LONE STAR ELECTION LAWS

A Comparative Study of Texas's Campaign Finance System

By Derek Cressman

U.S. PIRG Education Fund   Texans for Public Justice

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The U.S. PIRG Education Fund is a non-profit, non-partisan citizens organization that conducts research and public education on a host of public interest issues including environmental preservation, public health, consumer protection, and good government.

Texas Office: U.S. PIRG Education Fund, 600 W 28th St Suite 205, Austin, TX 78705, Phone: (512) 479-8481

National Office: U.S. PIRG Education Fund, 218 D St, SE, Washington, DC 20003, Phone: (202) 546-9707

Texans for Public Justice is a non-profit, non-partisan research and advocacy organization that tracks the role of money in Texas politics.

Texans for Public Justice, 609 W 18th St, Suite E, Austin, TX 78701, Phone: (512) 472-9770

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I. Purpose of Campaign Finance Reform

Campaign finance laws are intended to require candidates to raise money from and be accountable to ordinary citizens.

Money heavily influences election outcomes

It is no surprise that candidates seek to raise enormous sums of campaign money to seize a distinct advantage over lesser-funded opponents. In fact, a 1998 report by Public Citizen's Texas Office, U.S. PIRG, and Texans for Public Justice found that the candidate who raised the most money in Texas elections almost always won. Out of 66 contested general election races in 1996, the least-funded candidate prevailed in only seven races. Of these seven upset races, only two were won by candidates whose opponent raised more than twice as much money as the victor. Money matters.

Currently, campaign money is provided by wealthy special interests

If fundraising mirrored genuine popular support for a candidate, then we might not be either surprised or alarmed that the candidates who raise the most money tend to win elections. But most Texans can only give $25 or $50 to a candidate they support, perhaps up to $100 if they really dig deep for a candidate that they feel strongly about. Yet House candidates in the 1996 election raised 95% of their funds in contributions greater than $100 ö beyond the reach of most of their constituents. In fact, House members raised an average of 80% of these funds from sources outside of the district that they sought to represent.

Under these circumstances, wealthy special interests usually determine who can run for office and who will win elections. Not surprisingly, these same interests will enjoy better access and influence than ordinary citizens when it comes time for the legislature to write the laws that would protect either the public's interest or the special interests. All too often in Texas, the public interest is sacrificed for special interests because regular citizens are not major funders of winning campaigns.

II. Elements of Campaign Finance Reform

Limiting the Size of Contributions

Perhaps the most fundamental campaign finance reform is to limit the size of contributions that anyone can give to a politician. The ideal limit would be an amount that still is within striking distance of most ordinary citizens, after they make their day-to-day ends meet. For most constituencies, we believe that $100 is a reasonable amount. There are many citizens who can barely afford to pay the next month's rent, let alone consider making a contribution to a politician. But, if the most that anyone could contribute was $100, then ordinary citizens would realize that even $20 would be enough to make a difference. Candidates would have incentives to take positions that would generate support from small donors and would go out of their way to hold chili dinners and other grassroots fundraisers aimed at generating small contributions from large numbers of people.

In November of 1997, citizens of Austin, Texas enacted $100 contribution limits for city council races. Citizens in Arizona, Arkansas, California, Connecticut, Colorado, Maine Missouri, and Montana have recently enacted legislation calling for limits ranging from $100 to $250 for many races. In January 2000, the U.S. Supreme Court reaffirmed the rights of states to set low contribution limits. States may set limits as low as they see fit so long as the are not "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." 1[1]

Conversely, under the Texas system of no contribution limits, citizens who can give even $100 realize that their contributions are but a drop in the bucket compared to what wealthy donors give candidates. In this system of perverse incentives, candidates who spend time with a small number of large donors typically raise enough to defeat an opponent who spends time doing grassroots fundraising and going door-to-door to talk to real people.

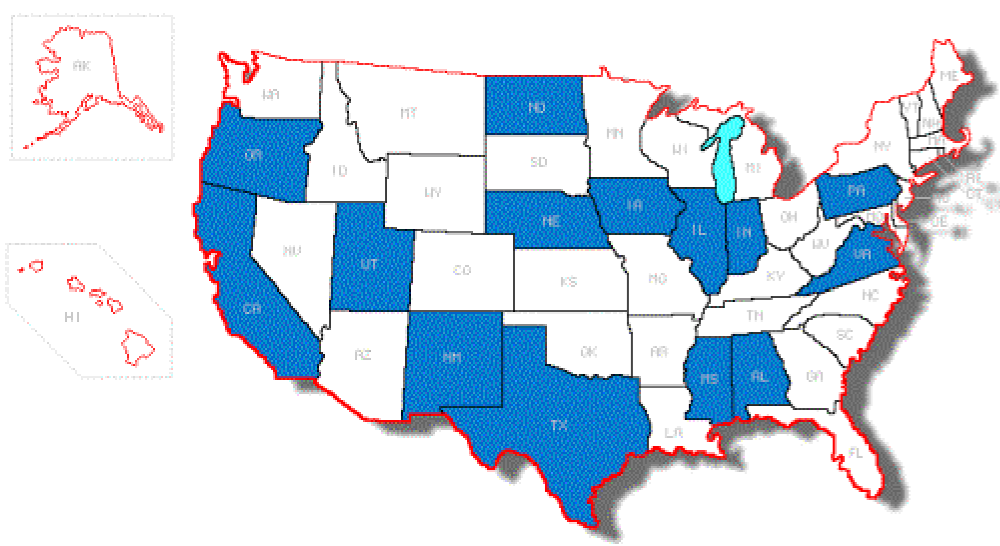
To be effective, low contribution limits should apply not only to candidates, but to political parties and political action committees (PACs) that contribute to candidates. Similarly, limits must also apply to committees and organizations that run advertisements or make other expenditures to influence election outcomes, even if they are acting independently of a candidate's campaign. If contribution limits in a state are quite high, then it would make sense to also limit the amounts that parties and PACs can give to a candidate.

However, if low limits apply to what citizens may give to a party or PAC, it makes less sense to also apply low limits on what a party or PAC can give to a candidate since these entities would then be merely organizing citizens to pool their resources toward a common interest.

These states currently have no contribution limits:

Alabama
California[2]
Illinois
Indiana

Iowa
Mississippi
Nebraska
New Mexico
North Dakota
Oregon[3]
Pennsylvania
Texas
Utah
Virginia



Limiting the Source of Contributions

A more recent innovation in campaign finance law is to require candidates to raise funds from their true constituents by limiting the amount of money they can accept from donors who reside outside of their district. Interests located outside of a candidate's district might have a stake in the outcome of an election, involving for example an incumbent politician who sits on a committee that oversees their key concerns. This vested interest does not, however, give those interests the right to heavily influence elections in which they cannot even cast ballots. Baseball pitchers ought not influence the selection of umpires and foreign governments ought not influence U.S. elections. Similarly, it makes little sense to allow lobbyists in Austin to influence the election of a candidate who is supposed to represent Corpus Christi. After all, that representative should be making sure that the lobbyists and special interests in Austin don't trample the interests of folks back home.

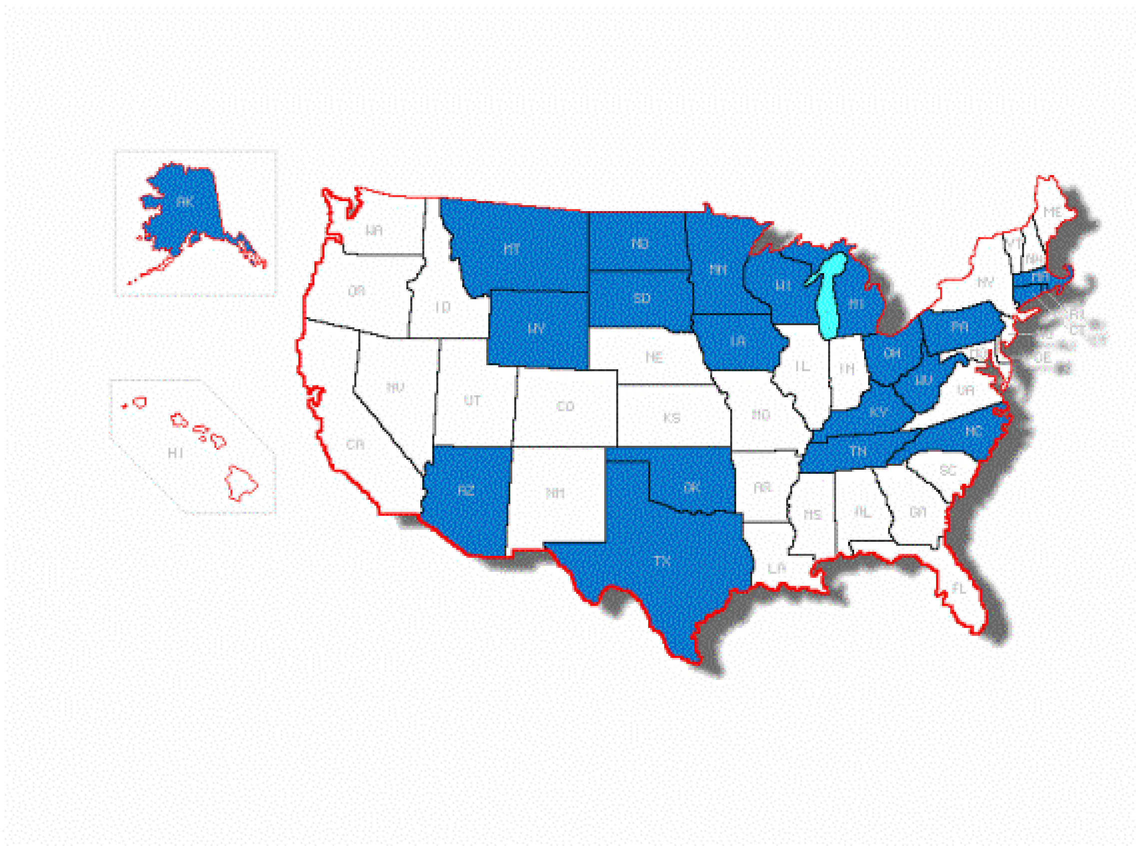
In 1996, citizens of Oregon voted to require state candidates to raise 100% of their funds from inside their district. That measure was thrown out by a federal appeals court on a 2-1 ruling, and the U.S. Supreme Court refused to hear the case. However, in 1997 the Alaska legislature passed a law that severely limited contributions from outside the state. That law was unanimously upheld by the Alaska Supreme Court. The decision emphasized the fact that Alaskan voters' rights were diminished when non-residents influenced the outcomes of Alaska's elections. The U.S. Supreme Court also refused to hear that case, leaving it unclear what the final legal ruling will be on in-district limitations. Also in 1997, the Vermont legislature enacted comprehensive reform legislation that will require all candidates to raise at least 75% of their funds from within Vermont. A challenge of that law is currently awaiting a court ruling.

Banning Corporate Contributions

Corporations were never intended to be political organizations. They are chartered by state governments to carry out specific economic functions and were given special privileges that include limited liability for shareholders, unlimited life-spans, and the ability to amass vast sums of capital. It was never intended for corporations to use this immense economic power for political ends. The federal government banned corporate contributions to candidates as early as 1907. There are, of course, other organizations such as non-profit corporations, labor unions, and political committees that aggregate contributions from their members and use them for political purposes. The difference is that these organizations raise their funds from members who are purposefully making a political decision. While some states and the federal government have also decided to ban contributions from labor unions in order to make a ban on corporate contributions politically more palatable, the U.S. Supreme Court has ruled that labor unions need not be treated the same as for-profit corporations. The Court held that states have an interest in stopping the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporations political ideas. ·[But] labor unions differ from corporations in that union members who disagree with a unions political activities need not give up full membership in the organization to avoid supporting its political activities. · As a result, the funds available for a union's political activities more accurately reflect members' support for the organization's political views than does a corporation's general treasury.2[4]

Courts have made clear that bans on corporate contributions cannot be extended to nonprofit corporations, so long as those corporations are formed primarily for political purposes, have no shareholders, and do not accept contributions themselves from for- profit corporations. Courts have also ruled that corporate interests are allowed to have a voice, and that they may make political contributions through setting up separate, segregated funds that are comprised solely from voluntary contributions from shareholders, management, and employees.

The shaded states below ban corporate contributions:



Encouraging Small Donors

In addition to limiting the influence of the wealthiest donors through contribution caps, it is possible to encourage candidates to seek out small contributions from ordinary citizens. This will encourages citizens to get involved in the political process, which makes politicians relatively more accountable to regular folks in their district and less accountable to wealthy special interests. There are a number of ways to boost small contributions:

Tax refunds or credits. At least 10 states provide some sort of tax refund or deduction to citizens who make a contribution to a candidate, party, or a political action committee. Tax credits are significantly better than tax deductions, because they can be used by all citizens ö whether they owe taxes or not. Minnesota has a refund system that is superior to any tax credit system because citizens can receive a refund check of up to $50 soon after making a contribution, rather than having to wait until tax time. For many families living on a month-to-month basis, this option encourages them to make a modest contribution that they otherwise might not have given. Some academics have proposed an even more elegant system of providing vouchers to all citizens, who could then give them to candidates, parties, or interest groups of their choice.3[5] This would allow all citizens a more equal opportunity to participate in funding politics and would foster representation in government more reflective of all citizens interests.

People PACs. Candidates can be encouraged to rely more heavily on small donors when those donors can effectively pool their resources to compete with larger donors. One system that allows this is the small donor PAC, or "people PAC." These are PACs that voluntarily limit the size of the contributions that they accept from citizens in order to be able to make larger contributions to candidates by aggregating numerous small contributions. For example, while a regular PAC might be able to take contributions from citizens of no more than $100 and make contributions to candidates of no more than $500, a people PAC might only be allowed to receive contributions of $25 but could then give candidates up to $2,000. People PACs are a way of preventing the PAC system from representing only wealthy interests. Arkansas and California have experimented with People PACs.

Public Financing. There are several ways to use public funds to encourage candidates to rely on small contributions. Perhaps the best example was pioneered in the state of Maine, where candidates receive full public financing for their campaign if they raise a threshold number of small $5 contributions and refuse to raise or spend any funds above a level given to them by the state. Candidates who voluntarily participate in this system, essentially agree to a system of extremely low contribution limits, with the state then providing the balance of their funds.   Other systems, such as New York City's, match small contributions by a four-to-one ratio, so if a candidate raised $50 from a contributor, they would receive another $200 from the city. These public financing systems often also require candidates to abide by voluntary spending limits. But even without this provision, they encourage small contributions. To serve that purpose, candidates should only receive matching funds if they are limited to accepting small contributions -- ideally no more than $100. Otherwise, public financing can wind up encouraging candidates to raise large contributions, which would undermine the goal of campaign finance reform.

Limiting Spending. Regardless of the source of funds, there are separate questions about whether or not massive campaign expenditures are the best way to conduct campaigns. Big spending allows candidates to communicate their "message" directly to voters via TV and radio ads, direct mail, and other means. However, it also allows candidates to avoid arguably more meaningful forms of campaigning such as debates, public speeches, and town hall meetings. All too often, frontrunners will simply refuse to debate his or her opponent, preferring instead to raise campaign funds and buy commercials. Underdog candidates usually have a fundraising disadvantage, so they are unable to compete as effectively as they could in debates which put all candidates on more equal footing.

Excessive campaign advertising may also reduce media coverage of campaigns, which is a potentially less biased source of information than candidate ads. Viewers who are bombarded by advertisements quite reasonably feel "fed up" with politics and less interested in watching news coverage of campaigns that they feel they have already heard too much about. Thus, ratings-driven news outlets devote less time to covering candidates, and are happy instead to reap huge profits from campaign advertising dollars. A 1998 survey of local television news coverage in 25 states found that viewers were four times more likely to see a political ad than a political story during the late night local news. What news coverage remains tends to cover campaigns as horse races, with the main criteria for judging a serious candidate being the amount of money they have been able to raise. This leaves a grassroots candidate in a triple bind. Their opponent won't debate them, the media won't cover them, and they can't afford to compete with paid political advertising.

If candidates relied less on big spending to win an election, they would be forced to rely more on the marketplace of ideas. Endorsements from civic groups, newspapers, and local officials would matter more, fundraising dinners would matter less. Issues would matter more in elections, as campaigns would rely on the internet and the press to put out position papers, rather than relying on 30 second ads that relate little substance but play up a candidate's character or attack the values of his or her opponent. Parties would be strengthened, because party platforms would again be an important means for voters to learn about where a candidate stands on the issues. When candidates can raise enough money to run their own campaign independent of the party, they are free to say that they haven't even read the platform, and certainly wouldn't feel bound to support it once elected.

Mandatory spending limits would also prevent so-called millionaire candidates from using their own wealth to vastly outspend opponents who rely on small contributions. While there is little danger that a candidate will be personally corrupted by a contribution from his or her own wallet, millionaire candidates distort the electoral process and make it considerably more difficult for ordinary citizens to run for office because the level of funds needed to compete with millionaires is beyond the reach of most candidates.

In 1976, the U.S. Supreme Court ruled that mandatory spending limits were unconstitutional, under the misguided logic that money is the equivalent of free speech. However, many legal scholars believe that this decision, known as Buckley v. Valeo, was incorrect and are calling on the Court to revisit the issue. The State PIRGs have launched the Buck Buckley campaign to educate the public about this decision and build support to reverse it. More information is available at www.pirg.org/buckbuckley. In 1997, the state of Vermont enacted mandatory spending limits. Those limits are in effect, and may provide an opportunity to challenge to the Buckley decision. The City of Albuquerque, New Mexico has had mandatory spending limits in place since 1972. They remain in effect and have served the city well.

To get around the current legal prohibition against mandatory spending limits, many states have adopted schemes for voluntary spending limits. Voluntary limits are of a less certain value, since they need to be set fairly high to prevent candidates who comply with the limits from being completely blown out by candidates who refuse to comply with the voluntary limits. By design, voluntary limits rarely yield significant reductions in campaign spending. Candidates can be enticed to accept voluntary spending limits by providing those who do with full or partial public financing, or by noting on the ballot which candidates volunteered and which refused.

Disclosure of Campaign Contributions and Expenditures

Disclosure of campaign financing allows the public, the media, and a candidate's opponent to scrutinize the source of a candidate's contributors and draw opinions about whether or not those contributors might improperly influence election outcomes. Such disclosure must be timely, so that voters have an opportunity to evaluate candidate fundraising before they cast their votes. However, unless it is accompanied by other reforms, disclosure is of limited value. In a no-limits campaign finance system, the most viable candidates will be those who have raised lots of money. This forces voters to choose between candidates who have all been bankrolled by big money from special interests. This leads wouldöbe voters to the logical conclusion that they haven't been given much of a choice at all.

III. How Texas Measures Up

Texas is among 14 states with no contribution limits. While passing high contribution limits would not be a significant improvement, passing limits within the reach of ordinary citizens would seriously improve Texas's campaign finance system. As one of 21 states that bans corporate contributions to candidates, Texas is in better shape in this regard. However, Texas does not limit contributions from outside a candidate's district, nor does it do anything to encourage small donors or limit spending. While recent improvements in disclosure are a significant step forward, their value was recently undermined by Attorney General John Cornyn's decision to not include donor addresses in electronic disclosure reports. This will make it difficult to accurately tabulate all the political contributions from a donor whose name is similar to other donors. All told, Texas's campaign finance laws still fall short of the laws found in most other states.

IV. Chart of Campaign Finance laws

The following chart lists important elements of campaign finance law for all 50 states and the District of Columbia. The chart notes what contribution limits apply to candidates, and uniformly calculates the maximum amount that one donor could give a candidate for state representative or governor in a full election cycle. Also listed are the contribution limits on what individuals may give to parties, PACs, and independent expenditure campaigns as well as any in-district or in-state requirements. The chart notes if corporate contributions are banned, limited to the same amount as individuals, or unlimited; notes any spending limit provisions; as well as noting what electronic disclosure is required. Data for the chart comes from the Federal Election Commission's Campaign Finance Law 98 publication, as well as specific legislation from individual states. Every effort has been made to keep abreast of changes in state campaign finance law through April, 2000. Disclosure data is from Digital Sunlight, a project of the California Voter Foundation, and it is current as of December 1999. The full report can be found at www.digitalsunlight.org/awards/states1.html.

[1] U.S. Supreme Court, Nixon v. Shrink Missouri Government PAC, January 24, 2000.

[2] In 1996, California voters approved Proposition 208, which called for contribution limits ranging from $100 to $1000. Prop. 208 was suspended by a federal judge, but is working its way through the appellate process and may well be upheld in light of the Missouri ruling by the US Supreme Court. However, it may ultimately fail because the contribution limits were allowed to double for candidates who accepted voluntary spending limits and this doubling feature is constitutionally questionable.

[3] In 1994, voters in Oregon approved Measure 9, which set contribution limits ranging from $100 to $300. This law was thrown out by the Oregon Supreme Court under the Oregon Constitution, even though federal courts have consistently ruled that the U.S. Constitution permits states and Congress to set contribution limits. Citizens in Oregon are currently petitioning to qualify an amendment to the Oregon Constitution for the November 2000 ballot, which would then allow Oregon to reinstate contribution limits.

[4] U.S Supreme Court, Austin v. Michigan State Chamber of Commerce, 1990.

[5] See Richard L. Hasen, Clipping Coupons for Democracy: An Egalitarian/Public-Choice Defense of Campaign Finance Vouchers, California Law Review, January 1996.