



Statement of

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Before the Hearing of the

Joint Committee on Government Reform

With Respect To

Campaign Finance

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Thank you for inviting me to testify on campaign finance reform. My name is Laura Renz, and I am the Research Director at the Center for Competitive Politics, headquartered in Alexandria, Virginia. The Center's mission is to educate the public on the role of money in politics and to protect the First Amendment political rights of speech, assembly, and petition. I congratulate the legislature on taking steps to examine corruption in Illinois, and I thank you for your time and commitment in serving.

INTRODUCTION

In encouraging citizens to get involved with both this hearing and the Illinois Reform Commission appointed by the Governor, the *State Journal Register* recently declared that "Never has there been a more fertile time for political reform in Illinois government."¹

Though recent corruption scandals have been the catalyst in forming this committee to study contribution limits, taxpayer financing, and other "reform" measures, let me suggest that efforts to find a "silver bullet" to stop corruption will fail. Anyone who claims to have the "silver bullet" — whether they claim it will single handedly put an end to corruption, or whether they claim that no reform can work without adoption of their solution is either lying to you or, at best, seriously in error.

You will likely hear testimony urging you to, in the words of Rahm Emanuel speaking about the economic crisis, not let this crisis "go to waste,"² and take advantage of the current political climate to pass legislation that is, in reality, unrelated to the circumstances that gave rise to the recent corruption and subsequent public backlash. My hope is that you will examine my claims, and theirs, and craft serious, realistic measures that will benefit Illinois.

My goal today is to provide a few words of caution and a brief overview of some of the academic literature on campaign finance regulation that is so often ignored in these discussions, in the hope that it will help you in crafting your recommendations.

I will begin by addressing the problems with pay-to-play legislation, and continue with testimony relating to contribution limits and taxpayer financed elections.

¹ <http://www.sj-r.com/editorials/x1362390283/Our-opinion-Get-involved-with-state-government-reform>

² http://online.wsj.com/article/SB122721278056345271.html?mod=googlenews_wsj

PAY-TO-PLAY AND THE PROBLEM OF REACTIONARY CAMPAIGN FINANCE REGULATION

Pay-to-play legislation unfairly targets campaign donors, infringing on their rights to free speech and association by restricting their ability to contribute to campaigns — at least if they want to continue to bid for state business. The law may reduce some incidents of corruption, but as the case of former Governor Rod Blagojevich shows, it is usually public officials — not donors — who instigate schemes of fraud and corruption, which are already illegal under existing state and federal laws.

Consider that in possibly the most infamous case of “pay-to-play” in this state, former Governor Blagojevich allegedly shook down an official at an Illinois hospital for campaign contributions in exchange for state funds. The problem is that the hospital — like many other businesses, most unions, professional associations, and others that receive government funds — is not considered a state contractor, and so the law does not apply to it. That is to say, pay-to-play laws would not have prevented the scheme Governor Blagojevich allegedly sought to pull off.

But, more importantly, what pay-to-play laws do is punish honest government contractors who merely seek to participate in politics the way any of their fellow Illinoisans can. Contributing to campaigns is, next to voting itself, the most common way citizens get involved in the democratic process.

CONTRIBUTION LIMITS

Illinois has already passed pay-to-play legislation, but in considering even more restrictive measures such as contribution limits, it is important to pause and consider the unintended, but not unexpected, consequences.

Contribution limits tend to make it more difficult for challengers to raise funds to take on incumbents. Challengers are more reliant on large donations than incumbents, and higher overall campaign spending tends to benefit challengers more than incumbents.³ This is primarily because of two dynamics. First, incumbents start with a significant advantage in name recognition. As such, their added spending buys them relatively little. Secondly, incumbents — thanks to their name recognition and past campaigns — are more likely to already have a large number of donors. Thus, by insulating incumbents from challenge, contribution limits can actually make it harder for voters to become aware of and root out corrupt politicians.

The Supreme Court has also made it clear that the First Amendment clearly protects the rights of individuals to support their own candidacy with their own funds.⁴ Imposing arbitrary contribution

³ See Bradley A. Smith, “Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform,” 105 Yale L.J. 1049, 1072-75, 1081-1082 (1996).

⁴ See, e.g., *Davis v. Fed. Election Comm’n*, 128 S. Ct. 2759, 2771-74 (2008); *Buckley v. Valeo*, 424 U.S. 1, 51-54 (1976).

limits would not affect a candidate's right to do this, and would only further complicate an already complex web of campaign finance laws.

The Court has been just as straightforward in reaffirming the right of outside interest groups to raise money without restriction and run ads in an election as long as they do not engage in expressly advocating the election or defeat of a candidate or its functional equivalent.⁵

The desire of a candidate to self-finance, or the motivation that results in a group of citizens organizing and speaking out on issues that affect them, are not problems in need of a solution. Rather, both indicate an engaged citizenry with a clear desire to participate in the democratic process.

Illinois is currently one of five states that do not limit campaign contributions by any source.⁶ A variety of groups have examined different measures of good government and determined that contribution limits have no significant effect on any of them.

For example, *Governing* magazine periodically grades all 50 states on the quality of their management. In 2008, three states tied for the top ranking with grades of A-: Utah, Virginia, and Washington.

Although Washington limits the size of contributions, it allows corporations and unions to contribute and has no taxpayer financing of political campaigns. Utah and Virginia have *no limits* on the size or source of contributions. This would illustrate that contribution limits do not affect how well a state is governed.

Recent research by the Center for Competitive Politics also shows no connection between contribution limits and corruption. The three states with the lowest public corruption rates as measured by the Department of Justice — Iowa, Oregon, and Nebraska — have either no or relatively high contribution limits.⁷

These findings are consistent with a great deal of political science research into the non-effects of campaign contributions on lawmaking. In 2002, three academics reviewed the nearly 40 studies appearing in peer-reviewed journals between 1976 and 2002 and found that, “in three out of four instances, campaign contributions had no statistically significant effects on legislation or had the wrong sign (suggesting that more contributions lead to less support).”⁸

⁵ See, e.g., *Federal Election Comm'n v. Wis. Right to Life, Inc.*, 127 S. Ct. 2652, 2666-74 (2007); *Buckley v. Valeo*, 424 U.S. 1, 39-51 (1976).

⁶ National Conference of State Legislatures, “Contribution Limits: An Overview,” available at <http://www.ncsl.org/programs/legismgt/about/ContribLimits.htm>.

⁷ Laura Renz, “Do Lower Contribution Limits Decrease Public Corruption?,” Jan. 2009 (Center for Competitive Politics), available at http://www.campaignfreedom.org/research/resID.110/research_detail.asp.

⁸ Stephen Ansolabehere, John de Figueiredo, and James M. Snyder, “Why is there so little money in politics,” 17 *Journal of Economic Perspectives* 105 (2003).

GOVERNMENT FUNDING OF CAMPAIGNS

Finally, some are calling for taxpayer financing of political campaigns as a way to regulate the political system in Illinois.

Draft public financing legislation follows the so-called “clean elections” model that is in effect in Maine and Arizona. It would require candidates to obtain small donations to qualify for a lump sum from Illinois taxpayers. Advocates have also proposed including a provision known as a “rescue fund,” whereby participants would receive more taxpayer money if the opposing candidate opts out of the system or spends their own money. However, these “rescue fund” provisions are of questionable constitutionality at best. Prior to a Supreme Court decision last summer, various courts had split on the issue.⁹ But in *Davis v. Federal Election Commission*, the Supreme Court ruled a similar mechanism aiming to “equalize campaign funding” on the federal level was unconstitutional.¹⁰ In fact, going all the way back to the Supreme Court’s seminal campaign finance decision in *Buckley v. Valeo*, the High Court has consistently held that “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”¹¹ And, in the first post-*Davis* case, a federal judge held that Arizona’s “rescue funds” provision is also unconstitutional, although the judge has yet to issue a final order.¹²

Supporters of public financing tout it as a way to sanitize politics from the disreputable aims of “special interests.” But one person’s “special interests” are, in fact, another’s group of concerned citizens organized to petition their government.

And such speech is constitutionally protected. Taxpayer financing cannot curtail the influence of independent advocacy groups that finance political ads because such speech is clearly protected under the First Amendment.¹³

In the same *Governing* magazine ranking I referenced earlier, the two states that have embraced so-called “clean elections,” Arizona and Maine, did not fare nearly as well as Utah and Virginia, which both allow unlimited contributions. Despite having adopted taxpayer financing over a decade ago, Arizona and Maine received, respectively, a B- (Arizona) and a C (Maine). Moreover, both states’ grades have declined since 2005.

⁹ See, e.g., *Day v. Holahan*, 34 F. 3d 1356 (8th Cir. 1994) (unconstitutional); *North Carolina Right to Life, Inc. v. Leake*, 524 F. 3d 427 (4th Cir. May 1, 2008) (constitutional); *Daggett v. Comm’n on Gov’t Ethics*, 205 F. 3d 445 (1st Cir. 2000) (constitutional); *Gable v. Patton*, 142 F. 3d 940 (6th Cir. 1998) (constitutional). All of the cases cited were decided prior to the Supreme Court’s decision in *Davis v. Fed. Election Comm’n*, 128 S. Ct. 2759 (June 26, 2008).

¹⁰ See generally *Davis v. Fed. Election Comm’n*, 128 S. Ct. 2759 (2008).

¹¹ *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976); accord *Davis v. Fed. Election Comm’n*, 128 S. Ct. 2759, 2773 (2008).

¹² *McComish v. Brewer*, No. CV-08-1550-PHX-ROS, slip op. (D. Ariz. Oct. 17, 2008).

¹³ See, e.g., *Federal Election Comm’n v. Wis. Right to Life, Inc.*, 127 S. Ct. 2652, 2666-74 (2007); *Federal Election Comm’n v. Nat’l Conservative PAC*, 470 U.S. 480, 490-501 (1985); *Buckley v. Valeo*, 424 U.S. 1, 39-51 (1976).

New Jersey enacted a limited taxpayer financing pilot program in 2006. The Center for Competitive Politics surveyed donors to so-called “clean” candidates and found nearly half of all donors to “clean” candidates were affiliated with “special interest” groups, primarily from the Communication Workers of America, the New Jersey Education Association, the National Rifle Association, the Sierra Club, and statewide pro-life and pro-choice groups.¹⁴

It is sometimes said that by eliminating “special interest” influence, states will spend less, thanks to a reduction in taxpayer subsidies favoring campaign contributors. However, in both Maine and Arizona, after a decade of so-called “clean elections,” state spending growth has gone from below the national average before taxpayer financing to faster than the national average since.¹⁵

Moreover, taxpayer financed political campaigns place caps on how much speech candidates and citizens can engage in, thus stifling political debate while doing nothing to address the problems of actual and apparent corruption, or supposed undue influence by interest groups. Such campaigns aren’t voter owned, they’re *government controlled*.

Even proponents of so-called “clean elections” have acknowledged that the claims made to sell these programs often over-promise. Bob Bauer, President Obama’s campaign attorney and legal counsel for the Democratic National Committee, as well as the Democratic Senatorial and Congressional Campaign Committees, himself a supporter of taxpayer financing, noted recently that the benefits of such programs are modest at best, and that advocates make unrealistic claims that they can “deliver transformative changes in government” in order to sell a program that is often rightfully met with legislative and public resistance.¹⁶

CONCLUSION

In conclusion, I would like to share with you why so many of the promises of campaign finance regulation have failed to be realized. The core assumption of most so-called “reform,” is that the public-at-large all generally shares identical perspectives and priorities on important public policy issues, and that absent the campaign contributions of narrow self-interested groups, the government would be able to quickly and cleanly implement measures the general public supports and demands.

More than simply being wrong, the charge is fundamentally anti-democratic. It requires a belief that the United States is a homogenous society, populated by citizens who all share roughly identical

¹⁴ Center for Competitive Politics, “Preliminary Findings Regarding New Jersey ‘Clean Elections’ Contributors,” Aug. 5, 2008, available at http://www.campaignfreedom.org/research/resID.96/research_detail.asp.

¹⁵ Sean Parnell, “Do Taxpayer Funded Campaigns Actually Save Taxpayer Dollars?,” Sep. 2008, Center for Competitive Politics, available at http://www.campaignfreedom.org/research/resID.104/research_detail.asp

¹⁶ Bob Bauer, “More Soft Money Hard Law Web Updates,” Feb. 24, 2009, available at http://www.moresoftmoneyhardlaw.com/updates/election_administration.html?AID=1422

ideologies and interests and that there is no real disagreement among citizens about what constitutes good public policy.

This obviously is not the case, as can be seen by the fact that we are well into our third century of competitive politics with two major political parties and several smaller ones, comprised of citizens with genuine disagreements about the proper role of government. This is, in fact, the nature of political freedom, and to suggest that much of government action is determined by campaign contributions rather than the best efforts of elected officials is to ignore this reality.

The solutions to curbing corruption cannot be legislated, and the best ones are simply common sense: enforcing bribery laws, providing transparency and merit-bidding in government contracting, making it easier, not harder, to unseat corrupt incumbents, and encouraging a vigilant press and an engaged citizenry that does not tolerate corruption.

I hope the information and perspective I've given today is useful to you as you consider reforming ethics and campaign finance regulations in Illinois. I will be happy to answer any questions, or provide further information at your convenience.