

# The Illinois Millionaire's Exemption and the Utility of Campaign Contribution Limits

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*Illinois' 2014 and 2018 Gubernatorial elections raised eyebrows and drew national media attention for the astronomical amounts of money raised by the candidates in the form of direct campaign contributions, often from individual wealthy backers. These extreme campaign contributions, which in many states are strictly limited, were made possible in Illinois by operation of a unique campaign finance scheme enacted only a few years earlier. This law, meant to emulate the federal "Millionaire's Exemption" (or "Millionaire's Amendment") which had previously been held unconstitutional by the U.S. Supreme Court, lifts contribution limits completely in a given race once certain conditions are met. This was intended to level the playing field by allowing "underdog" candidates facing opponents backed by wealthy interests to raise a little more money from their supporters. In these Gubernatorial elections, however, the main beneficiaries of the law were exactly those candidates who were empowered to raise many millions from individual wealthy donors.*

*In the aftermath of these elections, commentators began to ask whether the Illinois law was "backfiring" by simply allowing wealth-backed candidates to raise even more money from wealthy supporters. As such, this Note examines campaign finance data in recent statewide and legislative elections in Illinois in which contribution limits were lifted to analyze whether the law operated as intended. Part II explains the constitutional backdrop against which the Illinois law was enacted and the relevant scholarly and legal views on the utility of campaign contribution limits in a universe in which independent spending cannot be meaningfully regulated. Part III estimates how much the law allowed candidates in recent statewide and legislative races to raise above*

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*campaign contribution limits and analyzes the real-world effect of the law. Part IV concludes that the limits-off law fails to serve its intended purpose in practice and that its benefits are outweighed by its “floodgates” effect on select big-money races; Part IV also proposes pathways for reform that might realign campaign finance law in Illinois with the limits-off law’s admirable rationale.*

## I. INTRODUCTION

On November 4, 2014 — Election Day — the newly victorious Republican Governor-elect of Illinois, Bruce Rauner, stepped up to a podium at the Chicago Hilton to deliver his victory speech, celebrating his win over incumbent Democrat Pat Quinn.<sup>1</sup> In that speech, the new Governor stressed the need for bipartisanship<sup>2</sup> — not surprising for a Republican who had just been elected to the highest office in a state that had gone for the Democrat in every general Presidential election since 1992<sup>3</sup> and where the state legislature tended to reflect large Democratic majorities in both chambers, as it would throughout Rauner’s time in office.<sup>4</sup>

Rauner’s election raised eyebrows and inspired headlines for two reasons. First, it embodied the continuation of the Obama-era trend of Republican ascendance in state politics, due in part to the concentrated strategic efforts by state-focused conservative groups such as the Republican Governor’s Association.<sup>5</sup> Second, Rauner’s victory garnered attention because of what it communicated about money in politics. Rauner, who had made millions as a private equity investor, capitalized on what at the time was a relatively recent Illinois law concerning campaign contribution

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1. See Emily Brosious & Qudsiya Siddiqui, *Analysis: The Good, the Bad, and the Ugly of the Rauner Party*, RED LINE PROJECT (Nov. 5, 2014), <http://redlineproject.org/election2014raunernotebook.php> [https://perma.cc/D7TP-BMQL].

2. See *Rauner Calls for Bipartisanship In Victory Speech*, CHI. TRIB. (2014), <http://www.chicagotribune.com/news/opinion/zorn/81881715-157.html> [https://perma.cc/7XXX-FKTC].

3. HIST. ELECTION RESULTS, NAT’L ARCHIVES & RECORDS ADMIN., <https://www.archives.gov/federal-register/electoral-college/historical.html> [https://perma.cc/XF7X-H44J] (last visited Apr. 10, 2019).

4. STATE PARTISAN COMPOSITION, NAT’L CONF. OF STATE LEGIS. (Jan. 9, 2018), <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx> [https://perma.cc/7WBA-4QB6].

5. See Kevin Robillard, *Republican Governors: A Winning Machine*, POLITICO (Nov. 18, 2015), <https://www.politico.com/story/2015/11/republican-governors-association-winning-streak-216000> [https://perma.cc/UA87-LKX9]. From 2008 to 2015, the number of Republican Governors increased from nineteen to thirty-one. *Id.*

limits. That law, originally intended to “level the playing field”<sup>6</sup> and diminish the influence of wealth in Illinois’ elections, removes contribution limits for all candidates in a particular race when a wealthy candidate in that race spends beyond a certain dollar amount on their own campaign. The articulated rationale behind the law was that it would free up fewer wealthy candidates who nonetheless had broad bases of grassroots donor support to fundraise from their bases when facing a wealthier candidate. The law appeared to backfire spectacularly in the 2014 gubernatorial race because it allowed Rauner to use his personal wealth to nullify the caps on money he could take in from individual donors — this opened the floodgates, allowing Rauner to accept many millions from wealthy individual backers, including some of his former business associates.<sup>7</sup>

Rauner spent at least \$26 million of his personal wealth on his 2014 campaign.<sup>8</sup> Millions more came in the form of contributions from wealthy individual backers such as Ken Griffin, an Illinois hedge fund billionaire and friend of Rauner, who contributed about \$5.5 million and the use of a private plane.<sup>9</sup> Quinn, the incumbent, raised only about half of the \$65.9 million that Rauner raised.<sup>10</sup> All told, candidates in the Illinois gubernatorial

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6. See *infra* Part II.C for an in-depth discussion of the intended effect of the Illinois law and the views of some of its proponents in the Illinois legislature.

7. A prominent *New York Times* article criticized the Illinois law, and some in the media characterized it as a “loophole” because it was intended to diminish the role of wealth in elections yet was seen as, in fact, increasing it. See Nicholas Confessore, *A Wealthy Governor and His Friends Are Remaking Illinois*, N.Y. TIMES (Nov. 25, 2015), <https://www.nytimes.com/2015/11/30/us/politics/illinois-campaign-money-bruce-rauner.html> [<https://perma.cc/WUN5-6BUZ>].

8. Trip Gabriel, *Voters in Illinois Governor’s Race to Choose ‘Failure’ or the ‘Billionaire’*, N.Y. TIMES (Oct. 30, 2014), <https://www.nytimes.com/2014/10/31/us/voters-in-illinois-to-choose-failure-or-the-billionaire.html> [<https://perma.cc/VM7H-GYNV>]. Rauner’s personal wealth also became a money-in-politics story in Illinois because of his previous part-ownership of the *Chicago Sun-Times*. Unproven allegations arose that the Rauner campaign had been involved in the paper’s decision to push out its head Springfield reporter because of unfavorable coverage of the candidate. A few days later, the paper broke from its long no-endorsement tradition to endorse Rauner. Rich Miller, *McKinney Resigns From Sun-Times*, CAPITOL FAX (Oct. 22, 2014), <https://capitolfax.com/wp-mobile.php?p=22965&more=1> [<https://perma.cc/U52S-DLKL>].

9. See Confessore, *supra* note 7. Griffin would go on to quadruple that amount in a record-breaking contribution to Rauner’s re-election campaign. Rick Pearson, *Ken Griffin Gives Gov. Bruce Rauner’s Campaign Record \$20 Million*, CHI. TRIB. (May 17, 2017), <http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-ken-griffin-20-million-met-20170517-story.html> [<https://perma.cc/3R4N-HTTL>].

10. That figure includes Rauner’s self-funding contributions. Paul Merrion, *Cost of a Vote for Governor: \$23.90. Winning the Election, Priceless.*, CRAIN’S CHI. BUS. (Nov. 4,

race spent \$102.4 million compared to a nationwide average of about \$19 million across all gubernatorial races that year.<sup>11</sup>

But the immense coffers in Rauner's 2014 campaign soon became unimpressive by comparison. The 2018 gubernatorial race between Rauner and J.B. Pritzker, a billionaire challenger, left 2014's numbers in the dust. The race between the two wealthy self-funders is believed to be the most expensive gubernatorial campaign in U.S. history,<sup>12</sup> at a total of \$286 million raised across all candidates.<sup>13</sup> Pritzker's money came mostly from himself, spending an astronomical \$171 million on his own campaign between both the primary and general elections.<sup>14</sup> He raised about \$5 million from all other sources.<sup>15</sup> The Rauner campaign, on the other hand, took in \$85 million overall,<sup>16</sup> about \$57 million of which came from Rauner's own pocket.<sup>17</sup> Daniel Biss, the other serious Democratic challenger, raised a mere \$6.4 million before his primary loss, earning himself the title of the "small-money" candidate.<sup>18</sup>

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2014), <http://www.chicagobusiness.com/article/20141104/NEWS02/141109937/cost-of-a-vote-for-governor-23-90-winning-the-election-priceless> [https://perma.cc/DB39-6MTJ].

11. Thad Beyle & Jennifer M. Jensen, *Gubernatorial Elections, Campaign Costs, and Winning Governors of 2014*, COUNCIL ST. GOVERNMENTS (Sept. 1, 2015), <http://knowledgecenter.csg.org/kc/content/gubernatorial-elections-campaign-costs-and-winning-governors-2014> [https://perma.cc/S7RQ-K9P6].

12. Aamer Madhani, *Nasty Illinois Governor's Race Could be Most Expensive in U.S. History*, USA TODAY (Nov. 2, 2018), <https://www.usatoday.com/story/news/politics/elections/2018/11/02/ill-governors-race-nasty-contest-could-costliest-u-s-history/1849262002/> [https://perma.cc/U5FC-EM9A].

13. *Race for Illinois Governor*, ILL. SUNSHINE, <https://illinois sunshine.org/contested-race-detail/gubernatorial-0/#25185> [https://perma.cc/W6N9-RZCJ] (last visited Apr. 10, 2019).

14. *Individuals' Contributions to Pritzker, Jay Robert (J B) & Stratton, Juliana W (IL 2018)*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/show-me?dt=1&c-t-id=223590&d-et=2#{1|gro=d-eid> [https://perma.cc/DH5L-JH3J] (last visited Mar. 8, 2019); Rick Pearson, *Bruce Rauner and J.B. Pritzker Break the Record for Spending on an Illinois Governor's Race*, CHI. TRIB. (Oct. 16, 2018), <https://www.chicagotribune.com/news/local/politics/ct-met-illinois-governors-race-rauner-pritzker-fundraising-20181016-story.html> [https://perma.cc/M58H-JM4A].

15. *Contributions to Pritzker, Jay Robert (J B) & Stratton, Juliana W (IL 2018)*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/show-me?dt=1&c-r-id=78853&c-t-id=223590#{1|gro=d-et> [https://perma.cc/XF6Y-WR5Y] (last visited Mar. 8, 2019).

16. *Contributions to Rauner, Bruce Vincent, & Sanguinetti, Evelyn Pacino (IL 2018)*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/show-me?dt=1&c-r-id=78853&c-t-id=223582#{1|gro=d-et> [https://perma.cc/SJ8Q-NMSK] (last visited Mar. 8, 2019).

17. *Id.* Another \$22.5 million came from a single donor, Ken Griffin. *Id.*

18. *Contributions to Biss, Daniel K & Wallace, Litesa E (IL 2018)*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/show-me?c-t-eid=6485832&c-t-id=223584#{1|gro=d-id> [https://perma.cc/3MEG-L25S] (last visited Mar. 8, 2019). For comparison, four years earlier, in 2014, the candidates who were not one of the two main contenders raised anywhere from \$30,000 to about \$2 million. *Election Overview*,

Commentators characterized these 2014 and 2018 gubernatorial elections as unique examples of the transformative effect of money on politics and the ability of wealthy groups and candidates to “distort” elections in their favor.<sup>19</sup> But relatively little attention was paid to the conditions that precipitated the election: the laws and regulations that allowed the candidates to raise these impressive amounts. These laws, unique to Illinois, are worth studying to glean more information about how political actors (candidates as well as donors) react to conditional (and for those with money, essentially voluntary) contribution limits.

Part II of this Note first delineates the constitutional jurisprudence of campaign finance law in the U.S. and the resulting constraints that it places on campaign finance reform. It then presents scholarly views on the utility of contribution limits in a world without limits on spending. Third, it describes the basic features of the Illinois contribution limits law in question — the only one of its kind in the nation — and explains the motivations which spurred its enactment.

Part III examines how the Illinois law has functioned in practice, estimating how often limits were lifted in recent state races, how much was raised above the contribution limits in those races and, where the data is available, how much independent spending activity occurred in the same races. Part III also attempts to answer the basic question of what effect the lifting of limits has had on the behavior of political actors and on the flow and ordering of campaign money.

Finally, Part IV concludes that the Illinois law fails to serve its intended purposes as fully as it could, and its benefits are outweighed by its “floodgates” effect on those few big-money races in which it allows individual candidates to take in tens of millions of dollars from a single donor. This Note concludes by offering suggestions for how the law might be amended or replaced to bet-

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FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/tools/election-overview?s=IL&y=2014> [<https://perma.cc/E4WC-H7XG>] (last visited Mar. 8, 2019).

19. See, e.g., Confessore, *supra* note 7; Ray Long, *Quinn Signs Campaign Finance Loophole*, CHI. TRIB. (July 7, 2012), [http://articles.chicagotribune.com/2012-07-07/news/ct-met-quinn-campaign-finance-20120707\\_1\\_contribution-limits-campaign-finance-law-personal-pac](http://articles.chicagotribune.com/2012-07-07/news/ct-met-quinn-campaign-finance-20120707_1_contribution-limits-campaign-finance-law-personal-pac) [<https://perma.cc/7PKP-QRWU>]; Sarah Maslin Nir, *How The Illinois Governor's Race Turned Into One of the Most Expensive In The Country*, N.Y. TIMES (Oct. 23, 2018), <https://www.nytimes.com/2018/10/23/us/pritzker-rauner-illinois-governor-race.html> [<https://perma.cc/2J2L-YC5D>].

ter suit Illinois' original interest in reform without this distortive effect on high-profile races.

## II. CAMPAIGN FINANCE AND THE ILLINOIS LIMITS-OFF LAW

This Part first traces the historical outlines of campaign finance law in the United States, which preclude any meaningful restrictions on independent expenditures by any given political actor. It then offers a brief overview of scholarly arguments in favor of and in opposition to contribution limits. Finally, it describes how and why the Illinois law was enacted, delineating some of the legislative history and the law's intended effect on Illinois politics.

### A. BACKGROUND TO U.S. CAMPAIGN FINANCE LAW

The utility of the Illinois law or of contribution limits in general cannot be examined without reference to the baseline presumption that independent expenditures<sup>20</sup> will be available as an alternative to contributions to the campaigns themselves. A series of U.S. Supreme decisions set up this presumption, arising from challenges to federal campaign finance law and these decisions have subsequently defined the legal universe of contemporary American politics at both the state and federal levels. As a result, the status quo is one of *unlimited* independent expenditures, but usually *limited* campaign contributions. Numerical limits on independent expenditures have been ruled unconstitutional.<sup>21</sup> Campaign contribution limits, on the other hand, are often permissible when justified by an anti-corruption rationale

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20. Independent expenditures are defined by the Federal Election Commission as "an expenditure for a communication" (usually, a broadcast advertisement) that "expressly advocates the election or defeat of a clearly identified candidate and that is not coordinated" with the campaign or the candidate. *Making Independent Expenditures*, FED. ELECTION COMMISSION, <https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac/independent-expenditures-nonconnected-pac/> [https://perma.cc/D3EQ-9UAS] (last visited Mar. 2, 2019). That is, an independent expenditure is campaign funds spent independently of the campaign, by an outside group or actor. See *infra* note 28 for a brief overview of the types of outside groups relevant to this discussion.

21. See *Buckley v. Valeo*, 424 U.S. 1 (1976) (establishing the contribution and independent expenditure framework and invalidating limits on independent expenditures); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (invalidating limits on campaign spending as applied to corporations and unions and reducing the scope of the anti-corruption rationale).

and not disproportionately low.<sup>22</sup> In federal elections, contribution limits are set by federal law. In state races, however, contribution limits are set by the states themselves, and states may refuse to adopt contribution limits in the first place.

This distinction between contributions to campaigns and independent spending was first established in the landmark 1976 case *Buckley v. Valeo*. In *Buckley*, the Supreme Court struck down the Federal Election Campaign Act's (FECA) limits on a campaign's own election spending as an unconstitutional restriction on the quantity of speech that a campaign could produce.<sup>23</sup> At the same time, the *Buckley* Court upheld limits on contributions to candidates in service of the state interest in preventing corruption or the appearance of corruption.<sup>24</sup> Later, Congress (and some states) established new limits on spending by outside groups through the 2004 Bipartisan Campaign Reform Act (BCRA) and various similar state laws, which the court initially upheld in *McConnell v. FEC*.<sup>25</sup> However, with the resignation of Justice O'Connor and the appointment of Justice Alito, the *McConnell* majority collapsed, and the Court struck down these spending limits as well.<sup>26</sup> In more recent cases, courts have also struck down limits on how much money certain independent groups — specifically groups that limit themselves to making independent expenditures only — could raise, and from whom.<sup>27</sup>

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22. See *Buckley*, 424 U.S. 1 (endorsing contribution limits where justified by an anti-corruption rationale); *Randall v. Sorell*, 548 U.S. 230 (2006) (invalidating Vermont contribution limits as unconstitutionally low).

23. See *Buckley*, 424 U.S. 1; Federal Election Campaign Act, 52 U.S.C. §§ 30101–30146 (2012).

24. *Buckley*, 424 U.S. 1 at 30 (“We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms.”).

25. Bipartisan Campaign Reform Act, Pub. L. No. 107–155, 116 Stat. 81 (2002); *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) (upholding a state's limits on outside campaign spending); *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 224 (2003) (upholding the BCRA's limits on spending by corporations and unions).

26. See *Citizens United*, 558 U.S. at 365 (“*Austin* . . . should be and now is overruled . . . no sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations”).

27. In *SpeechNow*, the D.C. Circuit applied the Supreme Court's ruling in *Citizens United* to make clear what had been heavily implied in that decision: since independent expenditures do not pose a corruption risk in the way that the federal courts understood corruption, fundraising by groups who only engage in independent expenditures could not be limited by the FEC in the way that it had been previously. *SpeechNow v. Fed. Election Comm'n*, 599 F.3d 686 (D.C. Cir. 2010) (invalidating limits on how much independent-expenditure-only groups could fundraise from individuals).

The resulting legal universe is marked by the prominence of so-called Super PAC spending — spending by independent-expenditure-only political committees<sup>28</sup> who can spend as much as they like (so long as they do not coordinate with the candidate) and can raise as much as they like from each source, including corporations and unions.<sup>29</sup> In the 2012 elections alone, Super PACs spent about \$600 million at the federal level.<sup>30</sup> In 2016, they spent just over \$1 billion.<sup>31</sup> The top one hundred donors to Super PACs were the source of 66.7% of overall Super PAC money in 2012; in 2016, that number spiked to 77.8%.<sup>32</sup> Super PACs are an increasingly prominent component of campaign finance in the U.S. and are increasingly agents of the concentrated wealth of a relatively small number of individual donors.

Super PAC spending is a particular concern for states, especially in races which draw national attention. States sometimes worry that campaign finance might allow forces and money outside the state to more readily influence federal, state, and local races taking place inside the state.<sup>33</sup> For example, the 2017 spe-

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28. The campaign finance landscape contains many different types of outside actors. Traditional PACs are outside groups that can contribute to candidates or parties, as well as spend unlimited amounts of money through independent expenditures, but are subject to relatively strict contribution limits when raising funds from individuals and when giving money to candidates or campaigns. Super PACs engage only in independent expenditures, and can therefore raise unlimited amounts from individuals. Though these two categories of outside groups are far from the only prominent actors involved in campaign finance, they are the most relevant here. See *PACs, Super PACs & Dark Money Groups: What's the Difference?*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/update/pacs-super-pacs-dark-money-groups-whats-difference> [<https://perma.cc/3KPZ-KXRY>] (last visited Mar. 8, 2019); see also *Glossary*, FED. ELECTION COMMISSION, <https://www.fec.gov/help-candidates-and-committees/> [<https://perma.cc/TDG6-NXRG>] (last visited Mar. 8, 2019).

29. See *Contribution Limits for 2017–2018 Federal Elections*, FED. ELECTION COMMISSION, <https://transition.fec.gov/pages/brochures/contriblimitschart.htm> [<https://perma.cc/3PXX-ENV5>] (last visited Mar. 8, 2019).

30. R. SAM GARRETT, CONG. RES. SERV., *SUPER PACS IN FEDERAL ELECTIONS (2016)*, <https://fas.org/sgp/crs/misc/R42042.pdf> [<https://perma.cc/29UX-BM3F>] (last visited May 24, 2019).

31. *2016 Outside Spending, by Super PAC*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/outsidespending/summ.php?cycle=2016&chrt=V&disp=O&type=S> [<https://perma.cc/LN6T-H2WD>] (last visited Mar. 8, 2019).

32. *Super PACs: How Many Donors Give 2012*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/outside-spending/donor-stats?cycle=2012&type=I> [<https://perma.cc/LJ8V-JYZZ>] (last visited Apr. 28, 2019); *Super PACs: How Many Donors Give 2016*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/outside-spending/donor-stats?cycle=2016&type=I> [<https://perma.cc/RF2C-PRV7>] (last visited Apr. 28, 2019).

33. Those outside the U.S. cannot contribute to candidates or campaigns, and the Supreme Court has upheld this ban. 52 U.S.C. § 30121 (2012); *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 283 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012).

cial election for the U.S. Senate in Alabama attracted enormous national attention because of Roy Moore's controversial candidacy and its consequences for national politics.<sup>34</sup> Both candidates raised most of their contribution money from outside the state,<sup>35</sup> and non-candidate spending on the race (including spending by Super PACs, traditional PACs, and 501(c) organizations<sup>36</sup>) totaled about \$19 million.<sup>37</sup>

In contrast to the virtually unlimited independent expenditures that federal law allows, contributions are sharply limited. Contribution limits in national races are set at the federal level; for 2018 races, they were \$2,700 per election for an individual donor (\$5,400 between each candidate's primary and general campaigns).<sup>38</sup> States set contribution limits for state races. Many state limits tend to be in the same ballpark as the federal limits, with some outliers setting much higher limits or not setting any contribution limits at all.<sup>39</sup> However, if states choose to adopt contribution limits, they are constitutionally forbidden

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34. The race became embroiled in national controversy after allegations that Moore initiated a sexual relationship with a fourteen-year-old girl in 1979, when he was thirty-two and a local judge. See Stephanie McCrummen, *Woman Says Roy Moore Initiated Sexual Encounter When She Was 14, He Was 32*, WASH. POST (Nov. 9, 2017), [https://www.washingtonpost.com/investigations/woman-says-roy-moore-initiated-sexual-encounter-when-she-was-14-he-was-32/2017/11/09/1f495878-c293-11e7-afe9-4f60b5a6c4a0\\_story.html?noredirect=on&utm\\_term=.d8afa114a5e7](https://www.washingtonpost.com/investigations/woman-says-roy-moore-initiated-sexual-encounter-when-she-was-14-he-was-32/2017/11/09/1f495878-c293-11e7-afe9-4f60b5a6c4a0_story.html?noredirect=on&utm_term=.d8afa114a5e7) [https://perma.cc/X9CH-T2QE].

35. See Alexia Fernandez Campbell, *Doug Jones Got More Money from Alabama Voters Than Roy Moore Did*, VOX (Dec. 12, 2017), <https://www.vox.com/policy-and-politics/2017/12/12/16767130/jones-moore-campaign-donors> [https://perma.cc/B2CF-USAR].

36. 501(c) organizations are nonprofits organized under certain sections of the federal code which exempt them from certain requirements; notably in the campaign finance context, they are not required to report the sources of their contributions and are therefore an important component of "dark money" campaign spending. See *PACs, Super PACs & Dark Money Groups: What's the Difference?*, CAMPAIGN LEGAL CTR. (June 20, 2018), <https://campaignlegal.org/update/pacs-super-pacs-dark-money-groups-whats-difference> [https://perma.cc/3KPZ-KXRY].

37. *AL US SENATE*, FOLLOWTHEMONEY.ORG., [https://www.followthemoney.org/show-me?dt=2&f-fc=1,2,3&is-r-id=78673#\[1|gro=is-f-eid,is-t-id,is-r-id](https://www.followthemoney.org/show-me?dt=2&f-fc=1,2,3&is-r-id=78673#[1|gro=is-f-eid,is-t-id,is-r-id) [https://perma.cc/QGU2-52LA] (last visited Apr. 28, 2019).

38. *Contribution Limits For 2017-2018 Federal Elections*, FED. ELECTION COMM'N, <https://transition.fec.gov/info/contriblimitschart1718.pdf> [https://perma.cc/A9ZU-K2PB] (last visited Apr. 28, 2019).

39. See *State Limits On Contributions to Candidates*, NAT'L CONF. ST. LEGIS. (June 27, 2017), [http://www.ncsl.org/Portals/1/Documents/Elections/Contribution\\_Limits\\_to\\_Candidates\\_2017-2018\\_16465.pdf](http://www.ncsl.org/Portals/1/Documents/Elections/Contribution_Limits_to_Candidates_2017-2018_16465.pdf) [https://perma.cc/CAA8-7TXP].

from reducing limits such that they become an unconstitutional restriction on political speech.<sup>40</sup>

Thus, the status quo of American campaign finance law is one where an individual may donate only a few thousand dollars to each candidate, but may donate an unlimited amount to an independent group which can spend as much of that money as it pleases in support of that same candidate. An individual who wishes to spend above the contribution limits to aid a given candidate no longer has the option of contributing directly to the candidate once that limit has been reached. That person must either spend the money themselves (for example, they could directly finance the production of ads to be run on television and purchase the ad time), or donate the money to other organizations and associations with the political and strategic expertise to spend more effectively: parties, traditional PACs, and Super PACs. According to the Center for Responsive Politics, Super PACs raised about \$1.8 billion in 2016's federal elections.<sup>41</sup> In contrast, across all federal candidates, about \$1.5 billion was raised in direct contributions.<sup>42</sup>

## B. SCHOLARLY VIEWS ON CONTRIBUTION LIMITS

Any discussion about contribution limits must acknowledge that, at least for now, unlimited independent expenditures are the law of the land. Contentions that contribution limits are good or bad, or that they should be tighter or more relaxed, cannot ignore the constitutionally open door that characterizes the world of independent expenditures. It is a principle of campaign finance — which Justices O'Connor and Stevens acknowledged in 2003 in their joint opinion in *McConnell v. FEC* — that “money, like water, will always find an outlet.”<sup>43</sup> Even before *McConnell*,

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40. See *Randall v. Sorell*, 548 U.S. 230 (2006) (establishing the standard by which to judge a state contribution limit alleged to be unconstitutionally low, emphasizing comparison to the federal limits).

41. *2016 Outside Spending, by Super PAC*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/outsidespending/summ.php?cycle=2016&chrt=V&disp=O&type=S> [<https://perma.cc/LN6T-H2WD>] (last visited Mar. 8, 2019).

42. *2016 Presidential Campaign Finance*, FED. ELECTION COMMISSION, <http://classic.fec.gov/disclosurep/pnational.do> [<https://perma.cc/L9H7-QNNA>] (last visited Mar. 8, 2019).

43. *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 224 (2003) (joint opinion of Stevens and O'Connor, J.J.), *overruled by* *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

scholars had described what have been called the “hydraulics” of campaign finance reform.<sup>44</sup> Any particular campaign finance reform — for example, enacting or abolishing contribution limits — will not always diminish the abstract influence of money in a particular race, but could instead simply shift the flow of money into a different channel.<sup>45</sup> Just as *Buckley*'s contribution-expenditure distinction may have precipitated the redirection of money from one bucket to the other,<sup>46</sup> a law that lifts contribution limits in certain circumstances might similarly alter the balance of money.

That is, large contributions enabled by the limits-off law would likely be channeled into independent expenditures in a world where limits are reinstated. The thrust of much criticism surrounding the Illinois law was the assumption that those who use the limits-off provision strategically would otherwise make no use of this money if the law were not in place. But that the law allowed Ken Griffin and others to donate millions to the Rauner campaign does not require the conclusion that the limits-off provision “backfired.” After all, the law may have simply functioned exactly the way it should have, if one takes into account that independent expenditures cannot be meaningfully restricted under current federal constitutional rulings, and believes that it is preferable to channel political money into contributions. That proposition — that contributions are more desirable than independent expenditures so long as the latter are a constitutionally required option — is hotly contested.<sup>47</sup>

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44. See Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1999).

45. *Id.* at 1705 (“We worry that even if the reform advocates had their way, they would discover what the Corps of Engineers learned over the years in trying to redirect the Mississippi. Money, like water, will seek its own level. The price of apparent containment may be uncontrolled flood damage elsewhere.”); see also Kathleen M. Sullivan, *Against Campaign Finance Reform*, 1998 UTAH L. REV. 311, 312 (1998) (“[T]he restriction on formal campaign contributions has had predictable substitution effects. Barred from giving to candidates or limited in the amount that they can give, corporations, labor unions, PACs, and wealthy individuals have shifted resources into other forms of political advocacy and association”).

46. See Issacharoff & Karlan, *supra* note 44, at 1711 (Describing the effect of the contribution-expenditure distinction: “The effect is much like giving a starving man unlimited trips to the buffet table but only a thimble-sized spoon with which to eat: chances are great that the constricted means to satisfy his appetite will create a singular obsession with consumption.”).

47. See Issacharoff & Karlan, *supra* note 44; see also Anthony J. Gaughan, *The Futility of Contribution Limits in the Age of Super Pacs*, 60 DRAKE L. REV. 755, 791 (2012) (arguing that, in the wake of *Citizens United*, contribution limits fail to achieve their objectives and are not worth keeping); Albert W. Alschuler et al., *Why Limits on Contributions*

Judges, legal scholars, and political scientists offer several potential rationales in support of contribution limits, and several arguments why one might actually *prefer* contributions over independent expenditures.

### 1. *Arguments in Favor of Contribution Limits*

The anti-corruption rationale is that rationale most cited in favor of limits on campaign finance.<sup>48</sup> The theory is that contributions result in actual or apparent corruption of candidates or of the election process, whereas independent expenditures, which are not coordinated with the campaign, do not.<sup>49</sup> The argument that contribution limits are justified by the risk of corruption is relatively straightforward: large financial contributions, which are increasingly necessary for political campaigns, could be used to obtain quid pro quo arrangements or could taint the day-to-day business of lawmakers by making it appear as though they are influenced by donors.<sup>50</sup> Today, there is debate over what a stable category of “corruption” includes.<sup>51</sup> Though states may not go beyond “quid pro quo” corruption when they defend campaign finance laws in court,<sup>52</sup> it is still worth considering some of the broader conceptions of corruption in asking about the social utility of a particular reform. One such conception is the idea that contributions corrupt the electoral and political process as a

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to *Super PACS Should Survive* Citizens United, 86 FORDHAM L. REV. 2299 (2018) (defending contribution limits and arguing that *SpeechNow* was wrongly decided).

48. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 46 (1976) (“the independent advocacy restricted by [FECA] does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions”); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

49. See, e.g., *Buckley*, 424 U.S. 1.

50. See *Buckley*, 424 U.S. at 27 (“Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.”).

51. See, e.g., *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 143 (2003); *Citizens United*, 558 U.S. at 448 (Stevens, J., dissenting) (“Corruption operates along a spectrum, and the majority’s apparent belief that *quid pro quo* arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics.”).

52. The Supreme Court in *Citizens United* reversed from earlier, more expansive interpretations of “corruption,” clarifying that it only extended to actual quid pro quo arrangements and did not include the visions of the corruption rationale articulated below. 558 U.S. at 359 (“When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption.”).

whole.<sup>53</sup> This is often framed as the idea that aggregate wealth, particularly that of corporations, lends political strength and efficacy to ideas or candidates that is disproportionate to their support among the voting public; stated alternately, lots of money distorts the legitimate ordering of political ideas.<sup>54</sup> A related argument is that contribution limits promote responsiveness of elected officials to the voting public as a whole by limiting the ability of a few individuals to use their large donations to shape policy to their particular needs and desires.<sup>55</sup>

Some have also argued that strict contribution limits improve the democratic process because they free legislators from the time-consuming task of individual fundraising, allowing legislators to spend their time in ways that better serve the public and democratic values.<sup>56</sup> Some lawmakers have candidly expressed their desire to reduce the amount of time they spend making calls to solicit donations and attending fundraisers, and have even introduced legislative reform packages intended specifically to free up legislators' schedules.<sup>57</sup>

## 2. *Arguments Against Contribution Limits*

Most arguments against contribution limits do not claim that contribution limits are undesirable in a vacuum. Rather, they

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53. This "distortive" or "corruptive" view has been rejected by the Court. However, it still has utility as a normative theory of campaign finance policy. *See, e.g.,* *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990); *see also* *Citizens United*, 558 U.S. at 434 (Stevens, J., dissenting).

54. *Citizens United*, 558 U.S. at 348 ("*Austin* found a compelling governmental interest in preventing 'the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.'").

55. *See* Nicholas O. Stephanopolous, *Aligning Campaign Finance Law*, 101 VA. L. REV. 1425 (2015).

56. Vincent Blasi, *Spending Limits and the Squandering of Candidate's Time*, 6 J.L. & POL'Y 123 (1997) ("[S]pending limits are best justified on the ground that they protect candidates for office from having to devote an inordinate amount of their time to the task of raising money. . . ."); *see also* Alex Blumberg, *Senator by Day, Telemarketer by Night*, PLANET MONEY (Mar. 30, 2012), <https://www.npr.org/sections/money/2012/03/30/149648666/senator-by-day-telemarketer-by-night> [<https://perma.cc/4YHD-BGY9>] (interview with members of Congress explaining that their time spent fundraising interferes with their ability to legislate).

57. *See, e.g.,* *Durbin, Larson Introduce Fair Elections Now Act, Durbin Announces Hearing On Campaign Finance Reform*, DICK DURBIN U.S. SENATOR ILL. (Apr. 6, 2011), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-larson-introduce-fair-elections-now-act-durbin-announces-hearing-on-campaign-finance-reform> [<https://perma.cc/PVF5-5GTG>].

tend to assert that in the status quo context of unlimited campaign spending, contribution limits have comparatively undesirable effects on politics and thus should be relaxed or lifted. The idea is effectively that if government cannot restrict spending, then it makes little sense to also restrict contributions in the particular way that it does.<sup>58</sup>

One such assertion is that contribution limits are simply an incumbent protection device, designed to insulate legislators from legitimate attacks by challengers with wealthy backers.<sup>59</sup> However, a compelling contrary argument is often also made: that contribution limits actually hamstring incumbents and empower wealthy self-funded challengers.<sup>60</sup> This appeared to be a strong motivation for the Illinois limits-off law. Legislators were worried that, in the face of self-funding challengers or challengers backed by Super PAC money, they would not be able to tap into their more traditional base of support among a large number of individual donors.<sup>61</sup>

Another view is that in today's world of Super PACs, social media, and mass communication, contribution limits *as a whole* channel money into independent expenditures, which empower "upstart" candidates who trend towards the extremes of the ideological poles. This in turn contributes to the weakening of moderating institutions, especially parties.<sup>62</sup> Some empirical approaches claim to show that state legislatures are less polarized

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58. See S. Transcript, 71st Legis. Day., 96th Gen. Assemb. at 50 (Ill. 2009) (statement of Sen. Harmon) ("If we cannot legally limit the ability of [political actors] to spend money to influence the outcome of the campaign, why should we limit it in certain avenues?").

59. Justice Scalia made this argument in *McConnell*: "[I]f incumbents and challengers are limited to the same quantity of electioneering, incumbents are favored. In other words, *any* restriction upon a type of campaign speech that is equally available to challengers and incumbents tends to favor incumbents. . . . [The BCRA] *targets* for prohibition certain categories of campaign speech that are particularly harmful to incumbents." *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 249 (2003). See also Bradley A. Smith, *Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform*, 105 YALE L.J. 1049, 1072 ("Contribution limits tend to favor incumbents by making it harder for challengers to raise money.").

60. Indeed, BCRA § 304 (codified at 52 U.S.C. § 30116(i) (2012)), the "Millionaire's Amendment" on which the Illinois law was based, was chiefly motivated by this concern. Tom Curry, *Supreme Court to Weigh McCain-Feingold Law*, NBC NEWS (Apr. 16, 2008), [http://www.nbcnews.com/id/23884716/ns/politics-decision\\_08/t/supreme-court-weigh-mccain-feingold-law/#.XCbC\\_M9KhbU](http://www.nbcnews.com/id/23884716/ns/politics-decision_08/t/supreme-court-weigh-mccain-feingold-law/#.XCbC_M9KhbU) [<https://perma.cc/N924-LTQX>].

61. See *infra* note 74.

62. See, e.g., Smith, *supra* note 59; RAYMOND J. LA RAJA & BRIAN F. SCHAFFNER, CAMPAIGN FINANCE AND POLITICAL POLARIZATION (2015) (purporting to show empirically that campaign finance regulations weaken the influence of parties and increase the prominence of wealthy, ideologically purist donors).

where the flow of money is channeled into parties as mediating institutions.<sup>63</sup> Some of these scholars argue that individual donors will wield outsized influence whether they spend *or* contribute, and thus raising contribution limits will nudge the balance back towards candidates, parties, and traditional PACs, increasing moderation.<sup>64</sup> Others argue that limits on individual donors are desirable (because individuals are more likely to be ideologically polarized) but that limits on donations to parties should be relaxed.<sup>65</sup>

Finally, some arguments against contribution limits focus on the role of disclosure in campaign finance. Certain scholars have found that, particularly in recent years, independent expenditure money has been increasingly able to flout disclosure requirements, undermining the constitutional and social goals of disclosure regimes.<sup>66</sup> In general, contributions carry fairly straightforward, thorough disclosure requirements that do not apply to independent expenditures,<sup>67</sup> and so those seeking to conceal their use of money in the political arena often prefer independent expenditures, which can allow them to do so.<sup>68</sup> This concern applies

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63. See La Raja & Schaffner, *supra* note 62. See also Stephanopoulos, *supra* note 55, at 1430.

64. One scholar has notably argued that party leaders and officials diminish extremism in choosing who to support because the party's stake in that decision incentivizes them to choose candidates with views closer to the middle and with the greatest perceived chance at electoral success, whereas individual candidates tend to be more vulnerable to the influence of "purist" donors. La Raja & Schaffner, *supra* note 62; see also Ray La Raja, *The Supreme Court Might Strike Down Overall Contribution Limits. And That's Okay.*, WASH. POST (Oct. 9, 2013), [https://www.washingtonpost.com/news/monkey-cage/wp/2013/10/09/the-supreme-court-might-strike-down-overall-contribution-limits-and-thats-okay/?utm\\_term=.4efeffe5a8bf](https://www.washingtonpost.com/news/monkey-cage/wp/2013/10/09/the-supreme-court-might-strike-down-overall-contribution-limits-and-thats-okay/?utm_term=.4efeffe5a8bf) [<https://perma.cc/5BPJ-WNK3>] ("Wealthy donors can currently give unlimited amounts to outside organizations, like Super PACs, which can then spend unlimited amounts to campaign independently for or against a candidate. . . . [T]he flood of money to outside groups actually signals that we need *higher*, not lower, limits on donations to candidates, PACs, and parties."); John Sides, *Why Striking Down Campaign Contribution Limits Might Make Politics Better*, WASH. POST (Oct. 16, 2013), [https://www.washingtonpost.com/news/monkey-cage/wp/2013/10/16/why-striking-down-campaign-contribution-limits-might-make-politics-better/?utm\\_term=.b1547c9967c5](https://www.washingtonpost.com/news/monkey-cage/wp/2013/10/16/why-striking-down-campaign-contribution-limits-might-make-politics-better/?utm_term=.b1547c9967c5) [<https://perma.cc/D3MH-UY9S>].

65. Stephanopoulos, *supra* note 55, at 1431.

66. Anthony Johnstone, *A Madisonian Case for Disclosure*, 19 GEO. MASON. L. REV. 413, 416 (2012); see also Cory G. Kalanick, *Blowing Up the Pipes: The Use of (C)(4) to Dismantle Campaign Finance Reform*, 99 MINN. L. REV. 2254, 2257–66 (2011).

67. Debates over disclosure and the proliferation of 501(c) "dark money" are generally outside the scope of this Note, but disclosure remains relevant to the extent that channeling money into traditional contributions to candidates would protect the anti-corruption goals of our current disclosure regime.

68. Anthony Johnstone, *The System of Campaign Finance Disclosure*, 98 IOWA L. REV. BULL. 143 (2014) (explaining that contributions carry a "disclosure cost" for donors, "for

with particular force if the power of individual donors is not diminished much by contribution limits; if money is going to support a candidate one way or another, one might prefer to know where the money is coming from, and so one might try to incentivize donors to use channels that prevent circumvention of disclosure.

This question whether contribution limits are “worth it” is crucial to any examination of whether the Illinois limits-off law is functioning in a socially useful way. Even before knowing how candidates and donors react to its mechanisms, one’s view of the law will tend to turn on how one views these “hydraulics” of campaign finance reform.

### C. THE ILLINOIS LIMITS-OFF LAW

In 2008, the Supreme Court struck down several provisions of the BCRA, a package of federal campaign finance reforms.<sup>69</sup> A handful of these provisions, known colloquially as the “Millionaire’s Amendment,”<sup>70</sup> established a regime where, once a “self-funding candidate” spent a certain amount of their own money on their own campaign (determined by a complicated formula), contribution limits for their *opponents* were raised and certain other limits on party spending were lifted.<sup>71</sup> However, limits on contributions to the self-funders themselves remained in place.<sup>72</sup> The Supreme Court found this scheme unconstitutional in *Davis v. FEC*, as its asymmetry impermissibly burdened the speech of the self-funder.<sup>73</sup>

In 2009, Illinois enacted a unique state contribution limits scheme, essentially a constitutional version of the Millionaire’s

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some (connected) speakers quasi-coordinated “Super PAC” and 501(c)(4) speech becomes far more valuable in terms of unlimited contributions and far less costly in terms of limited disclosure. Hydraulic effects predominate as wealthy, sophisticated, and connected speakers divert speech into more valuable, less costly channels”).

69. *Davis v. Fed. Election Comm’n*, 554 U.S. 724 (2008); Bipartisan Campaign Reform Act, Pub. L. No. 107–155, 116 Stat. 81 (2002). The BCRA was primarily aimed at other issues of campaign finance, particularly the use of party money and the FEC’s regulation of “issue advocacy” advertisements, but only the Millionaire’s Amendment was at issue in *Davis*.

70. 52 U.S.C. § 30116(i) (2012).

71. FED. ELECTION COMM’N, MILLIONAIRES’ AMENDMENT BROCHURE (2008), [https://transition.fec.gov/pages/brochures/millionaires\\_brochure.pdf](https://transition.fec.gov/pages/brochures/millionaires_brochure.pdf) [https://perma.cc/6P3B-V284] (last visited May 24, 2019).

72. *Id.*

73. *Davis*, 554 U.S. at 744.

Amendment with some modifications — most importantly, when the law is triggered, it lifts limits symmetrically on *all* candidates in a particular race.<sup>74</sup> In ordinary circumstances, contribution limits in state races in Illinois are well within the federal ballpark<sup>75</sup> — \$5000 from individuals, \$10,000 from corporations or unions, and \$50,000 from traditional PACs per race, adjusted for inflation.<sup>76</sup> But under this law, contribution limits in a given race are lifted absolutely in either of two circumstances: first, if a self-funding candidate loans their campaign (or spends on their election) above a certain threshold dollar amount;<sup>77</sup> second, if an individual or any independent expenditure group spends beyond that same threshold in support of, or opposition to, a candidate in a given state race.<sup>78</sup>

In the legislative debates over the law and its later modifications,<sup>79</sup> proponents described it both as Illinois' own version of the Millionaire's Amendment and as a tool to allow candidates to “defend themselves” against an influx of outside spending in a particular race — a scenario that Illinois legislators anticipated as a result of the *Citizens United* and *SpeechNow* decisions removing limits on how much super PACs could take in from individuals.<sup>80</sup>

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74. 10 ILL. COMP. STAT. ANN. 5/9-8.5 (2012); *see also* S. Transcript, 71st Legis. Day, 96th Gen. Assemb. at 66 (Ill. 2009) (statement of Sen. Harmon) (“We have what we call a ‘millionaires amendment in this bill.”), S. Transcript, 126th Legis. Day, 97th Gen. Assemb. at 26 (Ill. 2012) (statement of Sen. Harmon) (“[T]his is identical to the existing millionaires’ exemption, which we contemplated when we passed the law.”).

75. *See* *Randall v. Sorell*, 548 U.S. 230 (2006); *see also supra* note 38.

76. 10 ILL. COMP. STAT. ANN. 5/9-8.5 (2012).

77. \$250,000 or more in statewide races (Governor, for example); \$100,000 in all other state races. *Id.*

78. 10 ILL. COMP. STAT. ANN. 5/9-8.5(h) (2012).

79. Here, this Note treats the 2009 bill establishing the “Millionaire’s Exemption” and the later addition of the independent-expenditure trigger somewhat interchangeably, as the two occurred close in time. Additionally, much of the legislature’s attention regarding the original provision was directed at the later amendment, because the original provision was a relatively minor part of a comprehensive campaign finance reform package. Act of Dec. 9, 2009, Pub. Act 96-832, 2009 Ill. Laws 832, <http://www.ilga.gov/legislation/publicacts/96/096-0832.htm> [<https://perma.cc/SE55-AUKW>]; Act of July 12, 2012, Pub. Act 97-766, 2011 Ill. Laws 766, <http://www.ilga.gov/legislation/publicacts/97/097-0766.htm> [<https://perma.cc/276Y-EXFT>].

80. The chief Senate sponsor of the bill directly referenced the impending effect of the *Citizens United* and *SpeechNow* decisions on Illinois politics, and framed this law as a reaction. *See* S. Transcript, 126th Legis. Day, 97th Gen. Assemb. at 21, 25–26 (Ill. 2012) (statement of Sen. Harmon) (“[I]n light of [U.S. and Illinois Supreme Court Rulings], the campaign contribution limits we imposed on Super PACs have been lifted by — by court order. . . . [T]he introduction of unregulated money into a political campaign has the capacity to dramatically distort the outcome. . . . [I]f the candidates who are running for office are subject to strict campaign contribution limits and they are bombarded by . . .

Many involved in drafting and amending the bill felt that the federal campaign contribution limits were “artificially low” and that this incentivized the channeling of money into outside spending (meaning spending by groups other than the campaigns), which the drafters saw as less desirable than contributions.<sup>81</sup> The intent seemed to be two-fold: first, to help fight what legislators saw as the distortive effect of campaign money from wealthy candidates and backers; and second, to help incumbent candidates defend themselves against an influx of outside spending, which included the threat of increased out-of-state money.<sup>82</sup> Constitutional constraints<sup>83</sup> forced the sponsors of the bill to accomplish this by lifting limits on *all* candidates in a limits-off race. The basic theory remained the same: lifting limits would help those candidates who could not self-fund and did not have the support of Super PACs. These candidates could solicit more small- and medium-sized donations, because, in theory, they had a larger base of support among individuals than the self-funder.

Before the drafting process began, a commission on campaign finance reform — itself spurred by the corruption scandal surrounding former Governor Rod Blagojevich<sup>84</sup> — recommended the legislature simply adopt the federal contribution limits in place at

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unregulated, unlimited money, it produces a perverse outcome . . . this is identical to the existing millionaire’s exemption, which we contemplated when we passed the law. . . . [B]y lifting the caps . . . we make sure we have a fair playing field. . . . [I]t’s only fair that the candidates competing with that Super PAC be able to raise enough money to run a campaign. . . .”); *see also* *SpeechNow v. Fed. Election Comm’n*, 599 F.3d 686 (D.C. Cir. 2010); *Pers. PAC v. McGuffage*, 858 F. Supp. 2d 963 (N.D. Ill. 2012) (applying Supreme Court precedent to strike down portions of the Illinois law restricting contributions to independent-expenditure-only groups).

81. *See* S. Transcript, 58th Legisl. Day, 96th Gen. Assemb. at 79 (Ill. 2009) (statement of Sen. Harmon) (“I think many of us recognize that the federal limits are artificially low and have unintended consequences.”).

82. The chief House sponsor of the bill explained the bill in these terms. *See* H. Transcript, 147th Legisl. Day, 97th Gen. Assemb. at 63–64 (Ill. 2012) (statement of Rep. Currie) (“[A]s the Supreme Court and now the Federal [District] Court has said that in Illinois contribution caps cannot be imposed on a super PAC. . . . I think it would be an outrage not to help the other candidates not so benefitted by the Super PAC, not to give them the opportunity to level the playing field. . . . [I]f we don’t help these candidates who are not benefitted by the deepest pockets across the country . . . we are ceding our democracy to the highest bidder.”).

83. *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 744 (2008).

84. Blagojevich was impeached and removed from office after it was revealed that he had been ensnared in an overarching federal investigation into corruption in Illinois and that he had tried to sell off the U.S. Senate seat left vacant by then President-Elect Barack Obama. Cynthia Canary & Kent Redfield, *Lessons Learned: What The Successes and Failures of Recent Reform Efforts Tell Us About The Prospects For Political Reform In Illinois*, SIMON REV. NO. 33 (Oct. 2012).

that time.<sup>85</sup> In an astonishing move exhibiting Illinois' resistance to campaign finance reform, even in the wake of the Blagojevich scandal, Governor Pat Quinn "jettisoned his own blue-ribbon commission by testifying in support of [the legislature's] plan"<sup>86</sup> rather than the commission's.

Thus the legislature's plan, which included the limits-off provision, became the set of reforms most likely to become law. Some public interest groups opposed the limits-off provision, which apparently surprised some of the bill's sponsors.<sup>87</sup> In short, reformers opposed the original 2009 campaign finance package, which simultaneously established contribution limits in Illinois for the first time and included the limits-off provision, because they felt that the legislature's resistance to the blue-ribbon commission and various other reform campaigns had resulted in a bill with so many weaknesses and amendments that it "might in fact be worse than having no limits at all."<sup>88</sup>

The law's opponents in the legislature characterized the law as incumbent protection,<sup>89</sup> especially in that it discriminated against rank-and-file legislators and gave too much power to the Democratic legislative leadership,<sup>90</sup> who wield peculiar influence

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85. Zach Christman, *3, 2, 1, Reform! Illinois Reform Commission Issues Its Final Report on Illinois Government*, NBC CHI. (July 14, 2009), <https://www.nbcchicago.com/news/local/Reform-Commission-Issues-Final-Report-on-Illinois-Government.html> [<https://perma.cc/5DUT-GCYC>]; *Contribution Limits For 2009-2010*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/overview/limits.php?cycle=2010> [<https://perma.cc/VB3Q-EXMV>] (last visited Apr. 28, 2019).

86. See Canary & Redfield, *supra* note 84.

87. Illinois PIRG, a prominent interest group in the area and highly influential in the Illinois legislature, opposed amending the law to add the independent-expenditure trigger. Brian Imus, *Super-Sized Loophole for Super PACs*, ILL. PIRG (May 30, 2012), <https://illinoispirg.org/blogs/blog/ilp/super-sized-loophole-super-pacs> [<https://perma.cc/2JKP-VBDM>]; see also H. Transcript, 147th Legisl. Day, 97th Gen. Assemb. at 65 (Ill. 2012) (statement of Rep. Currie) ("They are . . . idealists who would wish the Supreme Court had voted differently in Citizens United. These groups are fearful there might be collusion."); S. Transcript, 126th Legisl. Day, 97th Gen. Assemb. at 25 (Ill. 2012) (statement of Sen. Harmon) ("I'm quite surprised by their resistance to this, what I think is a commonsensical change. . .").

88. See Canary & Redfield, *supra* note 84, at 47.

89. See H. Transcript, 147th Legisl. Day, 97th Gen. Assemb. at 65 (Ill. 2012) (statement of Rep. Reis) ("The Majority Leader said we don't want to go into the election with our hands tied around our back. When she said we, she means the Democratic Party . . . [w]e should call this the Democratic Incumbency Protection Bill.")

90. See, e.g., S. Transcript, 71st Legis. Day, 96th Gen. Assemb. at 53 (Ill. 2009) (statement of Sen. McCarter) ("[T]here's one fatal flaw and that is that this bill provides unlimited power to the legislative leaders, the unlimited contributions in the general election. . ."); *id.* at 48 (statement of Sen. Dillard) ("[T]his bill . . . does not cure the cul-

in Illinois politics<sup>91</sup> and who have the fundraising connections to lift limits selectively and to their advantage.<sup>92</sup> One critic in the State Senate described the limits-off provision as a “loophole you could drive a truck, a truck full of cash through.”<sup>93</sup>

Until the 2014 elections, the limits-off provision did not receive much attention outside of “good government” groups and certain media outlets.<sup>94</sup> After Rauner’s victory, however, commentators around the country started to ask whether the law had helped Rauner’s election bid and whether the limits-off provision was “backfiring” by aiding wealthy candidates rather than their opponents.<sup>95</sup> Most notably, the *New York Times* published a feature article titled “A Wealthy Governor and His Friends Are Remaking Illinois” in which it characterized the provision as one that “intended to limit the influence of wealth by providing a level playing field, [but] had the opposite effect: Freed of the restraints, supporters of Mr. Rauner poured millions more into his campaign.”<sup>96</sup> The next Part of this Note examines Rauner’s 2014 race, among others.

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ture of clout that controls Springfield. . . . [W]e have got to limit the legislative leaders’ influence in this legislative process. . . .”).

91. For one author’s view on Speaker Madigan’s outsize influence and its preconditions, see Edward McClelland, *Opinion: Madigan One of Most Powerful History, WARD ROOM* (Nov. 8, 2012), <https://www.nbcchicago.com/blogs/ward-room/Madigan-One-Of-Most-Powerful-State-Legislators-In-US-History-177914821.html> [<https://perma.cc/X8Q7-RD4G>].

92. See, e.g., Rick Pearson, *Madigan Uses Quirk In Law to Stockpile 2016 Campaign Cash Against Rauner*, CHI. TRIB. (Jan. 1, 2016), <https://www.chicagotribune.com/news/local/politics/ct-mike-madigan-campaign-fundraising-met-20160102-story.html> [<https://perma.cc/E86M-9D7S>] (“[Speaker] Madigan has been on a fundraising tear, courtesy of a quirk in state campaign finance law that allows him to amass multiple five-figure contributions from the same donor into four funds he controls.”).

93. See S. Transcript, 58th Legis. Day, 96th Gen. Assemb. at 83 (Ill. 2009) (statement of Sen. Righter).

94. See Confessore, *supra* note 7; see also Imus, *supra* note 87.

95. See, e.g., Walker Davis, *How an Illinois Fairness Measure Backfired*, CREW (Feb. 2, 2016), <https://www.citizensforethics.org/how-an-illinois-fairness-measure-backfired/> [<https://perma.cc/ST2K-5F7M>]; Matthew Dietrich, *Campaign Contribution Limit Law Backfiring on Democrats*, HUFFINGTON POST (Oct. 7, 2016), [https://www.huffingtonpost.com/matthew-dietrich/campaign-contribution-limit\\_b\\_12392894.html](https://www.huffingtonpost.com/matthew-dietrich/campaign-contribution-limit_b_12392894.html) [<https://perma.cc/F9G5-TQ6F>]; Ben Jorvasky, *How Bruce Rauner Used a Legal Loophole to Get a \$2.5 Million Campaign Donation*, CHI. READER (June 18, 2014), <https://www.chicagoreader.com/chicago/illinois-republican-governor-candidate-contributions-limits-loophole/Content?oid=13962856> [<https://perma.cc/BH9F-KKCE>] (“[I]t’s a loophole big enough that you can drive a truck loaded with \$100 bills through it.”).

96. See Confessore, *supra* note 7.

### III. LOOKING AT LIMITS-OFF RACES IN PRACTICE

This Part first estimates, in dollar amounts, how much the candidate-beneficiaries of the law were able to raise from individuals from which they would not otherwise have been able to raise. It also, where possible, describes the state of independent expenditures in those races. It examines the 2014 Governor's race, the 2018 Governor's race, the Chicago mayoral race in 2015, and the 2016 General Assembly races in detail. It also looks at an outside analysis of the 2014 General Assembly races. The calculations in this Part are then analyzed to draw tentative conclusions concerning the effect of the law in Illinois.

Two distinct theories are at work in any examination of how the limits-off law has functioned in practice. First, as posited by the Illinois legislature and discussed above, contributions are a candidate's antidote to an opponent's outside spending. Second, as argued by scholars, lifting limits will shift the flow of money from independent expenditures to contributions. These seem at first glance like the same point, but there is a subtle, important distinction. If the goal is to "level the playing field," the question is whether one candidate's support from spending groups results in *their opponent's* increased ability to raise funds. On the other hand, if the goal is to find out whether unlimited contributions shift the flow of money from spending to contributions, the question is whether there is movement from one category to the other *within a single candidate* when limits are lifted.

#### A. ANALYSIS OF CONTRIBUTION AND INDEPENDENT EXPENDITURE DATA IN RECENT RACES

It is crucial to examine whether and to what extent the lifting of limits allowed candidates "under attack" to raise more small- and medium-sized donations from a larger group of people. This analysis identifies and examines races where limits were lifted to try to observe what the impact of the law has been on fundraising and expenditures.<sup>97</sup> It uses raw data on contributions and inde-

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97. For all calculations, the author used available individual campaign contribution data, sorted out every contributor who did not give above contribution limits in the aggregate, and then subtracted the contribution limit from the remaining records to derive an estimated total raised above contribution limits. From this, the author also calculated an estimated average contribution above limits. These calculated estimates are reflected in

pendent expenditures to calculate an estimate of how much candidates were able to raise above the limits because of the law.

There are two important limitations to this analysis. First, because of the practical difficulties involved, all calculations for contribution limits operate on the assumption that donors had the opportunity to donate during the candidate's primary race, and so use the combined contribution limits for that given year. As a result, some large contributions are overstated and smaller contributions (namely those by one-time donors in amounts that fell between the one-cycle limit and the two-cycle limits)<sup>98</sup> are understated. A second important caveat is that this analysis looks only at individual contributions and not at corporate or union contributions, which have their own interactions with the law.<sup>99</sup> The ability of corporations and unions to raise above the limit is significant, but the behavior of individual wealthy actors is a more appropriate subject of study in light of the Illinois legislature's stated rationale for the law.<sup>100</sup>

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the Appendix. All raw data on contributions and expenditures was obtained from the Illinois Board of Elections database, FollowTheMoney.org, and The Illinois Campaign for Political Reform's Illinois Sunshine Project. See *Contribution Limits Off Search*, ILL. ST. BOARD OF ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/ContributionLimitOffElecSelect.aspx> [<https://perma.cc/7S9G-X7AR>] (last visited Apr. 28, 2019); FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/> [<https://perma.cc/VV4P-8T8J>] (last visited Apr. 28, 2019); *About Us*, REFORM FOR ILL., <https://www.reformforillinois.org/about/> [<https://perma.cc/SG2T-PFYD>] (last visited Apr. 28, 2019).

98. In other words, a hypothetical donor who did not contribute until after the primary cycle is treated by these calculations as though they had been interested in the primary, but had simply declined to contribute. If such a hypothetical donor contributed only a few thousand above their limit for the general, that over-the-limit contribution would be missing in these calculations. For 2016 legislative races where limits were lifted after the primaries, the one-cycle limit was used, see *infra* note 130, thus those calculations carry the opposite problem (some who *did* have the opportunity to contribute in the primary are treated as over-the-limit when they actually were not).

99. Corporations and unions have their own, idiosyncratic numerical limits concerning contributions to both PACs and to campaigns, and can sometimes act as a conduit for receipt of PAC contributions, both of which render an empirical analysis of disclosure data substantially more complex. See *Contribution Limits*, ILL. ST. BOARD OF ELECTIONS, CAMPAIGN DISCLOSURE DIVISION, <https://www.elections.il.gov/Downloads/CampaignDisclosure/PDF/Contribution%20Limits.pdf> [<https://perma.cc/F4BS-VB6C>] (last visited Apr. 14, 2019).

100. When looking through contributions, however, a noticeable pattern emerged in corporate donations — even when limits were off, corporations often gave the maximum as though limits were still in place, suggesting that corporations were not often aware when limits were off or perhaps simply did not find it useful to exploit the lifting of limits. For an influential and illuminating discussion of the relative public inactivity of corporations in direct contributions in state and local politics due to various collective action problems, see Samuel Issacharoff, *On Political Corruption*, 124 HARV. L. REV. 118, 131–34 (2010).

### 1. 2014 and 2018 Gubernatorial Races

In the 2014 Governor's race,<sup>101</sup> Bruce Rauner appeared to use the limits-off provision highly strategically in the primary. He loaned himself \$1 under the amount that would have triggered limits-off, but limits for the race did not lift until he donated an additional \$500,000 and filed a self-funding notice for the primary in mid-November 2013.<sup>102</sup> Because Rauner won his primary, limits were off for the following general election. Using the above process for calculation, Rauner raised an estimated \$23 million which otherwise would have been unavailable as individual contributions from others, and \$37.5 million from his own pocket.<sup>103</sup> Quinn, on the other hand, raised only an estimated \$2.9 million that would otherwise have been unavailable from individuals and contributed nothing to his own campaign.<sup>104</sup> The other two general campaign candidates did not appear to reap any meaningful fundraising benefit from the lifting of limits.<sup>105</sup>

Independent expenditures in the 2014 Governor's race totaled just under \$9 million overall.<sup>106</sup> Virtually all of that spending supported Rauner; only a tiny fraction supported Quinn.<sup>107</sup> Another group that tracks outside spending has come to a similar, though slightly higher figure.<sup>108</sup> Thus, while Rauner was able to

101. All calculations of Independent Expenditures were done using the Illinois State Board of Elections' data, using cut-off dates for what constitutes an election cycle which were consistently applied across candidates when calculating.

102. *Notification of Self Funding, Bruce Rauner*, ILL. ST. BOARD ELECTIONS (Nov. 13, 2013), <https://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=OAp3BOAQj5s%3d&DocType=XSrYUm%2fd4jBThkAURL7Y53qJEXwiSOa> [<https://perma.cc/8SBC-SY8H>].

103. See Appendix; see also *supra* note 97 for methodology.

104. See Appendix; see also *supra* note 97 for methodology.

105. See Appendix; see also *supra* note 97 for methodology. This is perhaps not surprising, considering that the only third-party candidate who ultimately ended up on the ballot had very little support in the state overall. See *Chad Grimm*, BALLOTPEDIA, [https://ballotpedia.org/Chad\\_Grimm](https://ballotpedia.org/Chad_Grimm) [<https://perma.cc/99P3-NQ7D>] (last visited Mar. 29, 2019).

106. *Expenditures Search*, ILL. ST. BOARD ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/ExpendituresSearchByAllExpenditures.aspx> [<https://perma.cc/C3GJ-6UGR>] (last visited Mar. 29, 2019).

107. All but about \$40,000 benefitted Rauner. *Id.*

108. FollowTheMoney.org shows Rauner in 2014 as the beneficiary of \$11.1 million in outside spending; it also shows Quinn as having benefitted from a proportionately tiny amount of independent expenditures. See *Rauner, Bruce Vincent in Illinois 2014*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/show-me?dt=2&is-t-eid=2922304&is-s=IL&is-y=2014> [<https://perma.cc/3EVX-RNA7>] (last visited Apr. 28, 2019); *Quinn III, Patrick Joseph (PAT)*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/show-me?dt=2&is-t-eid=2838283> [<https://perma.cc/EEY9->

raise a great deal of money from individuals in the 2014 race because of the limits-off law that otherwise would have been unavailable, independent expenditures for Rauner's benefit were also quite prominent. Similarly, Quinn was not advantaged much by the lifting of limits, nor did he benefit from much outside spending.

In the record-breaking 2018 gubernatorial race, limits were raised early on in the primary: Republican primary challenger Chris Kennedy contributed \$250,000 of his own money to his campaign in late March 2017, a full year ahead of the primary election and twenty months ahead of the general election.<sup>109</sup> Ordinarily, when limits are lifted by self-funding in a primary race, they only remain lifted for the general if the candidate who triggered the lifting is still in the race.<sup>110</sup> Because Kennedy lost his primary, his loan<sup>111</sup> had no effect on the general election limits. Nevertheless, because Democratic nominee J.B. Pritzker filed a self-funding notice a few weeks after Kennedy after loaning his campaign a staggering \$7 million,<sup>112</sup> limits remained off in the general election.<sup>113</sup>

Rauner, in his re-election bid, donated a huge sum to his own campaign, but also raised considerable amounts from individual donors. Pritzker, on the other hand, was almost entirely self-funded.<sup>114</sup> In all, Rauner raised an estimated \$24.6 million from other individuals which would not otherwise have been available

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8ABV] (last visited Apr. 28, 2019). The reason for the \$2 million discrepancy may have to do with how FollowTheMoney sets date ranges or whether FollowTheMoney includes non-State Board sources.

109. *Notification of Self Funding, Christopher Kennedy*, ILL. ST. BOARD ELECTIONS (Mar. 24, 2017), <https://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=UjTCNeejyU8%3d&DocType=XSrYUm%2fd4jBThIkAURL7Y53qJEXwiSOa> [https://perma.cc/A36Y-VQDG].

110. *See supra* note 99, at 4.

111. In general, campaign finance law treats a candidate's loan to their own campaign as functionally equivalent to a contribution. *See Personal Loans From the Candidate*, FED. ELECTION COMM'N, <https://www.fec.gov/help-candidates-and-committees/handling-loans-debts-and-advances/personal-loans-candidate/> [https://perma.cc/3JP2-49CS] (last visited Mar. 29, 2019).

112. *Notification of Self Funding, JB Pritzker*, ILL. ST. BOARD ELECTIONS (Aug. 10, 2017), <https://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=LeS6ZRp%2f5Ak%3d&DocType=XSrYUm%2fd4jBThIkAURL7Y53qJEXwiSOa> [https://perma.cc/VD9Y-3VJZ].

113. Gregory Krieg, *Billionaire Pritzker, Incumbent Rauner to Face Off in Illinois Governor's Race*, CNN (Mar. 21, 2018), <https://www.cnn.com/2018/03/20/politics/illinois-governor-pritzker-wins-rauner-ives-close/index.html> [https://perma.cc/4J77-YLVB].

114. *See supra* note 10 for fundraising totals in the race.

as contributions, and gave \$57.4 million to his own campaign.<sup>115</sup> Notably, \$22 million of that \$24 million was from a single donor.<sup>116</sup> Pritzker raised only an estimated \$1.9 million from other individuals which would not otherwise have been available as contributions, but gave an unprecedented \$171 million to his own campaign. The average amount raised above limits (not including self-financing contributions) for Rauner was an estimated \$573,958; for Pritzker, it was an estimated \$36,622.<sup>117</sup> Independent expenditures reported in 2018 were fairly modest — about \$2 million supported Rauner with just under \$1 million attacking Pritzker, while only about \$63,000 supported Pritzker and about \$32,000 attacked Rauner.<sup>118</sup>

## 2. 2015 Mayoral Election

Rahm Emanuel's bid for re-election as Mayor of Chicago in 2015 drew media attention for several reasons. Chief among them was his reputation as a fundraiser<sup>119</sup> and the unprecedented runoff by the unexpectedly strong challenge from "Chuy" Garcia.<sup>120</sup> Limits were lifted when an underdog candidate in the first election filed a self-funding notice in October 2014;<sup>121</sup> they remained off in the subsequent run-off election because of independent expenditures in support of Emanuel.<sup>122</sup> In total, Emanu-

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115. See Appendix; see also *supra* note 97 for methodology.

116. The single donor was Ken Griffin.

117. See Appendix; see also *supra* note 97 for methodology.

118. *Race for Illinois Governor*, ILL. SUNSHINE, <https://illinoissunshine.org/contested-race-detail/gubernatorial-0/#32762> [<https://perma.cc/34PE-D3T9>] (last visited Mar. 9, 2019).

119. Tina Daunt, *Rahm Emanuel Tapped to Raise Big Dollar Donations for Obama Super PAC*, HOLLYWOOD REP. (Sept. 5, 2012), <https://www.hollywoodreporter.com/news/obama-dnc-rahm-emanuel-donations-pac-368186> [<https://perma.cc/3E5B-SMYB>].

120. John Byrne, *Challengers Continue to Lag Behind Emanuel on Fundraising*, CHI. TRIB. (Jan. 16, 2015), <http://www.chicagotribune.com/news/local/breaking/ct-mayoral-campaign-finance-met-20150116-story.html> [<https://perma.cc/A234-Y9W2>].

121. John Byrne, *Campaign Contribution Limits Off in Chicago Mayor's Race*, CHI. TRIB. (Oct. 14, 2014), <http://www.chicagotribune.com/news/local/politics/chi-campaign-contribution-limits-off-in-chicago-mayors-race-20141014-story.html> [<https://perma.cc/5R3P-VPWY>]; see also *Notification of Self Funding, William J. Kelly*, ILL. ST. BOARD ELECTIONS (Oct. 14, 2014), <https://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=XC137zJnG%2fM%3d&DocType=XSrYUm%2fD4jBThIkAURL7Y53qJEXwiSOa> [<https://perma.cc/5R3P-VPWY>].

122. *Independent Expenditure Committee Disclosure List*, ILL. ST. BOARD ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/IndependentExpenditureList.aspx?CanElectionID=NGD2sKwDK2lbeKPSR26xnA%3d%3d&Election=E2j8GPguFMetikTG23D0fQ%3d%3d> [<https://perma.cc/84GX-VZH3>] (last visited Mar. 9, 2019).

el raised about \$23.4 million, while Garcia raised about \$9.3 million.<sup>123</sup> From individuals, Emanuel raised about \$16.1 million, while Garcia raised about \$1.1 million.<sup>124</sup>

Garcia appears to have taken only \$116,145 above the limits from individuals during the timeframe of the 2015 race.<sup>125</sup> Emanuel, however, raised an estimated \$7.5 million from individuals that otherwise would have been unavailable.<sup>126</sup> Further, independent expenditures in the 2015 mayoral race were not insignificant. Independent expenditures filed with the Board of Elections supporting Emanuel during a broad timeframe around the election totaled about \$1.15 million; surprisingly, Garcia benefited from about \$2.2 million of independent expenditures.<sup>127</sup>

### 3. 2016 General Assembly Races

An important caveat to looking at *individual* contributions in these legislative races is that party money often predominated in the state data. In Illinois, political parties can give unlimited money to candidates in general elections,<sup>128</sup> and in 2016 they often contributed hundreds of thousands of dollars in races where only a few thousand dollars were raised from individuals. For example, Mike Babcock, Republican candidate for the 111th Illinois state congressional district, raised only a few tens of thousands of dollars from individuals, but took in over \$2 million in party money.<sup>129</sup> Additionally, labor unions and corporations were sometimes active in races in which individual contributions did not play a substantial role.

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123. *Garcia, Jesus (Chuy)*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/entity-details?eid=28299070&default=candidate> [https://perma.cc/36LP-TRQU] (last visited Mar. 9, 2019); *Emanuel, Rahm*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/entity-details?eid=16565480&default=candidate> [https://perma.cc/EB35-N622] (last visited Mar. 9, 2019).

124. See Appendix; see also *supra* note 97 for methodology.

125. See Appendix; see also *supra* note 97 for methodology.

126. See Appendix; see also *supra* note 97 for methodology.

127. *Independent Expenditure Search*, ILL. ST. BOARD ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/IndependentExpenditureSearchChoice.aspx> [https://perma.cc/K56J-KZDU] (last visited Mar. 9, 2019).

128. *Contribution Limits*, ILL. ST. BOARD ELECTIONS, CAMPAIGN DISCLOSURE DIVISION, <https://www.elections.il.gov/Downloads/CampaignDisclosure/PDF/Contribution%20Limits.pdf> [https://perma.cc/Z739-SVJJ] (last visited Mar. 9, 2019).

129. *Babcock, Mike*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/show-me?c-t-eid=6700685&c-t-id=221201#|1|gro=d-et> [https://perma.cc/DM9D-UKGB] (last visited Mar. 9, 2019).

In 2016, there were twenty-one limits-off races in the General Assembly.<sup>130</sup> In all but one race, limits were lifted by independent expenditures. The limits in the remaining race were lifted by a self-funding candidate. Out of these twenty limits-off races, only six resulted in either candidate actually subsequently raising above the limit from individuals. In the other fourteen, neither candidate appeared to raise above the limits from individuals.<sup>131</sup>

Collectively, the six races in which candidates were actually able to raise above the limit from individuals signify that the law does not tend to help candidates fight money-backed opponents. In all six races, the benefit of additional fundraising from individuals went to one candidate alone. In four of the six races, the beneficiary of the lifting of limits was *not* the candidate who had actually triggered limits-off: rather, it was an opponent.<sup>132</sup> Thus, in only four of twenty-one limits-off races did the law result in at least *some* numerical individual fundraising advantage for the *opponent* of a money-backed candidate in the manner that the Illinois legislature had imagined; in two others, it operated in the reverse manner and allowed the money-backed candidate to raise more. The most raised above the limits in one race was \$38,000, while the least was \$4,600. The per-candidate average fundraising from individuals among all six races was \$50,438.<sup>133</sup>

But knowing that a candidate derived *some* numerical fundraising benefit from the lifting of limits raises a second question: what effect did it have on the fundraising gap between candidates? One can calculate an estimate of how much the proportional gap of individual fundraising narrowed — essentially determining how much the candidate who actually benefitted was

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130. For these races, the author specifically used the one-cycle limit (that is, \$5,400 rather than \$10,800) for races where limits were lifted after the primaries, simply because there was so little primary activity. Estimates were derived from data from the Illinois State Board of Elections. See *Contribution Limits Off Search*, ILL. ST. BOARD ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/ContributionLimitOffElecSelect.aspx> [<https://perma.cc/6M24-TV7N>] (last visited Mar. 9, 2019).

131. See Appendix; see also *supra* note 97 for methodology.

132. In an additional fifth race, the Senate 23rd, the State Board had determined that both candidates had triggered the lifting of limits via independent expenditures, therefore this race is not counted as one benefitting the opponent of the lifter. See *Board Determination*, ILL. ST. BOARD ELECTIONS (Oct. 20, 2016), <https://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=MxsNw76DqRR%2f%2blclxw0%2bKQ%3d%3d&DocType=eVGDNjRrPDvLSdB8z4AXuKpK4v1wlZlc3HQwKeMLJoZkEtp3%2fZzGXg%3d%3d> [<https://perma.cc/5CV5-PZBMJ>].

133. See Appendix; see also *supra* note 97 for methodology.

able to either narrow the gap with their opponent or expand it, gaining even more of a fundraising advantage. For this analysis, the 2016 “above the limits” calculations in the previous sections were subtracted from total individual contributions for the same time period to arrive at estimated totals of how much would have been available without the lifting of limits. This was then used to create two sets of ratios for each race: first, a fundraising gap “without the law,” and second, a fundraising gap of total individual contributions (what was raised with the law in place). A ratio of 1 would denote no gap in fundraising from individuals.

In four of those six races, the lifting of limits expanded the fundraising gap, regardless of whether it helped the candidate who lifted limits or their opponent. In the remaining two races, the gap was narrowed: in the Senate 28th and 31st, the ratio of contributions went from .87 to .88 and from .83 to .92, respectively.<sup>134</sup> In both of those races, the candidate for whose benefit limits were lifted was the candidate empowered to raise above limits, and in the 28th, the candidate was able to overtake their opponent in individual contributions.

In the four races where the lifting of limits expanded the fundraising gap, three were races where the candidate empowered to raise above the limits was *not* the candidate who had triggered the lifting of limits. However, in all three cases the empowered candidate would have had a fundraising advantage even without the lifting of limits, and so was able to expand that gap. The contribution gap in the House 111th race went from a .28 ratio gap to .20, the 72nd race went from .22 to .17, and the Senate 49th race went from .55 to .39.<sup>135</sup> Finally, the lifting of limits for the Senate 23rd was based on expenditures benefitting both candidates.<sup>136</sup> The individual contribution gap in that race went from

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134. See Appendix; see also *supra* note 97 for methodology. The Senate 28th was as follows: \$19,400 raised above the limits; compared to a total contributions gap of \$73,639:\$83,766. The Senate 31st was as follows: \$4600 raised above the limits; compared to a total contributions gap of \$50,523:\$46,682.

135. Calculations on file with the author. See Appendix. The House 111th was as follows: \$18,400 raised above the limits; compared to a total contributions gap of \$14,275:\$70,250. The House 72nd was as follows: \$18,400 raised above the limits; compared to a total contributions gap of \$86,806:\$14,500. The Senate 49th was as follows: \$19,400 raised above the limits; compared to a total contributions gap of \$26,651:\$67,545.

136. See *supra* note 132.

.96 to .51 — fundraising above the limits had a dramatic effect in that race.<sup>137</sup>

Independent expenditures in the six races<sup>138</sup> where candidates actually raised above limits remained prominent. In all six, expenditures were significantly higher than the amounts raised above the limits. The amounts of independent expenditures ranged from \$142,019 (in a relatively low-money race) to \$1,007,743. The average of all six was \$385,872.33.

Thus, in 2016 legislative races, only a handful of limits-off races actually resulted in candidates fundraising above the individual limits, and in only two races did it actually narrow the fundraising gap. In three races, the law did in fact allow candidates to raise more money because their opponent was backed by independent expenditures, but in all three of those races, the empowered challenger already had an individual fundraising advantage. Independent expenditures were moderately high in all races where candidates were actually able to raise above individual limits.

#### 4. 2014 General Assembly Races

An analysis of contested state legislative races in 2014 by Citizens for Responsibility and Ethics in Washington (CREW), revealed that only two out of sixteen limits-off races actually allowed candidates to raise above limits, and in those cases, they only raised a few thousand dollars above those limits.<sup>139</sup> Challengers in limits-off races were not especially benefitted by the law in the way that Illinois originally contemplated — only five of twenty-two challengers to limits-off candidates were enabled to

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137. Calculations on file with the author. See Appendix. The Senate 23rd was as follows: \$38,800 raised above the limits; compared to a total contributions gap of \$76,375:\$39,250. This was the race in which the Board had determined that both candidates had triggered the lifting of limits, see *supra* note 132.

138. All independent expenditure data for this calculation were derived from Illinois State Board of Elections disclosures double-checked against data from FollowTheMoney.org. See also *Independent Expenditure Search*, ILL. ST. BOARD ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/IndependentExpenditureSearchChoice.aspx> [<https://perma.cc/6GK5-CXF4>] (last visited Mar. 9, 2019).

139. Walker Davis, *How an Illinois Fairness Measure Backfired*, CREW (Feb. 2, 2016), <https://www.citizensforethics.org/how-an-illinois-fairness-measure-backfired/> [<https://perma.cc/R9TK-T6FL>].

receive contributions above the limit, and only two of those raised more than a few thousand over the limits.<sup>140</sup>

## B. CONCLUSIONS FROM RECENT ELECTIONS

Though there are significant limitations to the analysis above, it can be a useful empirical starting point from which to draw some tentative conclusions about the utility of the limits-off law. The first is that the limits-off provision was, in the main, inconsequential in recent races that were not high-profile and statewide. In those races where it mattered most — the gubernatorial and mayoral races — the limits-off provision allowed candidates to raise millions which otherwise would not have been available from a handful of individuals. Additionally, recall that the purpose of examining the Illinois law was two-fold: first, to evaluate the scholarly concern with the ordering and flow of money between contributions and independent expenditures; and second, to evaluate Illinois' aim of levelling the playing field. Though these two often overlap, they shape the analysis of the data presented above in important, distinct ways.

The first question is essentially whether the law had a “hydraulic” effect — whether the lifting of limits seemed to encourage contributions. The data presented here suggests that this effect is not present in low-profile, legislative races. The fact that, in 2016, legislative candidates were able to raise above the limits for individuals in only a minority of races where limits were lifted (despite that virtually all lifting of limits was triggered by independent expenditures themselves) belies the idea that the lifting of limits is enough to push independent spending money into contributions — at least, in these relatively low-profile legislative races. That is, in legislative races where independent expenditures were generally at least moderate, and sometimes quite prominent, the typical result was that the lifting of limits had absolutely no impact on individual contributions for *either* candidate. A more scientific statistical analysis of the independent expenditure data could determine whether there was a relationship in a given race between expenditures and contributions. But at a glance, the only races where the lifting of limits seemed to matter were those high-profile, statewide races.

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140. *Id.*

The second question is whether the data demonstrates that the law serves the state's apparent interest. The chief sponsors of the law imagined that it would allow candidates to raise more from individuals when they were facing an opponent backed by independent expenditure money.<sup>141</sup> In those few races where it did, it sometimes increased contributions for the candidate backed by *outside spending*. Candidates facing a money-backed opponent did reap some small, but appreciable, fundraising benefits from individuals, yet with close to the same frequency, wealth-backed candidates were empowered to raise even more.

The reality in Illinois is that in idiosyncratic, high-profile races, the lifting of limits appears to have opened the door for large contributions from a concentration of small, wealthy backers. The law does not appear to be benefitting "besieged" candidates the way that the legislature intended it to from the outset, except in a very small number of races. Recent races have given few convincing reasons to believe that more contributions are having the kind of anti-distortive effect or any "levelling of the playing field" desired by legislators anxious about Super PAC money.

#### IV. REFORM AND THE FAILURES OF LIMITS-OFF

This Part of the Note builds on the analysis in the previous Part to offer suggestions for reform of campaign finance law in Illinois in a way that might better serve the goals of the law's supporters and of those scholars who worry about the utility of contribution limits.

If Illinois believes that contribution limits hamstring candidates with a base of medium-sized contributor support and prevent them from "defending themselves" against outside spending, then it is not clear that a limits-off provision is the most appropriate remedy. For one, when a strong candidate faces a wealthy self-funder like Rauner or a strong fundraiser like Emanuel, that opponent will be able to *outraise* the candidate as easily as they could *outspend* them. The imbalance of strategic control in the law<sup>142</sup> makes limits essentially voluntary but only for those with money — candidates, contributors, or spenders — who make the decision to open the contribution floodgates at the time of their

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141. See *supra* note 82.

142. To be sure, this imbalance is a result of *Davis*, and cannot be legislated around. See *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008).

choosing. Because these actors keep a toe in the waters of outside spending at all times, they will only tend to do so when they think it is to the advantage of the candidate with more and wealthier backers. The 2014 gubernatorial race dramatically exhibited this when Rauner loaned his campaign one dollar under the limit very early on in the race, setting up the option to lift limits at any time.<sup>143</sup> Republicans do not have a monopoly on this tactic: in 2018, Speaker Madigan, a Democrat, used PAC and union contribution money to loan his campaign \$100,001 (\$1 over the threshold) and took in \$8 million almost immediately after limits were lifted across twenty-three large contributions.<sup>144</sup> That the lifting of limits frequently expanded rather than narrowed the fundraising gap further reinforces the claim that the limits-lifting trigger can be used in the strategic interests of the wealth-backed candidate.

As a result of this imbalance, particularly where limits are lifted by a large expenditure or a large self-funding loan, the self-funder's challengers are unlikely to reap any benefit by the lifting of limits, except in those rare instances where two disproportionately money-backed candidates run against each other. Illinois inherited perhaps the clearest example of this phenomenon in U.S. history in the 2018 gubernatorial race, in which a combined \$286 million was raised, with \$257 million of it going to the two major party candidates.<sup>145</sup> In these rare wealth versus wealth races, one might prefer that money go directly to the candidates, so the lifting of limits might make sense in those contexts.

Even accepting that contested stipulation, two unexpected consequences of the Illinois scheme deserve consideration. First, such races rarely occur in a vacuum — voluntary limits could help wealthier candidates win primaries and nominations, a process that can sometimes take place before all independent expenditure groups are interested in the race or even formed. The primary, in addition to other, more informal sorting processes,

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143. *Notification of Self Funding, Bruce Rauner*, ILL. ST. BOARD ELECTIONS (Nov. 13, 2013), <https://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=OAp3BOAQj5s%3d&DocType=XSrYUm%2fd4jBThIkAURL7Y53qJEXwiSOa> [<https://perma.cc/P4KA-HZT4>].

144. Carol Marin, *Dollars & Sense: The \$100,000 Question — How One Check Can Produce Millions for Politicians*, N.B.C. CHI. (Dec. 18, 2018), <https://www.nbcchicago.com/news/local/how-one-check-can-produce-millions-for-politicians-503070041.html> [<https://perma.cc/86LX-WQ25>].

145. *2018 State Races*, ILL. SUNSHINE, <https://illinoissunshine.org/contested-races/?branch=G> [<https://perma.cc/Y85R-KQKC>] (last visited Mar. 20, 2019).

might enact a self-fulfilling prophecy wherein higher limits beget races between two wealthy candidates. Second, limits-lifting might erode confidence in the electoral process or give rise to the appearance of corruption,<sup>146</sup> where it encourages astronomical contributions. When a wealthy individual donates a huge sum to a Super PAC, even if that donation implies something nefarious in the political process, it might not carry the same public connotations as a huge donation to the candidate themselves.<sup>147</sup> The emphasis on self-funding might similarly influence the public view of elections. When the candidates are actively trying to beat an astronomical moving target to stay competitive, the “ballpark” of campaign finance inflates and the voting public might absorb the notion that the financial barrier to entry into politics in their state has shifted exponentially.

This latter theory would be difficult to prove empirically, but it is a strong thread in public discussions about the recent gubernatorial elections. In 2014, Rauner won as an opposition billionaire propelled by his own money and that of his wealthy friends. In 2018, his challenger was an opposition billionaire propelled mostly by his own money and, to some extent, that of his wealthy friends. This trend has become a recurring topic of discussion in Illinois political media and in popular discussion about Illinois politics. As the *Sun-Times* put it, “how do you run for governor in Illinois if you are not a billionaire?”<sup>148</sup> The 2018 gubernatorial race unmistakably reflects the notion that massive contributions from wealthy donors and huge loans from self-funding candidates to their own campaigns have both become part of the landscape of gubernatorial politics in Illinois. One should avoid generalizing from one election, to be sure, but it is difficult to imagine a stronger signal of the influence of personal wealth than Rauner’s loss to a candidate who beat him at his own game.

The Illinois law should, at a minimum, be amended to better suit its goals. If Illinois wants to empower Davids against Goli-

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146. *Buckley v. Valeo*, 424 U.S. 1, 27 (1976).

147. The notion that contributions pose a relatively higher risk of the appearance of corruption than independent expenditures has long been a feature of Supreme Court jurisprudence. *See, e.g., Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 357 (2010) (“The *Buckley* Court, nevertheless, sustained limits on direct contributions in order to ensure against the reality or appearance of corruption. That case did not extend this rationale to independent expenditures, and the Court does not do so here.”).

148. Editorial, *How Do You Run for Governor in Illinois If You Are Not a Billionaire?*, CHI. SUN-TIMES, (Jan. 17, 2018), <https://chicago.suntimes.com/opinion/governor-in-illinois-billionaire-pritzker-rauner-kennedy-biss/> [<https://perma.cc/MCQ8-8ABD>].

aths in outside spending, and thinks that such candidates have an untapped reserve of medium-sized donations waiting for them, it should simply either tick up contribution limits across the board or amend the statute such that limits are not lifted completely, but simply doubled or tripled. Keeping a numerical cap, even if it is modestly higher than most contribution limits, would avoid scenarios in which a single candidate is able to take in tens of millions from individual donors. Even if that scenario is the exception, the lifting of limits is not apparently justified by any appreciable benefit in races that are *not* exceptional.

On the other hand, if Illinois thinks that outside spending distorts elections and that small, local donors are the legitimate lifeblood of support, it should abandon the limits-off law in favor of an aggressive public matching funds scheme. In a public matching funds program, candidates have the option to accept stricter limits on how much they can raise (and in its more robust forms, how much they can spend). In exchange, the relevant unit of government will match small contributions many times over — for example, the New York City program currently matches at an 8:1 ratio up to \$2000 per contributor in some races.<sup>149</sup> This makes raising small amounts from a much larger number of contributors a much more rewarding strategy, and as a result, reduces reliance on wealthy donors, PAC money, and special interests in general.<sup>150</sup>

While it is true that participation is voluntary, and therefore wealth-backed candidates could simply opt-out, the New York City experience has been that wealth-backed candidates often choose to participate anyway. For example, even though Michael Bloomberg did not participate in 2009 when the program was much weaker,<sup>151</sup> Bill de Blasio, who has sometimes courted controversy for his strong connections with wealthy supporters,<sup>152</sup>

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149. *Candidate Services*, N.Y.C. CAMPAIGN FIN. BOARD., <https://www.nycffb.info/candidate-services/join/> [<https://perma.cc/7B9G-EQ7X>] (last visited May 24, 2019).

150. See ANGELA MIGALLY & SUSAN LISS, BRENNAN CTR. FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 17 (2010).

151. Michal Barbaro & David W. Chen, *Bloomberg Sets Record for His Own Spending on Elections*, N.Y. TIMES (Oct. 23, 2009), <https://www.nytimes.com/2009/10/24/nyregion/24mayor.html> [<https://perma.cc/NW83-EN7V>].

152. J. David Goodman, *Mayor de Blasio Seeks Small Donations to Fill War Chest Amid Inquiries*, N.Y. TIMES (Jan. 16, 2017), <https://www.nytimes.com/2017/01/16/nyregion/mayor-de-blasio-seeks-small-donations-to-fill-war-chest-amid-inquiries.html?module=inline> [<https://perma.cc/92RU-BP9L>].

chose to participate in both 2013 and 2017.<sup>153</sup> Candidates who could easily opt out are not exactly candid about why they ultimately choose to participate, but one can speculate that the option is attractive because of public pressure to participate, the ability to reduce reliance on traditional fundraising, and because competitive pressures are reduced when one's opponent has accepted voluntary limits.

A public matching funds program, in combination with a repeal of the limits-off law, would better accomplish the purpose of "levelling the playing field" for candidates without Super PAC backing by amplifying the voices of a broad base of donors who do not have as much to give. Those examining the New York City system, considered a model for the implementation of similar programs,<sup>154</sup> have concluded that it reduced dependence on PACs,<sup>155</sup> increased candidate demand for and reliance on small donors,<sup>156</sup> and crucially, increased spending parity.<sup>157</sup> The program has also been found to increase the diversity of average income and of race in participants' fundraising base, and increased citizen participation in the election process.<sup>158</sup>

The Illinois legislature had an opportunity to adopt such a program in Senate Bill 1424, the plan introduced by State Senator Daniel Biss in February of 2017.<sup>159</sup> That plan would amplify the value and influence of each small donation to a candidate, allowing "besieged" candidates to fight against the influence of outside spending without opening the floodgates to outsized con-

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153. *Candidate List: 2013 Citywide Elections*, N.Y.C. CAMPAIGN FIN. BOARD, <https://www.nyccfb.info/follow-the-money/candidates/2013> [https://perma.cc/TK62-6CY5] (last visited Dec. 18, 2018); *Candidate List: 2017 Citywide Elections*, N.Y.C. CAMPAIGN FIN. BOARD, <https://www.nyccfb.info/follow-the-money/candidates/2017> [https://perma.cc/H323-6EBL] (last visited Feb. 11, 2019).

154. *New York City's Matching Funds Program*, BLUEPRINTS FOR DEMOCRACY, <http://www.blueprintsfordemocracy.org/model-matching-funds-program/> [https://perma.cc/YWM4-U349] (last visited Mar. 21, 2019).

155. Migally & Liss, *supra* note 150, at 17.

156. *Id.* at 13.

157. *Id.* at 19.

158. See *supra* note 154; see also SUNDEEP IYER ET AL., BRENNAN CTR. FOR JUSTICE, DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS (2012), <http://www.brennancenter.org/publication/donor-diversity-through-public-matching-funds> [https://perma.cc/L8LN-TA8B].

159. S.B. 1424, 100th Gen. Assemb. (Ill. 2017). The plan would be modelled after the New York City system and match at a 6:1 ratio, but apply only to statewide races. Participants would have to accept a \$25 million spending cap and accept no more than \$500 from individuals. *Biss Plan for Public Campaign-Money Matching Fails in Senate*, FOX ILL. (May 4, 2017), <https://foxillinois.com/news/local/biss-plan-for-public-campaign-money-matching-fails-in-senate-05-04-2017> [https://perma.cc/QJ78-9PMC].

tributions. Biss' proposal, supported by campaign finance reform and good government groups in the state,<sup>160</sup> would make the limits on individual contributions stricter for candidates who opt-in, but would match local individual contributions at a 6-to-1 rate.<sup>161</sup> The scheme would only apply to statewide races. The plan stalled out in the legislature,<sup>162</sup> perhaps in part because it carries a modest tax burden and was considered close in time to the 2018 elections. After Pritzker's 2018 victory, campaign finance reform once again became a subject of renewed public discussion in Illinois.<sup>163</sup> No reform proposals have yet made it out of committee, though at least one proposal has been introduced in the Illinois legislature to repeal the limits-off provisions.<sup>164</sup>

## V. CONCLUSION

Ultimately, the Illinois statute is a reflection of constitutional constraints that leave little room to maneuver on campaign finance in ways that might be socially desirable. Illinois cannot lift limits asymmetrically, nor can it place meaningful restrictions on independent expenditures because of Supreme Court jurisprudence. Campaign finance reformers at the state level who might be concerned about independent spending face strong constraints — both political and constitutional — with which they must grapple. The analysis presented here can hopefully serve as a meaningful ad-hoc empirical view of how the limits-off law has functioned in Illinois and serve as a lodestar for further reform. The data above also provides a useful estimate of the impact of the contribution limits scheme on the ability and efficacy of campaign fundraising from individuals and an overview of the status of outside spending in those races where the law mattered. Finally, this Note has argued that the law is failing to achieve its purpose in low-profile races and has caused dramatic, unintended negative consequences in high-profile, statewide races. It has

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160. Bill Smith, *Senate Approves Biss' Small Donor Match Legislation*, EVANSTON NOW (May 16, 2017), <http://evanstonnow.com/story/government/bill-smith/2017-05-16/77651/senate-approves-biss'-small-donor-match-legislation> [<https://perma.cc/T9VT-8KGR>].

161. Ill. S.B. 1424.

162. *Biss Plan for Public Campaign-Money Matching Fails in Senate*, *supra* note 159.

163. *The Latest: Pritzker Promises Campaign Finance Reform*, ASSOCIATED PRESS (Nov. 7, 2018), <https://www.apnews.com/bfafa7d810794a73aeb10d347acf298d> [<https://perma.cc/ZNP7-QYIE>].

164. H.B. 1446, 101st Gen. Assemb. (Ill. 2019).

offered suggestions to amend or replace the law so that it might better suit its aims.

Curtailling the influence of outside spending is a sympathetic policy goal, but after nearly a decade of experience, there is little reason to believe that Senator Harmon's argument — "it's only fair that the candidates competing with [a] Super PAC be able to raise enough money to run a campaign"<sup>165</sup> — has carried the day. The limits-off law does not seem to be making races more fair, and when it actually does help candidates raise more than a little bit of money, it appears to let them raise much more than is needed to run a campaign. The shifting political winds in Illinois, as well as the ever-increasing scrutiny of this particular provision, both suggest that reform is simply a matter of time; with a decade of experience under its belt, there is cause for optimism that the state will find more effective ways to diminish the influence of wealth in Illinois politics.

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165. See S. Transcript, 126th Legis. Day, 97th Gen. Assemb. at 26 (Ill. 2012).

## APPENDIX

TABLE 1: 2016 GENERAL ASSEMBLY LIMITS-OFF RACES<sup>166</sup>

District	Raised Above Limits <sup>167</sup>	Fundraising Gap With Limits	Fundraising Gap "Without" Limits	Change in Gap
20th	\$0			
45th	\$0			
46th	\$0			
56th	\$0			
59th	\$0			
62nd	\$0			
63rd	\$0			
71st	\$0			
76th	\$0			
79th	\$0			
81st	\$0			
82nd	\$0			
95th	\$0			
112th	\$0			
114th	\$0			
Sen 31st	\$4,600	0.83	0.92	+0.09
72nd	\$18,400	0.21	0.17	- 0.40
111th	\$18,400	0.27	0.20	- 0.70
Sen 28th	\$19,400	0.87	0.88	+0.01
Sen 49th	\$19,400	0.55	0.40	-0.15
Sen 23rd	\$38,800	0.96	0.51	- 0.45

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166. As stated in the text, these totals involve only contributions from individuals.

167. Estimated totals using the methodology described in *supra* note 97.

TABLE 2: 2014 GUBERNATORIAL RACE

Candidate	Total Raised from Individuals <sup>168</sup>	Raised Above Limits from Individuals Other than Self <sup>169</sup>	Self-Financing Contributions Above Limits	Average Contribution Above Limits from Individuals Other than Self
Rauner	\$71.1 mil	\$23 mil	\$37,526,000	\$92,813
Quinn	\$6 mil	\$2.9 mil	\$0	\$45,142
Dillard	\$490,382	\$7,157	\$107,591 <sup>170</sup>	\$3,478
Rutherford	\$927,774	\$27,128	\$0	\$6,782

TABLE 3: 2018 GUBERNATORIAL RACE

Candidate	Total Raised from Individuals <sup>171</sup>	Raised Above Limits from Individuals Other than Self <sup>172</sup>	Self-Financing Contributions Above Limits	Average Contribution Above Limits from Individuals Other than Self
Rauner	\$84.3 mil	\$24,680,199	\$57,450,000	\$573,958
Pritzker	\$174.6 mil	\$1,904,329	\$171,500,034	\$36,622
Biss	\$4.8 mil	\$2,379,155	\$0	\$44,489
Kennedy	\$7.8 mil	\$1,363,083	\$3,329,124	\$26,213
Ives	\$4 mil	\$3,454,973	\$0	\$314,088

168. Totals from *Individuals' Contributions to Candidates in the IL GOVERNOR / LIEUTENANT GOVERNOR 2014 Race*, FOLLOWTHEMONEY.ORG, [https://www.followthemoney.org/show-me?dt=1&c-r-id=57732&f-fc=1%2C2%2C3&d-et=2#{1|gro=c-t-id \[https://perma.cc/4P4G-F7GZ\]](https://www.followthemoney.org/show-me?dt=1&c-r-id=57732&f-fc=1%2C2%2C3&d-et=2#{1|gro=c-t-id [https://perma.cc/4P4G-F7GZ]) (last visited Apr. 28, 2019).

169. Estimated totals using the methodology described in *supra* note 97.

170. A large contribution from Dillard's running mate is here counted as self-financing.

171. Totals from *Individuals' Contributions to Candidates in the IL GOVERNOR / LIEUTENANT GOVERNOR 2018 RACE*, FOLLOWTHEMONEY.ORG, [https://www.followthemoney.org/show-me?dt=1&c-r-id=78853&f-fc=1,2,3&d-et=2#{1|gro=c-t-id \[https://perma.cc/J6NZ-UY84\]](https://www.followthemoney.org/show-me?dt=1&c-r-id=78853&f-fc=1,2,3&d-et=2#{1|gro=c-t-id [https://perma.cc/J6NZ-UY84]) (last visited Apr. 28, 2019).

172. Estimated totals using the methodology described in *supra* note 97.

TABLE 4: 2015 MAYORAL RACE

Candidate	Total Raised from Individuals <sup>173</sup>	Raised Above Limits from Individuals Other than Self <sup>174</sup>	Self-Financing Contributions Above Limits	Average Contribution Above Limits from Individuals Other than Self
Emanuel	\$16,156,078	\$7,560,773	\$0	\$50,405
Garcia	\$1,140,377	\$116,145	\$0	\$14,518

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173. Totals from FOLLOWTHEMONEY.ORG, *supra* note 123.

174. Estimated totals using the methodology described in *supra* note 97.