

Financing of State Campaigns in Wisconsin

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Introduction

Prior to 1973, the law governing campaign finance activities was contained primarily in Chapter 12 of the statutes dealing with "Corrupt Practices Relating to Elections." Among other provisions at that time, Chapter 12 specified certain limits on the amount of funds that could be expended by candidates for public office and by party and personal campaign committees. That law also contained a prohibition on any political contributions from corporations, but otherwise was generally silent with regard to campaign contributions.

Since 1973, a series of legislative enactments have addressed the financing of state campaigns in Wisconsin. This history is detailed in the Appendix to this paper.

On January 20, 1976, the United States Supreme Court in *Buckley v. Valeo* invalidated all spending limitations that were imposed on individuals, groups and candidates in election campaigns for federal office under the Federal Election Campaign Act of 1971. The Court held that limitations on the amounts a candidate could spend to promote or advance his or her political views constituted a restriction on the candidate's freedom of speech and were, therefore, impermissible. However, the Court held that spending limitations were permissible where the candidate accepts them voluntarily as a condition of receiving public financing.

In response to this decision, the Legislature created the Wisconsin Election Campaign Fund (WECF) under Chapter 107, Laws of 1977. Under the WECF, as a condition to receiving public financing to support their campaigns, candidates

agreed to campaign spending limits created under the WECF. The WECF also established contribution limits on the level of donations that could be received by candidates from individuals and committees. The WECF was a segregated fund originally established to help finance the election campaigns of qualifying candidates for the offices of Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, Justice of the Supreme Court, State Senator, and Member of the Assembly. The WECF was funded by a \$1 check-off on individual income tax returns.

The provisions of 2007 Act 1 dissolved the separate Elections Board and Ethics Board, but merged their functions under a new Government Accountability Board (GAB). This successor board is responsible for overseeing and administering the state's campaign finance laws, as well as statewide election administration, and ethics and lobbying laws. The Government Accountability Board is a six member board with members serving six-year terms. By state statute, in order to be eligible to be a GAB board member, an individual must be a former elected state judge. Appointments to the Board are made by the Governor from nominations presented by a nominating committee consisting of one judge from each of the state's four Court of Appeals districts. Appointments to the Board must be confirmed by the Senate with two-thirds of the members present and voting.

On December 1, 2009, 2009 Act 89 was signed into law. Under the act, candidates for Supreme Court Justice were no longer to receive public financing under the WECF. Instead, Supreme Court Justice candidates could receive public financing under a new Democracy Trust Fund (DTF). The DTF was supported by funds

generated from an increased campaign finance check-off on state individual income tax returns. The act increased the check-off from \$1 to \$3, and provided that the \$2 increase in the check-off be used exclusively to fund the DTF. As the increased \$3 designation did not increase the tax liability or reduce the tax refund of the taxfiler (as with the prior \$1 WECF check-off), the increased revenue generated from the check-off was transferred to the DTF from the state's general fund.

If income tax check-off funding was insufficient to fully fund all DTF grants to qualifying Supreme Court Justice candidates in a given election cycle, Act 89 provided that the state's general fund would fully fund these grants.

Under the DTF, the maximum base grant for an eligible candidate for Supreme Court Justice was \$300,000 for the spring election, and, unlike under the WECF, such a candidate was also eligible for a maximum base grant of \$100,000 for the spring primary (prior to any future adjustment to account for inflation). Unlike under the WECF, the DTF also created supplemental grants available to candidates participating in the DTF to match disbursements by opposing candidates not participating in the DTF, and to match disbursements by outside third parties.

On January 21, 2010, the United States Supreme Court issued its opinion in the case of *Citizens United v. Federal Election Commission*. The U.S. Supreme Court held that federal law prohibiting corporations and unions from making certain independent disbursements for election-related communications was unconstitutional. However, the U.S. Supreme Court upheld other provisions of federal law which imposed disclaimer and financial disclosure requirements on such election-related communications made by corporations and unions.

Effective July 1, 2011, 2011 Act 32 repealed the WECF. With the elimination of the WECF,

no public financing of campaigns is available. Instead, candidates must fund their campaigns from personal funds and private contributions. With the elimination of the WECF, the state no longer seeks to limit the amount spent on campaigns by candidates for legislative or statewide office. The state does, however, have campaign contribution limits and reporting requirements.

Effective July 1, 2011, 2011 Act 32 also eliminated the DTF. As a result, no public financing of campaigns is available for candidates for Supreme Court Justice. Instead, candidates for Supreme Court Justice must fund their campaigns from personal funds and private contributions. As a result of the elimination of the DTF, Act 32 returned the individual and committee contribution limits applicable to Supreme Court Justice candidates to what these limits had been when Supreme Court Justice candidates participated in the WECF. Consequently, an individual is again permitted to give a Supreme Court Justice candidate up to \$10,000 per campaign, and a single committee is again permitted to give a Supreme Court Justice candidate up to \$8,625 per campaign. Under the DTF, an individual or a single committee could only give a Supreme Court Justice candidate up to \$1,000 per campaign.

[Additional information on the structure and administration of the WECF and DTF prior to their repeals can be found in the Legislative Fiscal Bureau's January, 2011, Informational Paper 97 entitled "Public Financing of Campaigns in Wisconsin."]

Repeal of the WECF and the DTF did not eliminate the contribution limits to campaigns that currently apply to donations from individuals and committees. Repeal of the funds also did not eliminate the contribution and disbursement reporting requirements that apply to candidates for statewide and legislative office.

On April 2, 2014, the U.S. Supreme Court issued an opinion in the case of *McCutcheon et al. v. Federal Election Commission* invalidating

the federal aggregate limit on campaign donations for individual donors. Pursuant to this decision, on May 22, 2014, the U.S. District Court for the Eastern District of Wisconsin issued an order in *Young v. Vocke* permanently enjoining the enforcement of the \$10,000 aggregate campaign donation limit for individuals under Wisconsin state statute. Therefore, the aggregate limit for donations by an individual is no longer enforced.

On May 14, 2014, the federal Seventh Circuit Court of Appeals ruled in *Wisconsin Right to Life Inc. v. Barland* that certain statutory provisions restricting the political activities of corporations are unconstitutional. Specifically, under s. 11.38(1)(a)1. of the statutes, corporations and associations organized under Chapters 185 (co-operatives) or 193 (unincorporated cooperative associations) of the statutes are prohibited from making "any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum." This statutory provision was determined to be unconstitutional in its application to corporate independent expenditures under *Citizens United*. In addition, under s. 11.38(1)(a)3. of the statutes, such corporations and associations are prohibited from annually expending more than \$20,000 or 20% of the amount of solicited contributions to a segregated fund established by the corporation or association for the purpose of supporting or opposing a candidate for state or local office. This statutory provision was also determined to be unconstitutional in the May 14, 2014, decision. Further, the Court held that the statutory definition of "political purpose" is overly broad and unconstitutionally vague in its application to speakers other than candidates and political parties, requiring a narrowing construction.

On September 5, 2014, the U.S. District Court

for the Eastern District of Wisconsin, in *CRG Network v. Barland et al.*, issued a preliminary injunction against enforcement of aggregate limits in state statute on contributions from political action committees, candidate campaign committees, and political party committees. For the duration of the federal preliminary injunction issued in September, 2014, the GAB will not enforce aggregate limits of contributions from committees.

This paper addresses state law provisions that govern the financing of state election campaigns. In particular, this paper focuses on the contribution limits and reporting requirements that apply to candidates that seek state office. This paper does not address the disclaimer and reporting requirements under state law that apply to election-related communications funded and produced by non-candidates.

Limits on Private Financing of Candidates

Aggregate Committee Funding of Candidates

Under state statute, a candidate may not accept more than 45% of the "spending limit" for his or her office in contributions from political action committees and other candidates' campaign committees. In addition, state statute specifies that a candidate may not accept more than 65% of the "spending limit" for his or her office in contributions from political action committees, other candidates' campaign committees, legislative campaign committees, and political party committees. Table 1 identifies the "spending limits" under statute by office. With the repeal of the WECF, these spending limits no longer limit the spending of any campaign.

Table 1: "Spending Limits" Under State Campaign Finance Law

	Total Spending Limit
Governor	\$1,078,200
Lieutenant Governor	323,475
Attorney General	539,000
State Treasurer	215,625
Secretary of State	215,625
Superintendent of Public Instruction	215,625
Supreme Court	215,625
State Senate	34,500
State Assembly	17,250

The aggregate committee contribution limits in state statute are shown in Table 2. As of this writing, contributions are not subject to these aggregate committee contribution limits due to the September, 2014, federal preliminary injunction against enforcement of the limits, issued in relation to *CRG Network v. Barland et al.*

Table 2: Aggregate Committee Contribution Limits in State Statute (45% and 65% Limits)

Office	Maximum Total Contributions From All Committees	
	Except Political Party Committees*	Including Political Party Committees*
Governor	\$485,190	\$700,830
Lieutenant Governor	145,564	210,259
Attorney General	242,550	350,350
State Treasurer	97,031	140,156
Secretary of State	97,031	140,156
Superintendent of Public Instruction	97,031	140,156
Supreme Court	97,031	140,156
State Senate	15,525	22,425
State Assembly	7,763	11,213

*Both political party and legislative campaign committees.

Individual and Single Committee Contribution Limits

All candidates for state office must still comply with individual contribution limits and single committee contribution limits applicable to non-political party committees. The individual and single committee contribution limits, which are still in effect, are shown in Table 3. These contri-

bution limits are set by statute and apply to all candidates for the respective offices. (In addition, prior to 2014, an individual could not make aggregate contributions to candidates and committees, including legislative campaign and political party committees, of more than \$10,000 in any calendar year. However, due to the May, 2014, U.S. District Court decision in *Young v. Vocke*, the aggregate limit is no longer enforced.)

Table 3: Limitation on Contributions

Office	Individual	Single Committee
Governor	\$10,000	\$43,128
Lieutenant Governor	10,000	12,939
Attorney General	10,000	21,560
State Treasurer	10,000	8,625
Secretary of State	10,000	8,625
Superintendent of Public Instruction	10,000	8,625
Supreme Court	10,000	8,625
State Senate	1,000	1,000
State Assembly	500	500

Individual Contributions Passed Through Conduits

Under state campaign finance laws, a "conduit" is an individual who, or an organization which, receives a contribution of money from an individual, and transfers the contribution to another individual or organization without exercising discretion as to the amount which is transferred and the individual to whom, or organization to which, the transfer is made. A conduit must identify itself, in writing, to the transferee as a conduit and provide the required information under campaign finance reporting laws regarding each contribution transferred by it to the transferee. For purposes of contribution limits, a contribution of money received from a conduit is considered to be a contribution from the original individual contributor. While individuals remain limited by the individual per-candidate contribution limits shown in Table 3 above, there are no established limits as to the total amount of individual contributions which a conduit may pass-

through to candidates. Candidates then report these pass-through contributions to GAB as individual contributions. For example, from July 1, 2012, through November 6, 2012, individual conduits passed-through aggregate individual contributions to state legislative campaigns that ranged from \$20 to \$197,200.

Political Party Funding of Partisan Candidates

Up to \$6,000 in a calendar year may be: (a) received by a political party from a committee or its subunits or affiliates, excluding contributions from legislative campaign committees and political party committees; and (b) contributed, directly or indirectly, by a committee, other than a legislative campaign committee or political party committee, to a political party. Political parties may receive \$150,000 in a biennium from all committees, excluding contributions from legislative campaign committees and transfers between party committees of the same party. Under state statute, these amounts may be used by political parties to increase up to 65% of the applicable "spending limit," the funds received by a candidate from all committees, including political party committees.

The May and September, 2014, federal court decisions did not affect the \$6,000 and \$150,000 limits. However, for the duration of the September, 2014, federal preliminary injunction issued in relation to *CRG Network v. Barland et al.* the 65% aggregate committee contribution limit in state statute is not enforceable.

Registration and Reporting of Campaign Finance Activity

General Registration and Reporting Requirements

Candidates and their personal campaign committees must always file campaign finance registration statements. Generally, individuals, other than candidates or agents of candidates, and committees, other than personal campaign committees, must file a registration statement if they accept contributions, incur obligations or make disbursements exceeding \$300 in a calendar year. For most purposes, a contribution or disbursement includes a gift, loan or advance of money or anything of value made for a political purpose. Generally, registrants must also file complete reports of all contributions received, contributions or disbursements made, and obligations incurred. The reports must include information about the source of the contributions received and to whom contributions or disbursements are made.

Table 4 identifies, for calendar year 2010, the number and amount of individual contributions, individual contributions received through conduits, and committee contributions received by candidates for statewide office. Table 5 identifies, for calendar year 2012, the number and contributions received through conduits, and committee contributions received by candidates for legislative office. In 2012, individual contributions made up 85% of the total value of indi-

Table 4: Aggregate 2010 Individual and Committee Contributions to Candidates for Statewide Office

<u>Office</u>	<u>Individual Contributions</u>	<u>Individual Contributions--Conduits</u>	<u>Committee Contributions</u>	<u>Total</u>
Governor	\$16,258,200	\$1,214,000	\$1,115,100	\$18,587,300
Lieutenant Governor	909,500	40,200	373,200	\$1,322,900
Attorney General	479,200	37,400	245,200	761,800
Secretary of State	16,500	0	34,300	50,800
State Treasurer	<u>16,800</u>	<u>400</u>	<u>6,000</u>	<u>23,200</u>
Total	\$17,680,200	\$1,292,000	\$1,773,800	\$20,746,000

Table 5: Aggregate 2012 Individual and Committee Contributions to Candidates for Legislative Office

<u>Office</u>	<u>Individual Contributions</u>	<u>Individual Contributions--Conduits</u>	<u>Committee Contributions</u>	<u>Total</u>
State Senate	\$1,439,500	\$643,600	\$302,900	\$2,386,000
State Assembly	<u>4,511,500</u>	<u>1,341,500</u>	<u>1,102,200</u>	<u>6,955,200</u>
Total	\$5,951,000	\$1,985,100	\$1,405,100	\$9,341,200

vidual and committee contributions received by these candidates. Approximately 25% of the total value of individual contributions received by these candidates in calendar year 2012 was received through conduits. [Complete contribution data for state and legislative office races in the 2014 general election will not be reported until February 2, 2015.]

Reporting of Individual Contributions to Partisan Campaigns for Statewide or Legislative Office

Under the Legislature's declaration of campaign finance policy, the Legislature has identified goals for the state's campaign finance system, including: (a) encouraging the broadest possible participation in the financing of campaigns by all citizens of the state; and (b) providing information as to the source of support or extent of support being provided to campaigns.

Under s. 11.21(16) of the statutes, GAB is required to have campaign finance registrants who accept contributions in a total amount or value of \$20,000 during a campaign period, to file required campaign finance reports electronically. (Campaign finance registrants may also voluntarily choose to file their campaign finance reports electronically.) For candidates for elective office and their committees, the campaign period is the length of term for the office for which they are campaigning. For example, the campaign period for a candidate for Assembly is two years, while the campaign period for a candidate for Senate is four years. For other campaign finance registrants (such as political action committees),

the campaign period runs for two years, beginning January 1 of each odd-numbered year and ending on December 31 of the following even-numbered year.

The Department of Administration (DOA) annually estimates the: (a) state population; and (b) number of eligible voters. Table 6 provides data on DOA estimates as to the number of eligible voters in the state for 2010 through 2014.

Table 6: Estimated Number of Eligible Voters in Wisconsin

<u>Date</u>	<u>Number of Eligible Voters</u>
January, 2010	4,347,500
January, 2011	4,352,800
January, 2012	4,378,700
January, 2013	4,400,000
January, 2014	4,416,500

From July 1, 2010, through November 2, 2010 (the last year for which individual contribution data for statewide office candidates is available through the date of the general election), nine candidates for Governor, 10 candidates for Lieutenant Governor, two candidates for Attorney General, five candidates for State Treasurer, and two candidates for Secretary of State reported electronically as to the individual contributions received by their respective campaigns. These campaigns reported receiving 50,591 individual contributions during this time period totaling \$8,209,000. These contributions were as follows: (a) 46,476 individual contributions of less than \$500 each, totaled \$3,403,800; and (b) 4,115 individual contributions of \$500 or more each,

totaled \$4,805,200. (Under current law, an individual may give up to \$10,000 to a candidate for statewide office.) Table 7 identifies the estimated number of eligible voters in 2010, as well as by office: (a) the number and amount of individual contributions received of less than \$500 each; (b) the number and amount of individual contributions received of \$500 or more each; and (c) the total number and amount of contributions received. Of the 50,591 individual contributions totaling \$8,209,000 during this time period to state candidates, 49,281 individual contributions totaling \$7,506,900 came from Wisconsin residents. [Again, complete contribution data for statewide office races in 2014 will not be reported until February 2, 2015.]

From July 1, 2012, through November 6, 2012 (the last year for which individual contribution data for legislative candidates is available through the date of the general election), 245

candidates for Assembly and 35 candidates for Senate reported electronically as to the individual contributions received by their respective campaigns. These campaigns reported receiving 49,289 individual contributions during this time period totaling \$4,850,500. These contributions were as follows: (a) 39,846 individual contributions of \$100 or less each, totaled \$1,895,400; and (b) 9,443 individual contributions of more than \$100 each, totaled \$2,955,100. (Under current law, an individual may give up to \$500 to a candidate for Assembly and up to \$1,000 to a candidate for Senate.) Table 8 identifies the estimated number of eligible voters in 2012, as well as by office: (a) the number and amount of individual contributions received of \$100 or less each; (b) the number and amount of individual contributions received of more than \$100 each; and (c) the total number and amount of contributions received. Of the 49,289 individual contributions totaling \$4,850,500 during this time period

Table 7: Individual Contributions Received by Candidates Running for Statewide Office in 2010 Who Filed Electronically

	Eligible Voters Statewide	Contributions Received of				Total Contributions	
		<u>Less Than \$500 Each</u>		<u>\$500 or More Each</u>		Number	Amount
		Number	Amount	Number	Amount		
	4,347,500						
Governor		41,041	\$3,035,800	3,780	\$4,520,300	44,821	\$7,556,100
Lieutenant Governor		1,965	173,000	206	204,900	2,171	377,900
Attorney General		3,070	182,300	119	71,500	3,189	253,800
Secretary of State		361	10,300	7	5,500	368	15,800
State Treasurer		<u>39</u>	<u>2,400</u>	<u>3</u>	<u>3,000</u>	<u>42</u>	<u>5,400</u>
Total		46,476	\$3,403,800	4,115	\$4,805,200	50,591	\$8,209,000

Table 8: Individual Contributions Received by Candidates Running for Legislative Office in 2012 Who Filed Electronically

	Eligible Voters Statewide	Contributions Received of				Total Contributions	
		<u>\$100 or Less Each</u>		<u>More Than \$100 Each</u>		Number	Amount
		Number	Amount	Number	Amount		
	4,378,700						
Assembly		25,773	\$1,310,300	6,738	\$2,003,800	32,511	\$3,314,100
Senate		<u>14,073</u>	<u>585,100</u>	<u>2,705</u>	<u>951,300</u>	<u>16,778</u>	<u>1,536,400</u>
Total		39,846	\$1,895,400	9,443	\$2,955,100	49,289	\$4,850,500

to legislative candidates, 45,400 individual contributions totaling \$4,490,600 came from Wisconsin residents.

As there were 280 legislative campaigns that filed electronically in 2012, Table 9 provides an estimate of the average number and amount of contributions received by the 245 Assembly campaigns, and the 35 Senate campaigns from July 1, 2012 through November 6, 2012.

In calendar year 2011, there were recall elections held in nine State Senate districts. From April 19, 2011, through August 16, 2011, 21 candidates for Senate reported electronically as to the individual contributions received by their respective campaigns. These campaigns reported receiving 187,570 individual contributions during this time period, totaling \$6,403,700. These contributions were as follows: (a) 180,103 individual contributions of \$100 or less each, totaled \$3,590,500; (b) 7,412 individual contributions of more than \$100 each, totaled \$2,629,000; and (c) 55 individual contributions of more than \$1,000 each totaled \$184,200. (Under current law, an individual may generally give up to \$1,000 to a candidate for Senate. However, until the recall primary election was ordered, State Senate recall candidates could receive contributions from indi-

viduals in excess of the normal \$1,000 contribution limit per individual, provided the contributions were utilized for the purpose of payment of legal fees and other expenses incurred in connection with the circulation, offer to file or filing of the recall petition.) Table 10 identifies the estimated number of eligible voters in 2011, as well as: (a) the number and amount of individual contributions received of \$100 or less each; (b) the number and amount of individual contributions received of more than \$100 each; (c) the number and amount of individual contributions received of more than \$1,000 each; and (d) the total number and amount of contributions received. Of the 187,570 individual contributions totaling \$6,403,700 during this time period to Senate recall candidates, 88,377 individual contributions totaling \$4,939,400 came from Wisconsin residents.

As there were 21 Senate recall campaigns that filed electronically in 2011, Table 11 provides an estimate of the average number and amount of contributions received by these campaigns from April 19, 2011 through August 16, 2011.

In calendar year 2012, there were recall elections held for Governor, Lieutenant Governor, and for State Senator in four senate districts.

Table 9: Average Number and Amount of Individual Contributions Received by Candidates Running for Legislative Office in 2012 Who Filed Electronically

	Number of Candidates	Average Total Individual Contributions of				Average Total Contributions Per Candidate	
		\$100 or Less		More Than \$100		Number	Amount
		Each Per Candidate	Each Per Candidate	Each Per Candidate	Each Per Candidate		
Number	Amount	Number	Amount	Number	Amount	Number	Amount
Assembly	245	105	\$5,300	28	\$8,200	133	\$13,500
Senate	35	402	16,700	77	27,200	479	43,900

Table 10: Individual Contributions Received by Candidates Running in 2011 Senate Recall Elections Who Filed Electronically

	Eligible Voters Statewide	Contributions Received of						Total Contributions	
		\$100 or Less Each		More Than \$100 Each		More than \$1,000 Each		Number	Amount
		Number	Amount	Number	Amount	Number	Amount		
Senate	4,352,800	180,103	\$3,590,500	7,412	\$2,629,000	55	\$184,200	187,570	\$6,403,700

From January 3, 2012, through June 5, 2012, seven candidates for Governor, two candidates for Lieutenant Governor, and nine candidates for Senate reported electronically as to the individual contributions received by their respective campaigns. The campaigns for Governor and Lieutenant Governor reported receiving 309,284 individual contributions during this time period totaling \$33,111,800. These contributions were as follows: (a) 298,685 individual contributions of less than \$500 each, totaled \$15,775,400; (b) 10,515 individual contributions of \$500 or more each, totaled \$12,411,100; and (c) 84 individual contributions of more than \$10,000 each, totaled \$4,925,300. Table 12 identifies the estimated number of eligible voters in 2012, as well as: (a) the number and amount of individual contributions received of less than \$500 each; (b) the number and amount of individual contributions received of \$500 or more each; (c) the number and amount of individual contributions received of more than \$10,000 each; and (d) the total number and amount of contributions received. (Until the time the recall primary election was ordered, statewide recall candidates could receive contributions from individuals in excess of the normal \$10,000 contribution limit per individual,

provided the contributions were utilized for the purpose of payment of legal fees and other expenses incurred in connection with the circulation, offer to file or filing of the recall petition.) Of the 309,284 individual contributions totaling \$33,111,800 during this time period to Governor and Lieutenant Governor recall candidates, 106,268 individual contributions totaling \$13,229,000 came from Wisconsin residents.

The nine Senate campaigns in the 2012 recall election who electronically reported receiving 38,116 individual contributions during this time period totaling \$1,838,100. These contributions were as follows: (a) 35,821 individual contributions of \$100 or less each, totaled \$970,700; (b) 2,282 individual contributions of more than \$100 each, totaled \$776,900; and (c) 13 individual contributions of more than \$1,000 each, totaled \$90,500. (Under current law, an individual may generally give up to \$1,000 to a candidate for Senate. However, until the recall primary election was ordered, State Senate recall candidates could receive contributions from individuals in excess of the normal \$1,000 contribution limit per individual, provided the contributions were utilized for the purpose of payment of legal fees and oth-

Table 11: Average Number and Amount of Individual Contributions Received by Candidates Running in 2011 Senate Recall Elections Who Filed Electronically

	Number of Candidates	Average Total Individual Contributions of						Average Total Contributions Per Candidate	
		\$100 or Less		More Than \$100		More than \$1,000		Number	Amount
		Each Per Candidate	Number	Amount	Each Per Candidate	Number	Amount		
Senate	21	8,576	171,000	353	\$125,200	3	\$8,800	8,932	\$305,000

Table 12: Individual Contributions Received by Statewide Candidates Running in 2012 Recall Elections Who Filed Electronically

	Eligible Voters Statewide	Contributions Received of						Number	Amount
		Less Than \$500 or More		More Than \$10,000		Total Contributions			
		Number	Amount	Number	Amount	Number	Amount		
	4,378,700								
Governor		290,277	\$15,244,100	9,979	\$11,798,900	83	\$4,900,300	300,339	\$31,943,300
Lieutenant Governor		8,408	531,300	536	612,200	1	25,000	8,945	1,168,500
Total		298,685	\$15,775,400	10,515	\$12,411,100	84	\$4,925,300	309,284	\$33,111,800

Table 13: Individual Contributions Received by Senate Candidates Running in 2012 Recall Elections Who Filed Electronically

	Eligible Voters Statewide	Contributions Received of						Total Contributions	
		<u>\$100 or Less Each</u>		<u>More Than \$100 Each</u>		<u>More Than \$1,000 Each</u>		Number	Amount
		Number	Amount	Number	Amount	Number	Amount	Number	Amount
Senate	4,378,700	35,821	\$970,700	2,282	\$776,900	13	\$90,500	38,116	\$1,838,100

Table 14: Average Number and Amount of Individual Contributions Received by Senate Candidates Running in 2012 Recall Elections Who Filed Electronically

	Number of Candidates	Average Total Individual Contributions of:						Average Total Contributions Per Candidate	
		<u>\$100 or Less Each Per Candidate</u>		<u>More Than \$100 Each Per Candidate</u>		<u>More Than \$1,000 Each Per Candidate</u>		Number	Amount
		Number	Amount	Number	Amount	Number	Amount	Number	Amount
Senate	9	3,980	\$107,900	254	\$86,300	1	\$10,100	4,235	\$204,300

er expenses incurred in connection with the circulation, offer to file or filing of the recall petition.) Table 13 identifies the estimated number of eligible voters in 2012, as well as: (a) the number and amount of individual contributions received of \$100 or less each; (b) the number and amount of individual contributions received of more than \$100 each; (c) the number and amount of individual contributions received of more than \$1,000 each; and (d) the total number and amount of contributions received. Of the 38,116 individual contributions totaling \$1,838,100 during this time period to Senate recall candidates, 24,413 individual contributions totaling \$1,532,600 came from Wisconsin residents.

As there were nine Senate recall campaigns that filed electronically in 2012, Table 14 pro-

vides an estimate of the average number and amount of contributions received by these campaigns from January 3, 2012 through June 5, 2012.

With regard to the individual campaign contribution data for 2010, 2011, and 2012 it should be noted that: (a) although GAB periodically reviews filed reports to verify accuracy, the electronically filed reports may be amended at a later date and are, therefore, subject to change; (b) unitemized contributions are not included in the analysis; (c) contributions/loans by a candidate to his or her own campaign are excluded; and (d) state law permits an individual to make multiple contributions to a given candidate, provided that the individual per-candidate contribution limits are followed.

APPENDIX

History of Major Legislative Enactments Regarding the Financing of State Campaigns

Chapter 334, Laws of 1973. Chapter 334, Laws of 1973, created an entire new statutory chapter (Chapter 11 of the statutes) governing campaign finance activities. As a part of that new chapter, the campaign spending limits in existence at the time were increased. Further, the new law established limits for the first time on the contribution amounts that could be made to candidates by any one individual. Limits were also created on the amount of contributions that could be received from various political committees. In addition to these changes, Chapter 334 also created the State Elections Board and charged the Board with the administration of state laws relating to elections including the new campaign finance law.

The recodification of spending limits under Chapter 334 reflected the Legislature's concerns about the total level of spending on campaigns and the relative ability of candidates to raise sufficient funds to finance competitive electoral campaigns. These concerns were expressed in a statutory declaration of policy that the Legislature included as a preamble in the new law (s. 11.001(1) of the statutes):

"The legislature finds and declares that our democratic system of government can be maintained only if the electorate is informed. It further finds that excessive spending on campaigns for public office jeopardizes the integrity of elections. It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and to enable candidates to have an equal opportunity to present their programs to the voters. One of the most important sources of information to the voters is available through the campaign finance reporting system. Campaign reports provide information that aids

the public in fully understanding the public positions taken by a candidate or political organization. When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence. The legislature therefore finds that the state has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate."

On January 20, 1976, the United States Supreme Court in *Buckley v. Valeo* invalidated all spending limitations that were imposed on individuals, groups and candidates in election campaigns for federal office under the Federal Election Campaign Act of 1971. The Court held that limitations on the amounts a candidate could spend to promote or advance his or her political views constituted a restriction on the candidate's freedom of speech and were, therefore, impermissible. However, the Court held that spending limitations were permissible where the candidate accepts them voluntarily as a condition of receiving public financing.

The impact of the *Buckley* decision on the state's campaign finance law was discussed in an August 16, 1976, Attorney General's opinion (OAG 55-76). In that opinion, Attorney General

Bronson La Follette opined that the spending limits that the state had imposed were unconstitutional given the *Buckley* decision. However, he further stated that based on *Buckley*, spending limits could be enforced in a system where: (a) public campaign financing is made available; and (b) a candidate chooses to accept public funding with attendant spending limits imposed as a condition for receiving public funding. In effect, if the state were to offer public funding to candidates, spending limits could still be enforced on those candidates who accepted grants.

This latter consideration appears to have provided the primary impetus for establishing the Wisconsin Election Campaign Fund (WECF) during the 1977 legislative session. Another reason for the creation of the fund was the belief that public funding should be made available to candidates seeking office in order to curb the influence of political action committees. Holders of this viewpoint argued that by offering public funding to a candidate's campaign, there would be less need for a candidate to seek campaign financing from large individual contributors and political action committees.

Chapter 107, Laws of 1977. The WECF was established by Chapter 107, Laws of 1977, and began operation on October 21, 1977. When 1977 Assembly Bill 664 (which ultimately became Chapter 107) was passed by the Legislature, the bill stipulated that an individual's state income tax liability would be increased by \$1 if the individual taxfiler elected to make a designation to the WECF. The designation was, in effect, an income tax surcharge since an individual's tax liability would be increased by \$1 if he or she made a designation to the WECF. However, this provision was partially vetoed by then acting Governor Martin J. Schreiber in such a manner that the original income tax surcharge language, as passed by the Legislature, was converted to a check-off.

Under the resulting revised language, a taxfiler could designate that \$1 be transferred from general fund revenues to the WECF without affecting the amount of his or her tax liability or tax refund. The Governor's veto was challenged by State Senator Gerald D. Kleczka and Representative John C. Shabaz. On April 5, 1978, the State Supreme Court upheld the Governor's veto (*State Ex rel. Kleczka v. Conta*).

The WECF was a segregated fund originally established to help finance the election campaigns of qualifying candidates for the offices of Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, Justice of the Supreme Court, State Senator, and Member of the Assembly.

2001 Wisconsin Act 109. On July 26, 2002, Governor Scott McCallum signed 2001 Wisconsin Act 109 into law. Act 109 made numerous significant changes to Wisconsin's campaign finance laws. Among these changes were the following: (a) increasing the income tax designation supporting the WECF from \$1, to the lesser of \$20 or the taxpayer's tax liability prior to making such a designation; (b) creating political party accounts and a general account in the WECF and permitting a taxpayer to designate which account receives funding from the taxpayer's WECF income tax designation; (c) increasing the spending limits applicable to candidates accepting WECF grants; (d) providing supplemental grants matching an opposing candidate's disbursements exceeding the applicable spending limit; (e) requiring special interest committees, during the last 30 days prior to a general, special or spring election, to pre-report their independent advocacy and "issue ad" disbursements and obligations; (f) providing supplemental grants matching independent advocacy and "issue ad" disbursements and obligations by special interest committees; (g) expanding the role of political parties by transferring approximately 55% of the annual WECF income tax designation revenue in a given

political party account to the political party to be distributed by the party to provide supplemental grants; (h) halving the contribution limits for legislative candidates who neither accept a WECF grant nor file an affidavit of voluntary compliance to abide by the spending limits for the applicable office; (i) doubling contribution limits for candidates subject to an opposing candidate's disbursements exceeding the applicable spending limit, or subject to independent advocacy and "issue ad" disbursements and obligations by committees exceeding 5% of the spending limit for the applicable office; (j) increasing from \$150,000 to \$450,000, the amount that political parties may receive from all committees in a biennium, excluding transfers between political party committees of the same party; (k) specifying that political parties may receive an additional \$450,000 per biennium in contributions from committees, conduits and individuals to a special party account with segregated Assembly and Senate accounts to fund supplemental grants and to provide up to 65% of the spending limit for the applicable office, the funds that a candidate may receive from all committees, including political party committees; (l) generally prohibiting a candidate or personal campaign committee applying for a grant from the WECF from accepting a contribution from a committee, other than a political party committee; and (m) requiring public television stations and public access channel operators to provide a minimum amount of free airtime to certified state office candidates.

During legislative deliberations on this legislation, concerns were expressed about the constitutionality of a number of the campaign finance provisions. To allay these concerns, Act 109 directed the Attorney General to promptly seek a declaratory judgment from the Wisconsin Supreme Court that the treatment of the campaign finance statutes by the act was constitutional.

On July 26, 2002, the day Act 109 was signed into law, the Attorney General petitioned the Wisconsin Supreme Court to begin an original

action seeking a declaratory judgment regarding the constitutionality of the campaign finance law revisions under the act. Although the Attorney General petitioned the Supreme Court for a declaratory judgment, as directed by Act 109, the Office of the Attorney General, invoking its responsibilities as an officer of the Court, advised the Supreme Court in its petition that, "it has concluded that the constitutionality of the provisions ... cannot be defended because they are plainly in conflict with well-established principles." On November 13, 2002, the Wisconsin Supreme Court denied the Attorney General's petition to commence an original action.

On July 26, 2002, a separate action challenging the constitutionality of the Act 109 campaign finance provisions was filed in the United States District Court for the Western District of Wisconsin. A variety of private parties brought the action, including the Wisconsin Realtors Association, the Wisconsin Education Association Council, Wisconsin Manufacturers and Commerce, Wisconsin Grocers Association, Wisconsin Builders Association, Wisconsin Broadcasters Association, Wisconsin Farm Bureau Federation, Realtors-PAC, WEAC-PAC and WMC Issues Mobilization Council, Inc.

On December 11, 2002, the United States District Court for the Western District of Wisconsin ruled that requiring special interest committees to pre-report their independent advocacy and "issue ad" disbursements and obligations during the last 30 days prior to a general, special or spring election, was neither supported by a significant government interest nor narrowly tailored. Together, these failings rendered the provision incompatible with the First Amendment to the federal Constitution. The Court did conclude, however, that the public broadcasting free airtime provision was not preempted by federal law, but could not yet be reviewed on constitutional grounds as the Elections Board had yet to adopt rules putting the provision into effect.

Act 109 provided that if a court found any part of the public broadcasting free airtime provision unconstitutional, this provision would be voided. The act further provided that if a court found any other part of the campaign finance provisions unconstitutional, all campaign finance provisions, other than the free airtime provision, would be voided. As a result of the District Court's actions on December 11, 2002, all of the Act 109 campaign finance changes, other than the free airtime provision, were voided. This action returned the operation of the WECF to its pre-Act 109 status.

2007 Wisconsin Act 1. Act 1 dissolved the Elections and Ethics Boards, but merged their functions under a new Government Accountability Board (GAB). Existing campaign finance laws were not modified. However, this successor Board was responsible for the administration of the WECF.

2009 Wisconsin Act 89. Act 89 provided that candidates for Supreme Court Justice would no longer receive public financing under the WECF. Instead, these candidates would receive public financing under a new Democracy Trust Fund (DTF).

An eligible candidate participating in the DTF could not accept private contributions, other than "seed money contributions" and "qualifying contributions," that the candidate accepted through the first Tuesday in January preceding a spring election for Supreme Court Justice. A "seed money contribution" could not exceed \$100 and an eligible candidate participating in the DTF could not accept seed money contributions in excess of \$5,000. A "qualifying contribution" was defined as a contribution in an amount of not less than \$5 nor more than \$100 made to a candidate by an elector of the state. In order to qualify for a DTF grant, a Supreme Court justice candidate had to receive at least 1,000 qualifying contributions from separate contributors in an aggregate amount of not less than \$5,000, nor more than

\$15,000.

The DTF provided for three types of grants to participating eligible Supreme Court candidates. First, the DTF provided for a \$100,000 base grant for an eligible Supreme Court candidate for the primary election, while the spring election base grant for an eligible candidate was \$300,000. Act 89 provided that base grants would be adjusted in the future to reflect changes to the consumer price index.

In addition, if a Supreme Court Justice candidate not participating in the DTF received contributions or made disbursements exceeding 105% of the base grant provided to an eligible DTF candidate at the same primary or election, each candidate participating in the DTF qualified for a nonparticipating candidate supplemental grant equivalent to the total excess disbursement amount made or obligated to be made by the nonparticipating candidate, but these supplemental grants could not exceed, in the aggregate, three times the public financing benefit provided during the relevant primary or election.

Finally, the DTF provided grant funding to match "independent disbursements" made by any outside third party. If the aggregate independent disbursements made or obligated to be made against an eligible DTF candidate for Supreme Court Justice, or for the opponents of that eligible candidate, exceeded 120% of the base grant in the primary or election campaign, the eligible DTF candidate qualified for an independent disbursement supplemental grant equal to the aggregate independent disbursements made or obligated to be made, but not to exceed, three times the public financing benefit provided during the relevant primary or election. An "independent disbursement" meant a disbursement by a person expressly advocating the election or defeat of a clearly identified candidate. The grants were not available to match "issue ad" expenditures in which the ad does not expressly advocate the election or defeat of the candidate.

Beginning with 2010 tax returns, every individual filing an income tax return who had a tax liability or was entitled to a tax refund could designate \$3 for the WECF and the DTF. One-third of the total amount designated by taxpayers through the campaign finance check-off was credited to the WECF, and the remaining two-thirds was credited to the DTF. If individuals filing a joint return had a tax liability or were entitled to a tax refund, each individual could make a \$3 designation. Since the check-off did not affect taxpayer liability, the amount generated from the check-off was transferred to the WECF and the DTF from sum sufficient GPR appropriations.

To the extent that income tax check-off revenue was insufficient to fully fund DTF grants, Act 89 created an additional GPR sum sufficient appropriation to provide additional funding to the DTF equal to the difference between the unencumbered balance in the DTF and the amounts required to provide full public financing benefits to Supreme Court Justice candidates participating in the DTF.

2011 Act 32. Act 32 eliminated the WECF. With the elimination of the WECF, no public financing of campaigns is available for candidates for Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, State Senate,

and State Assembly. Instead candidates for these offices must fund their campaigns exclusively from personal funds and private contributions. Elimination of the WECF did not eliminate the contribution limits to campaigns that currently apply to individuals and committees. Elimination of the fund also did not eliminate the contribution and disbursement reporting requirements that apply to candidates for statewide and legislative office.

Act 32 also eliminated the DTF. As a result, no public financing of campaigns is available for candidates for Supreme Court Justice. Instead, candidates for Supreme Court Justice must fund their campaigns exclusively from personal funds and private contributions. As a result of the elimination of the DTF, Act 32 returned the individual and committee contribution limits applicable to Supreme Court Justice candidates to what these limits had been when Supreme Court Justice candidates participated in the WECF. Consequently, an individual is again permitted to give a Supreme Court Justice candidate up to \$10,000 per campaign, and a single committee is again permitted to give a Supreme Court Justice candidate up to \$8,625 per campaign. Under the DTF, an individual or a single committee could only give a Supreme Court Justice candidate up to \$1,000 per campaign.