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Testimony to the Kansas Special Committee on Ethics, Elections and Local Government
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Thank you, Mr. Chairman, and members of the committee. I appreciate the invitation to speak to you today on the topic of campaign contribution limits in the states. I'm Katy Owens Hubler, a Senior Policy Specialist at the National Conference of State Legislatures, a bipartisan organization headquartered in Denver, Colorado.

SLIDE NCSL serves the legislators and legislative staff in all 50 states and the territories. We provide non-partisan research and analysis, and link legislators with each other and others.

SLIDE Today I've been asked to speak on campaign finance regulation in the states, and specifically campaign contribution limits. Setting limits on contributions is one of the ways that states regulate campaign finance. Some states also have public financing programs and set disclosure and reporting requirements for individuals and organizations who make campaign contributions. I'll talk about public financing first, then contribution limits, and finally a bit about disclosure requirements.

I am open to questions either during this presentation or after it, as you prefer, Mr. Chairman.

SLIDE First, a bit about public financing, the least common method of regulating campaign finance. Only thirteen states have public financing programs in place, and the trend is moving away from these.

The blue states on this map have clean elections programs for legislative and/or statewide candidates. In these clean elections programs, candidates are encouraged to collect small contributions from a number of individuals to demonstrate that they have enough public support to warrant public funding of the campaign. In return, the candidate receives a sum of money equal to the expenditure limit set for the election.

The red states on this map provide matching funds for candidates up to a certain amount. A candidate must first receive a certain amount in qualifying contributions, which the state will then match. The candidate can then raise additional money from other sources up to the expenditure limit.

SLIDE The aspect of campaign finance regulation that I've been asked to address here today is contribution limits. I'll touch on the following:

- Contribution limits and the Supreme Court
- Federal contribution limits
- State contribution limits
- Recent state legislation

SLIDE The first Supreme Court case addressing contribution limits takes us back to 1976 – *Buckley v. Valeo*. The case was a reaction to the passage of the Federal Election Campaign Act (FECA), which Congress amended in 1974 to limit contributions. Both the Republican and the Democratic parties filed suit objecting to these and other provisions of the act. The court struck down some aspects of the FECA, including limits on expenditures, but upheld limits on contributions. Contribution limits were upheld because they act as a deterrent to quid pro quo corruption, where contributors to campaigns are given preferential treatment because of their financial assistance. After this case, many states implemented contribution limits in line with federal limits outlined in the FECA.

SLIDE The issue of contribution limits was raised again in 2006 in *Randall v. Sorrell.* It involved a Vermont law that set the strictest contribution limits in the country, allowing a maximum contribution of $400 for a gubernatorial campaign. It also limited independent expenditures.

I'll take a moment here to define independent expenditures. As defined in federal regulations, an independent expenditure is an expenditure for a communication "expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents."

In *Randall v. Sorrell* the court ruled that independent expenditures cannot be limited; they must be allowed as free speech. The court also struck down the Vermont contribution limits as unconstitutionally low, as they "prevent candidates from amassing the resources necessary for effective campaign advocacy." As a result, states may not set their contribution limits so low as to make it difficult to run a campaign and all its related expenses.

SLIDE Perhaps the most famous court case in recent years on the subject of campaign finance is 2010's *Citizens United v. Federal Election Commission*. This was one of several cases that addressed provisions in the Bipartisan Campaign Reform Act (BCRA) of 2002 that imposed bans on soft money and placed limits on advertising by corporations and political action committees (PACs) immediately before an election. We have more information on other campaign finance-related Supreme Court cases on our website and I can provide more information if you'd like, Mr. Chairman.

For the purposes of focusing on contribution limits, I'll touch on one aspect of the *Citizens United* decision. The court ruled that corporations, unions and PACs can spend unlimited amounts of money on ads and other communications designed to support or oppose a candidate. Corporations are still prohibited from contributing directly to federal candidates, and we'll see in a bit that states put restrictions on corporate contributions as well.

SLIDE The most recent Supreme Court decision affecting campaign contribution limits came in 2014 with *McCutcheon v. Federal Election Commission*. Before this case, individuals were able to donate money to as many candidates as they pleased, provided they did not cross an aggregate threshold. Shaun McCutcheon challenged this limit as a violation of his freedom of speech. Chief Justice John Roberts and the majority agreed with McCutcheon, striking down aggregate contribution limits.

In order to impose these kinds of limits, states must be able to prove the link between contributions and corruption. As a result, many states that had aggregate limits have reexamined these regulations, and it is unlikely that we'll see new state laws imposing aggregate limits.

SLIDE So, from these court cases this is the lay of the land in 2015. States can impose limits on contributions to candidates. But:

- Limits can't be too low, and
- They can't impose individual aggregate limits.

Also, independent expenditures can't be limited.

SLIDE Now, I'll touch briefly on federal contribution limits. This matrix is taken from the FEC website. Note that it summarizes many different limits on who can give how much to whom. There are federal limits on individual contributions to candidates, individual contributions to PACs and party committees, and also limits on candidate committee contributions to candidate committees, PACs, and parties, and PACs to candidates, parties, etc. Every state that has contribution limits has a similarly complex matrix of limits on contributions. For this presentation I've focused primarily on contribution limits to candidates.

SLIDE This slide highlights federal limits from different individuals and organizations to candidates.

A couple of things to note:

- These amounts are per election. State regulations vary as to the timeframe of the limit – some are per election, some are per year and some are per election cycle, .
- The individual limit to a candidate is indexed for inflation. Many states use indexing as well, which I'll talk about a bit later in the presentation.
- "PAC" here refers to a committee that makes contributions to other federal political committees. Independent-expenditure-only political committees (sometimes called "super PACs") may accept unlimited contributions, including from corporations and unions.

I wanted to highlight federal limits in order to provide some perspective as I discuss state limits, which I'll get into next.

SLIDE There are twelve states that have no limits on individuals giving to candidates, and six of these have no limits on any entity contributing to candidates. We'll see these states in the next slide. Other states have limits on contributions to candidates from: individuals, state parties, PACs, corporations or unions.

SLIDE These twelve states have no limits on individual donors contributing to candidates. Six of these states-- Alabama, Missouri, Nebraska, Oregon, Utah and Virginia--have no limits on any entity contributing to a candidate. The others limit some things. North Dakota, Pennsylvania and Texas prohibit corporate and union contributions to candidates. Indiana places limits on corporate and union contributions, and Iowa and Mississippi prohibit corporate contributions but permit union contributions. I've provided the committee with a chart that contains details on each state's limitations on contributions to candidates.

SLIDE I mentioned previously that states vary in the timeframe of contribution limits – in some states the limit is by election, others by calendar year, and others by election cycle, which is often two years long. For the sake of comparison, this chart includes the 25 states that, like Kansas, have contribution limits per election. The yellow shows limits for gubernatorial candidates, red is for state Senate, and blue is for state House. Note that states often place the same limit for state House and Senate, and the contribution limit for gubernatorial candidates is often much higher.

SLIDE Of the same 25 states compared in the previous chart, these are the average, median, highest and lowest limits on individual contributions to candidates for governor, state Senate and state House. I've also included Kansas' limits for comparison. The contribution limit on state Senate in Kansas is right at the median, but the limits on governor and state house are a bit lower than the median.

SLIDE Similarly, this chart indicates the same information for state party to candidate limits. It contains comparisons of just sixteen states that have limits per election. In Kansas, these limits are the same as individual limits. In most other states, the limit is higher.

SLIDE In most states, PAC to candidate limits are the same as individual to candidate limits. Nine states have higher limits for PACs than for individuals: Alaska, Connecticut, Illinois, New Jersey, Oklahoma, South Carolina, Tennessee, Wisconsin and Wyoming. Only Massachusetts has a lower limit for PACs than for individuals.

A few states have different limits for different types of PACs. For example, Louisiana's limits for "big PACs" is double the limit for regular PACs. A "big PAC" is a PAC with over 250 members who contributed over $50 during the last year.

In Arizona a PAC that has received contributions from 500 or more individuals in amounts of $10 or more in a year may qualify as a "Super PAC," which has higher contribution limits.

California and Colorado both have higher contribution limits for small donor committees. I'll talk about these a bit more in depth later in the presentation.

SLIDE In most states, contribution limits from corporations or unions to candidates are the same as individual limits to candidates. This chart contains states that have unlimited contributions from corporations and unions to candidates, as well as those that prohibit these contributions.

SLIDE Now I'd like to highlight contribution limits in the four states that surround Kansas. Nebraska and Missouri will be quick – they are two of the six states that do not have any limits on contributions to candidates.

SLIDE Oklahoma's limit on individual contributions is $2,700 per candidate, which is higher than the individual contribution limit in Kansas. The state party to candidate limits in Oklahoma differ depending on the candidate receiving the funds.

SLIDE Oklahoma limits PAC contributions to candidates at $5,000, and prohibits corporate and union contributions to candidates.

SLIDE In contrast, Colorado's limits on individuals giving to candidates are lower than those in Kansas. However, if candidates accept voluntary spending limits, this amount doubles. This is dependent on the candidate's opponent not accepting the limits and the candidate raising more than 10 percent of the limit.

SLIDE Colorado's limits on state party to candidate contributions are quite high compared to other states we've looked at.

SLIDE As I mentioned previously, Colorado has higher limits for "small donor committees." These are committees that accept a lot of small donations – no more than $50 per individual – from a large number of donors.

Colorado prohibits corporations and unions from contributing to candidates, but they can contribute through PACs established by the organization. These are subject to the PAC contribution limits.

SLIDE In my discussion of federal contribution limits I mentioned that the federal limits on individual contributions are adjusted for inflation. The nineteen states on this map also adjust their contribution limits for state offices.

SLIDE Now – what states have been looking at changing their campaign finance laws recently? As I've mentioned before, public financing is not seeing much action recently. Legislation that we've seen recently on contribution limits has mostly been to raise limits. I'll discuss those in a minute. But more than half of the bills that have been introduced this year on campaign finance have been on disclosure and reporting requirements.

SLIDE Since 2013, eleven states have raised their campaign contribution limits. These are states that raised limits through legislation and does not include those that raised limits to account for inflation. In 2013 Alabama eliminated the last limit that it put on contributions – a $500 limit on direct corporate contributions to candidates – making it the sixth state to have no limits on contributions.

SLIDE Legislation that increased contribution limits often contained other provisions, indicating that many states are looking at campaign finance regulation as a whole. In the last couple of years several states have enacted provisions that will tie their contribution limits to inflation going forward. Several bills that raised contribution limits also tightened enforcement regulations or created higher penalties for noncompliance with reporting requirements. And several bills included provisions for increased transparency of independent expenditures.

SLIDE A few other trends that we've seen in legislation in the last couple of years:

- More states are looking at making it easier to search for campaign finance information by requiring electronic filing of reports and the creation of searchable databases.
- States are looking at reporting requirements for independent expenditures, including disclaimers or identification requirements for television ads.
- And, they are looking at regulating coordination between candidates and independent groups.

SLIDE With that, I will conclude my prepared remarks. I'm ready to answer any questions that you may have, and if I don't have answers today, I will do some additional research and get back to the committee. Thank you, Mr. Chairman, for the opportunity to be here with you today.