



February 23, 2015

The Honorable Jack R. Draxler
Utah House of Representatives
350 North State, Suite 350
Salt Lake City, UT 84114

The Honorable Bradley M. Daw
Utah House of Representatives
350 North State, Suite 350
Salt Lake City, UT 84114

Re: Practical Issues with House Bill 60

Dear Chair Draxler, Vice Chair Daw, and members of the House Government Operations Committee:

On behalf of the Center for Competitive Politics, I am writing you today to respectfully submit the following comments regarding the practical impact of House Bill 60, which would impose campaign contribution limits in Utah.

The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, we presently represent nonprofit, incorporated educational associations in challenges to state campaign finance laws in Colorado, Delaware, and Nevada. We are also involved in litigation against the state of California.

This legislation runs contrary to prevailing academic research, which shows that contribution limits will neither decrease corruption, nor produce “good” government, nor improve public confidence in government, and will actually have the perverse effect of increasing the power of independent groups at the expense of candidates and political parties. Worse still, imposing limits in Utah will lead to new complexity in enforcing Utah campaign finance law and create the potential for abusive investigations.

I. Enacting contribution limits would increase the influence of independent groups and limit the ability of candidates and political parties to speak during election campaigns.

Enacting candidate and party contribution limits would result in a massive shift of campaign speech away from candidates and parties and toward independent expenditure groups. The Supreme Court and federal courts have said that donations to independent groups¹ and speech by labor unions and corporations about candidates² cannot be limited under the First Amendment.

¹ *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010).

² *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

In race after race, the imposition of contribution limits would leave candidates and parties struggling to compete on messaging with independent expenditure groups, to which donations cannot be limited. Such limits will have the unintended consequence of increasing donations to independent groups, like Super PACs, at the expense of the now limited candidates and political parties. These contribution limits would place candidates and parties at a permanent disadvantage.

Imagine a small business owner in Salt Lake City who wants to express her opinion about the importance of lower taxes. As the law currently exists in Utah, she will find a candidate that agrees with her on this issue, and contribute to their campaign whatever amount she likes – her political giving is dictated only by her desire to voice her political preferences. Now imagine H.B. 60 becomes law. This small business owner’s desire to express her political opinion has not changed. But because her giving to the candidate that supports lower taxes is now capped, she chooses to contribute to an independent group. Thus, the same contribution has entered the political arena and the same amount of political speech has occurred, but the candidate has lost out on the opportunity to specifically define and express their message.

Thus, even if one accepts the inaccurate argument that Utah has a problem with “money in politics,” contribution limits on giving to candidates and political parties will not alter the overall level of funding for political speech. Like pressing down on one side of a water-filled balloon, contributions will inevitably flow to a different legal source. The net effect will be the diminished ability of candidates and political parties to control their message – and be accountable for it – during campaigns.

II. Contribution limits will lead to new complexity in Utah campaign finance law and create the potential for abusive investigations.

Enforcing new contribution limits will lead to new complexity in the law and new complexity in enforcing the law. Existing definitions of “independent expenditures” and “in-kind expenditures” in Utah statutes will become critically important.

With the creation of contribution limits, investigations of alleged coordination will often be demanded by political opponents. By their very nature, investigations concerning illegal coordination will target the most sensitive information: internal communications, membership lists, and conversations with political allies, all with great potential to harm First Amendment rights.

An illegal coordination claim alleges that someone spoke to someone else concerning a prohibited topic. Naturally, any contact between two individuals can raise suspicions that such a conversation occurred. And, once initiated, a coordination investigation will focus on who spoke with whom. This will require an invasive investigation that, by its nature, is directed precisely at private communications. Moreover, since information may be passed through intermediaries, the investigation will often expand to encompass the target’s entire professional and personal network.

For example, in 1997, a complaint by the Democratic National Committee triggered an investigation of over 60 conservative organizations, plus numerous individuals, that lasted over four years.³ The various respondents were ultimately exonerated. Another investigation of the Christian Coalition led to over 80 depositions and years of legal fees before the Coalition was ultimately found

³ See Federal Election Commission, MUR 4624.

not to have illegally coordinated its activities.⁴ These examples are not outliers, but rather paradigmatic examples of the intrusive and speech-inhibiting nature of coordination investigations based on flimsy allegations and generalized suspicion. Imposing contribution limits in Utah law will open the opportunity for illegal coordination complaints to great impact on First Amendment rights.

III. H.B. 60 imposes campaign contribution limits in Utah elections, at a time when states around the country are raising their contribution limits or eliminating them altogether, all while research demonstrates that these limits will neither reduce corruption, nor produce “good” government, nor improve public confidence in government.

In the last two years, twelve states – Alabama, Arizona, Connecticut, Florida, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Oklahoma, Vermont, and Wyoming – raised or eliminated portions of their campaign contribution limits. Alabama is notable for becoming the sixth state with no limits on the size or source of campaign contributions, joining Utah, as well as Missouri, Nebraska, Oregon, and Virginia.⁵ Since 2010, over one-third of the 38 states that impose contribution limits on individual giving to candidates (fifteen states), have increased or repealed portions of their contribution limits in some manner. Thus, the trend around the country is one of state legislators liberalizing existing limits and enhancing the First Amendment freedoms of their constituents. These efforts, generally, have been bipartisan, as both Republicans and Democrats across the country see the folly of strict contribution limits. Any attempts to do otherwise with this legislation would mark a backwards step away from First Amendment rights for Utahns.

The reason behind these changes is clear. As academic research and studies by the Center for Competitive Politics have shown, contribution limits have no impact on reducing corruption,⁶ promoting “good” government,⁷ or improving trust in government,⁸ but do have an impact in terms of reducing the amount of political speech. Academic research also demonstrates that campaign cash and legislative votes are not linked.⁹

⁴ *FEC v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999). See also Mark Hemingway, “IRS’s Lerner Had History of Harassment, Inappropriate Religious Inquiries at FEC,” *The Weekly Standard*. Retrieved on February 23, 2015. Available at: http://www.weeklystandard.com/blogs/irss-lerner-had-history-harassment-inappropriate-religious-inquiries-fec_725004.html (May 20, 2013).

⁵ Luke Wachob, “2013 State Legislative Trends: Campaign Contributions Limits Increase in Nine States,” Center for Competitive Politics’ Legislative Review. Retrieved on February 23, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2014/05/2014-04-25_Legislative-Review_Wachob_2013-State-Legislative-Trends-Increasing-Contribution-Limits2.pdf (May 9, 2014).

⁶ Adriana Cordis and Jeff Milyo, “Working Paper No. 13-09: Do State Campaign Finance Reforms Reduce Public Corruption?” Mercatus Center at George Mason University. Retrieved on February 23, 2015. Available at: http://mercatus.org/sites/default/files/Milyo_CampaignFinanceReforms_v2.pdf (April 2013); Matt Nese and Luke Wachob, “Do Lower Contribution Limits Decrease Public Corruption?,” Center for Competitive Politics’ Issue Analysis No. 5. Retrieved on February 23, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/08/2013-08-01_Issue-Analysis-5_Do-Lower-Contribution-Limits-Decrease-Public-Corruption1.pdf (August 2013).

⁷ Matt Nese and Luke Wachob, “Do Lower Contribution Limits Produce ‘Good’ Government?,” Center for Competitive Politics’ Issue Analysis No. 6. Retrieved on February 23, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/10/2013-10-08_Issue-Analysis-6_Do-Lower-Contribution-Limits-Produce-Good-Government1.pdf (October 2013); Matt Nese, “Do Limits on Corporate and Union Giving to Candidates Lead to ‘Good’ Government?,” Center for Competitive Politics’ Issue Analysis 7. Retrieved on February 23, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/11/2013-11-20_Issue-Analysis-7_Do-Limits-On-Corporate-And-Union-Giving-To-Candidates-Lead-To-Good-Government.pdf (November 2013).

⁸ Jeff Milyo, “Do State Campaign Finance Reforms Increase Trust and Confidence in State Government?,” Paper Presented at the 2012 Annual Meetings of the Midwest Political Science Association. Retrieved on February 23, 2015. Available at: http://web.missouri.edu/~milyoj/files/CFR%20and%20trust%20in%20state%20government_v3.pdf (April 2012).

⁹ See e.g. Steven Levitt, “How Do Senators Vote? Disentangling the Role of Party Affiliation, Voter Preferences and Senator Ideology,” *American Economic Review*, Vol. 86 (1996): 425–441; Gregory Wawro, “Legislative Entrepreneurship in the United States House of Representatives.” (Ann Arbor: University of Michigan Press, 2000); Stephen Ansolobehere, John M. de Figueroa, and James M. Snyder Jr., “Why Is There So Little Money in U.S. Politics?,” *Journal of Economic Perspectives*, Vol. 17:1 (Winter 2003): 105–130.

Understanding how contribution limits distort election campaigns helps explain why states without limits have fared as well or better than states with low limits in state rankings on corruption and good governance measurements. Many people wrongly assume that in the absence of financial contributions, all citizens would have equal access to candidates. In reality, established interests (including trade associations, labor unions, the media, well-organized public interest groups, celebrities, and established political players) already have an overwhelming advantage in access to elected officials. Thus, contribution limits serve to stifle the voice of the average citizen while doing little to hinder the influence of those who already hold political sway.

Ultimately, this is because contribution limits infringe upon the free speech rights guaranteed under the First Amendment. While courts have upheld many limits on contributions as constitutional due to a government interest in combating corruption or the appearance of corruption, there is broad agreement that limits on campaign contributions harm the right to free speech guaranteed by the First Amendment. However, now that evidence proves that contribution limits do not reduce corruption, produce “good” government, or increase trust in government, citizens and policymakers alike have recognized that the logic underlying contribution limits is weak at best. Limiting free speech rights should not be undertaken lightly, even when it is constitutionally permissible to do so. Many state legislators now realize that raising or eliminating limits entirely better conforms to the First Amendment, and therefore better fulfills every lawmaker’s commitment to upholding the Constitution. For Utah legislators to impose contribution limits on the citizens of Utah in the face of the above research and national trends would be antithetical to both common sense and the First Amendment.

* * *

Ultimately, House Bill 60 unnecessarily imposes campaign contribution limits, in opposition to both current legislative trends and prevailing academic research. While these limits would fail to address any perceived corruption issues or improve confidence in government, such a move would perversely increase the influence of independent groups at the expense of candidates and political parties and complicate enforcement of state campaign finance law. For a detailed analysis of the many harms involved with the implementation of contribution limits, I strongly encourage you to consult the attached Center for Competitive Politics’ Policy Primer, “Campaign Contribution Limits: A Cap on Free Speech.”¹⁰

Thank you for allowing me to submit comments on House Bill 60. Should you have any further questions regarding this legislation or any other campaign finance proposals, please do not hesitate to contact me at (703) 894-6835 or by e-mail at mnese@campaignfreedom.org.

Respectfully yours,



Matt Nese
Director of External Relations
Center for Competitive Politics

¹⁰ “Campaign Contribution Limits: A Cap on Free Speech,” Center for Competitive Politics’ Policy Primer. Retrieved on February 23, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-10-22_Policy-Primer_Contribution-Limits.pdf (July 18, 2014).