

# **Florida's Broken Campaign Finance System**

## **Integrity Florida Report to the Florida House of Representatives Ethics & Elections Subcommittee**



**By Dan Krassner, and Ben Wilcox**

**January 16, 2013**

Chairman Boyd, Vice Chair Diaz, Ranking Member Cruz, and distinguished members of the Subcommittee, thank you for this opportunity to discuss the regulation of political campaigns.

We commend this Subcommittee, and the Chairman, for holding this hearing and for making campaign finance reform as well as ethics reform priority issues for the 2013 legislative session.

Integrity Florida is a nonpartisan, nonprofit research institute and government watchdog. The organization's vision is government in Florida that is the most open, ethical, responsive and accountable in the world. The research, analysis and recommendations presented in this report were developed by Integrity Florida Executive Director Dan Krassner and Integrity Florida Research Director Ben Wilcox.

### **Florida's campaign finance system is broken**

The state-level campaign finance system in Florida is fundamentally broken. Campaign finance regulations in our state have created a system that is far from transparent and lacking in accountability. Florida has a system that already allows unlimited contributions but encourages them to go through secretive committees.

Currently, Florida law limits direct contributions to candidates to \$500 per contributor per election cycle, but clearly there are glaring loopholes to these limits. Nearly seventy-five percent of all of the money raised in the 2012 election cycle avoided candidate accounts and instead flowed through "so-called" independent committees and political parties based on Integrity Florida analysis of state-level campaign contribution data from the Florida Division of Elections database. Because some of the money is transferred from a CCE to an ECO or PC -- often in a veiled attempt to shield the donor and recipient from the disclosure -- some of the contributions are double counted. With several types of funding vehicles allowing unlimited contributions, it is time to admit that donation limits are not stopping any contributors from spending unlimited amounts of money.

The 2012 election cycle state-level system of campaign finance included 797 candidates and 1104 committees. The committees included 692 Committees of Continuous Existence (CCEs), 239 Political Committees, 159 Electioneering Communications Organizations (ECOs) and 14 political parties. The average candidate raised just more than \$96,000 and the average committee raised slightly more than \$200,000. The cost of running a competitive campaign is staggering. The amount of time spent by officeholders raising money is alarming. Harvard Professor Lawrence Lessig estimates that members of Congress now spend between 30 and 70 percent of their time raising money rather than focusing on constituent service and policymaking.

Florida's campaign finance system resembles money laundering and it has failed in preventing unlimited amounts of money from being spent to attempt to influence the outcomes of our state and local elections. Donors have a proven track record of adapting to any campaign finance regulatory schemes that seek to limit contributions or restrain spending. Candidates for office aggressively pursue unlimited checks in secret through committees and parties under

current law. The deck is stacked against Floridians who have to follow strict \$500 limits on what they can give a candidate while corporations play by a different set of rules. For example, corporations with subsidiaries may give \$500 for each entity they control while individual Floridians may only give \$500 total to a candidate. Where is the fairness and balance with that set of rules?

From 1981 to 1990, there were 340 federal public corruption convictions by United States Attorneys' Offices of Florida officials, according to U.S. Department of Justice data. That number more than doubled between 1991 and 2000 reaching 715 convictions and dropped just slightly between 2001 and 2010 to 674. *Forbes* magazine noted Florida's political corruption problem in its February 2012 edition. While Integrity Florida encourages the Subcommittee to pursue comprehensive ethics reform as a strategy for preventing corruption, we have not found any evidence that existing campaign finance regulations have had any impact on reducing Florida's corruption risk.

Money will always find innovative ways into the political environment and we have found no way to effectively limit it. Existing campaign finance laws are just not working nor are they producing any clear consequences. And that includes the public financing system that was intended to restrain fundraising, which is moving towards irrelevance since it simply functions as another source of campaign money courtesy of taxpayer-funded subsidies.

The reality is that money in politics today is dominated by unlimited donations with inadequate disclosure. Our goal should be to transition to a political financing system that maximizes transparency and accountability with candidates becoming directly responsible for their own campaign activities. Let us trust the voters of Florida to evaluate the money individuals, companies or associations give to candidates, and then reach their own judgment about candidates' association with their funders.

The public is right to be concerned about the corrupting influence of money in politics buying too much influence on public policy. Our view is that corruption does not like sunlight and disclosure is the key to accountability.

### **Background on Florida's campaign finance system**

We started our research process by examining the history of the development of Florida's campaign finance system. In 1951, the legislature revised the Florida Election Code and added the requirement that candidates file reports listing all contributions received and expenditures made by their campaigns (known as the "Who Gave It Who Got It" law). In 1973, the legislature passed what is now Chapter 106, Florida Statutes, and created the Florida Elections Commission to enforce campaign financing provisions. The legislation added more detailed reporting requirements than previously existed and regulated political committees and committees of continuous existence. The 1973 law defined "Person" as "an individual or corporation, association, firm, partnership, joint stock company, club, organization, or other combination of individuals having collective capacity. In 1991, the legislature reduced the contribution limit to \$500 for person, political committee, or committee of continuous existence. In 1997, the

legislature exempted political parties from contribution limitations. And in 2006, the legislature created Electioneering Communication Organizations which can accept unlimited contributions.

### **Current United State Supreme Court doctrine**

We also reviewed the current doctrine of the U.S. Supreme Court to understand the constraints on any reform measures. The following three decisions are likely to have the greatest impact on the constitutionality of any proposed campaign finance reform measures:

1. ***Buckley v. Valeo (1976)***, the Supreme Court recognized that restrictions on political spending are restrictions on political speech. Eliminated limits on independent expenditures by individuals and groups.
2. ***Citizens United v. Federal Election Commission (2010)***, the Court decided:
  - it was unconstitutional to ban free speech through limitation of independent communications by corporations, associations and unions;
  - allowed use of general treasury funds for political speech; and
  - upheld disclosure requirements including identifying who is responsible for the content of an advertisement and who contributed money to support the making of the advertisement.
3. ***SpeechNow.org v. FEC (2010)***, D.C. Circuit removed the limits on individual donations to independent expenditure groups, which led to the creation of the so-called Super PACs.

### **Integrity Florida identified four challenges with existing regulations**

1. **Contribution limits outdated and dysfunctional.** Most contributions evade limitations on individual candidate accounts, streaming into political committees where there is less disclosure and public transparency.
2. **Minimal transparency and accountability.** Campaign finance reporting requirements provide less information to voters on a less frequent basis than other states.
3. **Litigation risk.** Florida may be out of sync with U.S. Supreme Court doctrine potentially increasing the risk of litigation over the state's campaign finance spending limits.
4. **Failing public financing system.** Existing system of public financing is failing to achieve goals of limiting the amount of campaign spending, leveling the playing field between candidates and reducing special interest funding.

## Four principles to guide policy recommendations

1. **Ensure balanced regulations.** Ensure transparency and accountability regulations and requirements are equally applied to candidate accounts, interest groups and political parties.
2. **Protect political speech.**
3. **Make disclosure more timely and detailed.** Enable the electorate to make informed decisions and give proper weight to different speakers and messages through rapid and sufficient disclosure.
4. **Keep it simple.** Simplify the reporting and disclosure system.

## The solution

To remedy the challenges we identified and achieve our research objective of policy recommendations that increase transparency and accountability in Florida's campaign finance system, Integrity Florida recommends five policy directions:

1. **Eliminate contribution limits.**
2. **Require 24-hour disclosure.**
3. **Streamline independent committees.**
4. **Remove spending restrictions and increase disclosure for political parties.**
5. **Enhance statewide campaign finance database.**

### Policy Solution #1: Eliminate contribution limits

For our state to increase responsibility and accountability in political campaigns, the legislature must allow candidates to directly control campaign resources that support their candidacy. The contribution limits on candidate accounts in the existing campaign finance system must be eliminated to accomplish the goal of increased campaign responsibility and accountability.

We did not develop this recommendation lightly nor did we expect to come before you to call for the elimination of all limits on the size of campaign checks. Our present campaign finance system is one that welcomes unlimited checks and plenty of room for donors to stay secret or far removed from the candidates and causes they fund. Removing limits on contribution amounts to candidate accounts, committees and parties, would enable a level playing field for all. Integrity Florida identified four states with no limits on contributions to candidates based on National Conference of State Legislatures research and we also examined the partisan makeup of those states based on Ballotpedia research. We could not identify any trends where one party gained an advantage over the other. There are Democratic governors in Missouri and Oregon and Republicans in Utah and Virginia. The legislative bodies in those states have a mix of party representation.

### **Four states with no limits on contributions to candidates**

1. **Missouri** – Democratic Governor, Senate (8 Democrats, 26 Republicans), House (57 Democrats, 105 Republicans)
2. **Oregon** – Democratic Governor, Senate (16 Democrats, 14 Republicans), House (30 Democrats, 30 Republicans)
3. **Utah** – Republican Governor, Senate (24 Republicans, 5 Democrats), House (61 Republicans, 14 Democrats)
4. **Virginia** – Republican Governor, Senate (20 Democrats, 20 Republicans), House (31 Democrats, 67 Republicans, 1 Independent, 1 Vacancy)

### **Policy Solution #2: Require 24-hour disclosure**

**"I am for complete transparency within 24 hours for all groups, committees, organizations, campaigns, PACs, etc." – former Florida Governor Jeb Bush quoted in the *Orlando Sentinel*.**

**Candidates/parties:** 24-hours after bank deposit for all contributions.

**Candidates/parties:** 24-hours after payment for all expenditures.

**Committees:** Maintain existing reporting requirements but add 24-hour reporting of all contributions and expenditures within 30 days of a primary or 60 days before any other election.

Our second recommendation of 24-hour disclosure on the surface sounds like it would be a challenge for compliance but a number of states have proven that rapid campaign finance disclosure (reporting within 24 to 72 hours) can work. Ballotpedia identified 14 fast-track disclosure states:

1. Alaska: Yes-For all contributions over \$10,000 during the entire election cycle.
2. Arizona: Yes-For all contributions over \$10,000 during the entire election cycle.
3. Idaho: Yes-All contributions of \$1,000 or more must be reported within 48 hours during the final 16 days before the election.
4. Maine: Yes-All expenditures of \$500 or more must be reported within 24 hours during the last 13 days before the election.
5. Mississippi: Yes-All contributions of \$200 or more received in the last 10 days before the election must be reported within 48 hours.
6. Missouri: Yes-All contributions of \$5,000 or more have to be reported within 48 hours regardless when the contribution was received.
7. Montana: Yes-All debts of \$500 or more for campaign supplies must be reported within 24 hours. Also, all campaign contributions of \$500 or more must be reported within 24 hours during the last ten days before the election.
8. New Jersey: Yes-All contributions of \$1,200 or more must be reported within 48 hours if the contribution was on the day of or before the election.
9. North Dakota: Yes-All contributions of \$500 or more must be reported within 48 hours during the final 20 days before the election.

10. Oklahoma: Yes-All contributions of \$500 or more must be reported within 24 hours during the final 10 days before the election.
11. South Dakota: Yes-All contributions of \$500 must be reported within 48 hours during the final 18 days before the election.
12. Virginia: Yes-All Contributions of \$10,000 or more must be reported within 72 hours.
13. Washington: Yes-All contributions limited to \$5,000 in last 21 days before the election.
14. Wisconsin: Yes-All contributions of \$500 or more must be reported within 24 hours during the final 15 days before the election.

Alaska, Arizona, Missouri and Montana require fast-track disclosure through the entire election cycle, according to Ballotpedia. The other states require more frequent reporting within a certain number of days before an election. These fast-track reporting requirements include contributions amounts as small as \$200 and expenditures as small as \$500. Initially, we considered an aggregate contribution or expenditure threshold for a fast-track reporting requirement recommendation in Florida but stakeholders told us that adding different sets of reporting timelines and threshold requirements would be more complicated than just having 24-hour disclosure of all contributions and expenditures with reasonable and practical conditions.

For all contributions, we recommend that a 24-hour disclosure requirement begin from the time of the bank deposit and that the current requirement for checks to be deposited within 48-hours be expanded to seven days. The goal is to capture contributions in the campaign finance system once they are deposited and funds are in use in the campaign. We have received mixed feedback from election law attorneys on applying these fast-track disclosure requirements on committees. If it is determined that 24-hour disclosure cannot be applied throughout the election cycle to committees, then we recommend maintaining existing reporting requirements but adding 24-hour reporting of all contributions and expenditures within 30 days of a primary or 60 days before any other election for committees.

Disclosure requirements were stressed as important and legal in the U.S. Supreme Court's Citizens United decision. The Court found that disclosure imposes no ceiling on campaign-related activities and does not prevent anyone from speaking. The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way, according to eight of the justices. The Court found that this transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

Disclosure of independent spending should include:

1. the name and contact information for the chair and/or treasurer of the spender,
2. the date the expenditure was made,
3. purpose of the expenditure,
4. amount of the expenditure,
5. the vendor name and contact information,
6. the name of the candidate or measure mentioned in the electioneering communication or targeted by the independent expenditure,
7. and if an independent expenditure, whether the expenditure was made to support or oppose the targeted candidate or measure.

### **Policy Solution #3: Streamline independent committees**

Our third recommendation is to streamline committees which includes the elimination of Committees of Continuous Existence (CCEs) but allows existing CCEs to convert to Political Committees (PCs). CCEs operate primarily as a “money pump.” CCEs raise funds, but then transfer what they raise to candidates, PCs and Electioneering Communications Organizations (ECOs) to spend the money. The process of transferring money between committees makes it difficult to track the money and leads to less transparency.

We recommend providing PCs and ECOs maximum flexibility to raise and spend funds directly, without restrictions on contribution or expenditure amounts, rather than relying on CCEs to raise and transfer the funds. Avoid monetary limits on contributions to these entities or their expenditures. Allow officeholders and announced candidates to solicit funds for committees and parties, if disclosed. All committees should disclose the names of candidates or measures targeted by each expenditure and whether the expenditure is made in support or opposition. The names of officeholders or candidates soliciting funds for committees should be listed on the committee’s campaign finance page on the Division of Elections’ website.

### **Policy Solution #4: Remove spending restrictions and increase disclosure for political parties**

The fourth recommendation we developed is to remove spending restrictions and increase disclosure for political parties. Remove restrictions on spending by political parties to support or oppose candidates or issues. Disclose names of candidates or measures targeted by party expenditures and whether expenditures are made in support or opposition. Disclose if contributions are solicited by officeholders or candidates on the party’s campaign finance page on the Division of Elections’ website. Disclose if contributions are earmarked (restricted) to support or oppose specific candidates or measures. All contributions and expenditures should be reported within 24 hours.

### **#5: Enhance statewide campaign finance database**

Our final recommendation is to enhance the statewide campaign finance database. We recommend uniform software and database standards for state and local campaign finance reports. In addition, city, county and state campaign finance data should be aggregated into one centralized website (the Florida Division of Elections site) for the public to easily search the funders of the candidates and policy proposals on their ballots.

Thank you for the opportunity to present our research and recommendations to the Subcommittee.