

FOREWORD

Purpose. The Brennan Center for Justice at New York University School of Law has designed this manual for people who want to draft campaign finance reform legislation that is both appropriate for their community and sensitive to constitutional concerns. Because different laws may be appropriate in different states and localities, the handbook will not tell you what provisions to include in legislation you draft. In our view, people with ties to communities interested in reform are in the best position to determine what legislation is needed and achievable. We therefore do not provide model laws here, but we do identify organizations that can provide such models.

Rather than providing a blueprint for reform, we offer practical suggestions and legal analysis that will assist reformers in selecting and drafting appropriate campaign finance provisions. The handbook certainly should help drafters who wish to maximize the potential for avoiding a lawsuit or succeeding in court if their legislation is challenged, so that campaign finance reform can be implemented expeditiously. The manual also should be of use to activists who aim to push the envelope of permissible reform by drafting statutes or initiatives that can serve as the basis for test cases. Both groups of drafters must understand the state of current law to accomplish their purpose.

We focus primarily on the drafting of statutes or initiatives that will govern state elections. Our recommendations and analysis also apply, however, to local campaign finance laws. Special issues that must be faced when attempting to regulate municipal campaign finance are addressed briefly in the Epilogue.

Format. The main body of the handbook is divided into two Parts. Part One discusses areas of general concern to anyone who is engaged in drafting campaign finance laws. Part Two focuses on specific regulatory measures that are often considered by reformers at both the state and local level. We include four appendices—a chapter-by-chapter list of cases cited in the handbook; a table of the federal courts of appeals and the states within each circuit’s jurisdiction; a compilation of cited articles, books, and other resources; and a list of national organizations that collect data, provide assistance, or otherwise work on campaign finance issues.

For ease of use, the chapters in Part Two (Drafting Specific Campaign Finance Measures) separate our practical TIPS from our more technical LEGAL ANALYSIS. The TIPS are suggestions for drafters who do not necessarily have formal legal training. The LEGAL ANALYSIS section discusses the case law relevant to the provision at issue, and other legal considerations, for lawyers who are participating in the drafting process and others interested in understanding the relevant legal framework.

Warning. This handbook is only a beginning. Campaign finance is an extremely volatile area of the law. New initiatives and statutes are being drafted even as this book goes to print, and some, if not most, of those laws will be challenged in court. The decisions in those cases and others now pending throughout the nation could radically alter the legal framework for reform.

We have therefore dated each chapter in the footer. We will periodically update the handbook and revise chapters to reflect new judicial decisions and evolving practical experience under different campaign finance systems. If you are unsure whether you have the current version of a chapter, do not hesitate to inquire.

In addition, our analysis is limited to cases interpreting and applying federal constitutional law. In some states, the state constitution or state statutes may set additional limits on the types of reform that may be implemented. In addition, opinions published by state Attorneys General and existing state regulatory requirements will influence the reform landscape. A careful legal analysis of any applicable state (and, where appropriate, local) law should always be completed before proposing any new campaign finance legislation—whether by statute or initiative.

We therefore cannot emphasize too strongly how important it is to supplement this handbook with high quality legal advice. Look for attorneys who are experienced in the field, follow developments in the area, and can bring a critical perspective to proposals you may wish to consider. Even if lawyers in your community are helping you to draft legislation, it is advisable to invite outside counsel to review the proposal with a disinterested eye. Lawyers at the Brennan Center may be consulted by telephone: 212-998-6730 or via e-mail: brennan.center@nyu.edu. Please include “Campaign Finance Question” in the subject line.