

**Elections & Campaign Reform Committee  
Illinois General Assembly**

**Statement of**

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The Brennan Center for Justice thanks the Committee for holding this hearing. The Brennan Center is a nonpartisan think tank and legal advocacy organization that focuses on democracy and justice. Our remarks here focus briefly on some of the constitutional issues related to campaign finance regulation, especially contribution limits. For a more detailed analysis, we refer you to our 200-page treatise, *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, which you may download chapter-by-chapter at [http://www.brennancenter.org/subpage.asp?key=38&tier3\\_key=10340](http://www.brennancenter.org/subpage.asp?key=38&tier3_key=10340). For specific questions, please feel free to contact Ciara Torres-Spelliscy at 212-998-6025 or [ciara.torres-spelliscy@nyu.edu](mailto:ciara.torres-spelliscy@nyu.edu).

**Contributions Limits Promote Accountability and Public Trust**

Contribution limits promote accountability. Limits on the size of contributions to candidates encourage candidates to reach out to a broad base of supporters, including moderate-income constituents. A candidate who needs widespread support from ordinary people is more likely to respond to their needs. Contribution limits also promote public confidence that elected representatives will be accountable to voters rather than wealthy donors.

**Reasonable Contribution Limits Are Constitutional**

Federal law limits the amount that individuals, political action committees (“PACs”), and political parties may contribute to federal candidates, PACs, and political parties. Federal law also limits the aggregate amount of contributions that an individual may make in a two-year period.<sup>1</sup> Corporations, labor unions, and national banks may not use treasury funds to make contributions in federal elections.<sup>2</sup> All of these limits have been upheld by the Supreme Court.<sup>3</sup>

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<sup>1</sup> Federal Elections Commission, *Contribution Limits* available at <http://www.fec.gov/pages/brochures/contrib.shtml#Chart> (last visited March 19, 2007).

<sup>2</sup> *McConnell v. FEC*, 540 U.S. 93, 201-2 (2003) (reaffirming limits on corporate contributions).

<sup>3</sup> See *McConnell*, 540 U.S. 93 (upholding the soft-money ban); *California Medical Assn. v. FEC*, 453 U.S. 182 (1981) (upholding \$5,000 contribution limit to multi-candidate PACs); *Buckley v.*

Illinois is one of only three states without any contribution limits.<sup>4</sup> Most states have separate contribution limits for individuals, corporations, unions, PACs, and political parties. Limits typically rise with the size of jurisdiction for which the candidate seeks office. State contribution limits have been upheld by the Supreme Court and by lower courts.<sup>5</sup>

Many states, in addition to limiting the amount that may be contributed to an individual candidate, also limit the aggregate amount of contributions a donor may make during a given time period or the amount that a candidate may accept from PACs in the aggregate. Both sorts of aggregate contribution limits are constitutional.<sup>6</sup>

Only once has the Supreme Court invalidated contribution limits. In *Randall v. Sorrell* (2006), the Court held that Vermont's contribution limits, considered with other factors, were so low as to prevent candidates from amassing sufficient funds for competitive campaigns.<sup>7</sup> Vermont's limits were the lowest in the nation—individuals, PACs and political parties in Vermont were allowed to give, per election *cycle*, only \$400 to candidates for statewide offices; \$300 to candidates for state senator; and \$200 to candidates for state representative.<sup>8</sup> *Randall* also noted that the limits were not indexed for inflation; volunteer expenses counted toward contribution limits; limits on contributions from individuals and political parties were the same; and there was no special justification (such as a history of corruption) for the low limits.<sup>9</sup> The contribution limits in HB 3497 are in the mainstream of state limits nationwide and should have no trouble surviving constitutional scrutiny.

### **Mandatory Spending Limits Are Unconstitutional**

*Buckley v. Valeo* reviewed the Federal Election Campaign Act, which was passed after the Watergate scandal and contained both contribution and expenditure limits. *Buckley* held that it is constitutional to limit contributions, but it is unconstitutional to limit expenditures (amounts spent directly on campaigns).<sup>10</sup> This holding invalidating expenditure limits was

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*Valeo*, 424 U.S. 1, 21, 25-26, 30 (1976) (per curiam) (upholding \$1,000 contribution limit to federal candidates).

<sup>4</sup> The other two states without contribution limits are Oregon and Virginia. In addition to limits on the source or amount of contributions, some states have temporal limits that ban contributions when the legislature is in session. In states that have judicial elections, a host of additional regulations and limits often apply. This testimony does not address limits that apply exclusively to judicial elections.

<sup>5</sup> *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 382 (2000) (upholding Missouri's limits); *Mont. Right to Life Ass'n v. Eddleman*, 343 F.3d 1085, 1092-96 (9th Cir. 2003) (upholding Montana's limits).

<sup>6</sup> *Buckley*, 424 U.S. at 27 (upholding \$25,000 aggregate annual limit on individual contributions); see *Eddleman*, 343 F.3d 1085 (upholding Montana's aggregate contribution limits for PACs).

<sup>7</sup> *Randall v. Sorrell*, 126 S. Ct. 2479, 2495 (2006).

<sup>8</sup> *Id.* at 2486.

<sup>9</sup> *Id.* at 2486, 2495, 2496, 2499.

<sup>10</sup> *Buckley*, 424 U.S. at 19.

recently reaffirmed in *Randall*, which rejected Vermont’s spending limits.<sup>11</sup> HB 3497 avoids this pitfall because it does not propose spending limits.

### **Voluntary Spending Limits in Public Funding Systems Are Constitutional**

Although HB 3497 does not provide for public financing of elections, it should be noted that *voluntary* spending limits are permissible in the context of public financing systems. Public funding is available for presidential elections and elections for various offices in several states. In exchange for receiving public funds, the candidates agree to limit their campaign spending. The Supreme Court and lower federal courts have upheld expenditure limits accepted as a condition of receiving public funding.<sup>12</sup>

### **Limits on Corporate Independent Expenditures and Electioneering Communications Are Constitutional**

Independent expenditures are expenditures made without coordination with a candidate or political party. Federal law bans the use of corporate, union, and bank treasury funds for expenditures in federal elections, including independent expenditures.<sup>13</sup> The Bipartisan Campaign Reform Act (“BCRA,” also known as “McCain-Feingold”) extends that ban to “electioneering communications,” which are defined as targeted broadcast advertisements referring to a federal candidate and run in the period immediately before an election. 2 U.S.C. § 441b. The Supreme Court has upheld bans on corporate independent expenditures and electioneering communications, when the affected corporate entities were permitted to form “separate segregated funds” or PACs to conduct the spending.<sup>14</sup> Limits on corporate and union spending that fall short of bans are also constitutional. Seventeen states, including Illinois, have some type of regulation of electioneering communications.

### **“Millionaire’s Amendments” Offer One Response to Self-Financed Candidates**

Elected officials sometimes worry that contribution limits will make it harder for them to compete against candidates who are wealthy enough to finance their own campaigns. Congress attempted to address the advantage of self-funded candidates with the so-called “millionaire’s amendment” to BCRA. This provision raises contribution limits for candidates facing high-spending, self-financed opponents and allows increased coordinated party expenditures for candidates operating under those limits.<sup>15</sup> The millionaire’s amendment has not been reviewed by any court. In addition to raising contribution limits, as HB 3497 does, another option for addressing self-financed candidates is public financing, which helps to level the playing field among candidates without exacerbating public cynicism about the influence of large contributions.

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<sup>11</sup> *Randall*, 126 S. Ct. at 2485.

<sup>12</sup> *See Buckley*, 424 U.S. 1 (upholding the presidential public financing system under Federal Election Campaign Act).

<sup>13</sup> Federal Election Commission, *Independent Expenditures Brochure* available at <http://www.fec.gov/pages/brochures/indexp.shtml> (last visited March 19, 2007).

<sup>14</sup> *McConnell*, 540 U.S. at 229-30; *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990).

<sup>15</sup> Federal Election Commission, *Millionaire’s Amendment Brochure* available at <http://www.fec.gov/pages/brochures/millionaire.shtml> (last visited March 19, 2007).