

Campaign Finance Reform on the Ballot in Several States This November: Missouri, South Dakota, Washington

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There are a number of prominent campaign finance ballot measures that will be before the voters in November. Below are summaries of three of the most significant ones.

Missouri

Missouri voters are expected to vote on a proposed constitutional amendment establishing campaign contribution limits and banning contributions from certain entities, such as corporations and labor unions. Since 2008, Missouri has had no contribution limits, and the state permits corporate and union contributions. The constitutional amendment would limit contributions to candidates to \$2,600 per election and limit contributions to political parties to \$25,000. In addition to banning corporate and union contributions, the law would prohibit PAC-to-PAC transfers and would require out-of-state PACs to register in Missouri before making contributions.

The ballot measure has already been challenged in court. Last month, a state trial court held that the terms of the proposed constitutional amendment were consistent with the First Amendment and declined to remove the question from the ballot. The plaintiffs appealed, but the Court of Appeals affirmed.

South Dakota

Initiated Measure 22 (IM-22) proposes to overhaul South Dakota's campaign finance laws. First, the measure proposes to impose limits for the first time on PAC contributions to candidates, making these limits equal to those imposed on individual contributors. The measure

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also proposes to decrease the limits on contributions from individuals to candidates for lieutenant governor and attorney general to \$2,000 per calendar year, and to candidates for other state offices (except governor) to \$1,000 per calendar year (the limit is currently \$4,000 per calendar year for all statewide candidates). The measure also calls for a decrease in contribution limits for state legislative and county office candidates to \$750 per calendar year (currently \$1,000). Additionally, the measure would decrease the limit on contributions to PACs from \$10,000 to \$2,000 per calendar year and the limit on contributions to political parties from \$10,000 to \$5,000 per calendar year.

IM-22 also proposes more substantial disclosure requirements on individuals and organizations financing certain communications within 60 days of a South Dakota election. As an initial matter, the definition of “independent expenditure” under the measure is much broader than the commonly understood term and is more akin to an “electioneering communication.” The definition covers any communication that refers to a clearly identified candidate and that targets the candidate’s relevant electorate within 60 days of an election. An organization that spends \$100 on such advertisements must include a disclaimer and list the organization’s top five contributors over the previous 12 months. The sponsor must also file a report within 48 hours, itemizing contributors until the full amount of the independent expenditure is accounted for and indicating whether the expenditure is for or against a particular candidate, ballot measure, or political party.

The measure proposes to make a host of other changes to South Dakota campaign finance law, including new disclaimer requirements and a “Democracy Credit Program,” whereby residents receive two \$50 vouchers from the government to contribute to candidates of their choice.

Washington State

Initiative 1464 (I-1464) proposes several major changes to Washington State campaign finance law. Of significance are new restrictions on campaign contributions from government contractors and lobbyists and the expansion of expenditures that are considered coordinated with a candidate. The initiative also proposes a comprehensive public financing program.

If the initiative were to pass, Washington would join the growing number of states that have pay-to-play laws. This pay-to-play law would apply to a contract or contracts worth at least \$100,000. It would limit contributions from contractors, prospective contractors, entities owned by the contractor or in which the contractor has a controlling interest, and persons owning or having a controlling interest in the contractor (if the contractor is an entity). The law would also cover officers and directors and immediate family members of the contractor. Any person covered by the law would not be permitted to contribute more than \$100 to a candidate for an office with a decision-making role with respect to the contractor’s contracts.

The initiative also proposes a \$100 limit on contributions from lobbyists to candidates for an office having decision-making authority over matters about which the person had lobbied in the previous four years. The initiative purports to extend the restriction to similar affiliated entities and persons as in the pay-to-play law.

I-1464, in an effort to curb independent expenditures, significantly expands the universe of communications that are considered coordinated with a candidate. The initiative provides that “[a]n expenditure in support of a candidate or opposing a candidate’s opponent ... is presumed to be made in coordination with that candidate or the candidate’s agent ... and is thus presumed to be a contribution” under a number of specific circumstances. For example, the presumption of coordination applies when, within two years prior to the expenditure being made and within the same election cycle:

- The candidate or agent, and the person making the expenditure, attended a meeting at which campaign-related strategy or planning related to the candidate’s election was discussed;
- The candidate or agent, and the person making the expenditure, shared office space; or
- The candidate or agent, and the person making the expenditure, had the same agent or coordinated with the same person for non-ministerial campaign-related purposes.

The presumption would also apply when the candidate or agent contributed to a political committee making the expenditure; solicited contributions to the political committee making the expenditure; or solicited contributions at an event hosted or organized by the political committee making the expenditure.

The presumption of coordination is a rebuttable one. Once the basis for the presumption has been established by a preponderance of the evidence, the burden of proof shifts to the alleged violator to disprove the presumed coordination.