

New Study Ranks States' Campaign Contribution Laws

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Based on how campaign finance laws are often portrayed in the news media, the conventional wisdom holds that the campaign finance system is in need of perpetual "reform." Such reforms typically entail a one-way ratchet in favor of more restrictions on campaign contributions and speech. However, a new study by the Institute for Free Speech (IFS), ranking the 50 states' campaign contribution laws, challenges that conventional wisdom. In addition to underscoring the challenges that our clients often face when making contributions in connection with state elections, the IFS study suggests that, to the extent "reform" is needed at the state level, it should be in the direction of liberalization.

As the IFS "Free Speech Index" highlights, the United States' system of federalism is both a boon to policy innovation and a compliance headache for clients that conduct activities in a multitude of states. As IFS notes, its study "challenge[s] the assumption that campaign contributions are regulated in a similar manner by all states. Quite the contrary." Overall, the study notes that campaign contributions are "more highly regulated than at any time prior to the 1970s, and in some important ways more highly regulated than ever."

Thus, prior to making contributions to state candidates, state political parties, and state PACs in any given state, an individual, corporation, or PAC must consult the applicable state laws to determine what contribution limits, registration and reporting requirements, and blackout periods apply. Clients who are lobbyists or government contractors, or who are related to lobbyists or government contractors, often are subject to enhanced regulation under states' laws.

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At the same time, the IFS study reveals the extent to which many states' campaign contribution laws are far more liberal than others', and also more liberal than the federal laws. For example, the IFS study highlights that 28 states allow unlimited contributions from individuals to political parties, and 22 states allow political parties to provide unlimited support to their candidates.

At the federal level, contributions to the national political party committees have been regulated for more than 40 years, and have become even more so since the enactment of the "Bipartisan Campaign Reform Act" of 2002. That 2002 federal law even regulated state party committees' "federal election activities." As *Election Law News* has explained, this has led to various efforts in recent years to undo some of those federal restrictions, whether through litigation, rulemakings at the Federal Election Commission, or riders in omnibus budget bills.

The IFS study also notes that 32 states allow unions, corporations, or both to make contributions directly to candidates, and 11 states have no limits on how much individuals may contribute to candidates, PACs, or parties. Again, this is in contrast to the federal laws, which prohibit corporations and unions from making direct political contributions to candidates, party committees, and conventional PACs, and also limit individual contributions.

The policy implications of the IFS study are significant. As IFS explains, "[t]he right to contribute to candidates, parties, and political groups allows citizens to simply and effectively join with others to amplify their voices and advocate for change. The right to speak out about politics is a core First Amendment right, and limits on one's political donations infringe on that right." Accordingly, the IFS study awards top scores to states with the least restrictive campaign contribution laws and ranks states with the most restrictive laws last. The five states that tied for the top score of "A+" in the IFS study were Alabama, Nebraska, Oregon, Utah, and Virginia. Six other states earned "A" grades. Eleven states received "F" grades: Alaska, Colorado, Connecticut, Hawaii, Kentucky, Maryland, Massachusetts, Missouri, Oklahoma, Rhode Island, and West Virginia.

What is striking about these results is the diversity among the top-scoring and the bottom-scoring cohorts. Put another way, there is no correlation between how restrictive states' campaign contribution laws are and good governance. Citing other original research by the organization, the IFS study notes:

- "[F]our of the ten least corrupt states [Iowa, Nebraska, Oregon, and Utah] place no limit on the amount individuals may contribute to state legislative candidates";
- "[T]wo of the top three best-governed states [Utah and Virginia] have no limits at all on how much may be given to candidates from any source"; and
- There is "no relationship between the presence of limits on corporate and union contributions to state legislative candidates and a state's corruption rate or quality of government as determined by the Pew Center on the States."

The IFS study on states' campaign contribution laws is the first part of the organization's "Free Speech Index." Wiley Rein's Election Law practice group has assisted IFS with compiling the second part of the organization's index, which is under development and will focus on state laws regulating speech by independent groups.