

LEGISLATIVE FINDINGS
Spokane Fair Elections Ordinance
Spokane City Council
Adam McDaniel

Subject:

This proposed ordinance establishes a Spokane Fair Elections program which sets regulations around campaign contributions, including contributions from City of Spokane contractors, public sector unions, and political committees.

*This briefing paper includes findings based on recognized governmental purposes of campaign finance regulation as well as ancillary information to supplement discussion of the City of Spokane's overall electoral system and historical campaign trends.

Background:

Spokane voters overwhelmingly supported campaign contribution limits and contribution disclosure. As evidenced by their opposition to the *Citizens United* Supreme Court ruling, voters increasingly perceive corruption in our electoral process.

Spokane voters supported Initiative-276 which established the Public Disclosure Commission by more than 66% and Initiative-134 (which set campaign contribution limits) by 70%¹. Spokane voters also supported Initiative-735 which requested that Washington's Congressional Delegation propose a constitutional amendment that reserves constitutional rights for people over corporate rights. Spokane voters supported that Initiative with 62% of the vote and significant majorities² in all Council Districts. Spokane voters joined the Spokane City Council³, a majority of the electorate in Washington, and 80% of Americans⁴ who supported overturning the *Citizens United* decision (DeSilver & van Kessel, 2015).

Each of these initiatives reflected poignant questions for Spokane voters:

1. Does the status-quo campaign finance system prevent the opportunity for every candidate, potential candidate, voter, and issue to participate in the political process?
2. Does the inability to identify wealthy donors who potentially influence our elections crowd out meaningful political debate and degrade the political speech of all willing participants, and thereby creating opportunities for potential corruption?

Spokane voters overwhelmingly answered 'yes' to these questions.

¹ Source: Washington State Archives – Eastern Region Branch

² District 1 – 62.9%; District 2 – 64.4%; District 3 – 59.6%

³ Spokane City Council Resolution 2016-0083

⁴ Washington Post-ABC News Poll, February 2010; Bloomberg Poll, September 2015

Campaign contribution limits in the City of Spokane as a “percentage of median household income” are higher than every large city in the state of Washington except Yakima.

The Washington State Public Disclosure Commission (PDC) sets the campaign contribution limits in the state of Washington for all state, legislative, judicial and local races unless a jurisdiction adopts limits lower than the state limits. The PDC sets limits biennially that reflect “changes in economic conditions”⁵ via the inflationary index recommended by the Washington State Office of Financial Management. The current contribution limits for candidates running for the offices of Mayor and City Council Member in Spokane, which were set in 2016, are \$1,000 per election. The limit is set at \$2,000 for Spokane Municipal Court judicial candidates. Contribution limits fixed by the PDC for local office have traditionally grown by \$50 or \$100 and \$100-\$200 for judicial elections every biennium.

“This isn’t Shark Tank. This is your democracy. But as the bidding grows higher, your voice gets lower. You’re simply priced out of the marketplace of ideas. That is, unless you are one of the ultra-wealthy.” – Former Congressman Steve Israel

Many municipal governments across the United States, including Seattle⁶ and Issaquah⁷ in Washington, have developed campaign finance regulations with differing contribution limits. The new contribution limits in these jurisdictions have not had a detrimental impact on the amount of money candidates have been able to raise for their campaigns⁸. Brennan Center research has shown that low contribution limits lead to more competitive races, increase the likelihood of challengers defeating incumbents, and reduce the fundraising advantages inherent for incumbents (Torres-Spelliscy, Williams, & Stratmann, 2009). Since 2009, City of Spokane incumbents have held an average fundraising advantage of more than 3 to 1 against their challengers.

Spokane has a higher contribution limit as a percent of median household income than every other large city in Washington state; except Yakima. Phrased another way, a “max out” contribution in one election (\$1,000) is 2.3% of the median household income in Spokane. A \$500 contribution limit per election, as proposed by the Spokane Fair Elections Code, would place the city of Spokane in the middle of top 10 most populated Washington cities and between

⁵ WAC 390-05-400

⁶ Seattle Municipal Code 2.04

⁷ Issaquah Municipal Code 1.30

⁸ 2017 Seattle Mayor Candidate Jenny Durkan has raised \$928,046 as of November 2017, with a \$500 total contribution limit. For comparison in 2013 with a contribution limit of \$700, former Mayor Ed Murray raised \$891,189.01 while his challenger, former Seattle Mayor Mike McGinn, raised \$475,634.77. Durkan has also outraised the 2009 campaign totals from Mike McGinn and former Mayor Greg Nickels who also had a contribution limit of \$700.

For questions on these findings, contact Adam McDaniel (amcdaniel@spokanecity.org)

regional competitors Boise and Salt Lake City for contribution limits as a percentage of household income.

<u>City</u>	<u>City Council Individual Contribution Limit per Election</u>	<u>% of 2015 Median Household Income⁹</u>
Spokane Washington	\$1000	2.3%
<i>Spokane (Proposed by Spokane Fair Elections Code)</i>	\$500	1.17%
Seattle Washington	\$500 (total)	0.7%
Tacoma Washington	\$1000	1.92%
Vancouver Washington	\$1000	1.90%
Bellevue Washington	\$1000	1.05%
Kent Washington	\$1000	1.66%
Everett Washington	\$1000	2.01%
Renton Washington	\$500	0.77%
Federal Way Washington	\$1000	1.79%
Yakima Washington	\$1000	2.45%
San Francisco California	\$500	0.48%
Anchorage Alaska	\$500	0.63%
Fort Collins Colorado	\$75	0.11%
Boise Idaho	\$1000	1.92%
Salt Lake City Utah	\$750	1.13%
Missoula Montana	\$330	0.77%

Contribution limit as a percentage of median household income increased in 2011, 2013, and 2015¹⁰. There were no local office contribution limits prior to the 2011 campaign cycle.

⁹ American Community Survey Data

¹⁰ 2011 – 2.00%; 2013 – 2.28%; 2015 – 2.3%

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Only 29%¹¹ of donors who contributed over \$500 to candidates in elections between 2001 and 2017 came from Spokane. The Spokane donors who contributed over \$500 were a male majority (59%); overwhelmingly lived in Council District 2, the South Hill in particular (75%); and were predominantly white.¹²

The most recurring contributions over \$500 in elections between 2001 and 2017 came from political action committees, city

contractors, and City of Spokane public

sector unions.¹³ The dominance of white, affluent donors disadvantage candidates of color and may prohibit people of color, who lack access to the network of these wealthy donors, from running for office. The lack of this rich network makes it nearly impossible for an individual to compete in the “wealth primary”¹⁴ necessary to run a competitive campaign (Lioz, Stacked Deck, 2015). Additionally, people of color who lack this wealthy network seem less viable to the candidate recruiters of the political class and political parties.

LESS THAN 0.06% OF SPOKANE’S
POPULATION GAVE MORE THAN
\$500 TO CITY OF SPOKANE
POLITICAL CANDIDATES IN AN
ELECTION BETWEEN 2001 AND
2017.

*2016 CITY OF SPOKANE POPULATION (US CENSUS
BUREAU)

Campaign expenditures by Spokane Mayor and Spokane City Council candidates are growing, but voter turnout is falling.

Campaign expenditures by general election candidates for Mayor, City Council President, and all Council Districts in Spokane have increased significantly since 2007 although total general election votes for each office have remained flat, while total votes cast have declined.¹⁵ The city of Spokane increased in total population by 7.43% from 2007 to 2015¹⁶ and gained 20,000 more registered voters¹⁷. Despite the rise in population and a 50% increase in campaign expenditures, the number of citizens choosing to vote in City of Spokane elections dropped by 4,000.

The rising cost for political office candidates to be competitive limits the pool of candidates. Campaign expenditures are rising, but the number of voters continues to fall. Thusly, we must ask: What exactly is the money solicited and contributed actually buying?

¹¹ 130 of 441 donors

¹² Demographic voter information is notoriously hard to find. I utilized local political party resources to review this data.

¹³ Avista (21 donations), Washington State Council of County & City Employees (14 donations), Spokane Firefighters Local 29 (18 donations), Community Builders Trust PAC – Spokane Homebuilders Association (14 donations) Build East PAC – Association of General Contractors (13 donations), Spokane Tribe (7 donations), & Washington Association of Realtors (16 donations).

¹⁴ For information on the “wealth primary”, see Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary* (1993)

¹⁵ The City of Spokane Municipal Court was established in 2007-2008 with the first slate of appointed judges up for election in 2009. In 2009, candidates for Spokane Municipal Court Judge raised a combined total of \$12,811. The judges elected in 2009 (Mary Logan, Michelle Szambelan, & Tracy Staab) all ran unopposed in 2013 and only Judge Tracy Staab has drawn an opponent in 2017.

¹⁶ Source: Spokane Community Indicators

¹⁷ Source: Spokane County Elections Office

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<u>Year</u>	<u>Ballots Issued – General Election</u>	<u>Ballots Returned - General</u>	<u>Ballot Return % - General</u>	<u>Total Campaign Expenditures – General Election Candidates</u>
2007	100,011	56,968	56.96%	\$536,238.12
2009	109,447	55,939	51.11%	\$234,651.99
2011	111,945	63,194	56.45%	\$749,701.83
2013	118,817	50,073	42.14%	\$291,868.80
2015	120,278	52,128	43.34%	\$808,892.73
2017 ¹⁸	127,466	44,900	35.23%	\$213,130.04

Average¹⁹ contributions to Spokane City Council President and Spokane City Council candidates are rising but the median²⁰ and mode²¹ of the contributions are consistent.

	<u>Average Contribution – Spokane Council President General Election Candidates</u>	<u>Median Contribution – Spokane City Council President General Election Candidates</u>	<u>Mode Contribution – Spokane City Council President General Election Candidates</u>
2003	\$134.18	\$75	\$50
2007	\$152.67	\$75	\$50
2011	\$164.23	\$75	\$50
2015	\$231.50	\$100	\$100

<u>Year</u>	<u>Average Contribution – Spokane Mayor General Election Candidates</u>	<u>Median Contribution – Spokane Mayor General Election Candidates</u>	<u>Mode Contribution – Spokane Mayor General Election Candidates</u>
2003	\$225.76	\$100	\$100
2007	\$200.64	\$100	\$50
2011	\$182.14	\$75	\$50
2015	\$222.41	\$100	\$100

¹⁸ As of November 15, 2017

¹⁹ The average or ‘mean’ is the sum of all the contributions for the race divided by the total number of all contributions in that race. The mean is susceptible to outliers such as high and ‘maxed out’ donations.

²⁰ The ‘median’ is the middle contribution amount in the total sequence of all contributions of the race arranged in order of magnitude. Median is less affected by outliers such as ‘maxed out’ or high-dollar contributions.

²¹ The ‘mode’ is the most frequent contribution made in a race.

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The average contribution to general election candidates increased significantly in 2015 with the offices of Mayor, Council President, and Spokane City Council Member positions all crossing the \$200 average contribution threshold for the first time in the City’s electoral history; despite the median and mode hovering around the \$50 and \$100 mark. The most frequently occurring donation amount to a Spokane City Council candidate in all but one of the last nine campaign cycles was \$50. The growing divide between the average contribution, the maximum contribution set by the PDC, and the most reoccurring contribution represents a loss of competitive impact and efficacy for citizens making small donors at the expense of the wealthy, unions, corporations, and political action committees who can afford to financially contribute the (constantly growing) maximum contribution limit.

	<u>Average Contribution – Spokane City Council Member General Election Candidates</u>	<u>Median Contribution – Spokane City Council Member General Election Candidates</u>	<u>Mode Contribution – Spokane City Council Member General Election Candidates</u>
2001	\$157.28	\$100	\$50
2003	\$146.01	\$100	\$50
2005	\$190.42	\$100	\$100
2007	\$113.61	\$50	\$50
2009	\$122.99	\$50	\$50
2011	\$120.05	\$50	\$50
2013	\$130.02	\$50	\$50
2015	\$208.18	\$100	\$50
2017	\$197.68	\$100	\$50

Most Spokane citizens do not provide any financial contributions to their preferred candidates. The reduction of contribution limits creates an incentive for candidates to expand their outreach to new donors for smaller contributions to meet their campaign expenditure goals; thus increasing participation (Corrado, Malbin, Mann, & Ornstein, 2010). Greater participation prevents corruption by forcing a candidate beyond a narrow group of large individual, corporate, and union donors (Overton, 2012).

Political parties and Legislative District Committees made campaign contributions above the individual and PAC/Union contribution limits to candidates for Spokane Mayor and Spokane City Council, totaling \$65,700 in 2011 and \$14,290 in 2015.

Political parties and legislative district committees donated \$65,700 in 2011 and \$14,290 in 2015 above the individual and political committee contribution limit to nonpartisan City of Spokane candidates. These two entities have been accused by political opponents of serving as a conduit for donations from contributors who have met the individual contribution limits (Brunt, 2011). This process is called "earmarking." "Earmarking" is illegal per RCW 42.17A.460, yet political parties serve as an easy target for "earmarked" funds because they are not bound by a flat contribution limit but instead by a "per voter" formula²².

²² 2017: \$1.00 per registered voter per cycle

Although the Washington State Republican Party gave more in dollar amounts beyond the current campaign limits, the Spokane County Democratic Party and 3rd Legislative District Democratic Committee gave beyond the contribution limits more often²³.

Parties, legislative district committees, and associated party committees have given almost evenly to incumbents and challengers since 2009²⁴.

The Spokane Fair Elections Code proposed to bring political parties and legislative district committees under the contribution limits of individuals, corporations, and political committees.

“Out-of-cycle”²⁵ fundraising by Spokane Mayor and Spokane City Council candidates is growing, peaking at \$170,649 for general election candidates in 2015 – comprising more than 22% of their total contributions.

City of Spokane candidates up for election in the fall of 2015 began raising campaign cash in January 2012, three years and ten months before the general election date. Only Seattle candidates raised more money out of cycle (\$181,030.65) in the state of Washington in 2015, and there were six more candidates in Seattle than in Spokane. Incumbents have raised 96% of the money raised out of the election cycle since 2007. Potential candidates, witnessing the competitive advantage of long-term fundraising by incumbents, have begun filing with the Washington PDC earlier to begin building their war chests (Walters, City Council President Ben Stuckart has already filed to run for mayor — in 2019, 2016).

<u>Year</u>	<u>“Out-of-Cycle” Fundraising – Spokane General Election Candidates</u>
2007	\$11,858
2009	\$0
2011	\$17,925
2013	\$6,872.13
2015	\$170,649
2017	\$32,448

The Seattle City Council reduced the campaign cycle from 4 years to 2.5 years in 2012. (City of Seattle, n.d.). The City of Issaquah only allows candidates to receive campaign contributions during an election cycle. Issaquah defines their election cycle as January 1st of the year of the election until 14 days after the election²⁶.

²³ Since 2005, the Spokane County Democratic Party and 3rd Legislative District Democrats have combined to give \$9,299 over the individual contribution limit to local candidates. The Spokane County Republican Party has not given to any candidate. The Washington State Republican Party made the greatest contributions totaling \$62,000 but only gave to one candidate.

²⁴ Challengers: 6; Incumbents: 8

²⁵ Defined as campaign funds raised in the year(s) before the candidate appeared on the ballot.

²⁶ Issaquah Municipal Code 1.30.020

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- What is the purpose of having multi-year fundraising cycles for the City of Spokane elected offices?
 - The record in the general election for candidates raising funds out of their campaign cycle does not reflect a clear political advantage with 5 wins and 7 losses.

- Does raising money out of cycle create an opening for quid pro quo type corruption as a person or entity seeking favor from an elected official could make a contribution to the campaign of the elected official (or against them)?
 - Since 2003, twenty City of Spokane contractors²⁷, eleven lobbyists²⁸, and two public sector unions²⁹ made contributions to incumbents before the elected official's campaign reelection cycle even began.
 - Immediately following elections, City contractors made five contributions³⁰ and lobbyists³¹ made two contributions to candidates they had not donated to prior to the election. In fact, these contractors and lobbyists had donated to the ultimately unsuccessful candidates before the election, and only financially supported the successful candidates post-election.
 - In total from 2003-2015, candidates who won election raised \$76,210.33 after the date of their election³².

- Although candidates for any office face great political pressure to raise as much money as possible as quickly as possible, do the campaign outreach requirements of Spokane Mayor, Spokane City Council Member, or Spokane Municipal require the Congressional-style constant fundraising loathed by current and former elected officials (Israel, 2016)?
 - Fewer and fewer voters participate in City of Spokane elections every cycle despite growing campaign expenditures and unprecedented voter outreach avenues through social media and the internet.³³

The Spokane Fair Elections Code proposes limiting campaign fundraising to January 1st of the year before the candidate will be on the ballot until December 31st following the candidate's general election.

²⁷ Contractors: Baker Construction, Avista, Desautel Hege (DH), Frank Gurney Inc., Premera Blue Cross, CPM Development, Garco Construction, Moloney + O'Neill, Spokane Rock Products, Max J. Kuney Co, Kiemle & Hagoood, Wm. Winkler, CH2M Hill, Please Printing, SPVV Landscaping, Barr-Tech, Cameron Reilly, Allied Fire & Security, Spokane Tribe of Indians, Ashe Public Affairs.

²⁸ Lobbyists: Patrick Dunn & Associates, Washington 2 Advocates, Richard Little, Final Passage Inc., Ashe Public Affairs, PEMCO Insurance (Government Affairs), Gallatin Public Affairs (Amber Lewis & Jeff Bell), Chris Marr, Melissa Gombosky, Kathryn Hedrick

²⁹ IAFF Local 29 (Spokane Firefighters Union), Spokane Police Guild

³⁰ Avista (3 times), CH2M Hill, Allied Fire & Security (Terrill Hunt),

³¹ Gallatin Public Affairs (Jeffrey Bell), Ashe Public Affairs

³² Some candidates had debt that could have theoretically need to be paid off, however, the total debt by these same candidates only totaled \$33,755.07 leaving more than \$42,000 in 'non-allocated' contributions. The final reports for 2017 candidates had not been filed prior to publishing this document.

³³ See Anthony J. Corrado; Michael J. Malbin; Thomas E. Mann; Norman J. Ornstein, *Reform in an Age of Networked Campaigns* (2010)

City contractors have contributed more than \$88,000 in campaign contributions to current City of Spokane elected officials while receiving \$116 million in city contracts.

<u>City Contractor</u>	<u>Direct Contributions</u>	<u>Indirect Contributions (PAC, Political Party, Independent Expenditures)³⁴</u>	<u>Estimated City Contract Value Post-Donation to Current Elected Official³⁵</u>
Garco Construction	\$1,000	\$4,000	\$52,158,300.90
CH2M Hill	\$2,000	\$2,500	\$16,067,173.00
Clearwater Construction	\$500	\$0	\$14,009,107.75
Walker Construction	\$100	\$100	\$7,336,696.00
Spokane Rock Products	\$4,340	\$600	\$5,672,084.30
Barr-Tech	\$7,360	\$8,000	\$3,487,600.00
WM Winkler	\$1,950	\$0	\$3,380,177.52
Avista	\$11,850	\$2,645	\$2,837,580.61
Cameron-Reilly	\$750	\$0	\$1,772,499.11
Max J Kuney Co	\$3,600	\$1,000	\$1,413,381.38

From 2009 to 2017, City contractors donated more than \$93,500 to the current Mayor and Spokane City Council Members³⁶ and received more than \$116 million in city contracts post-donation³⁷. The total contributions rise over \$125,000 and \$132 million plus in City of Spokane contracts when indirect contributions, such as donations given to political action committees and political party committees that in turn are given to elected officials, are included.

³⁴ Indirect contribution sources: Build East PAC (Inland Northwest Association of General Contractors), Jobs & Opportunities Benefitting Spokane PAC, Coalition for Economic Vitality PAC, Inland Pacific Chapter Association of Builders & Contractors, Community Builders Trust PAC (Spokane Homebuilders Association), Washington State Republican Party, Spokane County Democratic Party, Spokane County Republican Party.

³⁵ Method: I took the date of the contribution to the campaign of a current elected official. I found all City contracts for services (via the City's public records database) for the period in which the elected official was an officer of the City. It does not distinguish between Council approved contracts and minor contracts typically executed by City administration. Contract dates are based on the last City action (including amendments and final payments). Contributions include the city contracted entity, its owner, and any executive officer of the entity. It does not include contributions made by lobbyists contracted on the entity's behalf or government affairs employees of the entity.

³⁶ Mayor David Condon, Spokane City Council Members: Ben Stuckart, Mike Fagan, Amber Waldref, Lori Kinnear, Karen Stratton, Candace Mumm. It does not include contributions from Breean Beggs as Beggs is appointed and has not yet completed a full campaign cycle.

³⁷ This contract figure does not include leases, real estate purchases, easements, and franchises.

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It is a widely held belief across America that making campaign contribution endears entities to government contracts and favorable policies (The New York Times | CBS NEWS Poll, 2015). The act does not typically involve outright bribery although prosecutors have investigated and juries have convicted officials for blatant quid pro quo across the United States (Holman, Pay-to-Play Restrictions on Government Contracting Under Assault, 2014). Instead, donations act as a purchase of access for consideration of a government contract (Holman & Wi, Pay-to-Play Restrictions on Campaign Contributions from Government Contractors, 2016, 2016). Spokane elected officials are subject to these same types of quid pro quo allegations. (Hill, 2017).

Federal, state, and city governments³⁸ have addressed perceived “pay to play” campaign contribution problems by placing contribution limits on public sector contractors. The following table contains selected information compiled by the Sightline Institute (Durning, HONEST ELECTIONS SEATTLE BANS “PAY TO PLAY”, 2015).

Government	Limits
<i>SPOKANE (Proposed by the Spokane Fair Elections Code)</i>	<i>No contributions from contractors or potential contractors who have received or will receive \$50,000 worth of City contracts for a period of 2 years.</i>
Seattle	No contributions from entities with contracts worth over \$250,000 in the prior two years.
San Francisco	No contributions from entities with contracts worth over \$50,000 in a fiscal year.
Oakland	No contributions from potential contractors with a contract of \$15,000 between the commencement of negotiations and 180 days after contract completion or termination of negotiations.
Los Angeles	No contributions from contractors with contracts worth more than \$100,000.
Houston	No contributions from entities with contracts of more than \$50,000 to any candidate during the period from day first bids were accepted through 30 days after award or decision not to award.

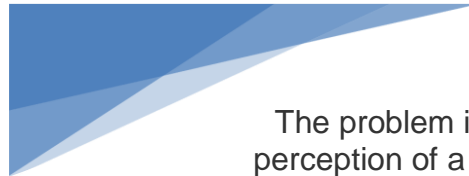
³⁸ Title 2: §441 (c)

The Spokane Fair Elections Code proposes prohibiting campaign contributions by contractors who have received an aggregate of \$50,000 in City of Spokane contracts within the last two years.

City of Spokane public sector unions have donated \$34,650 directly to the campaigns of current City of Spokane elected officials.

City of Spokane public sector unions, Local 270 (Washington State Council of County & City Employees), Spokane Police Guild, and Local 29 (Spokane Firefighters) donated \$34,650 directly to current City of Spokane elected officials and invested \$65,200 in independent expenditures to support their candidates or oppose their opponents. Combined with indirect money given to other political action committees and political parties, City of Spokane public sector unions donated more than \$100,000 in support of current City of Spokane elected officials³⁹.

The topic of public sector unions donating to elected officials who will ultimately approve or reject the union's bargaining agreements was the subject of legislation⁴⁰ in the Washington State Legislature in 2017. While these bills did not become law, advocates such as the Washington Policy Center continue making "quid pro quo" arguments similar to the arguments made by opponents of public sector contractor contributions. (Shannon, Eliminate perception of quid pro quo, 2017).



The problem is that the mere perception of a quid pro quo is sufficient to cast doubt and suspicion on the whole process and inspire public distrust.

Erin Shannon – Washington Policy Center

Senator Joe Fain, R-Auburn, attempted to combine both issues (regulating contributions by public sector unions and state contractors) however the bill⁴¹ never received a hearing.

In addition to regulating contributions by City contractors, the Spokane Fair Elections Code proposes requiring disclosure of campaign contributions by bargaining units to current elected officials prior to signatures and approval of bargaining unit contracts by the Spokane City Council.

³⁹ Indirect sources include: Inland Northwest Leadership PAC, Coalition for Economic Vitality, Spokane County Democratic Party, Citizens for Honest Government PAC, Spokane for Honest Government PAC.

⁴⁰ SB 5533/HB 1891 (co-sponsored by Senator Michael Baumgartner, R-Spokane)

⁴¹ SB 5865

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Independent expenditures, in the form of “dark money” and “gray money,” are playing a significant role in City of Spokane elections.

"Dark money" is defined as political spending for the purpose of influencing voters without disclosing who funded the influence (typically made by 501 (c)(4) *social welfare groups* and 501 (c)(6) trade/business associations). Social welfare organizations are only required to disclose their donors to the Internal Revenue Service, not to the general public.

“Gray money” is defined as expenditures made by political committees which are funded by other political committees to obscure the identity of the original donors. It can be just as beneficial to the candidate to avoid public association with certain donors. Dark and gray money can have a tremendous impact on local elections. Gray money has typically been a much larger force than dark money. Eighty percent of Americans oppose the non-disclosure practices used by dark money groups⁴², yet the prevalence of dark money continues to rise.

The Brennan Center for Justice points out three reasons we should be particularly concerned about dark and gray money in our elections (Lee, Valde, Brickner, & Keith, 2016):

1. Voters in cities such as Spokane face ballot measures where they directly decide policy questions such as education spending, taxes, and other actions with financial consequences.
2. Most city races are low-information races where small political advertising can sway a significant portion of the electorate. This is particularly evident in non-partisan elections. In Spokane, from 2003-2017, candidates who raised the most money won 83% of the time⁴³.
3. The low costs of local elections mean contributors can donate modest amounts of money while making significant purchases in the small mail, television, and radio markets. New fundraising techniques allow candidates and committees to raise money quickly⁴⁴.

Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.” – Justice Antonin Scalia

The largest amount of gray money spent against candidates for a Spokane political office in the City’s history came in 2013 from a political action committee (PAC) whose top contributors were also political action committees⁴⁵. This PAC, called Jobs and Prosperity for Spokane, ran

⁴² Citizen.org, Public Citizen Poll, September 2014

⁴³ 23 Wins, 5 losses. Candidates who lost that raised more money than their opponent included: Richard Rush, Laverne Biel, Dennis Hession, Donna McKereghan, & Brad Stark.

⁴⁴ Example: Social media, direct mail, phonebank, ActBlue, crowdfund, text, house parties, merchandise/campaign ‘swag’ etc.

⁴⁵ Source: Washington Public Disclosure Commission

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television and radio commercials against two candidates and successfully prevented the disclosure of their individual donors by using three⁴⁶ other political action committees as three of their top five donors.

The Spokane Fair Elections Code will require political action committees engaging in independent expenditures to drill down and disclose their top three individual/entity donors in their political advertisements instead of another political action committee.

Some organizations unexpectedly become gray money donors in support of or against candidates for office in Spokane. In 2013, Greenstone President Jason Wheaton (developer of Kendall Yards) disavowed negative campaigns targeting Councilmember Jon Snyder, and then-candidate Candace Mumm, by the Jobs and Prosperity PAC. The contribution was made by Greenstone to the Spokane Homebuilders Association PAC which in turn was donated to the Jobs and Prosperity PAC. Wheaton explained at a Spokane City Council meeting Open Forum that Greenstone intended to donate to the initiative campaign requiring a supermajority to raise taxes. Wheaton said that it was "unfortunate to be associated with that," referring to the attack ads (Prager, Greenstone disavows ad campaign attacking Mumm, Snyder, 2013).

Walt Worthy, the owner of the Davenport Hotel, made a similar claim when contributions he made to the Spokane Homebuilders PAC ended up in the same attack ads. Worthy told *The Spokesman-Review*, "We did not contribute one dollar to this endeavor." (Prager, Davenport owner Walt Worthy pressed by firefighter union over ads, 2013).

There have also been instances when public funds were transferred even if in error to a political action committee that participated directly in local elections. In 2009, the Community Builders Trust PAC (managed by the Spokane Homebuilders Association) received a contribution from the City of Spokane⁴⁷. Community Builders Trust then contributed to the campaigns of Councilmember Nancy McLaughlin, Councilmember Mike Allen, and future Councilmember Mike Fagan.

An example that does not meet the accepted definition of dark money, but could be subject to "incidental committee" requirements outlined in the City of Spokane's Fair Elections Code, involves the recent billboards targeting Councilmembers Breean Beggs and Candace Mumm from a group calling themselves the "Monroe Street Business Association." These billboards attempt to sway voters to vote against these Councilmembers because of their support of the North Monroe Street project (Walters, Councilmembers Beggs and Mumm never voted on Monroe lane

The reason we have disclosure and transparency is to reduce the opportunity of corruption and to help voters be informed. That helps us to have a healthier democracy." – Senator Andy Billig, D-Spokane

⁴⁶ Inland Pacific Chapter of the Associated Builders and Contractors, Spokane Homebuilders Association, & Eastern Washington PAC.

⁴⁷ Source: Washington Public Disclosure Commission

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reduction — but billboard targets them anyway, 2017). The “Monroe Street Business Association” is not registered as a political committee with the Washington State Public Disclosure Commission making donor identification of the political hit piece impossible.

Spokane’s Fair Elections Code would require a statement of organization and disclosure of donors and political expenditures by non-profit organizations engaging in politics.

The goal of dark money reforms across America, such as State Senator Andy Billig’s DISCLOSE Act, is not to reveal donors to non-profits but to encourage organizations to engage in the political process via the appropriate mechanism – political action committees (Billig A. , 2017). Governor Jerry Brown signed a version of the DISCLOSE Act into law in California in October of 2017 (California Clean Money Campaign, 2017).

Independent expenditures, supposedly made without direct coordination with the candidate, have grown significantly as a percentage of overall expenditures since the *Citizens United* Supreme Court ruling⁴⁹, peaking at 76.9% of all combined spending in 2013. City of Spokane candidates could feel the Supreme Court’s decision immediately in the 2011 cycle (Deshais, 2011).

<u>Year</u>	<u>Expenditures – All Candidates</u>	<u>Independent Expenditures⁴⁸</u>	<u>I.E. as percent of Total Expenditures</u>	<u>% of Candidate Expenditures Spent Outside Spokane County</u>
2003	\$749,226.12	\$0	0%	14.5%
2005	\$201,121.58	\$0	0%	5%
2007	\$601,447.34	\$2,969.92	0.5%	31.9%
2009	\$193,898.56	\$17,434.02	9.3%	8.7%
2011	\$811,210.10	\$48,270.34	6.4%	14.4%
2013	\$326,851.91	\$224,526.98	76.9%	7.5%
2015	\$828,703.59	\$17,815.68	2.2%	17.3%

The year 2013 was witness to the most expensive races in Spokane City Council history and marked the first time independent expenditures occurred in a primary election for or against a Spokane City Council candidate.⁵⁰

In 2017, a political action committee outspent the candidate they were supporting or opposing in an election.⁵¹

⁴⁸ Expenditures made by political action committees and others filing in support or opposition to a candidate.

⁴⁹ January 21, 2010

⁵⁰ The final numbers from 2017 had not been filed prior to publishing this paper.

⁵¹ Better Spokane - \$12,710.57, Andy Dunau - \$9,915.57; Better Spokane - \$20,498.80, Matthew Howes - 18,996.29

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Candidates with the most independent expenditures in support (or against their opponent) have won election eleven out of the sixteen times. Most of the independent expenditures were made within 30 days of the general election.

Although a substantial majority of Americans across party and ideological lines say that Super PACs have an adverse effect on our elections (Confessore & Thee-Brenan, 2015; The Pew Research Center, 2012), the *Citizens United* decision and *McCutcheon*⁵² decision almost ensure that the growing influence of independent expenditures in City of Spokane elections will not dissipate anytime soon.

Impact:

The Spokane Fair Elections ordinance:

- Clarifies that all members of Pro and Con Committees for ballot measures should be registered voters in the city of Spokane.
- Designates the City Clerk's Office as the City's Election Resources Center.
- Establishes the City of Spokane's campaign contribution limit at \$500 per election for all individuals, political committees, political parties, legislative committees, and caucus committees.
- Defines election cycle as the only time when candidates for City of Spokane office may solicit and accept campaign contributions (January 1st of the year before the candidate's general election until December 31st or until the election results are certified, (whichever occurs last).
- Prohibits City elected officials and candidates from soliciting and/or receiving contributions from a contractor or subcontractor (including partners/principals with equity interest totaling more than 10%) who has earned more than \$50,000 in City contracts or from any contractor participating in a contract award period.
- Requires that bidders affirm and certify that they will comply and will notify their principals and subcontractors of the campaign contribution provisions of this chapter.
- Requires City of Spokane bargaining units to disclose contributions made to current elected officials on publicly available bargaining unit contracts prior to signatures and approval by the Spokane City Council.
- Requires entities making campaign contributions to City of Spokane candidates or to political committees in support or opposition to City of Spokane initiatives and referendums have an active registration with the Washington Secretary of State or

⁵² McCutcheon, et al. v. FEC

equivalent stage agency of the donors' primary locations.

- Defines and establishes procedures for 'incidental committees,' including the filing of a statement of organization with the City Clerk's office and the names of the ten largest aggregate contributions, with the City and published on the City's website.
- Requires political committees making independent expenditures identify and disclose the three persons or entities contributing the largest amounts (not including other political committees) in addition to the requirements of RCW 42.17A.320.
- Requires entities to certify that their ownership is not comprised of 50% or more foreign nations when making contributions to City of Spokane candidates or political committees.
- Establishes violations of this chapter as a Class 1 Civil Infraction and freezes the acceptance of contributions until the illegal contributions have been returned by the candidate.
- Creates a limitations period for complaints.
- Creates an annual report requirement to the City Council on the number of investigations undertaken and actions taken to enforce the Spokane Fair Elections code.
- Creates the "Transparent Democracy" Fund to help offset costs of enforcement of Spokane Fair Elections Code.

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