



## CONTRIBUTION LIMITS STIFLE POLITICAL DEBATE

This primer summarizes how contribution limits undermine basic First Amendment rights and harm the democratic process. This primer borrows heavily from the Center for Competitive Politics Chairman Bradley Smith's *Cato Policy Analysis No. 238*.

### **Contribution Limits Undermine Fundamental First Amendment Rights**

“We do little but engage in word games unless we recognize that people - candidates and contributors - spend money on political activity because they wish to communicate ideas, and their constitutional interest in doing so is precisely the same whether they or someone else utters the words.” – Chief Justice Warren Burger

The First Amendment wisely says that government “shall make no law...abridging the freedom of speech.” Former Supreme Court Chief Justice Warren Burger recognized that “money translates into communication.” Therefore, Burger observed that “limiting contribution, as a practical matter, will limit expenditures and will put an effective ceiling on the amount of political activity and debate that the Government will permit to take place.”

Contribution limits expressly damage the democratic process.

### **Contribution Limits Favor Incumbents**

Higher levels of spending tend to benefit challengers more than the incumbent. Incumbents begin each election with significant advantages in name recognition. They are able to attract press coverage because of their office, and they often receive assistance from their office staff and government-paid constituent mailings. Through constituent favors, they can also add to their support. To offset these advantages, challengers must spend money. By limiting the ability of challengers to raise and spend money, campaign finance laws lock into place the advantages of incumbency and disproportionately harm challengers.

Justice Burger opined that the loss of seed money, in the form of early, large contributions would discriminate against many challengers. With contribution limits the unknown challenger is unable to raise money quickly from a small number of dedicated supporters and other contributors are less likely to give to unknowns. The likely result is that many qualified challengers are discouraged from running.

The incumbent, though, with a database of past contributors, an intact campaign organization, and

often a constant fundraising machine can easily raise funds from a large number of contributors.

There is little doubt that limits on campaign spending hurt challengers significantly more than incumbents. The positive effect of added spending is significantly greater for the unknown challengers than for the incumbent. In fact, studies show an inverse relationship between incumbent spending and incumbent success, while a challenger's added spending is more likely to impact the challenger's chances of electoral success. Therefore, it is not surprising that incumbents seek to limit the amount of money that challengers can raise.

Indeed, since contribution limits were first enacted at the federal level, successful challenger campaigns have plummeted by 50 percent.

### **Contribution Limits Favor Political Insiders**

Additional contribution limits also require significant reporting requirements. Such regulation creates opportunities to gain an advantage over an opponent through use of the regulatory process. As a result, litigation has now become a major campaign tactic.

Regulation favors insiders already familiar with the regulatory machinery and those with the money and sophistication to hire the lawyers, accountants, and lobbyists needed to comply with complex filing requirements. Challengers are less likely to have staff familiar with the intricacies of campaign finance regulation.

### **Contribution Limits Favor Wealthy Candidates and Parties**

Campaign finance restrictions have also created the modern phenomenon of the "millionaire candidate."

The Supreme Court has ruled that the amount of money that candidates can spend on their own campaigns is unlimited. This ability to spend unlimited amounts, coupled with contribution limits, favors candidates who can contribute large sums to their own campaigns from personal assets.

At the same time that campaign finance restrictions help wealthy candidates, they can hinder candidates who represent a less affluent constituency. Historically, candidates who represent less affluent constituencies have often obtained their campaign funds from a small base of wealthy donors.

### **Contribution Limits Take Control of the Campaign Away from the Candidates**

News commentators, candidates and campaign finance reformers have expressed concern over an increased prominence of independent-expenditure organizations on federal elections (such as MoveOn.org and the Swift Boat Vets for Truth).

Candidates of both parties have expressed some hesitancy over independent groups acting on the candidate's behalf, citing a lack of control over their campaigns, and an inability to reach or reason with the independent groups for fear of violating prohibitions on coordinated communications.

While strongly believing in the ability of independent political groups to engage in advocacy, CCP notes that contribution limits at the state and local level would likely have the same effect as at the federal level.