Campaign Financing in Arizona Legislative Elections

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In 1962 Representative Jack A. Brown spent approximately $350 getting elected to the Arizona State House of Representatives where he served for 6 terms, or 12 years, before he was defeated. In 1986, a little less than 25 years after he had first run for the legislature, Mr. Brown spent in excess of $30,000 to successfully unseat an incumbent. Even controlling for the effects of inflation, this illustration represents the fact that there has been an obvious increase in the amount of money necessary to run for public office. In recent years the average cost of a legislative seat has doubled or tripled in almost every state for which there are records (Jones 1984, 175). Why the large increase? What factors contribute to these rising costs? More importantly, what measures are being taken to control them?

These questions are not easily answered, but the present political climate in Arizona provides a perfect opportunity to examine campaign spending and reform, and provides insight as to possible answers to such questions. Before looking at the Arizona experience specifically,
however, I will briefly examine the broader base of campaign spending and reform.

Brief History of Campaign Finance Laws

Not only has campaign spending risen dramatically at the state level, but at the national level as well. Costs of congressional campaigns have skyrocketed in the last decade, with the average House open seat campaign running close to $430,000 (Nelson and Magleby 1989, 35). Senate races are even more expensive, due in part to a six-year rather than a two-year term. An average campaign for an open Senate seat costs over $3 million (Nelson and Magleby 1989, 36).

Before 1972 it was much more difficult to determine exactly how much money was spent on national races because there existed only piecemeal legislation regulating campaigns. The Federal Election Campaign Act of 1971 (FECA) established more stringent regulations and required fuller disclosure of political funding than ever before (Alexander 1980, 29).

Watergate caused increasing concern over the role of money in corrupting U.S. elections, which
brought about the passage of the 1974 Amendments to the FECA. These Amendments placed overall limits on how much could be spent on campaigning, provided public financing for presidential campaigns, and established political action committees (PACs). The 1974 Amendments also created the Federal Election Commission (FEC) to administer and enforce the new laws.

In 1976, portions of the 1974 FECA Amendments were ruled unconstitutional by the Supreme Court in the case Buckley v. Valeo. Limitations on expenditures were struck down as violations of free speech guaranteed by the First Amendment. The Court determined, however, that limitations could be imposed on candidates who accept public funding. Contribution limits and public disclosure measures were left intact (Alexander 1980, 34).

Additional Amendments were made to the FECA in 1979. Essentially, the bill simplified record keeping and public reporting requirements and refined the procedural requirements of the enforcement process (Alexander 1980, 37). As Edwin Epstein observed, "Few developments during the past decade have been more important to American electoral politics than the virtual revolution in campaign financing that occurred in the 1970s" (Epstein 1980, 356).
Accompanying this onslaught of campaign finance at the federal level were a number of "post-Watergate" reforms in many states. From 1972 to 1976, 49 states made some type of revision to laws regulating political money (Alexander 1980, 15). These laws were largely experimental and covered a wide range of reform tactics—from strict aggregate spending ceilings to tight limits on individual contributions. After 1976, however, many states were forced to change their laws in order to comply with the ruling of Buckley v. Valeo (Alexander 1980, 127).

Today, state campaign financing remains governed by state law, so any attempt to compare costs across states is complicated by having to consider 50 different sets of campaign funding regulations (Jones 1984, 172). States' campaign finance laws differ in many aspects: definitions of "expenditure" and "contribution"; allowances for public funding; types, time periods, and publication of disclosure reports.

The Role of State Legislatures

In the 1980s, state legislatures play an increasingly important regulatory and policy making role (Sabato 1984, 118). Reagan's "new
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federalism" put far more responsibility into the hands of the states (Singer 1989, 1). Frank Sorauf asserts that "the diminution of congressional responsibility in areas such as social welfare during the Reagan years may raise the stakes in state legislative politics. If policy-making power flows to the states, so will money seeking to pick candidates with congenial policy goals" (Sorauf 1988, 261). This, as Sorauf observed, indicates that money is playing a larger role at the state level than ever before.

State legislatures also control congressional and legislative redistricting every decennium. Because this affects a party's fate for an entire decade, the party in control of a state legislature tries to draw these lines to obtain the maximum number of congressional seats possible. Thus the state legislatures are the primary determinants of the party balance in the U.S. House of Representatives. Given this important task, increasing financial emphasis is likely to be placed on state legislative races by individuals and groups especially concerned about influencing the party control of the U.S. House.

This is especially likely to occur in the election cycles prior to reapportionment. The Republican National Committee (RNC) realized
this in the 1960s and 1970s and strengthened their state and local organizations. By the late 1970s, the RNC had instituted a program designed to influence the outcome of state legislative races. John Bibby reports that "the RNC gave direct financial and technical support to legislative candidates at an unprecedented level during the 1978 and 1980 campaigns" (1983, 128).

When considering the growing importance of states' legislative functions, it is not surprising that the number of members who consider themselves "careerists" is increasing. According to *State Legislator's Occupations: A Decade of Change*, a publication by the National Conference of State Legislatures, the number of legislators who consider the legislature to be their sole profession rose from approximately 9 percent in 1976 to possibly as high as 20 percent in 1986 (Singer 1989, 1). NCSL's Legislative Management Program Director Sandra Singer observed that "it is becoming a full-time job and a long-term career, and as might be expected, re-election has become the first goal on many legislators' agendas" (1988, 1).

Since a seat in a state legislature has become more attractive than ever, the influence of money at the state level is also
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multiplying. It follows, then, that increasing attention is being given to legislation governing the financing of state elections. A 1989 NCSL survey of priority issues for state legislatures reported that campaign finance was rated as the highest priority issue area in the State Government Issues Category. Of primary concern to most state legislatures, it seems, is working to see that their electoral systems do not enable only the well-to-do to seek public office.

Campaign Finance in Arizona: A Case Study

Prior to 1986, Arizona had very little legislation governing campaign finance. The only significant requirements were disclosure before and after the election. Corporate and labor union contributions were also prohibited. These regulations were too permissive to effectively control campaign spending in Arizona elections.

Individuals worried by the excessive financial influence of various interest groups drafted an initiative to be placed on the ballot in the 1986 election. Proposition 200, the so-called "Clean Government Initiative" was designed to "limit
campaign contributions so as to prevent improper influence over state and local elected officials and to foster public confidence in the integrity of government" (Anderson 1988, A17). Evidently, voters were concerned about the issue, because Proposition 200 passed by an overwhelming 2-1 margin.

The Facts About Proposition 200

Proposition 200 places strict limits on the amounts PACs and individuals can contribute to candidates. Under the new law individuals are prohibited from contributing more than $200 to local/legislative candidates and more than $500 to statewide candidates. As indicated by Table 1, PACs are bound by the same limits, unless they are certified by the Secretary of State as having received funds from at least 500 individuals in amounts of $10 or more in the one year period preceding the last closing report date. This type of PAC may contribute $1000 to a local candidate or $2500 for a statewide candidate. The most stringent limit is the aggregate limit of $5000 from all PACs (local candidates) or $50,000 (statewide candidates). All limits
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apply cumulatively to the primary and general election.

As prescribed by Proposition 200, these campaign limits are to be adjusted annually for inflation. For instance, the new 1989 aggregate PAC limit for local races has been raised to $5,500 rather than $5,000, and the new individual/PAC limit for local candidates is now $220 rather than $200.

Other provisions of the new law prohibite the practice of collecting checks or funds for the purpose of passing them onto a candidate—commonly called "bundling", "earmarking", which is the process of sending a check to a PAC or other committee with the specific objective of passing the contribution on to a selected candidate, and the transfer of funds from one candidate to another. In compliance with previous Arizona law, corporate funds are not allowed to be contributed to candidate elections. While the Federal Tax credit was abolished as of January 1, 1987, Arizona still allows tax deductions for political contributions for state tax purposes. Individuals can contribute a maximum of $2000 to all political action committees and statewide and local candidates in Arizona in a calendar year. Contributions to political parties are exempt from this $2000 limit.
There are no limitations on the amount of money a candidate may contribute to his or her own campaign. However, there are some rules governing such contributions: If a candidate contributes more than $10,000 to a local campaign, or $100,000 to a statewide campaign, he or she must give written notice of that contribution within 24 hours to the Secretary of State and all other candidates for that office. At that point, contribution limits do not apply to the other candidates in that race until they exceed the $10,000 or $100,000 contribution levels. According to an opinion by Attorney General Bob Corbin, this apparently means that until the $10,000/$100,000 limit is met, opponents could accept contributions from PACs and individuals in excess of the $200 or $500 limits of Proposition 200 (United For Arizona 1988a, 1).

Proposition 200 is to be enforced by the County Attorney or Attorney General who investigate complaints filed by any qualified voter. Violations will be dealt with as Class One Misdemeanors, with knowing violations resulting in up to 6 months in jail and up to $1,000 in fines, and unknowing violations resulting in civic penalty and up to three times the amount of the illegal contribution.

After the passage of Proposition
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200, there was a great deal of speculation as to just what its effects would be. Public interest groups such as Arizona Common Cause praised the new law, saying it would reduce the flow of special interest money into political campaigns and put an end to the big money individual contributor (Anderson 1988, A17). Other players, such as incumbent legislators, were understandably less than thrilled over the passage of "200".

Because legislators are interested in their own electoral success, it is no wonder that they are opposed to strict regulations such as those enacted by Proposition 200. Dana Larsen, director of Arizona Common Cause, observed that "most people there [in the legislature] do not find great comfort and joy in Proposition 200. I think it's probably the most unloved piece of work that's in the statutes right now" (Van De Voorde 1988, 10). But, Larsen maintains, it is their own fault legislators are not happy with the new law, because "it was their own inaction on the issue of campaign finance reform that brought them this" (Van De Voorde 1988, 10).

Asking self-interested legislators to create the rules governing the method by which they and their challengers are elected is
not the most logical mode of creating legislation. Yet submitting a long, complex proposal to a simple yes-or-no decision by oftentimes apathetic or unknowledgeable voters seems equally inefficient (Broder 1976, 320). Whether the public should be using the initiative process on such complex issues as campaign finance reform is one of the central questions in the debate over Proposition 200.

The Results of Proposition 200

Although views differ on the merit of Proposition 200, an analysis of 1986 and 1988 contributions and expenditures data allows conclusions to be drawn as to the results of the new law. The most obvious result of the tough new campaign laws enacted by the 1986 passage of Proposition 200 was a marked decrease in contributions from PACs, as depicted in Figure 1. In 1986, PACs contributed $1.1 million to Arizona candidates. In 1988 the amount of PAC contributions decreased 65 percent—to $388,136 (Harris 1989, Al). The most drastic individual example is House Minority Leader Art Hamilton, who dropped from $43,269 in PAC
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Contributions in 1986 to $4,834 in 1988, a reduction of nearly 90 percent. Total contributions also decreased in 1988—from a 1986 total of $2.4 million to $1.8 million, a decrease of 25 percent. For the first time since 1974, total expenditures decreased from the previous year's totals. 1988 candidates spent a total of $1.8 million, down from $2.2 million in 1986, a 20 percent decrease. As shown in Figure 2, the average winning candidate for the state legislature spent $19,565, as compared to $24,420 in 1986. This represents a total dollar reduction of $4,855 per race, and a percentage reduction of 20 percent.

These figures provide a remarkable contrast to previous contributions and expenditures. Common Cause of Arizona has been tracking campaign spending and PAC contributions in Arizona since 1974, where they have observed a steady escalation of PAC involvement and expenditures by candidates (it should be noted that these percentages are not in constant dollars and do not account for the effects of inflation). Between 1984 and 1986, campaign spending increased by 54 percent. In 1986, for the first time in Arizona's history, winning candidates spent over $2 million for seats in the legislature.
Also for the first time, PACs contributed over $1 million to those races for an average of over $12,500 per race—the first time this figure topped $10,000. In light of these figures, the 1988 data provide a remarkable contrast to previous year's data. In sum, Proposition 200 decreased the amount of money raised and spent by the winning candidates for the Legislature.

The Role of PACs

The role political action committees play in our electoral system is a topic surrounded by much debate. Though PACs have been extremely influential in congressional elections for several years now, their rise at the state level has been more recent. As Larry Sabato observed, "There is little question that PACs contribute a growing proportion of campaign money in states and localities, particularly in races for the state legislature" (1984, 117). For example, between 1974 and 1982, the number of registered PACs in Arizona increased by more than five times (Sorauf 1988, 269).

Larry Sabato terms the establishment of many national PACs at the state level the "new
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federalism" of PACs (1984, 120). In 1981-82, more than four in ten of the federal multicandidate PACs also contributed to state and local candidates. Sabato observed that "even if the U.S. Congress were still the center of a group's attention, it had good reason to look to the state capitals: most recent congressmen first served as state legislators, and a contribution made early in their careers was likely to be well remembered" (Sabato 1984, 118).

The most detailed study on PAC influence at the state legislative level was conducted in California. Its results are synonymous with those in Arizona--campaign costs are rising dramatically, PACs are extremely influential, PAC support is necessary for a successful campaign, and incumbents are widening their fund raising advantage over challengers (California Commission on Campaign Financing 1985, 3). Ruth Jones, an expert in the field of state legislative campaign finance, found that not all PACs exert equal influence. Recent state PAC growth has been disproportionate among business and professional interests (Jones 1984, 188).

There is little consensus among the key players of the system as to the degree of influence exerted by PACs. Obviously, many people are concerned that PAC money buys
influence. Alan Rosenthal, director of the Eagleton Institute of Politics at Rutgers University, says that PAC influence "gives an unseemly appearance because it looks like people are buying influence. . . Legislators are aware and concerned about contributors. I don't know what that buys but certainly it buys a sympathetic ear" (Singer 1988, 25).

Other observers feel that because the public is not extremely aware of the activities of their state legislature, corruption is more likely to occur at the state level than in Congress, where the members are subject to almost constant scrutiny. In comparing PAC influence in the Missouri legislature to PAC influence in the U.S. Congress, Jerry Brekke summarized: "At the national level, the great publicity and concern expressed over PAC activity may, to some extent, be a restriction on possible abuses. Since the Missouri legislature and many state legislatures are not subject to such public scrutiny, PACs may present more serious problems than they do at the national level (Brekke 1988, 103)."

The foremost issue in the Proposition 200 debate is centered around PACs and how much influence they should have. An interesting argument explaining the emergence of PACs in recent years is proposed by
Lee Ann Elliott. She claims that the PAC movement is a natural and healthy addition to the American political process. Elliott compares the development of PACs to overall social changes currently taking place, claiming that the biggest change in our political behavior has grown out of the increasing mobility of our society. We used to associate as neighborhood groups, but this is no longer the case. Improved communication and transportation have caused us to broaden our associations. This change has had an effect on political behavior because political activity no longer revolves around precinct, or neighborhood politics. We are not influenced by neighborhood leaders, but rather by occupational or socio-economic leaders. Thus, asserts Elliott, the rise of PACs is merely a response to these developing behavioral changes. These socio-economic organizations have developed as a substitute for geographic or neighborhood associations (Elliott 1980, 540-1).

If examined in terms of Elliott's argument, strict limits on the ability of PACs to contribute to candidates are an invasion on the right of individuals to associate in groups, whether those groups are geographical or socio-economic. A related argument is proposed by Robert L'Ecuyer, a Phoenix attorney,
lobbyist, and campaign consultant. He asserts that the central problem of Proposition 200 is that it severely handicaps groups of two to 500 people (1988, A16). Because these groups do not meet the "Super-PAC" requirement of 500 contributors, they are limited to donations of $200—the same amount an individual is able to give. This is a much tighter requirement than the federal statute—where only 50 rather than 500 people can gain "Super-PAC" status, and thus have higher limits on how much they may contribute.

L'Ecuyer further argues that the founders of the U.S. Constitution understood that an individual alone is no match for big power or influence, and expected that groups would be formed in order to promote government attention to their needs and concerns. This is why freedom of association is included in the Bill of Rights.

L'Ecuyer cites a hypothetical example to illustrate his point: 50 people in a neighborhood upset by a zoning decision decide to form a committee and to support a candidate for mayor. Each person can spare $10, which they realize is a small amount, so they pool their money and send $500 to the candidate. Under Proposition 200, this is illegal because the group cannot contribute over $200. The zoning problem was
created by a rich neighbor. He and his wife can each give $200, a total of $400, to the opposing candidate. Furthermore, the big corporation planning to build on the rich man's land can run an "independent expenditure campaign" through its PAC and spend an unlimited amount. How can the neighborhood be expected to compete if it cannot pool its resources?

This is a valid argument. Small groups should not be discouraged from attempting to make an impact on politics by contribution limits that are too restrictive. In L'Ecuyer's words, "The change in law [Proposition 200] was intended to limit PACs set up by big labor and corporations. Instead, it strangles every small and medium-sized group trying to give the little guy a voice" (L'Ecuyer 1988b, A16).

Another controversy associated with PACs is that they disproportionately favor incumbents. Incumbency is a very strong factor in determining the outcome of elections. Nationally, 98 percent of congressional officeholders won re-election in 1988. The numbers at the state level are lower, but still significant. Around 80 percent of state lawmakers seeking re-election are returned to office (Hansen 1988, 14). William T. Pound, executive director of the National Conference
of State Legislatures, believes that because of sophisticated redistricting, superior fundraising abilities, and power of incumbency there are "very few state legislative seats that are competitive" (Hansen 1988, 16).

One of the constants in PAC behavior is that PAC spending favors incumbents (Sorauf 1988, 266). The reason is simple: PACs favor incumbents because incumbents are more likely to win. In most circumstances, it does not benefit a PAC to give to a losing candidate. For this reason, nearly 99 percent of PAC money at the state legislative level goes to incumbents (Singer 1988, 25). Gary Jacobson has concluded that because incumbents are generally better known, they need less campaign money but are able to raise more. Challengers, however, need more money but have trouble raising it (Jacobson 1980). This paradox is one of the fundamental problems of the current campaign finance system. The Arizona data clearly show that incumbents receive more PAC funds than challengers. In 1986, the average non-incumbent brought in about $5,000 less than the average House of Representatives incumbent. Only three of the non-incumbent candidates raised more than $10,000 in PAC money, while 31 incumbents in the House raised more
than $10,000. No challengers accumulated over $20,000 of PAC dollars, yet seven House incumbents topped $20,000.

Interpretations Of Proposition 200--Strengths and Weaknesses

There is no dispute that Proposition 200 decreased PAC contributions tremendously. Also, the candidates' disclosure reports revealed that less money was received and spent in legislative races than ever before. Does this mean, as Common Cause asserts, that candidates "took less money and fewer obligations from the PACs?" (Arizona Common Cause 1989, 1) Not necessarily. Not everyone perceived Proposition 200 as such a panacea. Robert L'Ecuyer is perhaps the most vocal opponent. He said of the new laws, "After 18 months of detailed study of campaign finance statutes and cases from all 50 states and the federal government, I have concluded that Arizona's campaign finance statutes are among the four or five worst in the U.S." (L'Ecuyer 1988a). Conclusions about the overall utility of Proposition 200 can be reached by examining these opposing viewpoints. However, this is a difficult task and is largely speculative considering
the new law has only been in effect for one election cycle.

Proponents of Proposition 200 cite the decrease in PAC contributions as the primary benefit of the new law. This is expected to have the long-term effect of forcing candidates to rely more heavily on smaller contributions from individuals. This is especially true for incumbents who are, as former Common Cause director John Anderson claimed, "going to have to broaden their appeal beyond the relatively narrow circle of traditional special interest contributors" (1988, A17).

Related to the limitation of PAC contributions will be an increase of competitiveness, with a rise in the number of serious challengers. Again, incumbents are likely to be hurt by the increased ability of challengers to raise enough funds to mount a respectable campaign.

Another anticipated result of Proposition 200 is the strengthening of the political parties. Political parties are exempt from the $2000 limit that individuals can give to candidates and PACs. This is expected to encourage individuals to contribute to the parties and let the parties distribute those funds to the candidates they desire.

Proposition 200 prohibits the transfer of campaign funds from one candidate to another. This prohibits
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members of the House and Senate from giving money to other members to acquire legislative influence. Some claim this is undue influence, while others argue that fundraising is a tool that the leaders need since many traditional leadership methods have eroded in recent years. Thus, it is argued that transfers strengthen the parties by making individual legislators more accountable to leadership (Singer 1988, 27). The prohibition of these transfers, however, as in Proposition 200, keeps the legislative leadership from raising large sums of money and doling it out to loyal incumbents or recruiting challengers to defeat uncooperative incumbents.

While Proposition 200 may have its strengths, it is not without its weaknesses. Various "loopholes" exist that allow PACs and corporations to donate funds to influence elections in ways that are not included in the candidates' reported expenditures and contributions. For example, unlimited independent expenditures are allowed under Proposition 200. Independent expenditures are funds spent by an individual or organization for or against a candidate but without any coordination with the candidate. They offer a legal, effective means of influencing a campaign since they
are not prohibited by state or federal statutes. Independent expenditure campaigns (IECs) have traditionally been run for congressional candidates, though with the passage of strict limitations on PAC contributions such as those imposed by Proposition 200, IECs are turning up at the state level as well. Ninety-five percent of the business PACs in Arizona do not meet the Super Pac requirement of 500 contributors, so they are able to donate only $200 per candidate. PAC funds, then, are still multiplying, while the number of candidates able to accept funds has decreased rapidly. Thus, IECs present a way for PACs to legally exert influence on desired races. United for Arizona, a nonprofit trust that has helped set up most of Arizona's business PACs, sponsored a poll designed to measure public opinion of political campaigns run independently of candidates. The study concluded that the public is generally favorable toward such campaigns, and therefore United recommended that IECs for Arizona races provide a visible alternative to direct candidate support and can be successfully run with only a slight degree of risk involved (United for Arizona 1988b, 4-5).

Another "loophole", or alternative method of PAC
contributions to candidates occurs in the "constituent communications" provision. Attorney General Bob Corbin issued an opinion stating that money raised for newsletters does not fall under Proposition 200 and does not have to be reported as long as the publications are paid for sixty days prior to an election (Van De Voorde 1988, 10). This appears to allow PACs and corporations to donate unlimited amounts of money to a candidate, as long as it is used for a newsletter. But since legislators are not required to make any public accounting of these funds, no one knows who contributes how much to whom or how the money is actually spent.

One reason PACs and corporations are turning to these alternatives is because they have more funds available than there are candidates available to accept them, because of Proposition 200's $5,000 aggregate PAC contributions limit. Because of this limit, legislators are likely to begin their campaigns earlier and earlier in the election cycle (United for Arizona 1988c, 1). PAC managers are realizing that many legislators will "max out" at the allowable $5,000 months before they actively start campaigning. As United for Arizona complains, "Our problem with Proposition 200 is it forces PACs into a ridiculous race to see which
25 can "beat" the others in making contributions before the $5,000 aggregate is reached." In light of this problem, it is no wonder that PACs and corporations are searching for other viable options of supporting candidates.

The enforcement provisions of Proposition 200 are very ambiguous. Supposedly the County Attorney or the Attorney General will investigate claims filed by voters. Not only is the wording of the provision vague, there is no automatic method of oversight—only complaints are investigated. It seems that the responsibility of enforcement ought to be entrusted either to the Secretary of State or to some type of independent agency similar to the Federal Election Commission at the national level.

A problem related to the lack of an enforcement agency lies in the disclosure laws. Though the public disclosure of contributions and expenditures has been a large step forward in decreasing the amount of illegal money involved in elections, there is still room for improvement. At the present time, the Secretary of State houses the disclosure information but publishes no type of compilation or report. The rationale behind public disclosure is that it will in itself police candidates into complying with campaign finance laws.
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If disclosure reports were published in a timely manner, they would be much more likely to impact candidates' behavior.

Conclusion

It is clear that there are differing opinions regarding the effectiveness of Proposition 200. As previously stated, it is difficult to draw conclusions about how well Proposition 200 will work after just one election cycle has elapsed. The most visible effect in the 1988 election was the reduced amount of contributions from PACs. Legislators, PACs, public interest groups such as Common Cause, the media, and the general public all have differing opinions as to what aspects of Proposition 200, if any, should be revised. In general, legislators favor raising PAC limits. Common Cause advocates leaving the limits as strict as they are presently, plus eliminating apparent loopholes in Proposition 200. Reaching a compromise between these groups with competing interests will not be easily accomplished. A joint legislative committee is currently considering revising the campaign finance statutes. For the most part, the proposed changes will relax the
present contribution limits and structure Arizona's campaign finance system—more like the federal system.

Clearly, these proposals will not satisfy all of the players involved, nor are they likely to solve all of the existing problems. Likewise, Proposition 200 did not solve every problem nor satisfy every participant. Nonetheless, I would argue that both attempts are beneficial in helping to solve the complex problems associated with campaign financing in Arizona legislative elections.
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