The States of Campaign Finance Reform

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Published by The Ohio State University Press

Gross, Donald A. and Robert K. Goidel.
The States of Campaign Finance Reform.
The Ohio State University Press, 2003.
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Introduction

In Washington, D.C., the campaign finance charade has played out with each new session of Congress. Reform-minded legislators—the John McCains and Russ Feingolds of the world—map out relatively modest proposals aimed at curbing some of the worst abuses of the current system of raising and spending campaign dollars. And though there is often a great partisan divide in terms of identifying the vilest offenses and the most palatable reforms, there is also a considerable gnashing of teeth over a system that just doesn’t seem to work the way it should. Amidst this cacophony of discontent, reform-minded legislators have struggled to find majorities large enough to overcome a Republican filibuster in the Senate or a presidential veto. Without the bankruptcy of the once mighty energy corporation Enron, and the subsequent publicity given to Enron’s considerable political influence—much of which was bought and paid for with campaign contributions—these reform-minded legislators would have continued to struggle with, and would have most likely been frustrated, once again, by, the intransigence of Washington politics.

In the Senate, Mitch McConnell (R-KY) has earned a reputation as campaign finance reform’s worst nightmare. Despite its apparent popularity, McConnell willingly, even eagerly, leads the charge to defeat reform. Having finally failed in his efforts to keep campaign finance reform from becoming law, McConnell has already promised to be the lead plaintiff on the first constitutional challenge to the new law. On this point, McConnell contends that no one has ever been defeated for voting against, or working against, campaign finance reform. At least McConnell is honest in his opposition. Many of the legislators who vote in favor of reform are secretly pleased when reform efforts are defeated, appreciating McConnell’s efforts even as they are officially recorded as his opposition. For nearly thirty years, campaign reform was discussed in the nation’s capital, while only rarely materializing, with a priori knowledge that its enactment was improbable. The consideration of reform temporarily appeased an increasingly cynical and alienated public while feeding the media establishment with sound bites on the evils of money. But, in the long run, it undoubtedly increased public cynicism and added to public alienation, even as it protected individual members of Congress who could claim to be in favor of reform without ever having to abide by its provisions.
INTRODUCTION

In the spring of 2002, in the wake of the Enron scandal, the landscape of campaign finance reform was drastically altered as the most successful fundraiser in the history of American politics, President George W. Bush, signed into law the most significant federal campaign finance reform legislation since the post-Watergate reforms of the mid-1970s: McCain–Feingold aimed at curbing what many see as the most egregious problems in the current system of campaign finance, soft money and so-called issue advocacy campaigns. McCain–Feingold passed by a filibuster-proof sixty votes in the Senate—even though a mere six months earlier the legislation had appeared, once again, to be dead. Just as the Teapot Dome and Watergate scandals moved reluctant politicos to pass reform legislation in the past, the fall of the corporate energy giant Enron changed the dynamics of reform efforts in Congress. Enron had made major contributions to President Bush and to numerous members of Congress, Republicans and Democrats alike. Where McCain–Feingold had appeared dead in the Republican-controlled House of Representatives, it now passed with 240 votes. And, where President Bush had opposed McCain–Feingold during his presidential campaign, he reluctantly signed it into law.

McCain–Feingold was a significant step toward addressing reformist concerns with soft money. But the focus in Washington on McCain–Feingold left other issues of campaign finance reform in the shadows. In states as diverse as Arizona and Massachusetts, the drive for reform moved beyond discussion to real, tangible changes in state campaign finance laws, even before the Enron scandal became headline news. Where incumbent legislators resisted, reformers made use of the levers of direct democracy and took the case for reform directly to the people. “In 1996 alone, voters in Arkansas, California, Colorado, Maine, Massachusetts, Montana, and Nevada voted in favor of ballot initiatives affecting campaign finance.” Mitch McConnell may be correct in his assertion that opposition to reform has few, if any, electoral repercussions; but when citizens are given the opportunity to vote directly on campaign reform, reform generally wins. And in some cases, as in Massachusetts in 1998, it wins big.

But winning is hardly the point; better, more competitive, more participatory elections are the point. Otherwise reform is at best symbolism without substance, and at worst, a hindrance to democratic governance. Yet gauging the electoral consequences of reform is an exercise fraught with the potential for error. In this respect, elections are complex social and political phenomena — of which campaign financing plays only a part. In some elections, the race for campaign dollars plays a major role; in others, it plays a secondary or even tertiary role, trumped by issues of character, scandal, and incumbency. To understand the effects of campaign finance reform on the political process, one must begin by acknowledging that reform has both considerable promise and considerable limitations.
GOVERNOR JESSE VENTURA: THE PROMISE OF REFORM

In contemporary politics, no figure has done more to galvanize public opinion than Jesse “The Body” Ventura. His surprise victory in Minnesota in 1998 sent shockwaves through the political establishment. Political commentators and experts alike have struggled with the meaning of his election: Was he a harbinger of things to come? Was there some great political unrest lurking just below the surface of economic tranquility? Or was he a statistical aberration, a one-time chance occurrence? Politics has long attracted its own assortment of former actors, astronauts, and television weathermen, but there was something different about this former professional wrestler, talk show host, mayor, and Navy Seal; something more populist, more crass, more profane. But whatever one thinks about the meaning of his election, this much is clear: Without public financing, there would have been no Governor Ventura.

Despite an uncanny ability to attract free media coverage, the Ventura campaign was never very successful at raising money, a fact that belies arguments that campaign contributions seek out attractive, electable candidates. By mid-summer, it was questionable whether the Ventura campaign would be able to raise enough money to qualify for public financing. Having raised only $12,000 by mid-July, the campaign needed to raise an additional $35,000 by the end of August in contributions of $50 or less to qualify for public funding. In addition, because Ventura was running as a third party candidate, there were no guarantees that public funding would be forthcoming. The public financing provisions in Minnesota’s law provides monies be granted to third party candidates retroactively, and then only if they receive at least 5 percent of the vote. So the total amount of money allocated to the Ventura campaign would be based on the campaign’s showing in the general election. This uncertainty meant that the Ventura campaign would have to secure loans which could then be paid back after the election. With public opinion polls indicating that Ventura’s grassroots campaign was taking hold, the campaign was able to secure $330,000 in loans which in turn allowed Ventura to take his campaign to the television airwaves. The ads, which, among other things, portrayed Jesse Ventura as an action figure hero, netted him additional free local and national news coverage and was critical to his election as governor. As political scientist Steven Schier wrote about the Ventura candidacy, “Campaign finance laws do have consequences. No public money, no ads, no victory.”

In Minnesota, public financing helped transform Jesse Ventura from a media sideshow into the state’s highest elected official. But the promise of reform, illustrated by Jesse Ventura’s election, is much larger than a personal victory for a third party candidate. Campaign finance reform as an ideal offers the possibility that candidates outside of the mainstream, who may be judged unelectable
by traditional funding sources, can get at least enough funding to be electorally viable. Campaign finance reform, in the ideal, offers the possibility that the Jesse Venturas of the political world will at least get a hearing, and that once heard, a few may even win.

**REFORM IN KENTUCKY: A TALE OF TWO ELECTIONS**

If Jesse Ventura represents the possibility of reform, the experience in Kentucky over the past two gubernatorial elections represents both its promise and its limitations. Like many Southern states, Kentucky has long been a bastion of Democratic Party strength, with Republicans only recently gaining ground. Registered Democrats continue to outnumber Republicans by a rate of about 2 to 1. Until the Republican Party finally gained control of the Kentucky Senate in 1999 as a result of two state senators switching parties, the Democrats had held a majority in both houses of the Kentucky legislature for the entire twentieth century. Further, Kentucky had not elected a Republican governor since 1967. The partisan imbalance in the state, and the fact that governors were prohibited from seeking reelection, was very much reflected in how gubernatorial elections were conducted in the state prior to 1992. The Democratic Party primary was seen as the major step to becoming governor. Democratic primaries were crowded, competitive, and expensive. Republican primaries that were expensive and had more than one major candidate were an exception. In general elections, Republican gubernatorial candidates were historically underfunded and, subsequently, fared poorly.

In 1992, the Public Financing Campaign Act was passed by the Kentucky General Assembly and signed into law by the governor. The act serves as a good example of the type of comprehensive campaign finance reform that has been enacted in a number of states in recent years. First, the law placed strict new limits on the size of contributions to gubernatorial campaigns. Individuals, PACs (political action committees), and state or county executive committees of a political party were limited to contributions of no more than $500 for any one election. Prior to 1992, such contributions were limited to $4,000 for any one election. The law also continued Kentucky’s ban on contributions from corporations and labor unions. Limits on the use of personal loans by candidates were put in force. And finally, candidates were prohibited from receiving any contribution later than twenty-eight days before the election of interest.

A second important component of the Kentucky law was the creation of the Registry of Election Finance. The Registry is an independent agency composed of seven members. Four members are appointed by the governor, while the Auditor of Public Accounts, Attorney General, and Secretary of State each appoint one member. All are subject to Senate confirmation. The Registry is responsible
for receiving campaign finance reports from candidates and making them available for public inspection. In fact, much of the reasoning behind the twenty-eight-day period discussed in the preceding paragraph was to help insure public knowledge of contribution patterns before an election. The Registry is also required to issue summary reports after an election. It has the authority to conduct random audits of campaign committees and to use civil action to try and enforce many of the provisions of the campaign finance law. The Registry has the authority to initiate investigations, including the use of subpoena power, and forwards to the Attorney General any violations that might result in civil or criminal prosecution.12

Probably the most significant change resulting from the 1992 legislation, however, was the creation of a public financing system for gubernatorial elections and associated expenditure limits. The law established initial voluntary expenditure limits of $1.8 million for the primary and $1.8 million for the general election. The limits are adjusted by the consumer price index before each gubernatorial election to take into account inflationary effects in the economy. The law encourages acceptance of the expenditure limits by providing public campaign subsidies only to those candidates who agree to abide by the expenditure limits. Once a candidate achieves a minimum threshold of $300,000 in private contributions and agrees to abide by the expenditure limits, the state then matches each private contribution at a rate of 2 to 1 to a maximum state subsidy of $1.2 million.13 As a further incentive to induce all candidates to abide by the voluntary expenditure limits, if any one candidate in an election exceeds the limit, all other candidates in the election are allowed to exceed the expenditure limit while continuing to receive matching funds. If a candidate refuses public funds in the primary, he or she cannot receive public funds in the general election. And if a candidate accepts public funds in the primary, he or she must utilize the public subsidy in the general election and abide by the expenditure limit. A final critical component of the law is a requirement that each candidate receiving public funds must participate in publicly televised debates, with the maximum number of debates set at six.

Prior to the adoption of the 1992 reform act, Republicans were consistently underfunded relative to their Democratic opponents. In the general elections of 1979, 1983, 1987, and 1991, Republican gubernatorial candidates spent $1,225,148, $1,364,700, $263,459, and $1,813,362, respectively. The equivalent figures for Democratic Party candidates were $1,863,250, $1,559,510, $3,141,463, and $3,426,948. In every case the Democratic candidate was able to outspend his or her Republican opponent. Only in 1983 was the Republican candidate able to come within $200,000 of his Democratic opponent. Notably, the 1983 election was also the most competitive of these four elections in that the Democrat received “only” 55 percent of the vote in the general election. The Democrats got
59 percent of the vote in 1979 and 65 percent of the vote in 1987 and 1991. Although voter turnout reached nearly 40 percent of the voting age population in 1983, it had dropped to near 30 percent for the elections of 1987 and 1991.

The 1995 gubernatorial election was the first election operating under the provisions of the new campaign finance act. Because of a state constitutional amendment, it was also the first gubernatorial election in over a hundred years where the winning candidate would actually be able to run for reelection. Results of the 1995 election seemed to support the rhetoric of those who had fought for the passage of the campaign reform act. All major candidates agreed to abide by the new expenditure limits. The Democratic primary had four candidates, with the winning candidate receiving about 44 percent of the vote and two other candidates each receiving over 20 percent. Over $6.7 million dollars was spent by all of the candidates in both primaries. In the general election, each of the major candidates spent approximately $1.8 million, with the Republican slightly outspending the Democratic candidate. The level playing field in terms of campaign finances appeared to spur a heavily contested election. Polls immediately before the election indicated a dead-even race and Republicans went into the last weekend feeling confident. The Democratic candidate won, but with slightly less than 51 percent of the vote, a victory margin of less than 21,400 votes out of almost 980,000 votes cast.

Proponents of the campaign finance law felt vindicated. Individual candidate expenditures were reduced from what had been spent in recent gubernatorial elections, and yet the Democratic primary remained competitive. Further, the ability of serious candidates to raise sufficient funds in order to reach the minimum threshold for matching funds minimized fears that the $500 contribution limit might make it difficult for candidates to raise money. While voter turnout was a little over 30 percent of the voting age population in 1987 and 1991, it reached over 35 percent in 1995, perhaps because the election was the most competitive gubernatorial election in Kentucky in nearly three decades. From the perspective of its supporters, the campaign finance law had worked: candidates were able to raise sufficient funds to run a viable campaign; total expenditures had been reduced; candidates now had equal financial opportunities; voter turnout had been increased; and, most importantly, voters were given a competitive election.

As the 1999 gubernatorial election approached, growing Republican strength in the state of Kentucky was evident. After the 1998 congressional elections, both of Kentucky’s U.S. senators and five of the state’s six congressional representatives were Republicans. And, as stated above, in the summer of 1999, Republicans took control of the Kentucky Senate when two state senators switched parties. With the state increasingly tilted toward the Republican Party and a public financing system that allowed for greater fundraising parity, the
1999 election seemed the ideal setting for Republicans to make a strong run at the governor’s office. Standing in the way of a possible Republican victory, however, was incumbent Governor Paul Patton, the first Kentucky governor able to run for reelection in over one hundred years.

With a popular incumbent governor running for reelection, almost every aspect of the campaign finance law that seemed to work so well in 1995 proved to be a failure in 1999. No major figure in the Republican Party sought the nomination for governor. The eventual Republican nominee, publicist Peppy Martin, received only minimal help from the Republican Party. Kentucky’s senior U.S. senator and major national fundraiser, Mitch McConnell, refused to endorse her and was generally seen as hostile to her candidacy. As the election approached, the only question of interest was whether or not the Republican candidate would end up in third place behind Reform Party candidate Gatewood Gailbraith, a candidate notable largely for advocating the legalization of hemp.

In the general election the Democratic incumbent received more than 61 percent of the vote, while his Republican challenger finished a distant second with just over 22 percent of the vote. Only about 22 percent of the voting age population turned out to vote. No candidate received public funding for the 1999 gubernatorial election. According to Kentucky’s campaign finance law, at least two candidates must meet the minimum threshold level of $300,000 before any candidate can receive public funds. Only the incumbent governor ever met this threshold, spending approximately one million dollars in the fall campaign. Both the Republican candidate and the Reform Party candidate spent less than $50,000 in the general election. Thus, unlike the 1995 gubernatorial election, the election of 1999 was again characterized by a candidate with a massive financial advantage—this time a powerful incumbent opposed by two underfunded opponents—resulting in an uncompetitive, low voter turnout election.

What happened in 1999? Critics of the campaign finance reform law argue that its provisions made it too difficult for an opposition candidate to raise sufficient funds to seriously challenge an incumbent governor. The expenditure limits, they reason, were too low for a challenger to mount a credible campaign. As a result, no major Republican candidate chose to run for governor in 1999. Supporters of campaign finance reform contend that while financial considerations were a component of the campaign in 1999, financial considerations were secondary to other factors, the most important being a popular incumbent running for reelection. Disputes within the Republican Party after Martin won the nomination only made a bad situation worse. In this sense, Republican decisions made long before the primary helped insure the reelection of Governor Patton in an uncompetitive, low turnout election. Had the 1992 campaign finance law not been in force, reformers contend, little would have changed in how the 1999 election developed.
Perhaps what the two Kentucky elections and the Jesse Ventura election in Minnesota best illustrate, however, is the inherent problem in trying to evaluate the consequences of campaign finance reform with a limited set of elections or within a single electoral context. Anecdotal evidence may make for good storytelling, but it hardly provides the basis for broad generalizations regarding the electoral consequences of reform. Clearly, a more comprehensive approach is needed.

EVALUATING CAMPAIGN FINANCE REFORM

Over the past several decades much has been written about the ways candidates raise and spend money. Yet, despite an impressive body of literature, we can say very little with certainty about the electoral consequences of campaign finance laws. In part, this uncertainty reflects the fact that, at least since 1974, much of the research on campaign finance has focused on U.S. national elections. Though the system of campaign finance has proven to be highly malleable (the Federal Election Campaign Act was amended in 1976 and 1979), the statutes governing federal campaign fundraising have, until 2002, remained relatively constant. Therefore, our understanding of the electoral consequences of campaign finance laws at the national level is largely (though not entirely) limited to a single regulatory regime—the Federal Election Campaign Act of 1971 and its subsequent amendments.

Works evaluating campaign finance at the state level have more regimes to analyze, but nevertheless were limited in scope. First, most of the earlier works focused on either a single state or limited number of states and a limited time frame. More recent studies have expanded the scope of the analysis and provided considerable insight into the “lost world” of state-level campaign finance, but have also been limited in terms of their ability to provide a comprehensive assessment of state reform efforts. For example, writing the conclusions for the most exhaustive study of state legislative campaign finance to date, Malcolm Jewell and William Cassie observe that there is not enough evidence “to conclude that public financing would succeed or fail in meeting the goals of reformers.” In his analysis, Robert Hogan concludes that while campaign finance laws have a statistically significant impact on campaign spending in state legislative elections, the impact is relatively modest compared to other factors. Along these lines, Hogan finds that both contribution limits and public funding reduce campaign spending, but that “these effects are limited primarily to incumbents.”

Second, most of what we know about campaign finance has been derived from work on campaign spending in legislative elections, the findings of which may or may not be applicable to gubernatorial campaigns. Looking at the effects of candidate spending on electoral outcomes, Randall Partin found that
gubernatorial elections are “a horse race of a different color” in that, unlike legislative elections, incumbent spending matters almost as much as challenger spending. In addition, gubernatorial elections are more visible; generate greater media coverage; attract more experienced, better funded opposition candidates; and are generally more competitive than legislative elections. As such, campaign finance reforms may have a much different effect on gubernatorial than on legislative campaigns.

As this brief review of the literature illustrates, works on campaign finance reform have developed into two often separate strands. Literature focusing on campaign finance at the national level has been methodologically sophisticated, but suffers from limited variance in campaign finance laws. The state-level literature, which has the potential to say much more about the electoral consequences of campaign finance laws, has tended to be limited in scope because of practical limitations in data collection. Therefore, generalizations about the consequences of state campaign finance regulations are often limited as well.

This book attempts to overcome the limitations of the separate literature strands by focusing on the impact of campaign finance laws on candidate spending, voter turnout, electoral competition, and electoral outcomes in gubernatorial elections. We improve on prior work in several ways: First, utilizing data on gubernatorial elections, we are able to account for the variance in state campaign finance laws across all fifty states, and to do so over a considerable time frame (1978–97). Because state legislatures have been more willing to impose reform on gubernatorial candidates than on themselves, there is considerably more variance in public financing schemes (and spending limits) for gubernatorial elections than for state legislative elections. Second, by paying greater attention to the measurement of state reform efforts we are better able to distinguish between the effects of contribution limits, spending limits, and public financing on the electoral process. Third, with these improved measures of the state legal framework, we are able to make stronger, more convincing inferences regarding the effects of campaign finance reform on candidate spending, voter turnout, electoral competition, and electoral outcomes.

We begin in chapter 1 by providing a brief history of campaign finance reform at the state level, beginning with Maryland’s effort to regulate the use of liquor to buy votes and continuing through the recent wave of “clean money” initiatives. In chapter 2, we consider some of the arguments made for and against specific reform provisions (contribution limits, spending limits, and public financing). Though reform is often discussed as though it were a singular measure, it is, in reality, a patchwork of different measures, each with a different intent and set of consequences. In chapter 3, we outline patterns of spending in gubernatorial elections. How has spending increased over time? What are the patterns of spending across the states? We examine the importance of population
size, geographic size, and economic well-being to the evolution of spending patterns. Finally, spending in gubernatorial elections is compared to spending in House (aggregated by state) and Senate elections. In chapter 4, we expand this analysis to look more specifically at the impact of state campaign finance laws on candidate spending. In this respect, we examine the measurable impact of contribution limits, spending limits, and public financing on candidate campaign spending in gubernatorial elections.

In chapter 5, we examine patterns of electoral competition in gubernatorial elections, and then investigate whether these patterns of competition are related, either directly or indirectly, to state campaign finance laws. In chapter 6, we analyze whether, and how, campaign finance laws affect electoral outcomes. In particular, we evaluate how contribution limits, spending limits, and public financing affect the “incumbency advantage” and the partisanship of electoral outcomes. In chapter 7, we turn our attention to voter turnout and, in particular, to the question of whether patterns of voter turnout are related to state campaign finance laws. Finally, in chapter 8, we summarize the major findings of the text, provide an analysis of some recent campaign reform efforts, and offer suggestions for effective campaign finance reform.