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CAMPAIGN FINANCE
IN WISCONSIN

Suzanne Novak and Seema Shah

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ABOUT THE BRENNAN CENTER

The Brennan Center is a public policy institute that works to strengthen democracy and secure justice through law, scholarship, education and advocacy. With Justice Brennan, we believe that a “living constitution” is the genius of American law and politics – and that the test of our institutions is the ability to apply timeless values to a changing world.

ABOUT THE BRENNAN CENTER'S CAMPAIGN FINANCE REFORM PROJECT

The Brennan Center has long been a leader in the fight for campaign finance reform on the national, state and local levels. We helped to draft the federal Bipartisan Campaign Reform Act of 2002, published path-breaking studies of television advertising that were introduced into the congressional record, and played a key role on the legal defense team winning a major victory in the U.S. Supreme Court. After assisting in the drafting of Connecticut's landmark public funding legislation, enacted in 2005, we were retained as lead counsel for intervenors in two consolidated cases challenging that law. We played the same role in the successful defense of full public financing systems in Arizona and Maine.

Building on ten years of experience in the field, the Center offers top-flight legal and policy assistance to government officials and activists seeking to develop and defend effective and constitutionally defensible campaign finance bills and initiatives. We identify each jurisdiction's core policy goals and then translate those goals into language appropriate for legislation or ballot measures. The Center reviews and analyzes text drafted by others for potential constitutional or other legal problems. Once legislation is introduced, Brennan Center attorneys accept invitations to deliver written and oral expert testimony. When campaign finance reforms are challenged in court, the Brennan Center has skilled and experienced litigators to present a vigorous defense.

Finally, the Center's publications and public advocacy have amplified the First Amendment values in robust debate and participatory democracy served by campaign finance regulation. For advocates and legislators, we offer an accessible treatise on campaign finance law: *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, now in its fourth edition. Written by Brennan Center attorneys who have litigated campaign finance cases in federal and state courts throughout the nation, this 200-page book offers both practical tips and legal analysis for drafters of campaign finance reform bills or initiatives – both those who want to stay within current constitutional constraints and those who want to test those limits.

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FOREWORD

Full participatory democracy: it's been a national goal since America's founding. Today citizens recognize that money sometimes plays a warping role in electoral politics and hobbles progress towards full democracy. During the past decade, with Washington, D.C. mired in stalemate and in thrall to special interests, many states stepped forward and introduced innovative laws that enhance the power of ordinary citizens in the political process. States as different in political culture as Arizona and Connecticut have created bold systems to reform campaign finance laws, create voluntary public financing, and ensure that enforcement is fair and vigorous.

This report is the first of a five-part series that examines campaign finance laws and the ways they've worked – or haven't worked – to limit the influence of money on politics in the heartland. This report assesses Wisconsin's campaign finance system; we are developing similar reports for Illinois, Michigan, Minnesota, and Ohio. Throughout the last century, governments in these states often led the way for the rest of country, providing “laboratories of democracy” (in the phrase of Supreme Court Justice Louis Brandeis) that test and perfect new policies. Today, the governmental decisions made in these states affect millions of people and set the tone for the rest of the nation.

The campaign finance studies are part of a comprehensive evaluation of democratic institutions that has been undertaken by the Midwest Democracy Network, a collaboration among national research and policy institutions and state-based advocacy organizations that work for honest and accountable government. With generous support from the Joyce Foundation, the Network is examining campaign finance, election administration, redistricting procedures, state courts, and local news coverage of politics in the five Midwestern states.

Wisconsin, of course, has a storied history at the forefront of progressive reform. Under “Fighting Bob” LaFollette, the state pioneered a range of innovative measures that advanced democracy: referendum, recall, direct election of U.S. Senators, and campaign finance limits. More recently, when legislators introduced federal campaign reforms in the aftermath of Watergate in the 1970s, Wisconsin enacted an ambitious public financing system designed to restrict the role of big money in state elections and thereby increase the comparative role each citizen played in the electoral process.

This study of campaign finance laws in Wisconsin today casts light on the attenuation of Wisconsin's once-bold lead in campaign finance: one of the country's most innovative campaign finance laws has been allowed to slide into a state of decay. For example:

- The public financing system, which worked well for a dozen years, is inadequately funded, useless, and unused.
- Limits on contributions from political action committees to gubernatorial candidates in Wisconsin are the nation's third highest in that category.
- Information disclosed pursuant to Wisconsin's campaign finance law is difficult to find on the state Elections Board's website.

Now, there is a new Congress in session in Washington and a new hunger throughout the country for honest, accountable government officials who answer the basic economic, health, and education needs of ordinary citizens. This is the time to revive laws consistent with public interest in government that is elected by – and answers to – ordinary citizens, not big-money interests. No where is this more true than in the heartland, in what was once and can be again, the testing ground for progress.

Michael Waldman

Executive Director, Brennan Center for Justice at NYU School of Law

February 2007

CAMPAIGN FINANCE REFORM: WHY DOES IT MATTER?

When wooing wealthy supporters is the key to political success, honest government is difficult to sustain.

Campaign finance laws seek to make government more honest and accountable to ordinary people, so that bread-and-butter issues – such as education, taxes, and health care – are not held hostage to moneyed interests. By placing limits on the influence of money on elections, campaign finance laws make it easier for elected officials in Wisconsin to respond to their constituents’ concerns, rather than those of wealthy political supporters.

While all voters are equal in the voting booth, all voters are not equal in their ability to influence elections and policy. In states with inadequately regulated campaign finance systems, only wealthy individuals and special interests can make the substantial political contributions and advertising expenditures that move public debate and affect electoral outcomes. And although a \$5 contribution from a low-income constituent may represent a much greater commitment than a \$1,000 contribution from a millionaire, the latter usually has more power to influence the outcome of the election and to secure access to the candidate, once elected to office.

Suppose, for example, that the manufacturing industry wants the Wisconsin legislature to reduce corporate taxes. If contributions from that industry, its executives, and its lobbyists represent a large proportion of a candidate’s campaign funds, that candidate may risk her political future if she later resists industry pressure. She may find it hard to keep a promise to deliver tax relief for the middle class, if small donations from moderate-income supporters cannot compensate for the loss of corporate largess. The temptation to protect industry rather than ordinary taxpayers will be even greater if there is no way for the public to learn exactly who is financing the candidate’s campaign and to connect the dots between corporate contributions and corporate tax breaks.

When wooing wealthy supporters is the key to political success, honest government is difficult to sustain. Although many candidates and officeholders are people of high integrity, political corruption is a chronic problem. Money has been at the heart of political scandals throughout American history, from Teapot Dome to the indictment of Jack Abramoff. Recent scandals in the states mirror events at the national level. In Wisconsin, former Senate Majority Leader Chuck Chvala pleaded guilty to two felony charges and was sentenced to nine months in jail after using state workers and resources for campaign purposes and illegally funneling contributions from a third-party group to a colleague’s reelection campaign. Combating corruption is crucial to ensure that the government’s policies on everything from the economy to the environment serve the public interest, not special interests.

Campaign finance laws can have other benefits as well. Public funding helps to ensure that whether a citizen can run for public office and conduct an effective campaign is determined more by the force of his ideas in the public arena than by his personal fortune or access to wealthy supporters. Such laws also free candidates and government officials from the rigors of fundraising so they can spend more time listening to their constituents and formulating the best policies for the State. Regulations that reduce the influence of money help voters hold their representatives accountable for policy-making that serves the common good.

HOW DO CAMPAIGN FINANCE LAWS PROMOTE HONEST GOVERNMENT?

One of the most important and least controversial elements of campaign finance law is a requirement that certain political contributions and expenditures be reported to regulatory agencies for disclosure to the public. Reports of the sources and amounts of contributions to candidates from lobbyists, political action committees, and others give the public clues to the candidates' likely political leanings on key issues and flag the interest groups to which the candidates are likely to be responsive. Voters may also glean such information from reports of large independent expenditures made in support of or opposition to candidates. The objective information in the official reports can provide a badly needed supplement to campaign advertising, especially if the reported information is easily accessible to the media and interested citizens in searchable, web-based databases. With more information, voters are better able to choose candidates who share their values and to hold politicians accountable for failures to represent their constituents' interests. Reporting requirements open contributions and expenditures to public scrutiny, making it easier to detect exchanges of political favors for political donations.

Contribution limits also help to protect governmental integrity. A large donation presents a much greater temptation to stray from campaign promises than a small contribution. Limiting the potential benefits of corruption may help to keep candidates and elected officials honest. Public financing also helps in this respect, by ensuring that candidates will be able to run effective campaigns without becoming beholden to private donors.

Of course, none of the campaign finance tools will keep government honest without consistent and vigorous enforcement of the law. If candidates and contributors know that they can break campaign finance rules with impunity, they will have no incentive to follow legal requirements. An agency that is able and willing to enforce the law without regard to the partisan affiliation of any candidate is essential to protecting the integrity of government.

HOW DO CAMPAIGN FINANCE LAWS KEEP OFFICIALS RESPONSIVE AND ACCOUNTABLE?

A variety of campaign finance measures can be crafted to ensure that elected representatives are accountable to their constituents, not wealthy interests. Disclosure requirements identify candidates' financial supporters and allow voters to call elected officials to account if the policies they enact bear a suspiciously close resemblance to the policies favored by special interest contributors.

Contribution limits of various kinds also promote accountability. Limits on the size of contributions to candidates, and of contributions to entities (such as political action committees or political parties) that may serve as conduits to candidates, reduce the potential influence of particular wealthy donors on particular cash-hungry candidates. Aggregate limits on contribu-

tions may prevent such donors from purchasing influence by spreading largesse across entire legislatures. Low contribution limits also encourage candidates to reach out to a broader base of supporters, including low- and moderate-income constituents. A candidate who needs widespread support from ordinary people is more likely to respond to their needs.

In addition, generous public funding systems break the ties between access to wealth and electoral success, allowing candidates to respond to the full spectrum of voters. Arizona's Governor Janet Napolitano, twice elected under Arizona's full public financing program, has explained how public financing was connected to her executive order creating a discount prescription drug program for the people of Arizona:

If I had not run [under the public funding program], I would surely have been paid visits by numerous campaign contributors representing pharmaceutical interests and the like, urging me either to shelve that idea or to create it in their image. . . All the while, they would be wielding the implied threat to yank their support and shop for an opponent in four years.

With public financing in place, government officials need not worry that honoring campaign promises popular with ordinary voters will translate to a lack of funds for their next campaign.

Public financing programs, which provide partial or full grants for a candidate's campaign in exchange for limited spending, also permit candidates and officeholders to spend time on tasks more valuable than fundraising, such as studying and attempting to find the solutions to public policy problems and listening and responding to the concerns of ordinary citizens. Moreover, many qualified, dedicated individuals will not run for office if doing so forces them to dial for dollars all day. By lifting that burden, public funding encourages public service by people who care about constituents, not contributors.

Finally, public funding opens doors to public service for individuals of modest means who cannot self-finance their candidacies and do not have wealthy friends to bankroll their campaigns. For example, Deborah Simpson, now in her fourth term in the Maine State Legislature, was a politically active single mother and waitress, who never considered running for office before Maine implemented public financing for its elections beginning in 2000. But she realized that with public funding she could run for office "without having to figure out how to ask for money from donors when [she] really didn't live in that world." Because the public holds the campaign purse-strings, Rep. Simpson's constituents can keep her accountable for her legislative record and turn her out of office if she fails to respond to public needs.

WISCONSIN'S LAWS IN PERSPECTIVE

INTRODUCTION

Wisconsin has had its fair share of corruption scandals. In 2002 alone, Senate Majority Leader Chuck Chvala (D-Madison), Senator Brian Burke (D-Milwaukee), Assembly Majority Leader Steven Foti (R-Oconomowoc) and Representative Bonnie Ladwig (R-Racine) were all charged for various corruption offenses. As is mentioned above, Chvala pled guilty to using state workers and resources for campaign purposes and directing money from a third-party group to Senator Mark Meyer's reelection campaign in 2000. As part of the plea bargain, seventeen other felony charges were dropped. In 2006, former Assembly Speaker Scott R. Jensen (R-Assembly District 98) was convicted and sentenced to 15 months in jail for directing legislative staffers to campaign on state time. Jensen is currently appealing the conviction. Such corruption has tarnished the state's reputation and revealed a glaring need for reform. By minimizing the influence of money on politics, comprehensive campaign finance laws can decrease politicians' dependence on the wealthy elite and increase politicians' incentives for honesty.

Corruption has tarnished the state's reputation and revealed a glaring need for reform.

DISCLOSURE

Campaign finance disclosure law in Wisconsin is a mixed bag. In October 2005, "Grading State Disclosure," an independent nationwide study of campaign finance disclosure laws and practices, gave Wisconsin an overall grade of C- and an overall rank of 22 for its disclosure system.¹ The study found that the state's basic reporting requirements are sound (receiving a B grade), but determined that more information should be disclosed. And although the study concluded that the state's electronic filing program is first-rate (receiving an A), it further found that access to the content disclosed in the records is unacceptable (receiving an F), and the technical usability of the website that posts campaign finance reports is below average (receiving a D). State disclosure websites that received high grades for usability tend to be easy to locate from the state's home page and include comprehensive explanations of the state's campaign finance laws, disclosure requirements, and reporting periods. High-ranking states also provide instructions for how to access the data on the site, give a clear explanation of the scope of online data, and publish analyses of campaign finance activity. Improvement in accessibility and usability is needed if Wisconsin is to achieve state-of-the-art campaign finance disclosure.

REQUIREMENTS UNDER WISCONSIN LAW

The strength of Wisconsin's disclosure law lies in its basic requirement that candidates file reports for contributions in excess of \$20, including the occupation and employer of any contributor whose cumulative contributions for the calendar year are in excess of \$100. The law also keeps the public well informed about expenditures, requiring the reporting of expenditures over \$20, including the name and address of the person to whom the disbursement was made, along with a description of the type of expenditure.

A fundamental weakness in Wisconsin's disclosure law is its failure to regulate an important category of campaign advertising. Wisconsin has long been plagued by sham issue ads – advertisements that plainly support the election or defeat of a clearly identified candidate, but without

using express words of advocacy, such as “vote for” or “vote against.” Ads avoiding these “magic words” are not regulated in Wisconsin, permitting many election-influencing expenditures to escape public scrutiny.

After being targeted in the 1996 elections by the Wisconsin Manufacturers and Commerce (“WMC”), the state’s largest business organization, then-Senate Majority Leader Chuck Chvala became an outspoken advocate for the regulation of “issue ads.” The WMC claimed that the ads it ran against Chvala and several other candidates were public education about the candidates’ alleged anti-business voting records, not electioneering. Chvala countered that the ads amounted to an attempt to hamper the candidates’ electoral chances, and the State Board of Elections agreed, ruling that the WMC must disclose its donors and register as a political action committee (“PAC”).² Ultimately, the State Supreme Court ruled that disclosure was not required under the current law but that the Elections Board had the authority to regulate issue ads if it created clear standards.³ Unfortunately, the Board’s rules are subject to review by the state legislature’s Joint Committee for Review of Administrative Rules, and new rules designed to curb sham issue ads didn’t survive its first review.⁴

The legislature subsequently failed to pass regulations on sham issue ads, and this type of spending has been exploding for a decade. Local advocates, who monitor media buying and news reports, estimate that in the 2006 elections special interest contributions, or contributions from advocacy groups allied with both major state political parties, were used to pay for approximately \$15 million worth of sham issue ads – more than triple the \$4 million expended in 2002.⁵ Those advocates also concluded that 2002 was the first year in which the amount spent on unregulated sham issue ads clearly exceeded independent expenditures by PACs subject to disclosure requirements and campaign contribution limits.⁶ Without regulation of the sham issue ads, their funding sources remained obscured from public view.

The federal government and many states regulate such sham issue ads. To distinguish them from campaign ads using the “magic words” of express advocacy, such laws often refer to such ads as “electioneering communications,” defining them as advertisements in designated media, made within a specified period before an election, that refer unambiguously to a candidate and are targeted to the candidate’s constituents. Electioneering communications may be regulated exactly as are ads using magic words: spending of corporate and labor union treasury funds on such communications may be limited or banned entirely, corporations and unions may be required to establish affiliated “PACs” through which to finance advertising, PACs sponsoring such ads may be required to disclose their financial backers, and all sponsors (including individuals) may be required to report their spending on electioneering communications.

As of December 2006, 17 states have incorporated such provisions into their laws.⁷ Wisconsin, however, has not done so, leaving huge sums spent on campaign advertising exempt from disclosure requirements. Regulating Wisconsin’s sham issue ads would help keep the public informed about the sources of such ads and promote effective disclosure. To this day, however,

the public remains in the dark about the financing of major independent advertising campaigns that influence elections.

DISCLOSURE WEBSITE USABILITY AND ACCESS TO INFORMATION

The State Elections Board manages a website providing access to campaign finance information disclosed pursuant to state law. The Board's website was redesigned in 2005 so that is now possible to view candidates' and political committees' original filings along with any amendments. But the site is still difficult to navigate.

As discussed above, the "Grading State Disclosure" study concluded that the usability of the web in Wisconsin for campaign finance information needs improvement. Local advocates agree, noting that the site is lacking some key features. For example, the laws are not clearly explained, and it is difficult to locate the database of electronic filings.⁸

The accessibility of campaign finance information on the State Elections Board site is also poor, mainly because there is no searchable online database of contributions and expenditures. While the state's disclosure website allows individuals to download itemized reports of candidate data, those reports are available only for the candidates who filed electronically. The electronic filing system is very good, but many candidates still file on paper, because the law requires only that committees with at least \$20,000 in contributions in a campaign period or biennium file electronically.⁹ The Board does not make the information disclosed in those paper reports publicly accessible on its website.

CONTRIBUTION LIMITS

The efficacy of limits placed on different sources of contributions in Wisconsin varies widely. Some contribution limits are so high that they are virtually meaningless. For example, individuals are permitted to contribute up to \$10,000 per election cycle to the campaigns of statewide candidates. Along with Ohio, Wisconsin's limits in this category are the highest in the Midwest.¹⁰ Individuals are also permitted to contribute up to \$10,000 per calendar year to PACs and political parties. Wisconsin allows gubernatorial candidates to accept up to \$700,830 per election cycle in contributions from committees. A single political party committee could contribute the full amount to a gubernatorial candidate. In addition, PACs may contribute up to \$43,128 per election cycle to the campaigns of gubernatorial candidates, making Wisconsin's limits in this category the highest in the Midwest.

Even on a national scale, Wisconsin often ranks among the ten states with the highest contribution limits. For example:

- Wisconsin is one of five states that place a \$10,000 per election cycle contribution limit on individual donations to gubernatorial candidates, tying it and five other states for fourth place in this category.

Limits on Contributions from Individuals to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$3,400/election cycle*	\$3,400/election cycle	\$1,000/election cycle
Minnesota	\$2,000/election year**	\$500-\$1,000/ election year	\$500/election year
Ohio	\$10,000/election***	\$10,000/election	\$10,000/election
Wisconsin	\$10,000/election cycle	\$10,000/election cycle	\$1,000/election cycle

Limits on Contributions from PACs to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$34,000/election	\$34,000/election	\$10,000/election
Minnesota	\$2,000/election year	\$500-\$1,000/election year	\$500/election year
Ohio	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities
Wisconsin	\$43,128/election cycle	\$8,625 - \$21,560/election cycle	\$1,000/election cycle

Limits on Contributions from Political Parties to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$68,000/election cycle	\$68,000/election cycle	\$10,000/election cycle
Minnesota	\$20,000/election year	\$5,000-\$10,000/election year	\$5,000/election year
Ohio	\$564,000/election from state and county political parties in aggregate; prohibited from legislative campaign funds	\$564,000/election from state and county political parties in aggregate; prohibited from legislative campaign funds	\$112,500/election from state and county political parties in aggregate
Wisconsin	\$700,830/election cycle from all committees including political parties	\$140,156 - \$350,350/election cycle from all committees including political parties	\$22,425/election cycle from all committees including political parties

Limits on Contributions from Corporations to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	Prohibited	Prohibited	Prohibited
Ohio	Prohibited	Prohibited	Prohibited
Wisconsin	Prohibited	Prohibited	Prohibited

Limits on Contributions from Labor Unions to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	\$100/year	\$100/year	\$100/year
Ohio	\$10,000/election	\$10,000/election	\$10,000/election
Wisconsin	Unlimited	Unlimited	Unlimited

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$500/election cycle	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election	\$10,000/year	\$30,000/year to state political party	\$10,000/year to any political contributing entity; \$10,000/year to any county political party; \$15,000/year to any legislative campaign fund
\$500/election cycle	\$10,000/year	\$10,000/year	

* Election cycles may differ by state and by office (i.e. 4-year cycle for governor, 2-year cycle for state senators).

** States with limits per election year also have lower limits on non-election year contributions.

*** Primary, general, and special elections are considered separate elections.

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$5,000/election	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election from political action committees or political contributing entities	\$10,000/year from one political action committee or political contributing entity to another	\$15,000/year to any one legislative campaign fund; Prohibited to county political parties	
\$500/election cycle	Prohibited	\$6,000/year	

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$5,000/election cycle	Unlimited	Unlimited	
\$5,000/election year	Unlimited	Unlimited	Party expenditures that do not name any candidate or that fund mailings, phone calls, fundraising or party committee staff that benefit three or more party candidates are not counted toward the contribution limits for individual candidates.
\$56,000/election from state and county political parties in aggregate	\$10,000/year to any one political action committee or any one political contributing entity	Prohibited from county political party to another county political party; Unlimited from legislative campaign fund to state candidate fund of political party	Individual Limits differ for contributions from county parties; Individual limits differ for contributions from legislative campaign funds
\$11,213/election cycle from all committees including political parties	Unlimited	Unlimited	

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	
Prohibited	Prohibited	Prohibited	

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	
\$100/year	\$100/year	\$100/year	
\$10,000/election	\$10,000/year to another PAC or political contributing entity	\$30,000/year to any state political party candidate fund	Other limits apply for legislative campaign funds and contributions to Levin accounts
Unlimited	Unlimited	Unlimited	

- Wisconsin's limit of \$43,128 per election cycle on PAC donations to gubernatorial candidates is the third highest limit in the nation in this category.
- Wisconsin's limit of \$10,000 per calendar year from individuals to state political party committees places it among the states with the top ten highest contribution limits in this category.

And while Wisconsin prohibits corporate campaign contributions, unions can make unlimited contributions.¹¹

Some of Wisconsin's contribution limits do help to reduce the influence of the wealthy in political campaigns. Wisconsin's low limits for contributions from individuals and PACs to state legislative candidates fall in the middle range of limits in the Midwest.

PUBLIC FINANCING

Wisconsin law created the Wisconsin Election Campaign Fund ("WECF") in 1977, following passage of the Federal Election Campaign Act of 1971. The WECF established public financing in the form of a grant for candidates running in the general election for state executive, legislative, and supreme court offices. The program worked well for approximately twelve years, but is now largely unused and useless.

CONDITIONS FOR RECEIVING PUBLIC FUNDS

To qualify for public funding, candidates must meet the following criteria:¹²

- Applicants must apply for the grant and agree to voluntary spending limits as well as limits on what they may personally contribute to their campaign.
- Applicants must have raised a threshold amount of money in contributions of \$100 or less before the primary. The threshold amount varies with the office. For example, gubernatorial candidates must raise a minimum of \$53,910; candidates for State Representative must raise at least \$1,725.¹³
- If the office sought is a partisan office, applicants must have received six percent of the total vote cast for the office at the primary election and must have won the primary.
- If the office sought is a nonpartisan office, applicants must have been certified as a candidate.
- Applicants must have an opponent in the general election.

FIGURE 1: SAMPLE GRANT AWARD CALCULATION – CANDIDATE FOR STATE SENATE:

Contribution causing adjustment	Contribution amount made	Adjustment received by candidate	Calculation of grant
PAC contributions	\$1,000	Subtract from grant	\$15,525 (max grant amt) – \$1,000
Contributions from other candidates’ campaign committees	\$100	Subtract from grant	\$14,525 – \$100
Party contributions	\$8,000	Deduct allowed amount (20% of total spending limit of \$34,500) from contribution and subtract result from grant [\$8,000 – (\$34,500 x .20) = \$1,100]	\$14,425 – \$1,100
			\$13,325 (adjusted grant amt)

SOURCE: WISCONSIN LEGISLATIVE FISCAL BUREAU

CALCULATION OF THE GRANT AMOUNT

Wisconsin has a unique system for calculating the amount of funding available to candidates who qualify for grants. In other states, full public financing systems provide candidates with a lump-sum grant and bar (almost all) private contributions, and partial public financing systems typically match in whole or in part contributions candidates raise from private sources. The WECF combines elements of both of these more common systems.

The WECF specifies a maximum permissible grant, equal to 45 percent of the total spending limit for the office. That sum is then reduced by the amount of contributions accepted by the candidate from PACs, party committees, and other candidates’ campaign committees. This method of calculating grants appears to be designed to encourage candidates to reach out directly to individuals for contributions. The reduction formula works as follows:¹⁴

- A candidate seeking the maximum grant may accept contributions only from individuals and party committees.
- If a candidate accepts any contributions from PACs or other candidates’ campaign committees, the statutory maximum grant is reduced on a dollar-for-dollar basis, based on the amount of money received from PACs and campaign committees.

- A candidate accepting contributions from PACs and other candidates' campaign committees also may accept 20 percent of the spending limit for that office from political parties, without affecting the amount of the public grant. If candidates accept political party contributions that exceed the 20 percent limit, however, the statutory maximum grant is reduced by the excess amount on a dollar-for-dollar basis.
- If the state lacks adequate funds to provide the maximum grant, candidates may accept the difference between the maximum and the grant actually received in contributions from PACs or other candidates' campaign committees.¹⁵

EXPENDITURE LIMITS AND CAPS ON SELF-FINANCING

Candidates who choose to accept a public grant must abide by spending limits that are specific to the office they seek. For example, candidates for Governor may not spend more than \$1,078,200 total on their primary and general election campaigns, while candidates for State Representative may not spend more than \$17,250.¹⁶ However, candidates are freed from these spending limits if they face any privately-financed opponent who received more than 6 percent of the vote in a primary and who chooses not to voluntarily abide by the spending limits.¹⁷

There are also limits on the amount of money participating candidates may contribute to their own campaigns. Statewide candidates, candidates for the Superintendent of Public Instruction, and candidates for the Supreme Court may not use more than \$20,000 of their own money. State Senate candidates are limited to \$2,000, and Assembly candidates may not contribute more than \$1,000 to their campaigns.

PROBLEMS WITH THE WISCONSIN ELECTION CAMPAIGN FUND

The WECF is no longer working. In 1986, 140 candidates for state office – nearly three-quarters of those running – accepted public grants and abided by the accompanying spending limits. By contrast, candidates in only five legislative races accepted public grants in 2004, and none of those contests were competitive. The vanishing participation rate is the function of three weaknesses – a severe shortage of funds, outdated spending limits, and the lack of funds enabling participating candidates to respond to high-spending opposition.

Inadequate Funding

The WECF is funded solely by a voluntary \$1 tax check-off that does not affect a taxpayer's liability or refund. This amount has never been adjusted for inflation, and the number of contributing taxpayers has decreased significantly over the past several years. In its first year of existence, the check-off generated \$499,415 as a result of participation by 18.9 percent of tax filers. It reached its peak participation rate of 19.7 percent in 1979, when the check-off generated \$561,083. Since then, the WECF has suffered from decreased funding, in some instances resulting in candidate grants that are less than the statutory maximum. In 2002, taxpayers' participation rate dropped to a record low of five percent.

Outdated Spending Limits

The system's spending limits have not been adjusted since 1986. Gubernatorial candidates who accept public funding are limited to a little over \$1 million. In 2006, Governor Jim Doyle raised more than \$10 million. Similarly, in 2004, the average amount raised by Senate candidates was \$93,193, which is more than two and a half times the current spending limit for that office. Candidates have no incentive to participate if they know that they will be unable to spend enough to compete.

Omission of Rescue Funds

The system does not provide additional funds to participating candidates who need to respond to high-spending opposition. Instead, participating candidates who are opposed by privately-financed candidates who choose not to voluntarily abide by spending limits are freed from their pledged obligation to those limits, undermining one of the purposes of the system – to eliminate incessant fundraising.

ENFORCEMENT

On January 30, 2007, the Wisconsin Legislature passed legislation unifying two ineffective enforcement agencies – the Elections Board and the Ethics Board – into a single agency with expanded enforcement powers and more resources, under the direction of a politically independent board. This is a very important reform, but it is only the first step toward winning back Wisconsin's reputation for clean, open and accountable government.

New enforcement legislation is only the first step toward winning back Wisconsin's reputation for clean, open and accountable government.

RECOMMENDATIONS FOR REFORMING WISCONSIN'S CAMPAIGN FINANCE LAWS

PUBLIC FINANCING

Wisconsin's public financing system has an interesting design, but it is in dire need of updating. Candidates should have incentives for opting in. New legislation should do the following:

- Develop an alternative funding mechanism to replace or augment the tax check-off, so that the statutory maximum grants can be provided to all candidates who qualify for them.
- If the check-off is preserved, implement an annual public education campaign that informs people about the purpose of the check-off and how it works.
- Raise the voluntary spending limits so that participating candidates can raise enough for effective advocacy.
- Implement a matching funds provision that allows participating candidates to respond to high-spending, non-participating opposition candidates and independent expenditures.

CONTRIBUTION LIMITS

Wisconsin should dramatically reduce many of its contribution limits and ensure that all of the limits form a rational system. Lower limits will force candidates to reach out more widely to small donors, which will help to keep elected officials accountable to ordinary voters, not wealthy contributors. Lower contribution limits also will help to prevent corruption and the appearance of corruption. New legislation should do the following:

- Decrease the amount of money that individuals and PACs can contribute to statewide candidates' campaigns.
- Decrease the amount of money that individuals can donate to PACs and parties.
- Implement meaningful limits on the amount candidates may accept from political party committees.

DISCLOSURE

Wisconsin should ensure that voters are able to make informed decisions on Election Day. To that end, new legislation should do the following:

- Require all political committees, regardless of the amount of money raised, to file electronic disclosure reports and create a searchable, online database of those reports so that the public has fair access to the financial records of a campaign.
- Regulate sham issue ads just as express advocacy is regulated.

¹ Campaign Disclosure Project, Grading State Disclosure 2005, *available at* <http://campaigndisclosure.org/gradingstate/ny.html>. The ranking scale is from a high of 1 to a low of 50.

² Four years after fighting for regulation of issue ads, in 2002, Chuck Chvala illegally directed what was supposed to be an independent PAC called Independent Citizens for Democracy. Chvala used sham issue ads, the very problem he had previously sought to address, to help the campaigns of Democratic colleagues.

³ Jones, Richard P. *After High Court Refuses State Case, 'Issue Ads' Bill Sent to Full Senate*. Milwaukee Journal Sentinel. November 4, 1999.

⁴ Jones, Richard P. *Lawmakers Reject Rule on 'Issue Ads'*. Milwaukee Journal Sentinel. April 12, 2000.

⁵ The lack of regulation of such ads makes it impossible, of course, to determine the exact amount of money spent on them.

⁶ Wisconsin Democracy Campaign. *From Sunlight to Darkness: The Demise of Campaign Finance Disclosure in Wisconsin*. April 5, 2004. <http://www.wisdc.org/suntodark.php>

⁷ States that regulate electioneering communications are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Vermont, Washington, and West Virginia.

⁸ Wisconsin Democracy Campaign. *From Sunlight to Darkness: The Demise of Campaign Finance Disclosure in Wisconsin*. April 5, 2004. <http://www.wisdc.org/suntodark.php>

⁹ A campaign period, for a candidate who has not been a candidate in a previous election, begins on the day the candidate is required to file a registration statement and ends when any campaign obligations have been fulfilled or on June 30 or December 31 following the date on which the election is held, whichever is later. For a candidate who has been a candidate in a previous election, the campaign period begins on the day after the closing date for the period covered by the first financial report filed by or on behalf of the candidate subsequent to the date of the previous election, or if the candidate has incurred obligations from a previous campaign, the date on which the candidate receives sufficient contri-

butions to retire those obligations, whichever is later. Wis. Stat. Ann. § 11.26(17). A biennium is the period from January 1 of an odd-numbered year through December 31 of an even-numbered year.

¹⁰ Illinois has no contribution limits.

¹¹ Although Wisconsin law prohibits campaign donations from labor unions established after January 1, 1978, *see* Wis. Stat. Ann. § 11.38(1)(a), (2)(c), Wisconsin campaign finance lawyers and local advocates consulted by the Brennan Center do not know of any union established after that date.

¹² Wisconsin Legislative Fiscal Bureau. Public Financing of Campaigns in Wisconsin. Informational Paper 89. January, 2005. pp. 6-7.

¹³ Other candidates must raise the following in qualifying contributions: Lieutenant Governor: \$16,174; Secretary of State: \$10,781; State Treasurer: \$10,781; Attorney General: \$26,950; State Superintendent: \$10,781; Supreme Court Justice: \$10,781; State Senator: \$3,450.

¹⁴ Wisconsin Legislative Fiscal Bureau. Public Financing of Campaigns in Wisconsin. Informational Paper 89. January, 2005. p. 11.

¹⁵ Telephone Interview with Richard Bohringer, Lead Campaign Auditor, Wisconsin State Board of Elections (December 28, 2006).

¹⁶ Total (for the primary and general election campaigns) spending limits for other candidates are as follows: Lieutenant Governor: \$323,475; Secretary of State: \$215,625; State Treasurer: \$215,625; Attorney General: \$539,000; State Superintendent: \$215,625; Supreme Court Justice: \$215,625; State Senator: \$34,500.

¹⁷ Wis. Stat. Ann. § 11.50(2)(i).

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