AMENDMENT 75

Campaign Contributions

Summary
Amendment 75 would amend the Colorado Constitution to increase individual campaign finance contribution limits for all candidates in an election when a candidate in that race loans or contributes at least $1 million to his or her election. This would apply when the candidate:

- Contributes or loans more than $1 million to his or her candidate committee
- Contributes or loans at least $1 million to a committee or other entity to support or oppose any candidate in the same election
- Facilitates or coordinates third-party contributions amounting to more than $1 million to any committee or organization to influence the candidate's own election

Colorado's Legislative Council staff estimates a one-time $15,000 fiscal impact if Amendment 75 is enacted.

Research
The Pew Research Center shows most Americans give no more than $250 to a candidate or a campaign in a year, despite the variety of contribution limits across the country. Individuals can give campaign contributions in multiple ways, including to candidates directly, to political parties, or to independent expenditure committees (IECs). IECs can support the election or defeat of a candidate, so long as the IEC doesn't coordinate its activities or expenditures with the candidate. Political action committees (PACs) are one example of an IEC. A candidate can also contribute funds to his or her own campaign.

Federal and state laws govern campaign finance. In Colorado, individuals aren't restricted when it comes to self-funding campaigns or IEC giving. However, federal and state courts have determined limits on the amount candidates can collect from individuals are permissible. The Bipartisan Policy Center documents the many ways our complicated system permits money to influence elections, including the proliferation of corporate and union contributions and financing vehicles, such as 501(c)(4)s and Super PACS.

Colorado, along with 38 states, restricts the amount of money an individual can contribute to a candidate's state campaign. Colorado is one of at least three states where constitutional limits and statutory provisions apply to campaign finance. While there is a broad range of limits across the country, Colorado's individual contribution limits are among the lowest, as shown in the chart below.

	Governor	State Senate	State House
National Average	$5,619	$2,507	$2,375
National Median	$3,800	$1,000	$1,000
Highest Limit	$50,000 (New York)	$12,532 (Ohio)	$12,532 (Ohio)
Colorado limits[i]	$575 (each for primary and general elections)	$200 (each for primary and general elections)	$200 (each for primary and general elections)
Lowest Limit	$500 (Alaska)	$170 (Montana)	$170 (Montana)[ii]

Source: National Conference of State Legislatures, 2018

Currently, the $200 limits apply per election (primary and general) for state legislative, Colorado Board of Education, University of Colorado regent, and district attorney races. The $575 limit applies per election for governor, lieutenant governor, secretary of state, attorney general, and state treasurer.

Under Amendment 75, every candidate in an eligible Colorado election could accept up to five times the level of individual contributions listed in the state constitution if one candidate contributes at or above the $1 million threshold in that election. The new limits wouldn't just kick in if a millionaire gives money to his or her own race. They would also apply if a candidate "coordinates or facilitates" the contribution of a $1 million or more to an IEC.

Analysis conducted by the U.S. Public Interest Research Group (PIRG) examined the aftermath of 2002 federal reforms, which doubled the amount of money an individual could give to congressional or presidential candidates. PIRG says these changes didn't increase fairness or competition, nor did they reduce the amount of time candidates spent fundraising. While small donors (contributing $200 or less) gave more money to congressional and presidential candidates from 2000 to 2004, large donors also gave more, which "negated the effect of a promising surge in small donor participation." In short, candidates with access to wealthy donors benefited more after the reforms, and large donors continued to exert influence. The report concludes "the myth that (increasing individual limits) is relatively harmless and, therefore, an easy or acceptable tradeoff for other reforms threatens the ultimate impact of campaign finance reform and may well undermine the public's support and belief that real reform will ever reduce the influence of money in American politics."

The Brennan Center for Justice offers toolkits on how to improve state campaign finance laws, which do not recommend increasing contribution limits. In fact, earlier research by the Brennan Center conducted on congressional campaigns supports the case for low limits, finding they "increase the number of contested races, improve the rate of competitive races, and reduce fundraising gaps between incumbents and challengers." The Brennan Center's suggested reforms target disclosure, coordination, internet advertising, foreign spending, officer-controlled nonprofits, and public financing, which includes clean elections and matching funds.

However, citizens and policymakers are increasingly, and rightfully, concerned about the money and influence pouring into state elections, particularly in the wake of the U.S. Supreme Court ruling in *Citizens United*, which allows for more anonymous campaign financing. In 2012, the University of Denver's Strategic Issues Panel on Campaign Finance urged Coloradans to undertake a variety of reforms. Many of the suggestions address the marginalization candidates face as their individual fundraising efforts must combat powerful, wealthy donors, hidden contributions, and a lack of limits on other types of campaign financing. In fact, the panel recommended lifting the state's individual contribution limits for candidates and political parties, stating "strict contribution limits do not reduce the flow of money into elections; they simply re-channel it." Importantly, the panel also stressed removing those limits must be "accompanied by comprehensive disclosure practices."

Six years after the DU report's release, election spending in Colorado continues to rise. Independently wealthy candidates are part of the equation, and national research has examined their efforts. The National Institute of Money in State Politics finds self-funded candidates — those who get 51 percent or more campaign contributions from themselves or their families — have a low election success rate. Based on its data analysis, the more candidates gave to their own campaigns, the higher their rate of failure. Other noteworthy takeaways: self-funded incumbent candidates had a high level of success; gubernatorial candidates are more likely to be self-funded; and while Republican candidates are more likely to self-fund, they have a similar success rate as Democrats.

This issue is top of mind in Colorado, as by August 2018 the total amount spent on the governor's race — $29 million so far — "shattered" prior records. Millionaires Jared Polis, the Democratic nominee, and Victor Mitchell, who failed to garner the Republican nomination, contributed a combined $18 million of their own funds. Republican nominee Walker Stapleton contributed over $1 million of his own funds as well. This is a change over other election cycles, as "over the state's previous eight general election cycles, only four other candidates — Republicans Joe Coors, Jack Graham, Pete Coors, and Bob Beauprez — poured more than $1 million of personal cash into their races."

Amendment 75 appears to address the uphill climb non-wealthy Colorado candidates face, but it contains unclear language that requires some guesswork and inference. For example, as written, if a candidate contributes $1 million to his or her campaign in a primary election, the increased limits seemingly would apply in the subsequent General Election, but this could be open to interpretation and, potentially, litigation.

A second issue is the language that impacts contributions to IECs. Colorado could see contribution limits go up in many more races than just those with a self-funded candidate. Also, the new limits are triggered only if a candidate *"facilitates or coordinates"* the contribution of $1 million or more, but proponents have been quoted as saying Amendment 75's provisions would take effect if a committee backs a candidate and *spends* $1 million or more to support that candidate. This is a nuanced distinction, but an important one. Finally, proving a candidate facilitated or coordinated a contribution will require appropriate disclosure and vigilance by the public, and may even require adjudication by an administrative law judge.

Amendment 75 was filed with the Colorado secretary of state in April 2018, the last measure to be approved for signature gathering. In August 2018 the measure's proponents submitted over 212,000 signatures — a record number — to be certified and approved for the ballot. The group supporting the measure is "Stop Buying Our Elections." As of early September, no financial information has been filed for the measure, making it difficult to discern who funded the signature-gathering efforts.

Arguments For

- Our campaign finance system is broken. The system needs reform so elections are fairer, and politicians are more accountable to constituents and less beholden to rich donors and special interests.
- Wealthy candidates have an unfair advantage in elections because their self-funded contributions aren't limited. With significant resources, they can fund their own election efforts without having to pay attention to what voters want from them. If non-wealthy candidates can accept more money, it may create more competitive elections.
- Colorado's individual limits are among the lowest in the country. The measure would only raise, not eliminate, individual limits, and only if the $1 million self-funded threshold is reached, which is a high bar.

Proponents

Former Colorado legislators Greg Brophy and Betty June Nikkel are the point people for "Stop Buying Our Elections." Current gubernatorial candidates Jared Polis and Walker Stapleton expressed support for the measure. The Denver Post Editorial Board has endorsed, though it also raises concerns about measure's vague language and lack of financial transparency.

Arguments Against

- This measure further complicates the campaign finance system without a guarantee to make elections fairer. Amendment 75 increases campaign contribution limits for all candidates when any candidate contributes or loans $1 million to his or her own campaign, including the candidate who triggers this threshold. The $1 million threshold could soon be met in many elections. Additionally, this measure wouldn't take effect if a candidate self-funded at a large amount, but just under the $1 million cap.
- This measure will allow wealthy donors to potentially exert more influence over elected officials. Self-funded candidates may be more likely to approach issues based on their own convictions, without the outside pressures fundraising brings.
- The measure contains confusing language, which could pose problems once enshrined in the Constitution.

Opponents

Colorado Common Cause and the League of Women Voters.

Recommendation: Oppose

Nationally and at the state level, campaign finance is ripe for reform. Citizens are concerned with the influence of vast amounts of money on our elections, and the ways that money can be obscured. Thanks to the work of the DU Strategic Issues Panel on Campaign Finance, Colorado has a slate of state-specific recommendations it could enact, including removal (versus raising) of caps on individual limits. However, the panel found these changes are best made in a comprehensive manner, rather than piecemeal.

Improved disclosure and transparency requirements and a public finance program are promising approaches, neither of which are a part of Amendment 75. Additionally, Amendment 75 leaves voters with unanswered questions, including how and when the limits will be applied and what financial interests are behind the measure itself. While campaign finance reform is a worthy goal for Colorado, Amendment 75 isn't the ideal approach.

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[i] Colorado's limits are adjusted for inflation every four years. Individuals can contribute $1,050 and $400 per election cycle.

[ii] In 2016, a federal district court found Montana's law unconstitutional in 2016 and is currently being appealed and Montana's limits are higher for practical purposes ($1990 for gubernatorial candidates, $990 for other statewide candidates, $530 for senate candidates, and $330 for house candidates per election).