The States of Campaign Finance Reform

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Though often discussed as an aggregate, campaign finance reform is in reality a collection of smaller measures each with a different intent and set of likely consequences. The potential combinations of these various measures (contribution limits, public funding, spending limits, disclosure requirements) into comprehensive reform packages are virtually limitless—as are the potential consequences of these various reforms. Despite the variety of reform options and potential consequences, the temptation to overgeneralize about the electoral consequences of reform is rarely resisted by either the supporters or opponents of reform.

For supporters, reform reinvigorates democratic governance. By leveling the playing field in campaign fundraising, reform increases electoral competition. By reducing the influence of large contributors, it returns political power to John and Jane Q. Public, thus stimulating voter turnout and electoral participation. For opponents, the effects of reform are no less substantial, though the consequences are considerably direr. By placing limits on contributions and expenditures, reform muzzles political expression and participation. By limiting challenger spending, reform protects incumbents, thereby eroding electoral competition. In short, depending on one’s point of view, reform is a panacea, a colossal failure, or a threat to the functioning of democratic governance.

Nor is the rhetoric of reform limited to potential consequences; it extends to the advocates and opponents of reform as well. Opponents of reform often portray advocates as good-natured simpletons operating under positive intentions but hopelessly naive when it comes to “real” politics. Frank Sorauf, for example, writes:
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If there is any constant in the confusions about American campaign finance in the twentieth century, it is in the repeated attempts to reform it to rely on the small sums of ordinary citizens. The history of those attempts is not a happy one, and yet we have not given up. American optimism about the efficacy of reform, ironically, has run as deep as American distrust of the cash we have tried vainly to reform. So the reformers have persisted throughout the century, their efforts often limited to half-measures and just as often greeted with knowing winks.1

According to this particular portrayal, reformers are Progressive/Populist do-gooders, motivated by a “cynical innocence” leading them to distrust the power and influence of money, even as they embrace the possibilities of reform.2 Not all accounts of reformers are so kind. Bradley Smith contends that more cynical motives underlie reform efforts. As Smith observes:

Campaign reform is usually sold as a populist means to strengthen the power of “ordinary” citizens against dominant, big money interests. In fact, campaign finance reform has favored selected elites and further isolated individuals from the political process.3

For Smith, media elites, labor unions, political consulting firms, and political activists all benefit from reform—even though these groups “may or may not be more representative of public opinion than the wealthy philanthropists and industrialists who financed so many past campaigns.”4 The rhetoric of opponents is matched or exceeded by those groups supporting reform. Consider, for example, the following account of Mitch McConnell’s opposition to campaign finance reform on First Amendment grounds:

The truth is Mitch McConnell is no First Amendment avenger. Except when it comes to wrapping legalized bribery in the mantle of free speech, he has eagerly seized nearly every opportunity from regulating the Internet to banning flag-burning to use the power of the government to silence unpopular speech. Yet, ever so masterfully, he framed the debate over McCain—Feingold with a false passion for speech, coupled with a convincing, though ultimately illusory, pretense at First Amendment expertise. His success in characterizing all campaign finance reform as an attack on the First Amendment should go down in history as one of the great triumphs of Orwellian doublespeak. . . . The truth is, Senator McConnell’s First Amendment applies only to the wealthy special interests who finance campaigns.5
Though most reform rhetoric has been aimed at Republicans, and in particular at Mitch McConnell, Democrats have also been targeted for hypocrisy in superficially supporting reform, even while working behind the scenes to ensure that reform would never be enacted. As Elizabeth Drew describes it: “A member would declare support for reform, but manage not to have to actually vote for it if there was any real danger that a substantial bill would be enacted into law. Thus, people could vote for a bill they knew a president would veto, or that they assumed that the other chamber wouldn’t pass, and still claim credit as a backer of reform.” The result is discussion of reform that never quite makes it into law, even as most public officials claim to support reform. Consider, for example, Drew’s account of the 1997 debate over the McCain–Feingold campaign finance proposal: “[M]ost elected politicians, whatever their rhetoric, don’t favor giving challengers a level playing field. And one by one, the provisions that would have done that were eliminated from McCain’s bill even before it went to the Senate floor.”

The intractability of national politics, and cynicism about what might emerge under the label of “reform,” led reform groups to turn to the states, where resistance (though considerable) is often less well entrenched. The most visible of these efforts has been the Ellen Miller-led Public Campaign that advocates Clean Money Campaign Reform (CMCR), a combination of spending limits, public financing, and free media time. Where state legislatures have resisted the reformist impulse, reformers have made use of the levers of direct democracy (the referendum and initiative)—at least in those states where these levers are available. Yet, successfully passing campaign reform is hardly an assurance that campaign finance reform will work, or for that matter that it will even be implemented.

First, wherever reform is enacted, a court case is sure to follow. While reform groups have worked to help write laws that they believe will pass constitutional muster, the guiding precedent (Buckley v. Valeo) has been subjected to widely different interpretations—as well as considerable criticism. In fact, both reformers and opponents would like to see Buckley overturned but for fundamentally different reasons. Reformers would like the court to reconsider the constitutional viability of spending limits,8 while opponents would like to see Buckley’s First Amendment logic extended to cover contribution limits. Given this context, the courts are likely to weigh in on any change in state or local campaign finance laws. While Maine’s Clean Election Law has withstood at least one challenge in federal court, recently passed laws in Vermont and Arizona remain under challenge.

Second, even where initiatives are used to pass reform, public officials can still thwart implementation. The most glaring example has been in Massachusetts, where the Massachusetts State Assembly has resisted funding the public
funding mechanisms passed by a 2–1 margin by voters in 1998. As a Boston Globe report described it:

In the wee hours of the morning with no debate, House leaders pushed through a measure Friday that would erode a key part of anticorruption laws and allow special interests to wine and dine lawmakers without reporting much of the expense. . . . House members also quietly attached a rider that would suspend the state’s so-called clean elections law, which would publicly fund state elections.9

What is perhaps most notable about the resistance is that it has come from Democratic leaders, some from districts in which the initiative was supported by over 70 percent of district voters.10 Efforts to change the law were aimed at making it applicable only to statewide offices other than state legislative offices. Presumably, because public funding provisions would make additional monies available to challengers, the law threatened the electoral safety of incumbent legislators. A month later, in a further act of resistance, the Massachusetts State Democratic Party turned off the microphones just as a resolution was about to be offered supporting the state’s Clean Elections Law.11

The behavior of Democrats in the Massachusetts State Assembly raises some interesting questions about how policymakers perceive the effects of reform: Why would Democrats, who arguably benefit from public financing provisions, be so resistant to campaign finance reform? And why would incumbent politicians, not generally perceived as engaging in a great deal of altruistic behavior, resist legislation that would presumably make them safer (at least if one believes the arguments of campaign finance reform’s opponents)? Are they all stalwart defenders of the First Amendment, believing that spending is somehow equated with free speech? Or is it as the Boston Globe editorial suggests, that changing from privately to publicly funded elections might put their seat at risk?

Opponents to reform would, of course, take issue with the idea that campaign reform puts incumbents at risk. Aside from the rhetoric, however, what do we really know about the consequences of reform? The answer is not nearly as much as the experts and participants often claim. First, analysis of new reform proposals is often based on what has happened in the past. The well-worn maxim that “those who fail to learn the lessons of history are doomed to repeat it” undoubtedly applies in this context, but there is considerable disagreement as to what the past can teach us about campaign reform. For opponents, the first and most important lesson of past reforms is that reform will always fail because of the stakes involved. Smart lawyers, cunning politicians, and devious consultants will find loopholes in even the most well-thought-out laws. Of course, smart lawyers also find ways out of criminal convictions, but rarely do we blame the
law itself for individual criminal conduct, or for a lawyer’s ability to save his client from criminal prosecution.

The second lesson of reform is that reform will have unintended consequences, many of which will be worse than the original problem. (If nothing else, strategic actors will attempt to manipulate the law to their advantage: lesson number one.) The classic example of unintended consequences is the growth of political action committees at the federal level as a result of campaign finance reforms in the 1970s. Often described as a sinister electoral force, PACs came into existence when labor unions, particularly the AFL-CIO, sought legal recognition of the groups they formed to raise and contribute money to candidates supporting their interests. The unintended result of the legal change was an exponential growth in the number of PACs, particularly those associated with business organizations. Ironically, many contemporary reform proposals at the federal level call for undoing this unintended consequence of the reform efforts of the 1970s.

For supporters of reform, the lessons to be drawn are much different. First, supporters contend reform does not work if it is not enforced. The Federal Election Commission (FEC), which has responsibility for regulating campaign finance behavior, has been described, among other things, as a “toothless watchdog.” Split evenly in terms of its partisan makeup and with its funding dependent on congressional approval, the FEC has lacked both the will and resources to enforce federal election laws. The combination of lax enforcement and relatively minor penalties for violations has encouraged candidates and parties to push the boundaries of federal election law, subsequently expanding the definition of legal activity with each new election cycle. Second, speaking directly to their critics, reformers have noted that though unintended consequences are likely, they hardly nullify the need for reform. In fact, taken to its logical conclusion, the law of unintended consequences is an argument for the status quo against any significant policy change, including reform in the areas of welfare and taxes.

Academic studies have generally been interpreted as more supportive of arguments against reform, but there is good reason to question the implications (if not the results) of this research. First, many of the conclusions regarding the implications of reform have been derived from studies done at the national level. While such studies undoubtedly provide insight into the failures of the Federal Election Campaign Act, the ability to draw conclusions about how modifications of campaign finance laws might affect electoral competition or voter turnout is necessarily limited. Studies at the state level, which have tended to focus on state legislative elections, have been much more mixed in their assessments of reform. Minnesota is generally provided as an example of where reform has worked. In Minnesota, public subsidies to legislative candidates have been
sufficient to encourage compliance and electoral competition, though the effects on competition have been considerably less than reformers might have hoped. Wisconsin, on the other hand, is generally offered as a model of an unsuccessful reform effort, where the public financing provisions were too low to entice compliance. Competition declined as well, though it is unclear how much competition would have declined even without reform.

A final complicating factor emerges when discussing state reform efforts, and that is transferability. Minnesota’s system may be relatively successful, but would it work in Indiana? Or Oregon? Or Connecticut? Moreover, as we saw in the case of Kentucky (see Introduction), reform efforts may appear to be successful in one electoral context but unsuccessful in another. Reform might enhance competition in gubernatorial elections even though it detracts from competition in legislative elections. Before we can further consider the effects of reform, we need to first outline the different components of reform (public disclosure, contribution limits, spending limits, and public financing) and their likely effects on the electoral process.

PUBLIC DISCLOSURE

Public disclosure of campaign contributions and expenditures, the least intrusive and least controversial of reform efforts, is generally aimed at increasing political accountability. At least theoretically, full and open reporting of campaign fundraising activities allows voters to punish politicians for an overreliance on special interest contributions or for a reliance on contributions from the “wrong” type of interest group. For public disclosure to succeed as a mechanism of political accountability, however, several conditions must be met. First, candidates must accurately report on their campaign fundraising. Second, candidate fundraising data must be made available to voters prior to the actual election. And third, voters must be informed enough about candidate fundraising to at least potentially use that information in casting their ballot.

Although all three conditions are problematic, the third is the most questionable because it is unlikely voters would inform themselves of candidate fundraising efforts. In many elections, voters cannot identify either the name or the party of the candidates running for office. The idea that voters would check campaign finance records to see which candidates received money from which of the thousands of PACs currently active in electoral politics is absurd. It is even more absurd to expect voters to examine individual contribution records. A more plausible but equally problematic scenario is that voters would learn about candidate fundraising after irregularities are publicized by strategic elites—opposition candidates, public interest groups, or the media. Voters could then punish those candidates engaging in questionable or unethical fundraising prac-
tices by not voting for them. There is some evidence that voters prefer reform-minded candidates. But in order for voters to identify these candidates, campaigns must provide full, accurate, and timely information about their fundraising activities. If campaigns delay reporting until after an election or if they intentionally obscure the sources of their fundraising, public disclosure fails as a means of increasing political accountability.

The 1996 presidential election in which Bill Clinton and the Democratic Party were accused of accepting illegal foreign contributions and mixing hard money accounts with soft money accounts illustrates several points. First, though serious questions were raised about Clinton fundraising efforts during the election, substantial evidence of misconduct surfaced only after the campaign was over. As a result, the allegations had little impact on the outcome of the election. Second, most voters largely disregarded the charges because they viewed both parties as equally corrupt. President Clinton selling access to the Lincoln Bedroom may have been a difference in degree but hardly seemed to be a difference in kind from former Speaker Newt Gingrich providing large contributors special access to Republican Congressional leadership in return for large soft money contributions. If money corrupts, there is little reason to believe that it corrupts Democrats more than Republicans, or that money from the Chinese government is more corrupting, or necessarily more adverse to the public interest, than money from Phillip Morris.

Accepting money from special interests has become such an institutionalized part of the political process that it is odd only when candidates do not accept such money. When it comes to the process by which competitive candidates raise money, there usually is not a dime’s worth of difference between them. Consider, for example, John McCain’s bid for the Republican nomination in the 2000 presidential election. McCain was criticized by the Bush campaign for supporting reform while accepting contributions and campaign support from special interests. Painting the opponent as a hypocrite may work well in electoral politics, but the Bush campaign knew very well that only the very wealthy can survive without special-interest contributions. In contemporary American politics, these are, with a few rare exceptions, the options: lose, spend your own money, or accept contributions from special interests. More to the point, public disclosure legitimizes these contributions so that voters are just as inclined to chastise candidates who appear to hypocritically accept contributions while claiming the mantle of reform as they are to reject candidates who enthusiastically raise as much money as humanly possible.

Despite the weaknesses of public disclosure, all fifty states require public disclosure of campaign fundraising practices for statewide elections. Despite being widely adopted, there is little evidence that public disclosure improves the electoral process. Elections are no more competitive nor are voters more trusting or
more engaged in the political process. If anything, as voters have learned more about the fundraising activities of politicos, they have become less engaged and less trusting, and elections have become even less competitive. Overall, the advantages of public disclosure accrue primarily to the media who cover campaigns, the political professionals who can use published reports to identify future campaign contributors, and the academics who study campaign finance practices. Voters are neither better informed nor more engaged.\textsuperscript{16}

Though it may be argued that public disclosure has succeeded in reducing overt corruption, it has also legitimated contributions from special interests. As Larry Sabato and Glenn Simpson observe:

True enough, the cash bribe has become nearly extinct. And after Watergate some reasonably effective reforms were enacted that helped to correct specific ills observed in the Nixon scandals. Our politics are cleaner in some respects than they used to be. Yet time and again we have encountered disturbing practices that, upon reflection, can only be labeled corrupt and that cry out for change. . . . Indeed, influence peddling and other corruptions are in some ways more worrisome than they ever have been, because they are now so institutionalized that everyone practices them. The rules of the game, at least as perceived by the players, seem to demand it.\textsuperscript{17}

While it is hard to argue against the merits of disclosure (and we are certainly not attempting to make that case here), arguments that public disclosure somehow improves the electoral process by enhancing accountability, or that greater public disclosure is all that is needed to cure what ails electoral politics, are, at best, overblown.

**CONTRIBUTION LIMITS**

Three central rationales exist for contribution limits. They: (1) reduce corruption—or at least public perception of corruption—resulting from large contributions; (2) make the fundraising process more democratic by forcing candidates to raise money from a broader base of political supporters; and (3) reduce the overall level of candidate campaign spending by making the fundraising process more burdensome. Because of the *Buckley* decision limiting the ability of states to impose spending limits, many states have focused reform efforts on limiting campaign contributions. And though states vary widely in terms of their willingness to limit contributions from various sources, other than public disclosure requirements, contribution limits are the most widely adopted reform across the states.
Contributions and Corruption

The principal logic of contribution limits centers around the idea of reducing the nexus between contributors and public officials. Even when there is no quid pro quo, even if no special access resulted, large contributions raise concerns about the appearance (if not the reality) of impropriety. Why, after all, would anyone give a million dollars to a candidate or a party if they did not expect something in return? Such altruism, particularly when it involves furthering someone else’s political career, seems to defy common sense. Yet, benevolence is what opponents to campaign finance reform—as well as many academics—would have us believe. Contributors contribute but receive little more than returned phone calls, a few moments of time, or the satisfaction of knowing that they have helped candidates they believe in.

This position is not without support in the academic literature. Most studies examining the impact of roll call voting on legislative decision-making have either failed to find a significant impact of contributions on votes; or have found a marginal impact—limiting the connection to less visible and less salient votes. Such findings, however, should be treated with a healthy dose of cynicism. Statistical evidence may indicate that campaign contributions do not systematically alter the voting decisions of legislators, but accepting the null hypothesis of statistically significant influence is not the same as saying that legislators—voting primarily on the basis of party, ideology, and constituency—are free of the influence of campaign contributions. Consider, for example, that you have just discovered that you have cancer. Your doctor informs you that with chemotherapy your chances for surviving are very good. In fact, in 95 percent of the cases, the cancer goes into remission and the patient lives a healthy, normal life. While the statistical evidence may reassure you a great deal, you have no real way of knowing whether you will be among the 95 percent that survive or among the 5 percent that do not. Nor does the 95 percent survival rate offer much reassurance if you are among the unlucky five.

Along these lines, opponents to reform are quick to note that most of the evidence of corruption is anecdotal—focusing on a single issue or a single legislator—and that more systematic studies fail to turn up evidence of a distorting influence of contributions on the legislative process. But the systematic evidence does not invalidate anecdotal evidence any more than a low crime rate invalidates a single murder. Anecdotal evidence may be indicative of something outside of the ordinary, but that does not make it any less real or any less compelling. After all, how many savings and loan scandals does it take before the relationship between contributions and influence becomes statistically significant?

The Supreme Court itself recognized this distinction in its *Buckley v. Valeo* decision:
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Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. For the Court, anecdotal rather than statistical evidence was sufficient justification for contribution (though not for spending) limits.

Because legislators make hosts of decisions that are not recorded as roll call votes, the influence of contributions may be subtle and more difficult to detect. For example, the influence may show up in how a legislator changes language in mark-up sessions, where a single phrase can save industry billions of dollars. As former Senator William Proxmire observed:

It may not come in a vote. It may come in a speech not delivered. The PAC payoff may come in a colleague not influenced. It may come in a calling off of a meeting that otherwise would result in advancing legislation. It may come in a minor change in one paragraph in a 240-page bill. It may come in a witness, not invited to testify before a committee.

Campaign contributions are only the beginning of most efforts at influencing legislation. Contributions buy access, which in turn provides an opportunity for lobbyists to persuade legislators. In this sense, the influence of campaign contributions may be less direct than is commonly assumed; but this is hardly the same as saying campaign contributions have no effect. Even if—as the conventional wisdom holds—information rather than money is the number one resource of the professional lobbyist, money is critical in the dissemination of this information. As one recent study concludes: “By mastering the communications process and focusing on persuasive narratives, moneyed interests have carved out considerable power for themselves by their ability to define problems and acceptable solutions, as well as to lobby key policymakers.” And while moneyed interests have always exerted power, in contemporary American politics the only countervailing force to powerful moneyed interests are other competing, moneyed interests. Social movements, political parties, voters, even elected representatives no longer serve to challenge the dominance of powerful interest groups over the policymaking process. As Darrell West and Burdett Loomis conclude:

Thirty years ago, social movements and investigative journalists were powerful forces. From the civil rights coalition to the consumer safety movement, there were demonstrated cases in which broadly defined societal interests demonstrated their ability to alter public policy. Today, the dominant forces are large,
usually corporate interests. The power to convey convincing narratives requires money and favors those who already are well-organized politically. Such an emphasis on moneyed interests weakens American democracy and threatens the very foundations of representative democracy.25

But even if money exerts an undeniable (though often subtle) influence on policy and policymakers, the question of whether contribution limits can reduce actual corruption—or at least public perceptions of corruption—remains subject to dispute. Contribution limits in federal elections, adopted in the early 1970s, have coincided with a steady decline in public trust, undoubtedly because federal contribution limits are easily and regularly skirted by candidates. Has the law failed to reduce perceptions of corruption? Or has the failure of the law added to public distrust? To date, there are no studies connecting relatively restrictive contribution limits with increased public confidence in state (or national) governments.

The Supreme Court has, however, reaffirmed its commitment to contribution limits based on the logic that large contributions provide the appearance of corruption. Writing for the majority in *Nixon v. Shrink Missouri Government PAC*, Justice David H. Souter discounted the weight of academic studies relative to anecdotal evidence and newspaper accounts, at least in part because academic studies offer contradictory assessments regarding the potentially corrupting influence of campaign contributions. As Justice Souter observed, “Given the conflict among these publications [academic studies], and the absence of any reason to think that public perception has been influenced by the studies cited by the respondents, there is little reason to doubt that sometimes large contributions will work actual corruption to our political system, and no reason to question the existence of a corresponding suspicion among voters.”26

At this point, perhaps the best we can conclude is that large contributions continue to raise the specter of corruption, and that the specter alone is, at least according to current Supreme Court interpretation, sufficient to justify state regulation of campaign contributions. Having said that, however, there is little evidence at either the state or national level suggesting that limiting contributions affects either corruption or perceptions of corruption. In fact, unless other measures are taken to reduce the spending side of the campaign finance equation, public cynicism is likely to grow rather than recede as candidates devote increased time and energy to campaign fundraising, and as voters recognize the impotence of the law in controlling the power of moneyed interests.

**Contributions and Competition**

The small individual contributor is as sacred in the American polity as the small business owner is in the American economy. Campaigns run on the basis of small
contributions from middle-class Americans embody the democratic ideal of
government, participatory democracy. They are the Davids in American politics
out to slay the proverbial Goliaths: candidates bought and paid for by wealthy
contributors and corporate PACs. By limiting contributions, reformers hoped
to reduce the power of wealthy patrons or “fat cats” who took it upon themselves
to bankroll individual candidacies, usually in return for favorable public poli-
cies. Placing limits on the size of contributions would, ideally, force candidates
to seek out a larger pool of small contributors. Removing, or at least limiting,
the role of fat cats by reducing the size of individual contributions would, in
turn, reap electoral benefits in terms of electoral competition by leveling the
campaign fundraising playing field.

As reformers hoped, the actual number of citizens making campaign con-
tributions has, in fact, increased since the 1960s—even as other forms of partic-
ipation, most notably voter turnout, have declined. Yet, campaign contribu-
tors, including those making smaller contributions, hardly resemble the average
citizen: Notably, they are wealthier, better educated, more likely to be male and
white, and conservative on economic issues. Changes in campaign finance reg-
ulations have done little to alter this fundamental bias in American politics.
But forcing candidates to rely on smaller contributions does not mean that can-
didates have stopped going where the money is. While campaigns have expanded
their efforts so they are successfully raising money from a larger number of con-
tributors, giving money remains a form of electoral participation dominated by
the upper and middle classes. In other words, the democratization of campaign
contributions may expand the base of elite contributors, but campaign fundrais-
ing is itself hardly a democratic enterprise. Even with current limits, a relatively
small percentage of citizens can afford to give $1,000 to a candidate, and even
among those who can afford to contribute, only a small percentage actually do
so, and many in amounts of $25 or less. According to the Center for Responsive
Politics, less than one-tenth of one percent of U.S. citizens contributed $1,000
or more in 1996, while approximately 80 percent of the citizenry contributed
nothing at all. As such, raising or lowering limits is unlikely to drastically alter
the total number of contributors. As evidence to this point, consider figure 2.1,
which presents the percentage of respondents from the National Election Stud-
ies reporting that they contributed to a candidate between 1952 and 1996.

As the graph makes clear, the percentage of citizens contributing to a cam-
paign has not increased over time despite the enactment of contribution limits.
Nor has the adoption of limits at the federal level corresponded with an increase
in electoral competition. In addition, while campaigns that rely on small con-
tributions are often more populist in tone, they are not always widely embraced.
Oliver North’s 1994 Senate campaign spent over $20 million, most of which was
North's reliance on small contributions neither limited his total spending nor assured his victory.

The more damning criticism of contribution limits is that lower limits increase the time and energy devoted to campaign fundraising activities. Common sense tells us that, all else being equal, it would take less time to raise $1 million from a hundred contributors than from a thousand contributors. But all else is rarely equal, and the same individual who has trouble generating $1,000 contributions is likely to have trouble generating $10,000 contributions. In fact, assuming that contributors are strategic rather than altruistic, there is reason to believe that allowing large contributions would inhibit rather than enhance non-incumbent fundraising efforts.

Many potential challengers, it is argued, opt out of an election because of the time and energy required to raise enough money just to be competitive. But how might increased contribution limits affect this particular decision-making calculus? The conventional wisdom is that increasing contribution limits would spur electoral competition by reducing the fundraising burden on nonincumbents. However, this logic assumes a relatively static definition of what it takes to be competitive. It also assumes that incumbents would be either unaffected by the policy change, or that the change would result in a reshuffling of the representative's priorities. That is, finding fundraising easier, incumbents would turn their attention to policymaking activities. This scenario is true, however,
only if incumbents raise money strategically—responding primarily to some assessment of electoral need. If incumbents raise money to deter potential challengers, higher contribution limits would serve as an incentive to raise more rather than less money.

Future elections pose considerable uncertainty about electoral conditions, the types of challenger, and issues that might emerge. This uncertainty serves as an impetus to raise more money than is necessary. Though higher contribution limits might help challengers raise more money in an absolute sense, there is reason to believe that the gap between rich and poor candidates would continue to expand as the rich got richer.

PUBLIC FUNDING AND SPENDING LIMITS

Because of the Buckley decision, the question of candidate-based public funding is inevitably intertwined with spending limits. Several states provide public funding through the political parties without any associated limits. If the goal is maximizing electoral competition, parties are considered to be the most rational of contributors because they are more inclined to give to nonincumbent candidates than either individuals or political action committees. In this respect, party-based public funding mechanisms are thought to increase electoral competition by increasing the financial activity of state political parties. Party-based public funding is generally devoted to party maintenance activities and organizational overhead. Thus, the funding provides stability to party finances while freeing up other funds for electoral activity. In terms of electoral impact, party-based public funding mechanisms are also thought to be particularly beneficial to the out-party or the minority party. Given the diffuse nature of the support, however, it is unclear whether party-based public funding has a direct measurable effect in gubernatorial or legislative elections. Because the acceptance of public monies is not tied to any restriction on the parties’ electoral activities, and because any potential effect is diffuse rather than candidate or party specific, it generally registers little or no public opposition. As a measure of reform, it also enjoys a healthy level of support among political scientists who generally prefer stronger, more responsible political parties.

In direct contrast, candidate-based public funding mechanisms are almost always used as a lure to hook candidates on a set of corresponding spending limits. As a result, candidate-based public funding mechanisms are almost always mired in political and legal controversy. Though the mechanisms are often derided as welfare for politicians, most of the controversy surrounding them centers less on the public financing provisions than on the accompanying spending limits. For opponents to reform, spending limits not only violate the First Amendment, they also serve to reduce electoral competition and voter participation.
Spending Limits and the First Amendment

In *Buckley v. Valeo* (1976), the Supreme Court struck down involuntary spending limits on the grounds that such limits violated First Amendment guarantees of free political expression. At the same time, however, the Court allowed contribution limits to stand, arguing that such limits must be balanced against the need to protect the integrity of democratic processes. Because the connection between campaign spending and perceptions of corruption was much thinner, spending limits were considered unconstitutional. The Court did, however, allow “voluntary” spending limits; that is, limits predicated on the acceptance of public funding. In the Court’s opinion, speech could be subsidized but not limited, or perhaps more accurately, speech could be limited only if it was first subsidized.

Since the *Buckley* decision, the politics of campaign finance reform have been irrevocably linked to the First Amendment as opponents have cloaked arguments against reform in the language of the *Buckley* decision, often proclaiming that “money is speech.” Though the Supreme Court certainly came close, it never quite equated money with speech, instead noting that the connection between campaign spending and speech is so close that reducing campaign spending in the political process was the equivalent of reducing the amount of gasoline in a car. Money fueled speech, but it was not speech itself. Moreover, in defending the spending limits, the state argued that spending limits were necessary to maintain some semblance of political equality; the Court rejected the idea that either perceptions of corruption or political equality presented a compelling justification to enforce mandatory limits on candidate spending.

In rulings since *Buckley*, the Court has maintained the distinction between contributions and expenditures. The decision itself, however, has come under increasing criticism from both sides of the reform debate. Supreme Court Justice Clarence Thomas, who has never met a contribution limit that he believed passed constitutional muster, noted repeatedly that he would like the *Buckley* precedent overturned. For Thomas, contributing unlimited sums to political candidates is a fundamental constitutional right. On the other side of the debate, New York Law Professor Burt Neuborne argues, “*Buckley* is hardly a model for the formulation of public policy. The per curiam opinion resulted in the distortion of Congress’s intent, imposed a regime on the nation that no Congress would ever have enacted, and, most importantly, has created a campaign finance system abhorred by virtually all the participants.”

Though the Court’s recent ruling in *Nixon v. Shrink Missouri Government PAC* dealt primarily with the question of contribution limits, in separate opinions Justices Kennedy, Thomas, Stevens, and Breyer all noted a willingness to reconsider *Buckley*. Whether this means the Court’s decisions would be more or less supportive of reform is doubtful. As Neuborne observes, “The Court could push the tree upon reformers by eviscerating the distinction between contributions...
and expenditures and then deciding that neither may be constitutionally regulated.\textsuperscript{38} The Supreme Court itself, Neuborne writes, appears to be divided into three camps. Justices Thomas, Rehnquist, Scalia, and Kennedy appear to support overturning limits on contributions, while Justices Stevens and Ginsburg appear willing to allow greater government regulation of both spending and contributions. Adding uncertainty to the mix, Justices O’Connor, Souter, and Breyer appear to be undecided. Regardless of the balance on the Court, the framework used to determine the constitutionality of campaign reform may be significantly altered over the course of the next several years.

But even if the framework were not altered, there is reason to believe that significant reform can emerge within the confines of the \textit{Buckley} decision. Even as mandatory spending limits were declared unconstitutional, the presidential system of public funding, with its combination of public grants and spending limits, was upheld. This determination means spending limits are unconstitutional only when they are not connected to some form of public financing. As the Court observed, “Rather than abridging, restricting, or censoring speech, [public financing of presidential campaigns] represents an effort to use public money to facilitate and enlarge public discussion and participation in the electoral process.”\textsuperscript{39} The criterion, then, for determining constitutionality of a public financing scheme rests on whether the system is truly voluntary, or whether it is voluntary in name but coercive in effect.\textsuperscript{40} Systems which offer generous inducements for compliance with spending limits might be considered coercive if they put a candidate not accepting the inducement at a significant disadvantage. Generally, however, systems that rely on inducements (public subsidies) to encourage compliance have been upheld, while systems that punish candidates for rejecting spending limits have been thrown out.\textsuperscript{41} While almost any public financing scheme is going to be subjected to at least one court challenge, where states combine public financing provisions with reasonable spending limits, the laws are likely to pass constitutional muster.

\textbf{Spending Limits and Electoral Competition}

Another objection to public funding rests on the claim that spending limit provisions (even with public financing) protect incumbents. The empirical evidence on this point, however, is far from conclusive. Consider, for example, that since the Federal Election Campaign Act was passed three incumbent presidents (Ford, Carter, and Bush) have been defeated while only two have won reelection (Reagan and Clinton). Moreover, Clinton’s 1996 reelection effort all but obliterated existing campaign finance regulations.

At the state level, there is no evidence that gubernatorial incumbents are made more secure by either candidate- or party-based public financing provi-
Because states have been less willing to supply public financing to state legislative candidates, the mixed experiences of Minnesota and Wisconsin candidate-based public financing in state legislative races serve as the main evidence. The general conclusion is that public funding of state legislative races has been more successful in Minnesota than in Wisconsin, largely because the public funding in Minnesota is sufficient to entice a broader level of compliance. Nevertheless, the most exhaustive study to date concludes that there is simply not enough evidence to reach a verdict on the question of public financing.43

Undeterred by the inconclusive evidence, reformers and opponents both continue making claims about the electoral consequences of candidate-based public funding, though it is opponents who most often lay claim to the mantle of empirical “truth.” This truth, however, is based not on the evidence from the states or from presidential elections, but on observed correlations between campaign spending and electoral outcomes in congressional elections. (Ironically, as one of the repercussions of the Buckley decision, congressional elections are conducted without public financing or spending limits.) At first glance, these correlations seem to tell us that challengers yield a bigger electoral bang for their campaign dollars and that incumbents receive little or no return on their campaign spending.44 If this were truly the case, it would be easy to see why spending limits would hurt challengers, while having little or no effect on incumbents. Challengers need to spend money in order to be competitive. Limiting challenger spending would, subsequently, have negative consequences on the challenger’s share of the vote. Further, the more draconian the limits, the greater the damage. Yet, this finding has been subjected to repeated challenges within the academic literature, most notably by Donald Green and Jonathan Krasno who find “salvation for spendthrift incumbents.” They contend that while the effect of incumbent spending may be smaller than the effect of challenger spending, it is significant. Because incumbents typically raise (and spend) more money than challengers, the yield on incumbent spending is considerably greater than the yield on challenger spending.45

Still, opponents to reform have successfully labeled legislative efforts to reform the federal system of campaign finance as “incumbency protection acts.” Not only does the label ignore more recent research on the relationship between spending and votes but it also ignores the public financing side of the equation. In congressional elections, the majority of challengers spend less than any proposed limit (even if the limit were placed at $600,000). In theory, public financing provisions should result in an across-the-board increase in challenger spending, and subsequently, an across-the-board increase in the average challenger share of the vote. However, it is possible that a combination of public financing and spending limits could hurt the chances of well-funded challengers in competitive
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races against vulnerable incumbents, a threat that is probably overstated by opponents of reform. First, most congressional incumbents who are defeated are guilty of an ethical impropriety, have become vulnerable because of their voting record, or are simply from a highly competitive district—not because they have been outspent. While opponents to reform often hold the outdated belief that incumbent spending does not matter, it is at least arguable that were these endangered incumbents to spend less, they would become even more vulnerable. Second, though opponents to reform are quick to note that money does not buy elections in other contexts (e.g., “electoral bang” and “yield,” both referring to votes or rather the return on spending in vote percentages), they seem to believe that its purchasing power is virtually unlimited for nonincumbents.

Two general principles apply here. First, campaign spending is subject to the law of diminishing returns, meaning that after candidates reach a certain threshold, each additional dollar buys less in terms of the final percentage of the vote. Second, money is necessary but not sufficient to win an election. Candidates need enough money to establish name recognition and to get their message out, but assuming the message reaches a wide enough audience, the message rather than the money wins the election. For candidates who currently find it difficult to raise money, public financing provisions help them to at least get out their message, a feat that is often impossible in a system based entirely on private contributions. A privately funded campaign finance system may exert heavy pressure on first-time candidates who often enter electoral politics without a fundraising organization already in place. The more expensive campaigning becomes, the heavier the pressure becomes as the candidates must worry about having enough money to deliver their messages. As a result, many potential candidates may opt out of the electoral process because they lack relevant fundraising experience. But even experienced candidates (state legislators, city council members, school board members, etc.) may opt out of a race if they have concerns about the amount of time and energy required to raise enough money just to be competitive. Public financing provisions can enhance electoral competition by encouraging candidates to run, particularly politically experienced candidates who might otherwise have opted out of the race.

The overall electoral effect of a combination of candidate-based public financing and spending limits likely depends on the level of public funding and the level of any associated spending limits. Available evidence simply does not support broad generalizations that spending limits diminish (or enhance) electoral competition. Public funding must be high enough to entice compliance, to induce candidates to enter the race, and to jumpstart other fundraising efforts; but not so high as to call into question the voluntary nature of the limits. Spending limits must also be high enough to assure that nonincumbents can run competitive races, otherwise incumbents, already a protected species, might be even
further removed from any sign of electoral vulnerability. Yet, if spending limits become too high, they become meaningless in terms of their effect on candidate spending.

**Spending Limits and Political Participation**

A related objection to spending limits is that they have a negative effect on voter participation, most notably voter turnout. Where states adopt spending limits provisions, the reasoning goes, campaigns will devote less money to voter registration and voter turnout drives, instead devoting their limited resources to television advertising. As a corollary, competitive campaigns attract voters, and competitive campaigns are generally more expensive than uncompetitive ones. If reduced spending negatively affects electoral competition, it should have subsequent effects on voter participation.

Although the connection between campaign spending and voter turnout appears unassailable, in practice, things are rarely so simple. First, in studies that have examined the relationship between campaign spending and voter turnout, there is often a statistically significant relationship, but the actual effect of campaign spending on voter turnout is generally quite small, meaning that substantial changes in spending would have only a limited effect on the number of voters turning out on election day, or on the probability that any particular individual voted. Second, there is something of a paradox in the literature. Over the last several decades, campaign spending has increased dramatically, even after accounting for inflation, but voter turnout has steadily declined. If campaign spending really increased voter turnout, we should be experiencing an increase, rather than a drop, in voter turnout. Finally, one of the central arguments for campaign reform is that it deals with perceptions of corruption. If voters believe the electoral process is more fair and less corrupt, reform may have indirect effects on voter participation. As with electoral competition, the evidence is much more mixed, and much less conclusive, than either reformers or opponents would have us believe.

**CONCLUSIONS**

We began this chapter by noting that though reform is often discussed as an aggregate, it is, in reality, a collection of measures each with a different purpose and set of intended and actual consequences. These various measures could potentially be combined into unlimited “comprehensive” reform packages, suggesting there could be unlimited sets of potential effects, some positive, some negative. In this respect, the rhetoric of reform is based on an overly simplified question: Does reform enhance or diminish democratic governance? To truly understand the consequences of reform, however, one must ask a fundamentally
different question: Which types of reform have which types of effects on the electoral process? We might also add a further consideration: What are the effects of various types of reform across varying electoral contexts? Though there is a multitude of potential effects, in this book our primary focus will be on the effects of reform on campaign spending, electoral competition, and voter turnout.