

Fair Elections and Fair Campaign Practices for Citizen Self-Government

Testimony by Washington Public Campaigns
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Submitted to the Washington State Senate Government Operations and Elections Committee
At the Committee hearing: December 7, 2010

Committee Chair Senator Oemig and Members of the Committee:

Thank you for the opportunity testify today, on the subject of election campaigns and campaign funding practices, laws and regulations in Washington state. These remarks below are submitted in writing for the record. Our verbal testimony will be brief, with excerpts of the remarks below.

Attached as appendices are pages from a powerpoint presentation we will have.
Appendix A is a summary of our recommendations.

We need fundamental reform in campaign funding and practices, because we are losing our democracy to money and special interests. It has profound impact on public policy, budget decisions and whether we have fairness in our society and economy.

The November elections - in WA state, and nationally - show the trends, and they are alarming. In remarks below, we outline our concerns and also some remedies we suggest.

Perhaps the best summation from the recent election season is the title of Robert Kaiser's recent book: **"So Much Damn Money"** (in which he details the "pay-to-play" system of lobbying in Congress).

But of concern is not only the alarming increase in campaign spending in general; it's also the **trend toward spending by special interests** - swamping donations by individual voters and in effect buying an election result - in candidate races and ballot issues alike.

In addition of concern is **increased spending on independent electioneering** - thereby skirting contributions limits and reporting rules in some instances - for so-called "issue" ads and mailers, and using the latest Madison-Avenue methods of voter persuasion - where spin, half-truths and outright lies can be told loudly and repeatedly, to influence election outcomes.

These trends threaten self-government by the people - the very foundations of our democracy.

The loudness, frequency and size of the "speech" - the megaphone, if you will - is determined by money and financial backers. When financial support for campaigns, issue ads and lobbying is largely corporate - any corporate entity - we begin to lose the fundamental principles of representative democracy, one-person, one-vote. At the extreme, we might as well turn over lawmaking and governance to the wealthiest corporate interests - both Citibank and respected journalist Bill Moyers are now calling it a "plutocracy" - and stop calling ourselves a democracy.

Robert Reich describes a "perfect storm" threatening our democracy: increasing concentration of income and wealth at the top; a record amount of secret money, flooding our democracy; and a public becoming increasingly angry and cynical about a government that is raising its taxes, reducing its services, and unable to get it back to work. Reich concludes: "We're losing our democracy to a different system. It's called plutocracy."

The legislature must step up and take responsibility to assure that campaign practices and our elections are fair - and about people, issues and voters, rather than money. Otherwise, we will see chaos, with ballot measures and lawmaking essentially up for auction and budget priorities and public policies for sale to the highest bidder. The result may be populists with pitchforks, on the right and the left. And if that happens we'll be in meltdown, and it won't be pretty.

When the U.S. Supreme Court ruled in January, in the Citizens United case, that First Amendment "free speech" rights applied to any corporate entity and therefore they could spend whatever sums they wanted, right up to election day, on "political speech" - we predicted a wild ride: record-setting spending by special interests; and increased electioneering by shadowy groups on all sides, running ads to influence voters.

(See Appendix B for a summary of the Supreme Court's Citizens United ruling)

The prediction was correct on all counts. Let's take a quick look at campaign spending trends from November, statewide and nationally:

Refer to Appendices ...

Appendix C: Growth in outside spending on campaigns (national), 2006 to 2010

Appendix D: Total Campaign Spending, WA state, 2006-2010

Appendix E: Campaign spending trends, WA state, 2004-2010

Appendix F: Ballot measure spending, WA state, 2010

Appendix G: Spending per ballot measure (average), by year, 2004 to 2010

As stated, these trends threaten the tree-trunk of our democracy and self-governance. They threaten citizen confidence in election results and voting; many say, "why bother to vote?"

There are solutions. But solutions will require steadfast political will and action by the legislature.

Our suggestions and recommendations include the following:

1. We need robust measures and regulations to address electioneering and "political speech" by corporate special-interests. We recognize that corporate entities of all shapes and sizes are part of the fabric of our community, and that businesses large and small certainly have a legitimate role in our business economy, creating jobs and providing services. But these entities have no moral right to exert undue political influence or at the worst to hijack public policy for their own private ends. When they do, when they spend so lavishly to achieve an election outcome or to lobby for political favors in the halls of Congress or the legislature, it trumps the voice of our citizens and destroys confidence in democracy itself.

At the federal level, a constitutional amendment may be necessary to overturn the supreme court's Citizens United ruling - and to clarify that First Amendment rights to free speech means free speech for natural flesh-and-blood persons, not the right to unlimited political speech for corporate entities.

Member-of-Congress Donna Edwards, D-Md, has proposed such a constitutional change (Appendix H) - with language that would authorize Congress and the states to regulate spending on political speech. Other groups have proposals with various language but similar intent - including FreeSpeechForPeople.org, and MoveToAmend.org. (Appendix I). And there's a growing national movement for this - fed by increasing alarm at how much politics in Congress is skewed by corporate lobbyists and money. National polls show that some 80 percent of Americans disagreed with the Citizens United ruling and want to see it overturned.

Regardless of federal developments, we can take action at the state level - and we should. The state has constitutional tools - including the authority to issue corporate charters, business licenses and to set tax preferences, and also to set campaign finance regulations by statute. Furthermore, there is a compelling state interest to maintain an elections system with campaign practices that are fair and not subject to undue influence or abuse by the extraordinary power of money and corporate special interest.

Consider, must we grant tax preferences and/or public contracts to business entities that in turn use the funds for electioneering and lobbying toward their own private interest? With appropriate attention to constitutional concerns, we should pass laws that require corporate entities to choose: If they want to engage in electioneering, they will not qualify for tax preferences or state contracts. And if they want such preferences, they must refrain from electioneering - because the taxpayers should not subsidize private special-interest lobbying.

2. We support reforms to assure that the citizen ballot initiative process is not hijacked by corporate and financial special interests.

In the recent election season over \$57 million was spent by committees backing or opposing nine ballot initiatives and one referendum - a four-fold increase per ballot measure, over any previous

year. Nearly every ballot measure qualified for the ballot through signature-gathering that was bankrolled by special interest corporate entities with a huge financial stake in the outcome - and then the voter-persuasion was similarly bankrolled by these interests.

The most extreme case - Initiative 1107 - saw nearly \$16.8 million contributed, of which \$16.5 million (*over 98%*) was contributed by one entity - the American Beverage Association, itself dominated by Coca Cola, Pepsi Cola and similar soda bottling corporations with tens of billions in profits worldwide and yet concerned to stop any tiny per-bottle tax in it's tracks, in any state. True enough, the voters had the final say - but voters are influenced by the heavy never-ending persuasion (and half-truth spin) that \$16 million can buy in TV ads and direct mail. The ballot election result was to worsen the state's budget deficit, endangering funding for schools, health care, and other safety net services needed by soda drinkers and their families - even families who make a living producing, distributing and selling bottled soda. Whose interest is served by this distortion of our state's "citizen" initiative process?

In yet another case - Initiative 1053 - major financial backing was provided by oil giants BP, Tesoro Co., and Conoco-Phillips, who between them contributed \$235,000. The net effect of this election outcome was to preserve a system in which a minority of elected legislators can block taxes to these oil companies and to other corporate contributors to the initiative campaign, including Bank of America, Wells Fargo, US Bank, and real estate developers such as Kemper Holdings, Weyerhaeuser, Sabey Corporation and others. Are these corporate entities truly "Citizens for Responsible Spending" and "Voters Who Want More Choices" - as implied in the names of the initiative committees formed to influence election outcomes? - or are they simply concerned with their corporate bottom line regardless of long-term effect on the state?

As stated above, we believe the state should not be providing tax preferences - in some cases, large carve-outs or divots in the budget - to corporate entities that engage in electioneering. Public policy should be determined by citizens and voters who live and work here, and by elected representatives who should be able to vote for the public interest without fearing the economic and political wrath of giant corporations.

3. We support thorough disclosure of campaign spending and electioneering - enforced by a well-funded Public Disclosure Commission, and with tough penalties for violations.

We recognize that disclosure and transparency laws do not by themselves forbid bad acting, corruption or undue influence. But they discourage it - because sunlight is the best disinfectant.

In particular, we support PDC-proposed amendments to existing disclosure and reporting law, to require disclosure of who is conducting telephone campaign advertising, including robo-calls and "push polls" masquerading as surveys.

The Public Disclosure Commission must receive adequate funding for the tasks and important role it plays in policing a fair elections and campaign practices system.

Penalties for violations of disclosure and campaign funding rules need to be steep enough, to motivate compliance by all participants, rather than fines and penalties simply being a "cost of doing business."

Also, disclosure and transparency rules should include disclosure of who is "behind the veil" of any entity that engages in electioneering communication. It is challenging enough for voters to take time to navigate the campaign and lobbying reports, to learn who is supporting the candidates and/or ballot issues, and perhaps seeking to exert influence. But it is doubly-difficult even for investigative journalists, not to mention the average voter, to unpack the "Russian doll" system of corporate entities transferring funds one to another, such that only the final donor to a campaign is disclosed. In effect it amounts to laundering the money - when major donors to campaigns or issue ads hide behind a curtain of PACs or entities with innocent-sounding names, and are not disclosed. Instead, laws and rules should require disclosure of at least the top few original donors - be they individuals, or a business, or a union.

4. Timely and accurate voter information is essential to fair elections.

Voters today face a virtual blizzard of campaign propaganda - over the airwaves, in the mail, and at public campaign events - seeking to influence the outcome of elections.

Consider the "pre-game" statistics: During the 2010 election season, a total of \$88 million was spent in-state by campaigns, PACs and committees - on voter persuasion and to influence election outcomes. Not included in this sum are the millions spent by out-of-state sponsors of "issue ads" and unreported electioneering by groups that decline to report their spending or disclose their donors. These dollars buy the latest technology, and psychology, in Madison-Avenue persuasion; indeed, it is a core practice in the modern campaign-game, and a reason why campaigns have become so expensive.

Lined up against the reported and unreported expenditures are voters guide pamphlets, community-access TV (and TV-W), and perhaps, a "keeping 'em honest" private media.

"Fair and balanced" is tremendously out-gunned. Current expenditures for voter guides comes nowhere near the spending on "political speech" by groups with a persuasion point of view.

Yet, there is a compelling state interest to provide timely and accurate information to voters, about candidates and ballot measures - through voter guides, on-line voter information, frequent public debates, and requirements that print and broadcast media provide fair and balanced reporting and equal time for candidates and ballot issues. We recognize that broadcast media communication is regulated by the Federal Communications Commission and therefore somewhat immune to state regulation. Nonetheless, the state has prerogatives through licensing and taxing authority - and should use it to encourage accurate and timely information to voters.

What is the responsibility of the press to demonstrate statesmanship? Is there a way to encourage this, without trampling on freedom of the press? A major Seattle newspaper editorialized repeatedly for weeks in favor of Initiative 1053 and against Initiative 1098 - positions that would worsen the state's budget deficit - and then in the week following the election, published an opinion editorial saying the legislature should now find a way to fully fund schools in the state!

In particular we have a concern about the **truthfulness of campaign propaganda**. In the economic marketplace, First Amendment guarantees of free speech do not include the right to be deceptive, and commercial advertising is regulated by the authority of the Federal Trade Commission, to prohibit "unfair and deceptive acts or practices in commerce."

Political speech and political propaganda should have a similar requirement in law. Absent that, the necessity of trusted and accurate information for voters by some means is even greater.

5. Civic education programs in schools and community are essential.

When asked what type of government emerged - a republic or a monarchy - from the nation's founding fathers, Ben Franklin reportedly replied: "A republic, madam - if you can keep it."

Can we keep it? Do our nation's youth (indeed, many voters) know and respect the difference?

A successful democracy depends on an informed and savvy electorate - inoculated through robust civic education to become intelligent voters, perhaps even immune during election season to any undue influence (although that's difficult) by the blizzard of special-interest ads and electioneering.

Again, the state has a compelling interest in supporting civic education - through course-work and presentations in our schools, and through community programs that expose voters to the nuances of issues, budgets and spending priorities, public-interest decision-making, and lawmaking in general.

6. Public financing of campaigns is essential so that elections are decided by issues and voter preferences, and not by who is best at romancing financial backers. When dollars matter most, what we get is political auctions - not statesmanship and policy in the public interest.

Public campaign financing is available and used in several states (*Appendix J*). It works well and is supported by candidates and voters wherever it is available - provided funds are adequate so that participating candidates can run a competitive campaign. When Connecticut enacted a "Clean Elections" program in 2005, over 75 percent of candidates (of all political persuasions) used the program the first year. North Carolina has had public financing for state supreme court and appellate court races since 2002, and in 2007, expanded the program availability to three statewide "council of state" positions.

Under so-called "Clean Elections" or "Voter-Owned Elections" programs, candidates qualify for funds by first demonstrating a set minimum standard of community support - as fixed in the law. But then they receive public funds adequate to run a competitive campaign; they are relieved of "dialing for dollars" - in fact they agree not to accept any further private donations and not to use personal wealth, in effect to run their campaign only on the public funds provided. They may also agree to participate in a set number of public debates, and otherwise to make the campaign about issues, not money. These provisions are flexible, and can all be part of the design of a program, enacted in the law.

The result in many states has been continued support from candidates who dislike "dialing for dollars", from donors who are weary of being hit up, even from political parties who recognize that it is issues, civic awareness and voter turnout that wins elections. In particular, there is support from voters - those who recognize that unless we finance campaigns publicly, we're all paying the price of public policies up for auction to the highest bidder.

And the policy result in states where public financing has taken hold, is lawmakers who are truly free to champion the public interest - without worry about financial support for an upcoming re-election campaign. In Maine, they lowered the price of prescription drugs, and passed tough laws seeking to reduce teenage smoking - because they could stare down the pharmaceutical and then the tobacco lobbyists, no longer needing those special-interest campaign funds.

Voter-owned elections programs requires an allocation of public funds, somehow - and we recognize this is challenging in today's economic and budget climate. While understandable, it's too bad and perhaps short-sighted - because candidate races and ballot-issue campaigns will always be funded somehow. If not in the public interest, it will be in the private interest - and then the taxpayers will usually end up footing the bill - often through higher prices or taxes, as tax loopholes, special deals and budget priorities favor those with political influence.

Perhaps an effective program - proposed but not yet enacted anywhere - would be a "voucher" system in which every voter would receive public vouchers that could be "spent" - allocated in any manner at the voter's choice - on campaigns. This is actually a means of public campaign financing, more or less a "voter-market" model. It might simply lead to a scramble by candidates seeking to capture the most vouchers, by influencing voters' decisions how to "spend" their campaign vouchers - but there are pros and cons to the design of any public financing system.

7. Public campaign financing for supreme court races is necessary and affordable.

If any branch of government should be immune to special-interest campaign influence, it is our courts. Citizens must have confidence in the integrity and impartiality of the judicial system, particularly the supreme courts that are charged with upholding the constitution. Both the appearance and the actuality matter. When jurists are selected through popular election, the campaigns ought to be financed publicly - otherwise we risk the loss of public confidence.

Four states now have such programs, pioneered by North Carolina, and expanded to Wisconsin, New Mexico, and recently West Virginia. It's time to do it here - before the scandal breaks out in fights for supreme court seats, as happened in West Virginia in the sensational case of Caperton v. Massey (*where \$3 million was spent by the owner of Massey Energy Co., to elect a judge to that state's supreme court, who then provided a majority vote to absolve the energy company of a \$50 million fine awarded by a lower-court jury*).

The judicial campaigns public financing bills proposed in previous legislative sessions (SB 5912 / HB 1738) can be amended with an appropriate dedicated funding source, and perhaps submitted to the public as a referendum for consideration. We think this is a practical course to pursue.

Without significant reforms, we are losing our democracy to money and special interests. Polls and conversations among our own membership shows that civic activists and Main Street voters are justifiably concerned - even angry at the trends - and looking for answers, political spine and action from our elected officials. Please don't let us down.

Thank you for the opportunity to present these remarks and ideas.

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Fair Elections and Campaign Practices in WA State

1. Address electioneering and "political speech" by corporate special-interests
 - through state actions regarding tax preferences
 - through support to overturn the *Citizens United* ruling
2. Assure that WA's citizen ballot initiative process is not hijacked by special interests
3. Require thorough disclosure of campaign spending and electioneering ...
 - enforced by a well-funded Public Disclosure Commission
 - tough penalties for violations
 - disclosure of sponsors of telephone campaigning
4. Provide enhanced timely and accurate information to voters
5. Provide enhanced civic education, through school and community programs
6. Establish public financing of campaigns ... including,
7. - public campaign financing for supreme court races



Citizens United ruling: *February, 2010*

Overtured:

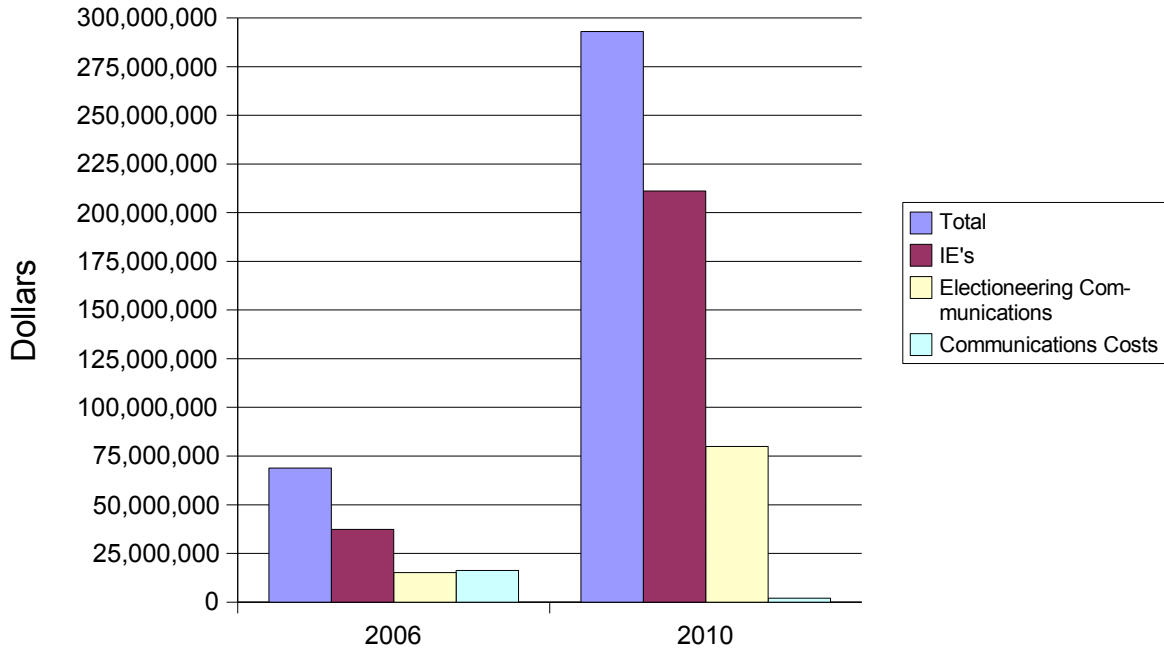
- Laws or rules that prohibit corporations and unions from spending treasury money on ads that advocate electing or defeating candidates for president or Congress but are produced independently and not coordinated with the candidate's campaign.
- The prohibition in BCRA that prohibits issue-oriented ads paid for by corporations or unions 30 days before a primary and 60 days before a general election.

Upheld:

- The ban on donations by corporations from their treasuries directly to candidates.
- The ability of corporations, unions or individuals to set up PACs that can contribute directly to candidates but can only accept voluntary contributions from employees, members and others and cannot use money directly from corporate or union treasuries.
- The McCain-Feingold provision that anyone spending money on political ads must disclose the names of contributors.



Outside Spending, excluding party committees



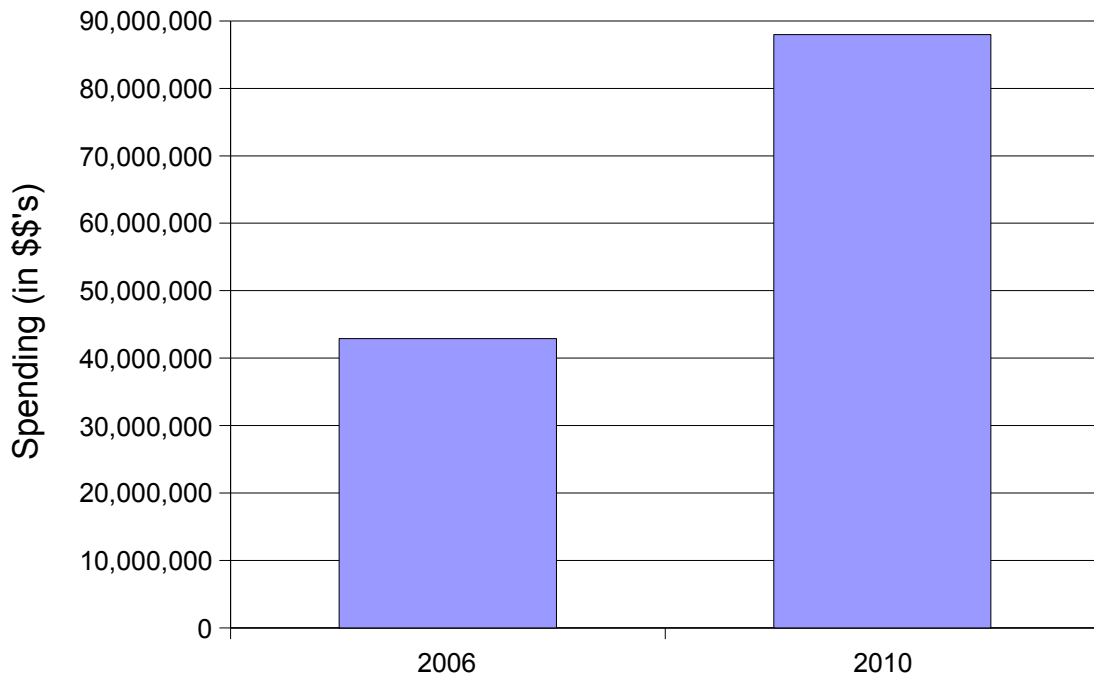
Total spending \$ 68,852,502 \$ 293,057,723

(source: OpenSecrets.org)

A January 2010 Supreme Court decision (Citizens United v. Federal Election Commission) now permits corporations and unions to make such expenditures from their treasuries directly and through other organizations. The decision allows such activity to take place without complete or immediate disclosure of who funds such communications, preventing voters from understanding who is truly behind many political messages.



Total spending, all campaigns, IE's



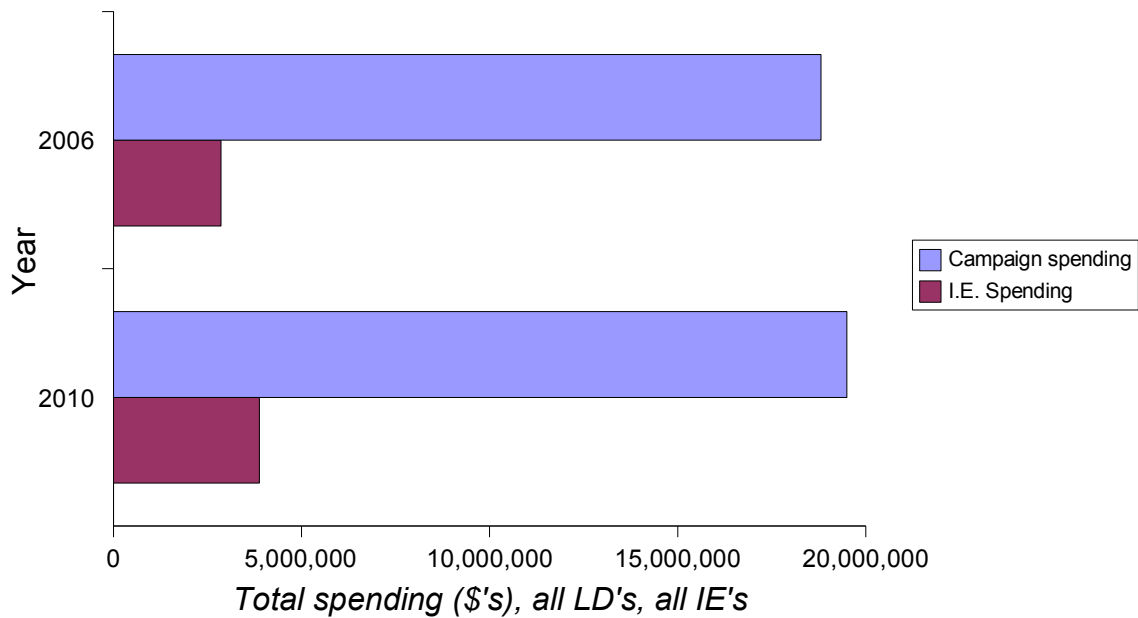
Total spending in WA state **\$42,889,341**

\$87,993,954

*(all WA campaigns and IE's combined)
source: PDC reports*



Spending by campaigns, and by IE's



2006	LD Campaign spending	\$ 18,810,072	
	IE spending	\$ 2,857,053	
2010	LD Campaign spending	\$ 19,497,300	(~ 4% increase)
	IE spending	\$ 3,877,353	(36% increase)

source: PDC reports

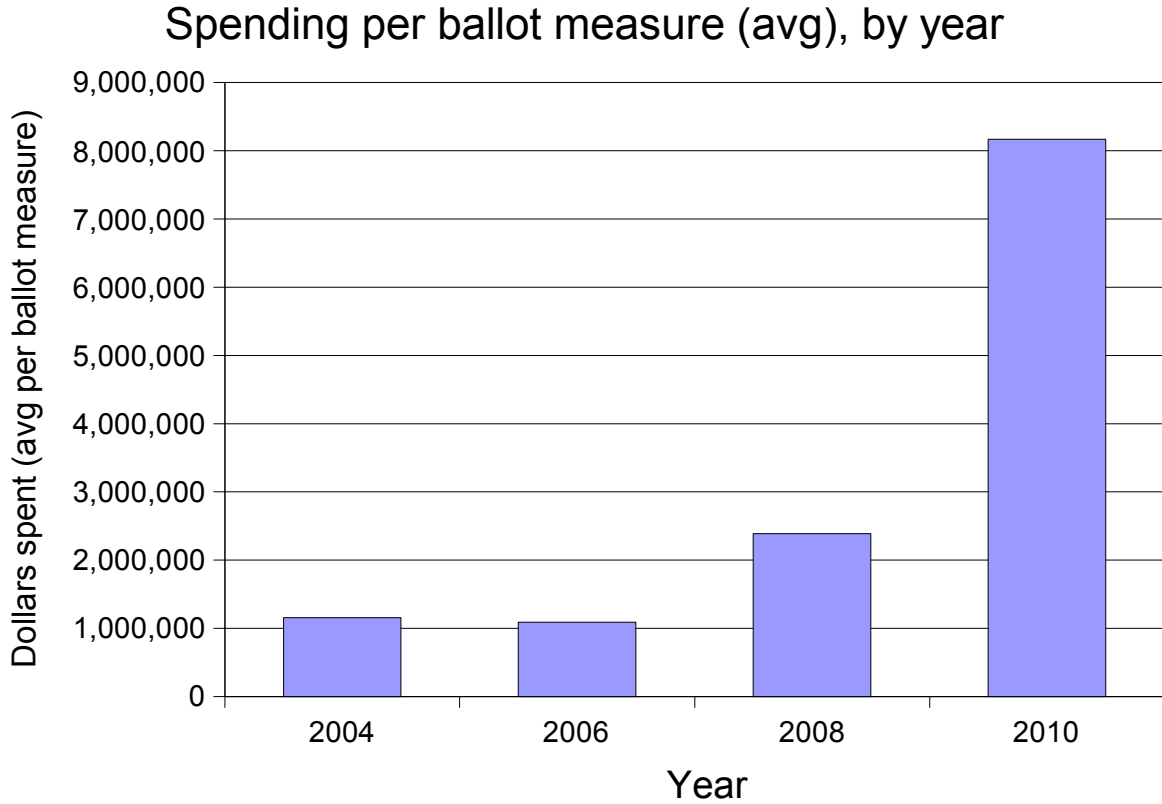


Ballot Measure Spending - 2010

<u>Ballot Measure</u>	<u>Total</u>	<u>For</u>	<u>Against</u>
R-52	732,060	732,060	- 0 -
I-1053	2,815,932	1,284,954	1,530,978
I-1082	9,172,359	3,394,034	5,778,325
I-1098	11,215,499	6,101,538	5,113,961
I-1100	15,076,028	6,063,496	9,012,532
I-1105	2,674,911	2,674,911	- 0 -
I-1107	15,379,554	15,038,170	341,384

source: PDC reports





source: PDC reports



Appendix H: Edwards amendment:

Ms. EDWARDS of Maryland (for herself and Mr. CONYERS) introduced the following joint resolution; which was referred to the Committee on the Judiciary

Proposing an amendment to the Constitution of the United States permitting Congress and the States to regulate the expenditure of funds by corporations engaging in political speech. (Introduced in House, February 2, 2010)

HJ 74 IH

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

Article--

Section 1. The sovereign right of the people to govern being essential to a free democracy, Congress and the States may regulate the expenditure of funds for political speech by any corporation, limited liability company, or other corporate entity.

Section 2. Nothing contained in this Article shall be construed to abridge the freedom of the press.'.



Proposed joint resolution regarding First Amendment rights for people, not corporations

Whereas: the First Amendment is designed to protect free speech rights of people, not corporations; and

Whereas: for the past three decades, a divided United States Supreme Court has transformed the First Amendment into a powerful tool for corporations seeking to evade and invalidate democratically enacted reforms;

Whereas: this corporate takeover of the First Amendment has reached its extreme conclusion in the US recent ruling Citizens United v. Federal Elections Commission;

Whereas: the U.S. Supreme Court ruling in Citizens United v. F.E.C. overturned longstanding precedents prohibiting corporations from spending their general treasury funds in our elections;

Whereas: the U.S. Supreme Court ruling in Citizens United v. F.E.C. will now unleash a torrent of corporate money in our political process unmatched by any campaign expenditure totals in US history; and

Whereas: the U.S. Supreme Court ruling in Citizens United v. F.E.C. presents a serious and direct threat to our democracy; and

Whereas: the people of the United States have previously used the constitutional amendment process to correct those egregiously wrong decisions of the U.S. Supreme Court that go to the heart of our democracy and self-government;

Now, therefore, be it resolved:

That the Commonwealth of Massachusetts hereby calls upon the U. S. Congress to pass and send to the states for ratification a constitutional amendment to restore the First Amendment and fair elections to the people.



States and Cities with Clean Elections programs:

Arizona – 1998, approved by ballot initiative; began in 2000, all statewide and legislative offices.

Connecticut – 2005, the Citizens Election Program was adopted legislatively, to start for legislative races in 2008, and statewide positions in 2010.

Maine – 1996, Maine Clean Elections Act approved by initiative, began in 2000, for gubernatorial and legislative offices. In 2006, 84% of elected legislators ran using only public financing.

Massachusetts – 1998, voters approved The Clean Elections Law, to provide PF for statewide candidates. Repealed by legislature in 2003, to avoid funding the program by court order.

New Jersey – 2004, pilot project for two districts adopted by legislature. In 2007, CE option available in three legislative districts, used by a total of 20 candidates (Oct-Nov 2007).

New Mexico – 2003, public financing available to candidates for Public Regulation Commission. In 2007, the legislature expanded the program to include upper-level judicial elections.

North Carolina – Judicial elections. In 2006, 8 of 12 candidates, including 5 of 6 winners, used the reform program. In 2007, the NC legislature expanded the Voter-Owned Elections program, to include State Auditor, Commissioner of Insurance, and Superintendent of Public Instruction

Vermont – 1997, public financing was adopted by the state legislature for gubernatorial and lieutenant governor candidates. The program has not been extensively used, due in large part to legal attacks on other provisions of the law.

West Virginia - 2010, established public financing for state supreme court campaigns.

Wisconsin - 2009, established public financing for state supreme court campaigns.

Albuquerque, NM – 2005, public funding for council (by district), and mayor (citywide).

Portland, OR – 2005, full public funding for council and mayor (citywide). Narrowly not renewed by voter referendum, 2010.

Elsewhere in the U.S., many local governments offer matching fund programs for local office.

