permits small donor committees to make larger contributions to candidates and parties than political committees.

Issue Committee – any group that supports or opposes any ballot issue as its major purpose and has contributions or expenditures in excess of \$200.

Federal Political Action Committee (PAC) – an organization that campaigns for or against candidates, ballot initiatives or legislation.

There are two types of political action committees registered with the Federal Election Commission.

Connected committees – established and administered by corporations, unions or membership organizations; can only solicit contributions from its members.

Non-connected committees – not sponsored by or connected to any of the aforementioned entities; free to solicit contributions from the general public.

Independent Expenditure Committee (IEC) – an organization that may raise unlimited sums of money from corporations, unions, associations and individuals, and spend unlimited sums to expressly advocate for or against political candidates. Unlike traditional PACs, Super PACs are prohibited from donating money directly to political candidates and from “coordinating” expenditures with a candidate, candidate committee, or campaign. They are also required to include “paid for by” statements in certain communications.

527 Group – a tax-exempt organization formed under Sec. 527 of the Internal Revenue Code (IRC) that provides a tax exempt status

for political activities. Technically, almost all political committees get their tax exempt status from IRC §527, but the term “527 group” is often applied to organizations that are not regulated under state or federal campaign finance laws because they do not “expressly advocate” for the election or defeat of a candidate or party. Instead they are used to raise money to spend on issue advocacy and voter mobilization.

There are no upper limits on contributions to 527 groups and no restrictions on who may contribute. There are no spending limits imposed on these organizations; however, they must register with the IRS, publicly disclose their donors and file periodic reports.

501(c) Group – a tax-exempt nonprofit organization formed under Sec. 501(c) of the IRC that can engage in varying amounts of political activity, depending on the type of group.

501(c)(3)s are groups that operate for religious, charitable, scientific or educational purposes and may not engage in political activity. They are, however, allowed to offer “public education.” These groups are absolutely prohibited from endorsing candidates and may not suggest how to vote on a particular issue.

501(c)(4) groups are commonly called “social welfare” organizations; they may engage in political activities as long as these activities do not become their primary purpose. Similar restrictions apply to Section 501(c)(5) labor and agricultural groups, and to Section 501(c)(6) business leagues, chambers of commerce, real estate boards and boards of trade.

(c)(4) nonprofit groups involved in political activity have few requirements beyond reporting their expenditures, because they are not defined as political committees under the Federal Election Campaign Act. They are not required by law to publicly disclose information about their donors.

Hidden or “Dark Money” – a term used to describe funds used to support a candidate or issue, the contributors of which are not disclosed before an election.

Organizational Screening – political contributions that are passed through multiple organizations.



June Travis
Campaign Finance Panel Member

Acknowledgments

PANEL PRESENTERS

The DU Strategic Issues Panel on Campaign Finance wishes to acknowledge and extend its sincere appreciation to the following individuals whose expertise, information and viewpoints contributed to the panel's process and to this report. Titles shown reflect the positions held by individuals at the time of their presentation to the panel.

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Hugh Rice

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Campaign Finance Panel Member





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