

Governor's Blue-Ribbon Commission on Campaign Finance Reform

State of Wisconsin

Volume I: Report of the Commission

May 1997

Governor's Blue-Ribbon Commission on Campaign Finance Reform

David W. Adamany

Robert H. Friebert

Donald F. Kettl, Chairman

James R. Klauser

Brandon Scholz

Staff

Terry Shelton, Executive Director

Shirley Smith, Administrative Assistant

Inga Glodowski

Robert Turner

Kristen Jensen

J. Lloyd Horwich

Kurt Sippel

Mark Brown

Wendy Kloiber

Consultant

Kenneth Mayer

Contents

1. Introduction

The Case for Reform

Money and Politics

The Commission's Findings

Framing the Recommendations

2. Ensure Accountability through Full and Prompt Disclosure

The Case for Disclosure

Experiences of Other States

Electronic Filing

Electronic Disclosure

3. Make Elections Candidate- and Political Party-Centered

Roads Not Taken

Contribution Limits

Political Action and Legislative Campaign Committees

4. Encourage More Competitive Elections

Citizens' Debates over Campaign Finance Reform

Public Financing Grants

The Wisconsin Clean Election System

5. Level the Playing Field

Promoting Freedom of Speech

Free Speech and the Electoral Process

New Challenges for Campaign Finance

Issue Advocacy and Express Advocacy

Promoting Free Speech through Disclosure

6. Improve Regulation of Campaign Practices

Transforming the State Elections Board

Improving the Board's Resolution of Questions

Strengthening the Board's Resources

Enforcement

7. Secure other Important Improvements in Campaign Finance

Local Public Finance Systems

Clear Rules of the Game

Restrict the Use of Campaign War Chests

Bundling and Conduits

Creation of a New Commission

Appendix I: Index of Recommendations

Ensuring Full and Immediate Disclosure

Making Elections Candidate- and Political Party-Centered

Encouraging More Competitive Elections

Leveling the Playing Field

Improving Campaign Finance Regulation

Securing Other Important Improvements

Appendix II: Executive Order

Appendix III: Schedule of Commission Meetings

Appendix IV: Supplementary Comments of Commissioners

Supplementary Comments of David W. Adamany

Supplementary Comments of Robert H. Friebert

Supplementary Comments of Donald F. Kettl

Supplementary Comments of James R. Klauser

Acknowledgments

The Commission is grateful to the people of the state of Wisconsin, who contributed their ideas and energy

to its search for comprehensive campaign finance reform. Close observers of state politics cannot remember an issue that has so galvanized residents of the Badger State. The Commission, quite simply, could not have done its work without the energy and commitment of the citizens who invested so much of their energy.

The Commission wishes to express its deep gratitude to two organizations that provided generous financial support: the Joyce Foundation, and especially Vice President Larry Hansen; and the University of Wisconsin-Madison, especially Chancellor David Ward. The considerable staff assistance and the public opinion poll would not have been possible without this help.

Finally, the Commission is profoundly grateful for the tireless work of the staff of the Robert M. La Follette Institute at the University of Wisconsin-Madison. The staff provided endless labor with remarkable good humor, no matter the pressures of time. In particular, Terry Shelton, the Institute's outreach coordinator, was invaluable as the Commission's executive director. Shirley Smith managed the endless details of the Commission's work and the production of its report with unfailing grace. All of the Commissioners are, jointly and individually, grateful for this support.

1. Introduction

Public outrage over campaign finance practices rose dramatically during the 1996 election season. The presidential campaign found itself enmeshed in charges and counter-charges about foreign money, special-interest contributions, misuse of the White House for fund raising, and a financial arms race that drove campaign spending upward. Voter turnout in the presidential election was an embarrassing 49 percent of eligible voters—and only one-fourth of eligible voters actually elected the president.

Although Wisconsin's 1996 elections were spared such battles, the elections nevertheless upset many voters. Citizens complained that the races were too negative, too long, and too devoid of debate on the big issues. Candidates, for their part, complained that independent money poured into many races, causing them to lose control of their own campaigns in the last days before the election. Stealth campaign tactics—large amounts of money from undisclosed sources funding principally negative ads—invaded key races.

Wisconsin has a rich and long tradition of clean elections. Experts have regularly cited the reforms enacted in 1975 after the last major commission study as a national model. Since then, though, the spreading problems of campaign finance have begun to infect Wisconsin's model system and have eroded its preeminent position. What first began as small problems in the mid-1980s have gradually bubbled over into a quiet but serious crisis.

To tackle the quiet crisis of Wisconsin's campaign finance practices, Governor Tommy Thompson appointed a five-member Blue-Ribbon Commission on Campaign Finance Reform in November 1996. The Governor sensed that this is an issue on which the state needs to act. Governor Thompson exerted strong leadership by creating the Commission and asking it to take a thorough look at the problems of campaign finance in Wisconsin and to propose fundamental reforms.

The Commission has spent the last seven months carefully examining the problem and listening to citizens from throughout Wisconsin. It held three public hearings (in Madison, Milwaukee, and Green Bay);

surveyed citizen attitudes through a public-opinion poll; collected written suggestions through fax, mail, and e-mail; created a 24-hour telephone hotline to which citizens could call in their suggestions; and reached out to citizens through electronic public hearings on Wisconsin Public Television and through the state's mass media.

Wisconsin has long been a model of campaign finance reform. With this report, the Commission seeks to upgrade and improve the state's existing system—and to adapt it to rapidly changing political conditions. Its goal is to make important changes in the state's campaign finance system *before* small problems become large ones.

Our central mission is to strengthen the connection between Wisconsin's citizens and the government that represents them. We seek to respond to the entreaty of a World War II veteran who asked for fundamental reform and told the Commission in an electronic public hearing, "I did not offer my life for this type of government."

The Case for Reform

Especially since the closing weeks of the 1996 presidential election, the mass media in Wisconsin and throughout the nation have produced a constant drumbeat of campaign finance stories. The problems identified in the news coverage, as well as in water-cooler and coffee-shop conversations, have raised concern about campaign finance reform to a level unprecedented since the Watergate scandals of the early 1970s.

To gauge citizens' attitudes about campaign finance reform, the Commission arranged for the St. Norbert College Survey Center to conduct a public opinion survey of Wisconsin residents. The poll showed widespread concern about campaign finance and strong support for reform. Two-thirds of the respondents said that "the political election process is in big trouble." But 86 percent believed that the problem is not "too far gone" and that "some reform will help." More than 84 percent of those responding agreed that "I'd like to see sweeping and fundamental campaign finance reform."

Although concern about campaign finance was high, however, other issues ranked higher. The poll showed that citizens ranked "reducing taxes in Wisconsin," "reducing crime in Wisconsin," and "protecting the environment in Wisconsin" almost equally important. Citizens believed that "improving highways in Wisconsin" was less important, followed by "reforming the way campaigns are financed in Wisconsin."

Citizens believed that campaign finance reform was important—but that other problems were even more so. When the survey asked how important campaign finance ought to be when compared with other issues like taxes and foreign policy, only 13 percent of those responding believed that it ought to be more important. Just over 54 percent thought it was less important, while 31 percent gauged it as important.

What do these findings add up to? It is clear that the headlines about campaign finance abuses have upset citizens. But it is equally clear that bread-and-butter issues matter more.

Does this mean that the case for campaign finance reform is weak? The Commission has carefully studied the questions and emphatically believes that the answer is "no"—but that campaign finance reform is a different kind of public policy issue.

Campaign finance is not so much a "the sky is falling" issue. It is, rather, a "termites in the basement" problem. The electoral process—and the campaign finance process that supports it—forms the very

foundation on which a vibrant and free democratic society is based. Problems with other issues, like taxes and the environment, can be more obvious and demand more immediate attention. But if the foundation of democracy is allowed to erode, our society will be far less equipped to solve its most critical problems.

Campaign finance reform problems, left unsolved over time, will slowly but steadily eat away at citizens' trust in their government and government's capacity to solve citizens' problems. That is the overwhelming message that the members of the Commission have taken from the public opinion poll, scores of hours of public input, and comments from hundreds of citizens. Campaign finance reform cannot in itself solve the problem of trust. But the Commission concludes that, without it, restoring public trust in government will be impossible.

The people of Wisconsin are far luckier than the citizens of other states. Those who built the state's political system and framed its civic culture made it of sturdy stuff. Nevertheless, the Commission has concluded that important problems have emerged in the state's campaign finance system that, quite simply, must be fixed.

This is a critical time in the state's history. While new problems have emerged, there is still time to fix them before they worsen. Well-planned reforms can reaffirm Wisconsin's place as a national leader in campaign finance—and in building a government that listens carefully to its people.

It would be a serious error, however, to view the problem casually or to tinker with reforms incrementally. Rebuilding public trust and confidence, if lost, would take monumental work. Small tensions in the system can quickly widen into major gaps that make it harder for political parties to work together effectively or to govern citizens well. The Commission has carefully considered the problems facing Wisconsin and has crafted a thorough and solid set of recommendations. They are not a menu from which to select some palatable fixes but, rather, an interlocking set of ideas, in which the whole is far stronger than the pieces.

The Commission urges, therefore, that its recommendations be considered and passed by the legislature as a complete package. It is critical that the state legislature avoid the urge to tinker with the package, to pull out the easiest or most attractive pieces, or to postpone serious consideration. The Commission's recommendations are woven together with a single thread. Tugging on it anywhere could cause the whole fabric to unravel: to give unfair advantage to some players over others; to risk creating new loopholes; and to plant the seeds for new problems that future commissions will have to attack. Wisconsin's citizens deserve nothing less than quick action from their elected officials in reviewing and passing the recommendations in this report.

Money and Politics

It is easy to point to "big money" as the problem of campaign finance. It is just as easy to overlook the important point that money has a *positive* value and great importance in politics. The ability of voters to know about and act on the choices they face depends on money: on candidates gaining the resources necessary to speak effectively to voters. Indeed, the U.S. Supreme Court has a two-decade-long tradition, based in *Buckley v. Valeo*, which puts substantial protections around the money used in political campaigns. Campaign money has become an important part of the First Amendment's freedom of speech protections.

The central issue of campaign finance reform is balancing the necessary role of money in the political system with citizens' interest in ensuring that the system is protected from undue influence by those with the most money. Money provides a meaningful voice to persons engaged in political campaigns; it shapes the strategies of campaigns and the means candidates use to talk with voters. But that leads to a central problem:

controlling the supply and demand for money to preserve the ideals of an informed electorate, while avoiding both the appearance and the reality of elected officials being dominated and controlled by those successful in the economic system.

This is the problem that has most preoccupied the members of the Governor's Blue-Ribbon Commission on Campaign Finance Reform. Indeed, it is the biggest problem of a democratic system operating in a market economy. There is no perfect balance between these competing principles, and no balance that is struck by today's laws can remain stable for long. No reform can possibly satisfy everyone, and no reform can work forever.

The Commission concludes that the conflict between these forces has nudged Wisconsin's system out of balance and that fundamental reforms are therefore needed. The Commission has dedicated its efforts to rejuvenating the state's democratic processes.

The time for reform is ripe. The need is great. The members of the Commission conclude unanimously that Wisconsin's campaign finance system requires a comprehensive review and thorough reform.

The Commission's Findings

The Commission has identified five central problems that must be solved. To attack these problems, the Commission has framed five basic principles.

Ensuring full and immediate disclosure. Too many parts of the campaign finance process have become invisible and unaccountable to voters. Citizens deserve the full and accurate facts about campaign finance, and they deserve that information before they vote.

Making elections candidate- and party-centered. The election process has drifted away from the candidates and parties. Citizens deserve a process that puts candidates for office and the parties they represent at the center of the campaign process, because they are accountable to the voters at the polls.

Encouraging more competitive elections. The high—and rising—cost of political campaigns has made elections less competitive. Citizens deserve to have a rich choice of candidates and opinions from which to choose in casting their ballots.

Leveling the playing field. Promoting free speech. Recent changes in campaign technology, especially the spread of campaign ads masquerading as "educational" ads, have created "stealth campaigns"—substantial advertising during the election season that has occurred independent of political parties and candidates' campaigns. Many of these efforts have had significant effects on the electoral process, but the source of the money paying for the ads has frequently been hidden or unknown. These tactics have denied voters critical information about who is making which claims. Voters deserve the full facts before casting their ballots. Such information would promote, not hinder, speech. It would also level the playing field for everyone.

Improving campaign finance regulation. The state's system of campaign finance regulation is seriously strained. Citizens deserve a prompt and effective system to enforce campaign finance laws and ensure clean elections.

In framing its recommendations, the Commission carefully reviewed hundreds of suggestions submitted by

ordinary citizens and public officials alike. Indeed, no other group in recent Wisconsin memory has so carefully surveyed Wisconsinites before framing proposals. Some citizen proposals were deemed unworkable. Some proposals violated long-standing Constitutional protections of free speech. Others, the Commission feared, might unintentionally produce new loopholes that could worsen the problems. But all have been valuable in shaping the Commission's work.

Wisconsin's citizens have contributed a remarkable array of impassioned opinions and suggestions. In fact, it is an enormous testimony to the civic concern of the state's citizens that the Commission has assembled such an amazing collection of ideas. (See Volume II of this report for the testimony and proposals citizens presented to the Commission.) The recommendations range from full public financing of all state elections to strong opposition to public financing, with full disclosure of campaign finance instead. With such disparate—indeed, completely contradictory—advice, the Commission's recommendations are bound to disappoint many of those who participated in the process. There was no citizen consensus around which the Commission could have framed its recommendations.

Campaign finance is an extraordinarily complex process. It is, in fact, much like a football game, in which fans go to the stadium, watch the teams match wits and fight for advantage—but in the campaign game, the fans themselves determine the winner. Like football, most of the game's deep strategizing happens in the locker room, far from public view. Presenting voters with a good contest requires ensuring that the complex locker room strategies are fair to all players.

To improve the game, some citizens proposed "single-bullet" solutions that, they believed, would solve critical problems. But as effective as Reggie White is at rushing opponents' passers or Brett Favre is at finding the open receiver, no play on offense or defense can possibly work every time. There are too many ways to counter any single tactic—in football or in elections. Rather than seek a single reform to solve all problems, the Commission has sought to craft a broad and comprehensive set of reforms.

As the Commission framed its recommendations, it relied on the considerable experience of its members. One of the commissioners is widely acknowledged as one of the nation's foremost scholars on campaign finance reform. Three of the members have decades of experience in managing campaigns. The Commission built on this expertise as it prepared its report. The experience of its members provided a clear sense of which recommendations were most likely to be effective, which ones candidates were likely to ignore, and which ones would create new, unintended loopholes. The recommendations that follow thus represent not only the commissioners' sense of which changes were most desirable. They also represent the recommendations that the commissioners believe are most likely to work. Reform ideas not well grounded in the realities of campaigns, the Commission concluded, would not serve the process well.

In proposing its recommendations, the Commission sought to follow three principles:

Preserve freedom of speech. The bedrock of both law and principle in campaign finance is the First Amendment of the U.S. Constitution. The First Amendment's protection of freedom of speech is one of the most revered liberties in the Bill of Rights. Free speech is rarely more important than in elections; the lively and vibrant exchange of ideas is the absolute cornerstone of elections in a free democracy. The Commission seeks to recommend campaign finance reforms that will preserve and, where possible, enhance freedom of speech.

Do no harm. As they begin their professional lives, physicians take the Hippocratic oath. They swear to do no harm to their patients. The Commission is devoted to the same goal. Campaign finance is an enormously complex area with the possibilities limited only by the imagination of campaigners. It is frighteningly easy to create unintended loopholes and distortions in

campaigns. Despite the manifest problems with current campaign finance reform practice in Wisconsin, the state nevertheless has a foundation of clean practice and a citizenry especially dedicated to clean elections that reformers in other states envy. The Commission has devoted itself to keeping what is good, changing what needs to be fixed, and avoiding doing anything that could undermine the current system's strengths. As part of this effort, the Commission has focused on identifying and rooting out loopholes in current or proposed practice that could have dangerous effects. It has also subjected each of its recommendations to a careful examination to avoid, as much as possible, unintentional creation of new loopholes.

Neutrality with respect to outcomes. Just as it is possible inadvertently to create loopholes in the system, it is also possible unintentionally to design reforms that advantage some players in the system over others. Democrats often seek funds from different sources than Republicans; Republicans sometimes use different campaign tactics than Democrats; and third-party candidates often operate very differently than the major political parties. In framing its recommendations, the Commission has quite self-consciously sought to avoid advantaging any player over another. The commissioners have subjected each recommendation to close examination to determine if it might distort the process.

Framing the Recommendations

With these principles in mind, the Commission developed recommendations in 5 areas:

Ensuring full and immediate disclosure

Making elections candidate- and political party-centered

Encouraging more competitive elections

Leveling the playing field

Improving campaign finance regulation

The Commission's recommendations are summarized in Appendix I. The chapters that follow detail the philosophy and prescriptions of reforms that will, the Commission believes, restore Wisconsin to its place as national leader in campaign finance reform.

2. Ensure Accountability through Full and Prompt

Disclosure

Full and frank discussion is the keystone of democratic society. If voters are to make intelligent choices among the candidates vying for public office, voters must know what the candidates stand for. If they are to decide whether to return current officials to office, voters need to understand and debate their performance in office. Democracy is impossible without voting by citizens, and voting is impossible without freedom of speech. But effective speech is impossible without full and complete information about the critical issues—especially the role of money in political campaigns.

As the U.S. Supreme Court rightly contended in *Buckley v. Valeo*, campaign money is an integral part of free speech. Indeed, without money, it would be hard for candidates to talk with voters: to distribute flyers describing their views, to purchase television time to advance their platforms, to mount "get out the vote" programs. While reformers rightly point to the dangers that excessive campaign spending can bring to the electoral process, it is important to note that without money, effective campaigns that promote democracy would be impossible.

The Case for Disclosure

The first step to reform lies in balancing the right of those with money to speak with the right of voters to know where the money is coming from. It is not only the right of citizens to contribute to political campaigns. It is the right of citizens to think about the size and source of contributions in deciding how to cast their votes. It is also the right of citizens to have campaign finance laws enforced by having campaign spending practices fully reported. Full, frank, and immediate disclosure is therefore the bedrock of campaign finance reform.

Disclosure is important because it promotes four important values.

Basic information. Disclosure informs voters about basic campaign practices, which allows them to cast their votes more intelligently. This is important not only for the contributions made to and expenditures made by those running for office. The principle extends as well to those making contributions and expenditures independent of a candidate's campaign, whether through issue or express advocacy.

Timing of policy debates. Disclosure of campaign finances informs the media and the voting public of possible connections between campaign money and policy decisions by elected officials. Democracy not only requires citizen participation in voting but in the deliberations about policy as well. Campaign contributions received by an elected official should be known to citizens so they can assess that official's interests in making policy decisions and can know what groups or individuals affected by policy proposals have campaign finance ties to public officials.

Enforcement of campaign finance laws. Disclosure is a critical tool for the enforcement of campaign finance laws and regulations. Many of these laws and regulations are triggered when expenditures or contributions reach certain levels, involve certain sources, occur at certain times, or connect certain players. Without full and clear information, enforcement of these laws

and regulations is impossible.

Information about needed reforms. Disclosure provides invaluable information about what in the campaign finance system is working well—and what requires fixing. Disclosure therefore is a critical instrument of ongoing reform.

The Commission concludes, therefore, that:

1. The Wisconsin campaign finance system ought to set as a goal the instantaneous reporting and disclosure of all relevant campaign finance information.

The Commission recognizes that reporting can be a real hardship for small campaigns with limited resources, so the Commission proposes to pursue this goal for all election activities above a specified financial threshold.

The Commission strongly believes that disclosure ought to be the keystone that holds together Wisconsin's campaign finance system. Disclosure is a necessary condition for reform. However, disclosure *alone* is insufficient to address the problems with the current system, for two reasons:

Information overload. Voters cannot be expected to absorb and act on all of the information that such a system produces. The information overload is clearly too much for any voter to digest. Disclosure, in itself, therefore, is inadequate to solve many campaign finance problems.

Priority of issues. If disclosure were a sufficient condition for reform, voters would punish those who violate campaign finance standards by voting against them in elections. However, while campaign finance issues are important, voters have shown that they are unwilling to substitute these issues for other public policy concerns, like foreign affairs or taxes. Campaign finance is not the only, or even the foremost, issue facing voters on election day. That, in fact, is the lesson taught by the public opinion survey the Commission conducted.

Disclosure alone is not sufficient to ensure clean elections. Without disclosure, however, real reform will prove impossible.

Experiences of Other States

Moving to an immediate, fully electronic reporting and disclosure system can seem daunting: to candidates, for whom this might represent new technology; and for state officials, who would be required to cope with a large volume of data. That has led some reformers to consider making electronic filing voluntary.

The experiences of other states, however, provide clear warnings about mixed electronic and paper filing systems. Citizens naturally expect quick and easy access to such data. In Florida, for example, the state's electronic filing law permitted state election officials to grant a waiver to candidates without the resources to file electronically. That cost the state about \$60,000 in labor, as well as long delays in access, to manually enter the data submitted on paper forms into the electronic system. The waiver, moreover, led to abuse by some candidates who declined to file so they could avoid making their campaign finance data easily available. The Florida system was inexpensive: \$50,000 to create the data system and an estimated \$60,000 for part-time data entry workers during peak periods, but it was plagued by long delays and serious controversy.

In Hawaii, by contrast, the state started small, provided technical assistance to candidates, and contracted

with a good vendor to provide a superior system. The contract, which cost the state \$250,000 to create the data system and \$60,000 for part-time data entry for reports not filed electronically, provided a far smoother start to electronic filing and disclosure.

Electronic filing and disclosure is spreading quickly across the states, but through many different strategies. Florida's system, with mandatory filing, little technical support, and easy waivers, has proven trouble-prone. Hawaii began with electronic filing only for the state attorney general and mayor of Honolulu the first year. Some states (Oklahoma, Texas, New Mexico, and Arizona) have voluntary filing, which leaves large holes in the data and fails to provide the full and immediate access that true reform requires. Missouri allows voluntary filing but charges a fee to candidates who do not file electronically. The state uses the money raised by the fee to enter the data. Finally, Maryland is just creating a new electronic filing and disclosure system.

The Commission carefully examined the experiences of these states (and San Francisco) in framing its recommendations. In addition, the Commission's staff conducted its own review of the technical issues. The Commission has sought to develop recommendations on the cutting edge of technology but which also serve the promise of making campaign finance information readily available, at minimal cost, to everyone in the process.

Electronic Filing

Without disclosure few other reforms would be possible. The Commission has therefore concluded that Wisconsin should move aggressively to implement *a full and instantaneous disclosure system*, using the most up-to-date technology, as soon as possible.

2. All candidates for state offices—both legislative races and statewide races—should be required to file full financial reports with the State Elections Board. Such reports should be filed electronically, using software certified by the Board, and instantaneously, within 24 hours of when financial transactions occur.

Candidates for state office, of course, are already required to submit paper reports about their financial information to the State Elections Board. The Commission does not propose to change *what* is being reported—just *how*. The current paper system is an archaic relic of days long past, and it works a serious handicap on citizens.

The current law requires candidates to file a single paper copy with the Board in Madison. Citizens living elsewhere in the state face the stark choice of driving to the capital to examine the financial records of the candidates seeking to represent them; trusting the news media to collect and report the information that most interests them; or doing completely without critical information that would inform their vote.

The current law does not require the information to be reported in any consistent form. The result is that the law's principle of full reporting and free access is undermined by a system that hides, not provides information.

The current law allows financial reports to be submitted long after the activities in question. Contributions and expenditures in the critical last days of political campaigns frequently are not reported until three months after election day, long after citizens have any opportunity to act

on the information they provide.

With only a single copy of financial reports available in a single office, the demands on the materials and the risks to preserving the information are high. The reports for some races are heavily used, hard to keep in order, and are difficult to maintain for archival purposes.

Electronic systems, such as e-mail and the World Wide Web, have made it possible to transmit immediately large quantities of complex data. Quite simply, there is no reason candidates cannot report their financial information as transactions occur—as they deposit checks and as they make expenditures. The Commission believes that the goal ought to be immediate reporting of all financial transactions: contributions as they are received; expenditures as they are made; and even bills received by a candidate or committee that are not paid within five days.

Computer-based filing software has already been developed and tested in jurisdictions like Hawaii and San Francisco. It not only allows candidates to file electronically but also to keep internal campaign records in a clear and easy-to-find form. The software automatically audits the financial information as it is entered, which reduces the chances for inadvertent violation of the state's reporting requirements. It also automatically sorts the right information into the right categories and produces the proper reports for filing with the state.

The electronic reporting system, therefore, offers great promise not only for providing citizens with critical information but also for easing the reporting burdens on candidates. Many software programs, moreover, help candidates maintain important internal records for their campaigns, such as who might be willing to accept yard signs or help with fund raising. The electronic filing systems that the Commission has examined would actually make it easier, not more burdensome, for candidates and their campaigns.

The Commission realizes, however, that some candidates might be concerned about the costs of purchasing electronic filing software and the computers required to operate it. Some candidates might also be concerned about finding someone with the required skills to manage the system. The Commission has investigated both the electronic systems in use elsewhere and current filing practices. Based on its research, the Commission recommends that:

3. The State Elections Board should provide all campaigns for state office with copies of electronic filing software, at no cost to the campaigns. The State Elections Board should also offer all campaigns basic training in operating such software.

To ease the burden on small campaigns with modest resources, the Commission recommends a threshold below which candidates should not be required to file electronically:

4. Electronic filing should be required for campaigns with contributions or expenditures greater than \$20,000. This number should not be adjusted for inflation over time.

The Commission also believes that all candidates who accept public grants ought to file electronically from the beginning of the general election campaign. For State Assembly races, the Commission recommends public grants of \$15,000. Even modest fund raising from individuals and organizations would likely take these campaigns above the \$20,000 threshold. The grants for Senate races will be \$35,000. Therefore,

5. Candidates who participate in the state's public funding grant system, described in Chapter 4, should be required to file electronically.

For campaigns that do not exceed the \$20,000 threshold, the Commission recommends:

6. Campaigns with contributions or expenditures less than \$20,000 should be allowed to file paper reports on the current reporting schedule. Electronic reporting from such campaigns should be required immediately when candidates cross the \$20,000 threshold. The State Elections Board ought to issue regulations outlining the process for electronic filing of contributions and expenses received before the threshold was crossed.

While some candidates have expressed concern that this threshold is too low, it is actually very generous when compared with regulations in other jurisdictions. San Francisco's system requires electronic filing for all campaigns over \$500. In Hawaii, the 1997 threshold will be \$5,000.

Electronic filing is important not only for candidates but also for others who participate in the electoral process and who are, therefore, required to report their financial activities to the Elections Board:

7. Conduits, political action committees, and all other entities required to report their financial activities to the State Elections Board should be required to submit those reports electronically and instantaneously (within 24 hours of the financial activity), under the same rules as for candidates.

Electronic Disclosure

Electronic filing provides only a partial answer on the disclosure issue, however. Once the information is provided to the State Elections Board, it must be made available as soon as possible to voters all over the state.

The rapidly emerging technology of the Internet, especially the World Wide Web, provides a ready solution. As Hawaii, Florida, and San Francisco have already demonstrated, government can use the Internet to make campaign finance information readily available to citizens everywhere. The Commission recommends that

8. The State Elections Board should make electronically filed campaign finance information available on the Internet as soon as possible (and in any case within 24 hours) after receiving electronic reports.

Currently available technology allows state election officials to take the information as it is filed, post it on the Internet, make it available to users anywhere, and allow users to analyze the data in any way that they choose. The technology, for example, allows users to download data into a spreadsheet and determine who gave to which candidates from which cities; who a candidate's largest and smallest donors are; and which candidates are spending how much money on which purposes. The technology, moreover, also would permit users to conduct on-line searches on the State Elections Board's site.

Testimony before the Commission showed that when the press in Wisconsin cities has direct access to campaign finance data bases, reporters thoroughly cover levels of spending, sources of campaign funds, and other aspects of political money. Electronically filed campaign finance information that is made readily accessible on-line to citizens and the media will increase the volume of coverage of campaign finance practices in the press throughout the state.

The same conclusions hold for campaign activity by groups other than candidates. Just as the Commission concluded that non-candidate groups ought to file their reports electronically, the Commission also concludes that:

9. All financial reports filed electronically by non-candidate organizations ought to be disclosed electronically as well.

The Commission understands that these recommendations pose two difficulties.

Access. While electronic filing and disclosure makes campaign finance information easily available to citizens who own computers, it will be harder for citizens without computers to gain access to the data. Those barriers are rapidly falling, however, as schools and libraries throughout Wisconsin are being wired into the Internet. Moreover, although this approach does not make disclosure perfect, it would be an enormous improvement over the existing system of a single paper copy filed in Madison.

Use of paper reports. Both candidates and non-candidate organizations with financial activity less than \$20,000 would still file their reports on paper. Unless the State Elections Board enters all of these data manually into the system, information about small campaigns would remain less accessible. Moreover, even if the Elections Board were to attempt to enter the data itself, the process would prove time-consuming and disclosure would be less than immediate. The Commission views electronic filing as a long-term goal for all campaigns. If smaller campaigns were not to be immediately included in such a system, information about larger races that generate more money and more attention would nevertheless be fully available. At the least, therefore, this would prove a major advancement.

No other state in the nation currently requires electronic disclosure for such a wide array of election races. No other state in the nation currently provides such extensive disclosure, although many states are now considering similar proposals.

The Commission's recommendations would make Wisconsin the unquestioned national leader in electronic filing and disclosure, an approach which itself is proving to be the cutting edge of campaign finance reform. This approach, moreover, is the keystone for other reforms the Commission is proposing. Without it, truly comprehensive campaign finance reform is impossible.

3. Make Elections Candidate- and Political Party-Centered

Since the last Wisconsin campaign finance reform commission in 1975, there have been massive changes in the technology of campaigns. The mass media, especially television, have come to play a far larger role, even in legislative races. Just as significantly—and perhaps as a result—new forums for raising and spending campaign funds have sprouted. In Wisconsin, there has been a gradual evolution from grass-roots campaign activity to mass-market tactics, and from candidate- and political party-centered actions to campaigns on a vast array of simultaneous but different fronts.

Forcing campaigns back to past practices would prove impossible. It is deceptively easy to romanticize

about the past and impossible to recreate it. The Commission has no desire to try. Nor does the Commission wish to uproot the roles of new campaign organizations like political action committees (PACs) or independent expenditure committees that have become significant forces in Wisconsin politics. They have become important instruments of political action and have provided mechanisms for individual voters to band together and exert real force in the election process.

Finally, the Commission believes that even the recent and rapid spread of media campaigns that seek to educate voters on the issues play an important role in the process. In the spring of 1997, as the Commission was doing its work, there were two different such issue-based television campaigns: a statewide campaign, funded by the Crandon Mining Company, supporting the expansion of mining in northern Wisconsin; and a regional campaign based in southern Wisconsin and funded by the AFL-CIO that argued the need to reduce special tax benefits for large corporations. The Commission, of course, does not take a position on the merits of either advertising campaign. But it does recognize the unquestioned legitimacy and value of such mass media campaigns in educating voters about the important issues facing them and their elected representatives. (We will return to this issue in Chapter 5.)

Nevertheless, the Commission believes that the center of the electoral process ought to be individual candidates and the political parties they represent. The Commission concludes that the pendulum has swung too far away from them. To the extent that campaign finance regulations affect this balance, we believe that those regulations should recognize and reinforce the roles that candidates and political parties play in politics.

Our system of democracy is a republic, founded on the election of officials to debate the nation's great issues and to frame solutions. Everything that promotes that process helps democracy. But, in the end, elected officials are responsible for resolving public policy questions. The electoral process needs to focus on them, the alternatives they formulate, the performance they have demonstrated, and the ideas they represent.

In our system, political parties—both the major parties and smaller parties that have often been the launching pad for important new ideas—have provided the critical connection between voters and candidates. The electoral process therefore should center on them.

The Commission therefore seeks to nudge the balance in the campaign finance system slightly to focus more activity on political parties and candidates. It seeks to make them the most important medium between citizens and their government.

Roads Not Taken

In framing its proposals, the Commission reviewed a host of ideas submitted by citizens and public interested groups. Many of these ideas sought to reduce the amount of money flowing into political campaigns by changing both the source and the amounts of money that candidates could collect. The Commission has great sympathy for the underlying purpose of these proposals: to ensure that government represents the public interest of its citizens.

Nevertheless, the Commission reviewed and decided not to support several proposals, for a combination of philosophical and constitutional reasons.

Lower contribution limits. Wisconsin already has relatively low contribution limits for legislative races: \$500 for the Assembly and \$1,000 for the Senate. The Commission heard testimony to

reduce these limits dramatically. The Supreme Court, however, has held that while the government can impose contribution limits to minimize corruption in the process, some limits (at about \$100) were so low as to infringe on individual's right of expression. The Court has left the critical line unclear: between permissible restrictions on contributions and unconstitutional restrictions that hinder free speech. Wisconsin's current limits are clearly constitutional, and the Commission does not find evidence of corruption caused by the current contribution limits that could establish a case for lowering the limits.

Restricting out-of-district contributions. The Commission also heard testimony from citizens urging that contributions be prohibited from individuals or groups from outside of Wisconsin. Some citizens argued that out-of-district money might drown out the voices of Wisconsin citizens. Some citizens favored requiring candidates to raise more money from within their districts to ensure that they generate more of their support from local sources. Other citizens have contended that substantial sums of money were flowing into Wisconsin politics from outside the state, without clear disclosure or adequate accountability.

The Commission is mindful of the Supreme Court's rulings that make it difficult if not impossible to impose such restrictions. The Court has ruled that geographic boundaries cannot be put around freedom of speech. Individuals from outside Wisconsin might have a legitimate interest in the policies the state government frames, and the Commission believes that they ought to have the right to participate in the state's politics.

Citizens in various districts within Wisconsin likewise might have strong interest in issues focused elsewhere in the state, such as the interest of urban environmentalists in the treatment of the state's beautiful, sparsely settled areas. Citizens might also have a strong interest in the partisan balance of the state legislature and wish to contribute to key races likely to affect its makeup. While the Commission believes that the primary responsibility of elected officials is to represent the citizens in their constituencies, the Commission has also included that others have the right to have their opinions heard—and that the Supreme Court is unlikely to look kindly on attempts to restrain their voices. In later sections of this report, however, the Commission does recommend steps to ensure disclosure by such groups.

Limits on out-of-district contributions would be almost impossible to administer in the case of PAC contributions. A labor, business, commercial, agricultural, or issue-oriented PAC might raise money from many contributors from many districts or even many states. It would be very difficult to determine whether PAC contributions to candidates in specific districts were made from funds raised in that district. The same problem would face state and national political party committees that raise money from a broad base of donors and make contributions to candidates in various districts.

The Commission has also heard considerable concern about money flowing into Wisconsin from outside the state. Many citizens have expressed grave concern that such contributions could give citizens from other states undue influence over Wisconsin politics. For all of the reasons outlined above, it would be constitutionally difficult, if not impossible, to impose such restrictions.

However, the Commission does believe that all money in Wisconsin politics ought to be on a level playing field. Those contributing money to Wisconsin campaigns ought to have to abide by the same rules as Wisconsin residents. Therefore, the Commission recommends:

10. All those making contributions to Wisconsin political campaigns, as well as PACs and groups engaged in independent expenditures and other election-oriented activities as defined in Chapter 5, ought to comply with the same rules, especially for disclosure, as Wisconsin citizens.

Tighter restrictions closer to elections. Finally, the Commission heard from citizens interested in imposing tighter restrictions on contributions close to election day. For example, there were proposals that contribution limits be cut in half two weeks before the election. The Commission decided not to embrace these proposals for several reasons. First, the Commission was concerned that such restrictions might make tight races less competitive. Second, the Commission was concerned that the proposal might raise unsolvable constitutional problems. Finally, the Commission was deeply concerned that such restrictions might push more money out of candidates' campaigns and into non-candidate organizations, where restrictions are far looser and accountability much less. The Commission believes that its proposal for full and immediate electronic filing and disclosure will reveal the source and extent of last-minute contributions. Citizens will have full information to judge whether such activity creates an issue that they might want to consider in casting their ballots.

Contribution Limits

The Commission carefully reviewed the existing contribution limits (see Table 3-1). The existing limits are approximately 20 years old and have not been adjusted for inflation since they were created. The Commission has concluded that the existing contribution limits are adequate for running competitive campaigns.

Table 3-1

Limits on Individual Contributions to Candidates

	Contribution Limit
Governor	\$10,000
Lieutenant Governor	\$10,000
Attorney General	\$10,000
State Treasurer	\$10,000
Secretary of State	\$10,000
Superintendent of Public Instruction	\$10,000
Supreme Court	\$10,000
Senate	\$1,000
Assembly	\$500

However, the Commission also recognizes that the rising cost of campaigns over time will eventually require some adjustment of these limits. In Chapter 4, the Commission reviews this problem as it applies to public funding grants and the spending limits that accompany them; that chapter contains a recommendation that the grants and limits be automatically increased over time. The Commission, however, is not eager to apply automatic increases to *contribution* limits.

The Commission believes instead that these limits ought to be subject to regular review by the State Elections Board and the state legislature. Rising campaign costs might require periodic increases in contribution limits, but the increases ought to be the result of careful study instead of an automatic escalator. Hence, the Commission recommends that:

11. Every two years, the State Elections Board ought to review the contribution limits contained in the state elections laws. If the Board finds that the limits need to be increased, it should frame a proposal and present it with supporting information to the state legislature, which should consider and act on the Board's recommendations.

Political Action and Legislative Campaign Committees

The Commission heard a great deal of testimony about the role of political action committees (PACs). Some witnesses believed that PACs have too much power in the electoral process. Some witnesses, moreover, called for dramatic reductions in the role of PACs—or even their elimination. The Commission believes that PAC activity ought to be focused, as much as possible, through the political parties and the campaign committees of individual candidates. The Commission has also concluded that any effort to restrict the flow of PAC money, no matter how well-intentioned, would simply push it out into other forms of political expression that would be far less controllable and even less subject to disclosure.

The Commission agreed that the method for establishing contribution limits by PACs should be modified to make it more clear. The limits are currently expressed as a percentage of the spending limit for a particular race (see Table 3-2). That requires a series of calculations to determine how much PACs may contribute to different races. The Commission believes that the contribution limits ought to be expressed more clearly in dollar terms. The Commission recommends that:

12. Contribution limits by PACs to candidates' races should be changed from the current standard (a percentage of the spending limit in a race) to a fixed dollar amount. The limits for each race should be: Governor—\$45,000; Lieutenant Governor—\$13,000; Attorney General—\$22,000; Secretary of State—\$9,000; State Treasurer—\$9,000; School Superintendent—\$9,000; Supreme Court—\$9,000; Senate—\$2,000; Assembly—\$1,000.

The Commission also concludes that there ought to be aggregate limits on the amount of PAC contributions that any candidate can accept. Thus,

13. Candidates should raise at least 35 percent of their income from individuals. Any public financing grant that they receive ought to be counted against the 65 percent of the contributions they can collect from sources other than individuals.

Candidates who participate in the public financing grant program would receive 25 percent of their spending from the public grant (see Chapter 4). They would be required to raise at least 35 percent of their spending from individuals. Thus, public grants and individual contributions would finance at least 60 percent of their spending. Contributions from all other sources, including PACs, would be limited to no more than 40 percent of their entire spending. For candidates whose spending was less than the spending limit, the limit on PAC contributions would be effectively even less. With full and immediate electronic disclosure,

furthermore, taxpayers would be able to learn the source and size of all PAC contributions.

The Commission also believes that the principles of full disclosure and making elections candidate- and party-centered create a strong case for banning PAC-to-PAC transfers. The Commission has absolutely no desire to restrict the ability of PACs to support the candidates and causes in which they believe. However, the Commission has found that some PACs have evaded disclosure by engaging in multiple transfers of funds.

For example, in the spring 1997 elections, substantial money flowed between PACs into a Madison school board race. Wisconsin 2000, a La Crosse-based conduit, channeled money from the Democratic National Committee into a race that was, at least officially, nonpartisan. Neither the amount nor the ultimate sources of the funding were disclosed. Such transfers greatly distance the source from the use of the funds. This makes it impossible to determine who actually contributes money to fund some electoral activities.

PACs occasionally incur expenses that can legitimately be reimbursed. The Commission believes that modest transfers between PACs, of up to \$100, ought to be allowed for such purposes. However, the Commission has concluded that most transfers between PACs evade the principle of full disclosure. Therefore, the Commission has concluded that:

14. PAC-to-PAC transfers of more than \$100 ought to be prohibited.

The Commission also believes that the same restriction ought to apply to candidate-to-party and candidate-to-candidate transfers. The Commission believes that candidates ought to be able to attend each other's fund-raising events, as well as the fund-raising events conducted by political parties. However, the Commission has concluded that contributions greater than the actual cost of the event, such as the value of the food, ought to be prohibited. Thus, the Commission recommends:

15. Candidate-to-party and candidate-to-candidate contributions ought to be prohibited, except for contributions covering the actual cost of events, up to \$100 per event.

Finally, the Commission was concerned that the legislative campaign committees—in each house of the state legislature, representing each political party's caucus—have taken on disproportionate influence in legislative races. This influence has come at the expense of the state's political parties. It has also blurred the lines between lawmaking and campaigning, including campaign fund raising, in ways that have undercut public confidence in the political system.

The Commission believes that the party- and candidate-building activities undertaken by the legislative campaign committees ought to more properly be undertaken by the political parties themselves. The Commission believes that the political parties ought to play an expanded role in the election system. This would separate legislating from fund raising. It would improve accountability for the campaign finance process and strengthen the political parties' ability to recruit, support, and elect candidates to office. That, in turn, would increase the focus of elections on the critical issues of the day.

The Commission understands that such a step will prove a difficult one for legislators to take. At the same time, however, the Commission has concluded that this step would be one of the most important ones that the state legislature could take to demonstrate its serious commitment to campaign finance reform. Therefore, the Commission concludes that:

16. The legislative campaign committees in the Assembly and Senate ought to be abolished.

Table 3-2
Limits on Contributions by
Political Action Committees to Candidates

	Current Limits			Proposed Limit
	Percentage fixed in law X	Current spending limit =	Dollar amount	Dollar amount
Governor	4%	\$1,078,200	\$43,128	\$45,000
Lieutenant Governor	4%	\$323,475	\$12,939	\$13,000
Attorney General	4%	\$539,000	\$21,560	\$22,000
Secretary of State	4%	\$215,625	\$8,625	\$9,000
State Treasurer	4%	\$215,625	\$8,625	\$9,000
School Superintendent	4%	\$215,625	\$8,625	\$9,000
Supreme Court	4%	\$215,625	\$8,625	\$9,000
Senate			\$1,000	\$2,000
Assembly			\$500	\$1,000

Source: Wis. Stat. 11.26(2), 11.31(1).

4. Encourage More Competitive Elections

A strong and vibrant democracy depends on lively and competitive elections. Our republican form of government rests on candidates running competitive campaigns—putting their views before the public and testing them in the crucible of free ballots. An effective democratic process requires first that voters have real choices to make.

The rapid rise of the mass media in electoral politics at all levels, down to school board and city council races, has allowed candidates to communicate their views better to a busy public. But it has also driven the cost of campaigns upward. The rise in the cost of campaigns, in turn, has made it harder for new candidates to run for office and for many candidates to run competitive campaigns. Building competitive elections requires ensuring that potentially strong candidates are not discouraged from running by the cost of elections. It also requires ensuring that, once they take the first step into the electoral arena, they can speak loudly enough to make their views heard.

Much of the reform debate has centered on limiting the spending on campaigns and making elections more competitive. The U.S. Supreme Court, in *Buckley v. Valeo*, has sharply limited the government's options, especially in restricting spending. The Court ruled that while the government could limit contributions to campaigns (on the grounds that very large contributions might corrupt the process), it could not mandate spending limits (on the grounds that spending constituted speech by candidates). The Court did permit one way to restrict spending: voluntary limits. The government could, for example, provide public grants to candidates in exchange for candidates' agreeing to limit the amount of money they spent. All attempts to restrict spending since *Buckley*, therefore, have been accompanied by public grants. *Buckley*, in turn, has become the touchstone grounding all campaign finance reforms.

Citizens' Debates over Campaign Finance Reform

In the course of its many hearings, the Commission heard numerous calls from citizens to encourage more competitive elections. Some citizens have suggested that campaigns are too long: that the din of campaigns discourages voters and that the press of campaigning overwhelms candidates. The Commission has concluded, however, that attempting to prescribe either the length or style of campaigns would hurt, not help, democratic debate. Part of democracy's great vitality comes from the imaginations of those who seek to lead it, and the Commission has no desire to channel that spirit.

Some citizens have suggested that, since the cost of mass media is responsible for driving up the cost of campaigns, candidates should either be forbidden from using the media or that the government ought to purchase a pool of time to distribute to candidates.

The Commission thinks it unwise to prescribe the manner in which candidates choose to communicate with voters, including the mix of mass media and other forms of contact. Especially in state elections, where campaign strategies vary so significantly, government could not possibly foresee and structure the richly textured approaches that candidates use. The Commission has concluded that it would be far wiser to allow

New Challenges for Campaign Finance

Especially beginning in 1996, issue advocacy during the campaign season dramatically expanded in Wisconsin. In fact, the Commission has found, such activity marks an innovation unmatched elsewhere in state elections. As a result, these emerging practices have framed tough challenges to campaign finance standards—and to campaign finance reform.

Issue Advocacy and Express Advocacy

The Commission concludes that, in each of these cases, the expenditures were clearly campaign-oriented activities. They were quite clearly designed to influence the electoral process. They were focused either on electing or defeating a candidate. The Commission bases this conclusion on the following points:

Although those paying for the activities claimed they were aimed solely at educating voters on the issues, they each mentioned the names of candidates for office.

They occurred only when election races were in progress that involved a contest between an incumbent and a challenger. When the election was over, the activities ended.

The activity has occurred after legislative sessions when the issues about which advocacy was occurring were not being deliberated by the legislature.

The activity occurred in campaign season, between the candidate's filing for candidacy and election time. Advertisements of this sort have tended to occur at virtually no other time.

The activity involved the electronic media, mass mailings, or centrally located telephone banks.

The Commission is not concerned with issue advocacy at the grass roots level, or with activities that simply provide public forums for candidates. The Commission does not wish to impinge upon extensive discussion of issues and candidates by groups and associations during the campaign period. In fact, the Commission wishes to encourage such debate. The Commission's concern is with mass communication efforts.

Moreover, the Commission has found that clear issue advocacy, quite apart from the election process, can and has occurred. This advocacy can be clearly distinguished from the campaign-based express advocacy cited above:

In the late spring winter of 1997, the Crandon Mining Company financed a major television advertising campaign promoting its proposed mining operation in northern Wisconsin. The legislature was in the midst of debating the mining proposal and the campaign was clearly directed at educating voters and legislators on Crandon's position.

In the early spring of 1997, the AFL-CIO placed a television advertising campaign promoting a reexamination of corporate welfare. The commercials presented a clear point of view on the issues suggested that viewers contact their congressman, Mark Neumann (R-1st). The issues were in play in Congress and there was no election in progress. The advertising, however, might have political and campaign effects.

The Commission concludes that some political activity presented as issue advocacy is, in fact, express advocacy. Although it did not use the "magic words" identified in the footnote of *Buckley*, these political activities are clearly election-related and intended to influence the election outcomes. The Commission also concludes that it is possible to differentiate issue advocacy from express advocacy.

The Commission believes without reservation that citizens have the right to voice their opinions about public issues. The Commission concludes citizens ought to be free to engage in political activities promoting their views on public issues. In this, the Commission completely supports the Supreme Court's conclusions in *Buckley*.

However, the Commission also concludes that the Court left substantial ambiguity in drawing the line between issue advocacy and express advocacy. The Commission also concludes that the facts on which the Court has based its decisions in the area have changed dramatically, especially in the last several years.

The Commission concludes that the central challenge of dealing with these new practices, therefore, lies in maintaining the basic principles of law that the Court found in 1976; and in adapting those principles to new matters of fact that have emerged only very recently.

The Commission, finally, concludes that this issue is perhaps the most fundamental problem facing campaign finance reformers. The explosive growth of campaign-based advocacy, without even disclosure of its activities and funding sources, poses a grave risk to the integrity of elections. It has created a two-tiered campaign process: one, based in candidates and political parties, which is tightly regulated and controlled; the other, based in interest group activity under the guise of "issue advocacy" but actually quite clearly election-focused, which lies beyond accountability. Unless modest steps are taken to restore accountability, the rise of these tactics could well undermine virtually all of the other recommendations the Commission makes. It could also actually limit freedom of speech in campaigns by hiding from voters who is saying what.