

ROLL CALL

Cap Campaign Contributions and Boost Competition

By Deborah Goldberg
Special to Roll Call
June 12, 2006

Contribution limits have been a core element of campaign finance regulation for decades, and the Supreme Court has repeatedly upheld them in the face of constitutional challenge. But opponents of Vermont's limits are now asking the court to reconsider, arguing that caps on contributions are an incumbent-protection device.

However, three new studies on campaign contribution limits - one published in *Public Choice*, a second forthcoming in *Political Research Quarterly*, and the third to be published by the Brookings Institution in *The Marketplace of Democracy* - offer empirical evidence to quell that familiar but flawed argument.

The argument has risen in *Randall v. Sorrell*, a challenge to Vermont's ceilings on campaign spending and contributions. Vermont enacted the mandatory expenditure caps in a conscious attempt to test *Buckley v. Valeo*, the 1976 precedent widely understood to foreclose such caps. When *Randall* reached the Supreme Court, everyone knew the spending limits would be controversial.

But observers were surprised to see the extent of the court's skepticism about the contribution limits. After all, *Nixon v. Shrink Missouri Government PAC* had reaffirmed the constitutionality of contribution limits just six years earlier. Why should Vermont's limits prompt questions?

Vermont allows contributions of \$400, \$300 and \$200 per election cycle to candidates for statewide offices, state Senate seats and state House seats, respectively. In *Nixon*, the court found that Missouri's limit of \$1,075 per election for statewide candidates was not "so radical in effect as to render political association ineffective ... and render contributions pointless."

Although the Supreme Court has never considered contribution limits as low as Vermont's, the lower limits should not be surprising for a state that ranks 49th out of 50 in both population and gubernatorial campaign spending.

Applying the Nixon standard, federal courts have upheld contribution limits comparable to, or even lower than, those in Vermont. Caps of only \$100 per election for legislative candidates in Montana have withstood constitutional challenge. The courts in that case considered the facts pertinent to Montana and determined that its contribution limits met the Supreme Court's test.

The facts about Vermont, including its small population and low costs of media advertising, persuaded two lower courts to uphold Vermont's limits as well.

The Supreme Court soon will decide whether to affirm those decisions in *Randall*. The facts in the record overwhelmingly support the lower courts' conclusion that Vermont's contribution limits are constitutional. The evidence shows that all candidates - incumbents, challengers and candidates for open seats - can conduct effective advocacy under the limits.

Concerns about the ability of challengers to compete also are allayed by new research on contribution limits. In their *Public Choice* article, economists Thomas Stratmann and Francisco Aparicio-Castillo found that contribution limits appear to help challengers in state Assembly elections. Such regulations are associated with both an increase in the number of challengers and a decrease in incumbents' re-election margins.

Two forthcoming studies focusing on gubernatorial elections reached similar conclusions. According to Kihong Eom and Donald Gross, analyses of both the number of contributors and the dollar amount of contributions to gubernatorial candidates suggest no support for an increased bias in favor of incumbents resulting from the presence of contribution limits. David Primo, Jeffrey Milyo and Tim Groseclose conclude that limits on individual contributions to candidates have statistically and substantively significant effects on the winning margins in gubernatorial races, narrowing such margins.

These recent statistical analyses of the empirical data comport with common sense. We all know that one of the principal advantages of incumbency is access to financial contributions, especially in larger amounts. In the 2004 cycle, for example, incumbents outraised challengers more than 4-to-1.

Incumbents increased their edge in contributions of at least \$1,000 from \$67 million in 2002 (the last cycle before the limits were doubled) to \$178 million in 2004.

True, a few challengers might have wealthy supporters who could bankroll their candidacies if not for contribution limits. But the risks of corruption from such an arrangement outweigh the burden on the rare challenger backed by a millionaire. And, as we have seen, incumbents are far more likely than challengers to attract big money when limits are raised.

The Supreme Court has long recognized the role of contribution limits in combating real and perceived corruption. The only circumstance that has given supportive justices pause in recent years is the possibility that such limits would exacerbate a pre-existing incumbent advantage. The new research on that subject provides comfort that caps on contributions will promote, rather than hinder, competition. If the factual record and the numerical evidence, rather than rhetoric and ideology, persuade the court, then Vermont's limits will be upheld.

Deborah Goldberg directs the Democracy Program at the Brennan Center for Justice at NYU School of Law. The Center submitted an amicus brief in support of Vermont in the Randall case.

Copyright 2006 (c) Roll Call Inc. All rights reserved.