



March 5, 2015

The Honorable Ray Merrick
Kansas House of Representatives
300 SW 10th Street
Room 370-W
Topeka, KS 66612

The Honorable Tom Burroughs
Kansas House of Representatives
300 SW 10th Street
Room 359-W
Topeka, KS 66612

Re: Suggested Improvements to House Bill 2213

Dear Speaker Merrick, Minority Leader Burroughs, and members of the House:

On behalf of the Center for Competitive Politics, I am writing you today to respectfully submit the following comments commending the Legislature for its consideration of House Bill 2213, which raises the state's severely outdated campaign contribution limits, and to suggest several ways the proposed legislation could be improved. As the *Topeka Capitol-Journal* wisely editorialized, "the logical conclusion is that individual campaign contribution limits should be increased."¹

The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, we presently represent nonprofit, incorporated educational associations in challenges to state campaign finance laws in Colorado, Delaware, and Nevada. We are also involved in litigation against the state of California.

The practical effects of this legislation, if passed, are strongly supported by prevailing academic research, which demonstrates that contribution limits neither decrease corruption, nor produce "good" government, nor improve public confidence in government. Low contribution limits, furthermore, have had the effect of increasing the speech of independent groups relative to candidates and political parties. Unfortunately, even if H.B. 2213 becomes law, Kansas will still rank between 22nd and 29th in contributions allowed to candidates. Such a record suggests that Kansas should go even further in raising contribution limits, and should strongly consider indexing those limits to inflation in order to prevent the diminishing value of political contributions over time.

¹ Editorial, "It's time to raise campaign contribution limits," *The Capitol-Journal*. Retrieved on March 5, 2015. Available at: <http://cjonline.com/opinion/2015-02-18/editorial-its-time-raise-campaign-contribution-limits> (February 18, 2015).

I. Raising contribution limits will bolster the speech of candidates and parties, allowing them to better compete with independent groups that have unlimited speech rights.

Contribution limits on giving to candidates and parties do nothing to deter individuals from wanting to express support for a particular cause; they merely shift these donations to independent expenditure groups. The Supreme Court and federal courts have properly ruled that independent speech by labor unions and corporations about candidates² and donations to independent groups³ cannot be limited under the First Amendment.

Low contribution limits that are further eroded by inflation every election cycle leave candidates and parties struggling to compete on messaging with independent expenditure groups. These low limits have the unintended consequence of increasing donations to independent groups, like Super PACs, at the expense of the contribution-limited candidates and political parties. These contribution limits place candidates and parties at a permanent disadvantage.

While raising contribution limits is a positive development, the new limits on giving to candidates and political parties proposed in this bill will likely have minimal effect on the overall level of funding for political speech. Like pressing down on one side of a water-filled balloon, contributions will inevitably flow to a different legal source. The net effect is the diminished influence of candidates and political parties to control their message – and be accountable for it – during campaigns. To counteract this, legislators should consider raising existing limits even further, or eliminating them altogether.

II. Fifteen states and Congress have already increased or eliminated portions of their contribution limits since 2010’s *Citizens United* decision, in accordance with academic research, which demonstrates that contribution limits neither reduce corruption, nor produce “good” government, nor improve public confidence in government.

Since 2010, the year of the *Citizens United* decision, Congress and fifteen states – Alabama, Arizona, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, North Carolina, Oklahoma, Tennessee, Vermont, and Wyoming – have increased or repealed portions of their contribution limits in some manner. Alabama is notable for becoming the sixth state with no limits on the size or source of campaign contributions, joining Missouri, Nebraska, Oregon, Utah, and Virginia.⁴ Thus, the trend around the country is one of state legislators liberalizing existing limits and enhancing the First Amendment freedoms of their constituents.

These efforts, generally, have been bipartisan, as both Republicans and Democrats across the country see the folly of strict contribution limits. H.B. 2213 wisely follows in the footsteps of these other states in an effort to protect and enhance the First Amendment rights of all Kansans.

² *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

³ *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010).

⁴ Luke Wachob, “2013 State Legislative Trends: Campaign Contributions Limits Increase in Nine States,” Center for Competitive Politics’ Legislative Review. Retrieved on March 5, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2014/05/2014-04-25_Legislative-Review_Wachob_2013-State-Legislative-Trends-Increasing-Contribution-Limits2.pdf (May 9, 2014).

The reason for this trend is clear. As academic research and studies by the Center for Competitive Politics have shown, contribution limits have no impact on reducing corruption,⁵ promoting “good” government,⁶ or improving trust in government,⁷ but do have an impact in terms of reducing the amount of political speech by candidates and parties. Academic research also demonstrates that campaign cash and legislative votes are not linked.⁸

As the table on the next page demonstrates, if H.B. 2213 becomes law, Kansas will still have contribution limits around or below the national average. Kansas would rank 23rd for giving to gubernatorial candidates. For State Senate, 21 states would have higher limits, and 27 would have lower limits. For State House races, 28 states would have higher limits and just 15 would have lower limits. Our comparisons are based on the amount that can be given per election cycle in an election year, to make state-by-state figures comparable.

Accordingly, we urge the Legislature to consider raising existing limits even further, or eliminating both individual and party contribution limits altogether as 12 states have done.⁹ Already, 29 states have no limit on the amount an individual may donate to a political party.¹⁰ States without limits have fared as well or better than states with low limits in state rankings on corruption and good governance measurements. Many people wrongly assume that strict contribution limits provide all citizens equal access to candidates. In reality, established interests (including trade associations, labor unions, the media, well-organized public interest groups, celebrities, and established political players) already have an overwhelming advantage in regards to their influence. Thus, contribution limits serve to stifle the voice of the average citizen while doing little to hinder the influence of those who already hold political sway.

Ultimately, this is because contribution limits infringe upon the free speech rights guaranteed under the First Amendment. While courts have upheld many limits on contributions as constitutional, there is broad agreement that limits on campaign contributions harm the right to free speech guaranteed by the First Amendment. However, now that evidence proves that contribution limits do not reduce corruption, produce “good” government, or increase trust in government, citizens and policymakers alike have recognized that the logic underlying contribution limits is weak at best.

⁵ Adriana Cordis and Jeff Milyo, “Working Paper No. 13-09: Do State Campaign Finance Reforms Reduce Public Corruption?” Mercatus Center at George Mason University. Retrieved on March 5, 2015. Available at: http://mercatus.org/sites/default/files/Milyo_CampaignFinanceReforms_v2.pdf (April 2013); Matt Nese and Luke Wachob, “Do Lower Contribution Limits Decrease Public Corruption?” Center for Competitive Politics’ Issue Analysis No. 5. Retrieved on March 5, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/08/2013-08-01_Issue-Analysis-5_Do-Lower-Contribution-Limits-Decrease-Public-Corruption1.pdf (August 2013).

⁶ Matt Nese and Luke Wachob, “Do Lower Contribution Limits Produce ‘Good’ Government?,” Center for Competitive Politics’ Issue Analysis No. 6. Retrieved on March 5, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/10/2013-10-08_Issue-Analysis-6_Do-Lower-Contribution-Limits-Produce-Good-Government1.pdf (October 2013); Matt Nese, “Do Limits on Corporate and Union Giving to Candidates Lead to ‘Good’ Government?,” Center for Competitive Politics’ Issue Analysis 7. Retrieved on March 5, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/11/2013-11-20_Issue-Analysis-7_Do-Limits-On-Corporate-And-Union-Giving-To-Candidates-Lead-To-Good-Government.pdf (November 2013).

⁷ Jeff Milyo, “Do State Campaign Finance Reforms Increase Trust and Confidence in State Government?,” Paper Presented at the 2012 Annual Meetings of the Midwest Political Science Association. Retrieved on March 5, 2015. Available at: http://web.missouri.edu/~milyoj/files/CFR%20and%20trust%20in%20state%20government_v3.pdf (April 2012).

⁸ See e.g. Steven Levitt, “How Do Senators Vote? Disentangling the Role of Party Affiliation, Voter Preferences and Senator Ideology,” *American Economic Review*, Vol. 86 (1996): 425–441; Gregory Wawro, “Legislative Entrepreneurship in the United States House of Representatives.” (Ann Arbor: University of Michigan Press, 2000); Stephen Ansolbehere, John M. de Figuerido, and James M. Snyder Jr., “Why Is There So Little Money in U.S. Politics?,” *Journal of Economic Perspectives*, Vol. 17:1 (Winter 2003): 105–130.

⁹ These twelve states are Alabama, Indiana, Iowa, Mississippi, Missouri, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia.

¹⁰ These twenty-nine states are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.

State Limits on Individual Contributions to Candidates, per Election Cycle								
Governor			State Senate			State House		
Ranking	State	Limit	Ranking	State	Limit	Ranking	State	Limit
1	Alabama	Unlimited	1	Alabama	Unlimited	1	Alabama	Unlimited
	Indiana	Unlimited		Indiana	Unlimited		Indiana	Unlimited
	Iowa	Unlimited		Iowa	Unlimited		Iowa	Unlimited
	Mississippi	Unlimited		Mississippi	Unlimited		Mississippi	Unlimited
	Missouri	Unlimited		Missouri	Unlimited		Missouri	Unlimited
	Nebraska	Unlimited		Nebraska	Unlimited		Nebraska	Unlimited
	North Dakota	Unlimited		North Dakota	Unlimited		North Dakota	Unlimited
	Oregon	Unlimited		Oregon	Unlimited		Oregon	Unlimited
	Pennsylvania	Unlimited		Pennsylvania	Unlimited		Pennsylvania	Unlimited
	Texas	Unlimited		Texas	Unlimited		Texas	Unlimited
	Utah	Unlimited		Utah	Unlimited		Utah	Unlimited
	Virginia	Unlimited		Virginia	Unlimited		Virginia	Unlimited
13	California	\$54,400	13	Ohio	\$24,311.04	13	Ohio	\$24,311.04
14	New York	\$50,995.83	14	New York	\$16,800	14	Nevada	\$10,000
15	Ohio	\$24,311.04	15	Nevada	\$10,000		North Carolina	\$10,000
16	Georgia	\$12,600		North Carolina	\$10,000	16	California	\$8,200
17	New Mexico	\$10,400	17	California	\$8,200		New York	\$8,200
18	Idaho	\$10,000	18	Maryland	\$6,000	18	Maryland	\$6,000
	Louisiana	\$10,000	19	Illinois *	\$5,300	19	Illinois *	\$5,300
	Nevada	\$10,000	20	New Jersey	\$5,200	20	New Jersey	\$5,200
	North Carolina	\$10,000		Oklahoma	\$5,200		Oklahoma	\$5,200
	Wisconsin	\$10,000	22	Georgia	\$5,000	22	Georgia	\$5,000
23	Kansas w/ H.B. 2213	\$8,000	22	Kansas w/ H.B. 2213	\$5,000		Louisiana	\$5,000
23	New Jersey	\$7,600		Louisiana	\$5,000	24	New Mexico	\$4,800
	Tennessee	\$7,600	24	New Mexico	\$4,800	25	Arizona	\$4,000
25	Connecticut	\$7,000	25	Arizona	\$4,000		Arkansas	\$4,000
	South Carolina	\$7,000		Arkansas	\$4,000	27	Tennessee	\$3,000
27	Michigan	\$6,800		Hawaii	\$4,000		Wyoming	\$3,000
28	Florida	\$6,000	28	Tennessee	\$3,000	29	Florida	\$2,000
	Hawaii	\$6,000		Wyoming	\$3,000		Hawaii	\$2,000
	Maryland	\$6,000	30	Connecticut	\$2,000		Idaho	\$2,000
31	Illinois *	\$5,300		Florida	\$2,000	29	Kansas w/ H.B. 2213	\$2,000
32	Oklahoma	\$5,200		Idaho	\$2,000		Kentucky	\$2,000
33	Wyoming	\$5,000		Kansas	\$2,000		New Hampshire	\$2,000
34	Arizona	\$4,000		Kentucky	\$2,000		South Carolina	\$2,000
	Arkansas	\$4,000		Michigan	\$2,000		West Virginia	\$2,000
	Kansas	\$4,000		New Hampshire	\$2,000	36	Washington	\$1,800
	Minnesota	\$4,000		South Carolina	\$2,000	37	Kansas	\$1,000
	South Dakota	\$4,000		West Virginia	\$2,000		Massachusetts	\$1,000
	Vermont	\$4,000	39	Washington	\$1,800		Michigan	\$1,000
40	Washington	\$3,600	40	Vermont	\$1,500		Minnesota	\$1,000
41	Maine	\$3,000	41	Massachusetts	\$1,000		Rhode Island	\$1,000
42	Kentucky	\$2,000		Minnesota	\$1,000		South Dakota	\$1,000
	New Hampshire	\$2,000		Rhode Island	\$1,000		Vermont	\$1,000
	West Virginia	\$2,000		South Dakota	\$1,000	44	Maine	\$750
45	Montana	\$1,300		Wisconsin	\$1,000	45	Delaware	\$600
46	Delaware	\$1,200	46	Maine	\$750	46	Alaska	\$500
47	Colorado	\$1,100	47	Delaware	\$600		Connecticut	\$500
48	Massachusetts	\$1,000	48	Alaska	\$500		Wisconsin	\$500
	Rhode Island	\$1,000	49	Colorado	\$400	49	Colorado	\$400
50	Alaska	\$500	50	Montana	\$340	50	Montana	\$340

Using NCSL's data on campaign contribution limits, we calculated each state's contribution limit on individual giving to candidates for governor, State Senator, and State Representative (or the equivalent) on an election cycle basis. In states that allocate their limits on an election basis, we doubled the limit to account for the maximum an individual could give to a candidate in both a primary and general election. States that regulate contribution limits on a yearly basis were considered to have limits equivalent to an election cycle for the purposes of this chart. Contribution limit data available at: "State Limits on Contributions to Candidates," National Conference of State Legislatures (NCSL). Retrieved on March 5, 2015. Available at: http://www.ncsl.org/Portals/1/documents/legismg/Limits_to_Candidates_2012-2014.pdf (October 2013). Adjustments have been made to these values to reflect legislative changes in Arizona, Massachusetts, Michigan, Oklahoma, and Vermont not reflected in NCSL's data. Save for those states that increased their limits effective for the 2015-2016 election cycle (Maryland, Massachusetts, Oklahoma, Vermont, and Wyoming), the figures are reflective of limits intact for the 2013-2014 election cycle. In New York, where limits for primary campaigns differ based on a candidate's political party, we took an average of the primary limits for all parties listed by the state and added the resultant figure to the general election limit.

* In Illinois, if spending by Super PACs hits a defined amount in a given race, then existing candidate contribution limits no longer apply.

Limiting free speech rights should not be undertaken lightly, even when it is constitutionally permissible to do so. Many state legislators now realize that raising or eliminating limits entirely better conforms to the First Amendment, and therefore better fulfills every lawmaker's commitment to upholding the Constitution. This bill is a praiseworthy first step toward protecting these vital First Amendment rights, but Kansas legislators could go even further.

III. The bill's proposed contribution limits should be indexed to inflation.

While a comprehensive increase in contribution limits as undertaken in H.B. 2213 is desirable, this one-time increase fails to ensure that the limits in Kansas stay both competitive and constitutional. Inflation adjusting is a standard, noncontroversial practice that prevents inflation from eroding the value of the contribution limit. The federal government regularly adjusts its candidate and party contribution limits to inflation, and 19 of the 38 states that have contribution limits on individual giving to candidates index those limits to inflation, according to the National Conference of State Legislatures.¹¹ This is a bipartisan idea that acknowledges that an individual's ability to voice her support for her preferred candidate should not be diminished merely by the passage of time.

The lack of an inflation adjustment mechanism in this legislation will have a very real negative effect on an individual's ability to voice their political preferences. In 1990, the year of the enactment of the majority of the state's current contribution limits, the \$2,000 per election limit on individual giving to gubernatorial candidates, for example, was a far more significant amount than it is today; with inflation adjustment, it is the equivalent of \$3,622 today. From this perspective, the new limit of \$4,000 is hardly an increase at all – it merely maintains the level of political expression Kansans were given in the early 1990s.

Kansas lawmakers should amend H.B. 2213 to index the revised limits to inflation so that the diminishing value of contributions to candidates and parties in the Sunflower State does not continue into the future. The amended bill could delegate this authority to an agency of the executive branch, much in the way that federal contribution limits are indexed to inflation and amended by the Federal Election Commission each election cycle.¹² Adding language that regularly adjusts Kansas's limits for inflation would save the Legislature from re-legislating this issue in future sessions, and would allow individuals to express their support for candidates and parties at the same real level each election.

As with the contribution limits themselves, the diminished capacity to participate in the political process over time through giving to candidates and political parties is in part responsible for the rise of independent spending, as individuals who want to participate in the political process find other legal avenues to express their opinions.

It should also be noted that the Supreme Court has previously found that contribution limits could be *unconstitutionally* low.¹³ While Kansas's current limits are unlikely to fit this category,

¹¹ "State Limits on Contributions to Candidates," National Conference of State Legislatures. Retrieved on March 5, 2015. Available at: http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2012-2014.pdf (October 2013). This figure accounts for legislation signed into law in 2014 in Oklahoma and Vermont, not reflected in the NCSL data, which raised contribution limits and indexed them to inflation.

¹² See, 11 C.F.R. 110.17(e).

¹³ See *Randall v. Sorrell*, 548 U.S. 230, 261-62 (2006) (opinion of Breyer, J.) (finding that a failure to index contribution limits to inflation, in combination with other factors, may substantially burden First Amendment rights and therefore render a state's contribution regime unconstitutional).

inflation indexing is a non-controversial way for the state to mitigate the risk of constitutional litigation on this matter in the future.

* * *

Ultimately, House Bill 2213 wisely raises Kansas’s outdated campaign contribution limits, in the spirit of current legislative trends and prevailing academic research. Contribution limits have failed to address any corruption issues or improve confidence in government, and they have increased the influence of independent groups, at the expense of candidates and political parties. By raising limits even further and indexing those limits to inflation, Kansas policymakers could do more to protect the First Amendment rights of Kansans. For a detailed analysis of the many failures of contribution limits as a policy, I strongly encourage you to consult the Center for Competitive Politics’ Policy Primer, “Campaign Contribution Limits: A Cap on Free Speech.”¹⁴

Thank you for allowing me to submit comments on House Bill 2213. Should you have any further questions regarding this legislation or any other campaign finance proposals, please do not hesitate to contact me at (703) 894-6835 or by e-mail at mnese@campaignfreedom.org.

Respectfully yours,



Matt Nese
Director of External Relations
Center for Competitive Politics

¹⁴“Campaign Contribution Limits: A Cap on Free Speech,” Center for Competitive Politics’ Policy Primer. Retrieved on March 5, 2015. Available at: http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-10-22_Policy-Primer_Contribution-Limits.pdf (July 18, 2014).