



October 31, 2017

2017 Campaign Finance Reform Legislative Work Group
Idaho Legislature
Boise, ID 83720

Dear Cochairs Lodge and Wood and members of the Work Group:

We submit this letter in support of the Work Group's decision to maintain Idaho's campaign contribution limits. On October 19, the *Idaho Statesman* reported that the Work Group was advised that Idaho's contribution limits might face a First Amendment challenge and that the Work Group should "just eliminate them."¹ The *Statesman* also reported that the Work Group balked at this suggestion.² We applaud the Work Group's skepticism and wish to offer a different perspective on the current state of litigation around campaign contribution limits.

The United States Supreme Court first upheld federal contribution limits more than four decades ago.³ Since then, the Court has said that states, too, may limit contributions.⁴ The Court's decades-long precedent makes clear that contribution limits help limit corruption, reduce the appearance of impropriety, and advance citizens' First Amendment interests in responsive government, while only minimally burdening the rights of contributors.

Courts have consistently upheld reasonable contribution limits. Earlier this month, the United States Court of Appeals for the Ninth Circuit upheld Montana's contribution limits,⁵ reversing the 2015 decision referenced at the Work Group's October 18 meeting.⁶ The *Lair*

¹ Betsy Z. Russell, 'We're supposed to be improving campaign finance laws, not making them worse', IDAHO STATESMAN (Oct. 19, 2017), <http://amp.idahostatesman.com/news/politics-government/state-politics/article179703981.html>.

² *Id.*

³ *Buckley v. Valeo*, 424 U.S. 1, 23-29 (1976).

⁴ *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 382 (2000).

⁵ *Lair v. Motl*, No. 16-35424, slip op. at 5 (9th Cir. Oct. 23, 2017).

⁶ The *Statesman* reported that the Work Group heard testimony that a district court struck down Montana's laws. Russell, *supra* note 1.

v. Mottl decision made clear that the “Constitution permits contribution limits to serve the narrow but vital purpose of preventing actual or apparent quid pro quo corruption in politics” and that Montana’s contribution limits “both further that interest and are adequately tailored to it.”⁷ Montana law limits contributions much more than Idaho law does. In Montana, individuals can contribute up to \$1,320 to a gubernatorial candidate, \$660 to a candidate for other state-wide office, and \$340 to a candidate for other office.⁸ In comparison, Idaho allows individuals to contribute up to \$10,000 to a state-wide candidate and \$2,000 to a legislative candidate.⁹ In other recent decisions, the United States District Court for the District of Alaska upheld Alaska’s contribution limits of \$500 per candidate,¹⁰ and the United States District Court for the Western District of Texas upheld Austin, Texas’s contribution limits of \$300 per candidate per election.¹¹

Given these decisions — particularly the Ninth Circuit’s recent decision — a litigant would be hard-pressed to successfully challenge Idaho’s contribution limits. The courts have long upheld the constitutionality of contribution limits and there is no reason to disregard this important tenet of campaign finance law in anticipation of an ill-conceived legal challenge.

We appreciate the opportunity to submit this letter. Please let us know if you would like additional information on any of the issues we have raised here.

Sincerely,



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⁷ *Lair*, slip op. at 35.

⁸ *Id.* at 8. Montana’s contribution limits are indexed to inflation; these figures reflect the contribution limits cited in the decision.

⁹ IDAHO CODE § 67-6610A(1).

¹⁰ *Thompson v. Dauphinais*, 217 F.Supp.3d. 1023, 1040 (D. Alaska 2016), *appeal docketed sub nom. Thompson v. Hebdon*, No. 17-35019 (9th Cir. Jan. 10, 2017).

¹¹ *Zimmerman v. City of Austin*, Findings of Fact and Conclusions of Law, No. 1:15-CV-628-LY, slip op. at 10 (W.D. Tex. July 20, 2016), *appeal docketed*, No. 16-51366 (5th Cir. Jan. 20, 2017). Austin’s contribution limits are indexed to inflation; this figure reflects the contribution limit cited in the decision.