

# THE CASE FOR STRONGER STATE POLITICAL PARTIES

By Clayton L. Barker\*

## I. INTRODUCTION

Political parties are essential institutions for the operation of American government. “Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views.”<sup>1</sup> “American government is a government of political parties.”<sup>2</sup>

Over the past 20 years, federal and state governments implemented a public policy of weakening political parties with the goal of reducing the influence of money and partisanship.<sup>3</sup> “Electoral reform [however] is a graveyard of well-intentioned plans gone awry.”<sup>4</sup> This effort succeeded in weakening political parties but, by creating a vacuum, caused a stark increase in the influence of wealthy, secretive, ideological outside groups. In the ultimate irony, the policy accelerated the very problems it was seeking to redress, creating greater influence of political money, more partisanship, and a greater disconnect between elected officials and the voters they represent. Thus the widespread distaste for today’s politics.

These results call for a return to stronger political parties. Adopting a public policy of strengthening state political parties relative to the outside groups would provide multiple public benefits<sup>5</sup> including reduced political influence by narrow and unaccountable outside groups; buffering the influence of single-issue advocacy groups; higher voter turnout with better informed voters; and better candidates for elective office.<sup>6</sup>

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1. Cal. Democratic Party v. Jones, 530 U.S. 567, 574 (2000).

2. Wynne P Harrington, *The Populist Party in Kansas*, in 16 COLLECTIONS OF THE KANSAS STATE HISTORICAL SOCIETY, 1923-1925 403, 403 (William E. Connelley ed., 1925), <http://www.kansasmemory.org/item/221606/page/9646>.

3. Many commentators believe the true motivation for “reform” was to protect incumbents from electoral challenges. See, e.g., PETER J. WALLISON & JOEL M. GORA, BETTER PARTIES, BETTER GOVERNMENT, A REALISTIC PROGRAM FOR CAMPAIGN FINANCE REFORM 91 (2009).

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

5. Reihan Salam, *Why We Need Stronger parties*, NATIONAL REVIEW (Oct. 24, 2013 3:13 PM), <http://www.nationalreview.com/agenda/362137/why-we-need-stronger-parties-reihan-salam>; Mark Schmitt, *More Partisanship: What We Need to Fix Congress*, NEW REPUBLIC (Oct. 1, 2013), <https://newrepublic.com/article/114950/government-shutdown-2013-democratic-republican-are-too-weak>.

6. Recently, there has been a proliferation of academic publication supporting the need for

This article pertains to state political parties and Kansas-specific reforms. Changes to federal regulation is more pressing but much more complex.

## II. WHAT IS A POLITICAL PARTY?

Unique among political groups, political parties are broad based, long-term, voluntary associations organized to pursue common policy goals *by electing their candidates to office*.<sup>7</sup>

In a legal formalistic view, a state political party is a unique type of associational organization defined and recognized by both federal and state law.<sup>8</sup> The party members are those voters who choose to affiliate with the party when they register to vote.<sup>9</sup> In Kansas, there are roughly 760,000 Republicans and 410,000 Democrats.<sup>10</sup> In the biannual August primary election, party members elect precinct leaders for the approximately 7,000 precinct positions.<sup>11</sup> In turn, those precinct leaders organize into 105 county parties, which in turn elect members of four congressional district party committees, which in turn elect members of the state central committee.<sup>12</sup> Each level has its own officers and governing rules.<sup>13</sup> The state party hires paid staff—currently the Kansas Republicans have two staff and the Democrats three or four staff. Everyone else is a volunteer.

In a broader, more theoretical sense, political parties combine formal structure and informal networks.<sup>14</sup> Some view parties as controlled by insiders

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stronger political parties. *See, e.g.,* WALLISON & GORA, *supra* note 3, at 97–110, (listing as benefits—reduced appearance of corruption, reduced advantages for the wealthy, better candidates, more time for lawmakers to do their jobs, cheaper campaigns, more information for voters, and less power to special interests).

7. The Kansas Democratic Party was organized on June 27, 1855, and the Kansas Republican Party on May 18, 1859. D. W. WILDER, *THE ANNALS OF KANSAS* 66, 255 (1875), [www.kansasmemory.org/item/223666](http://www.kansasmemory.org/item/223666).

8. *See, e.g.,* 52 U.S.C. § 30101(16) (2012); 26 U.S.C. § 527(e) (2012); KAN. STAT. ANN. § 25-302b (2015) (requiring that for an organization to be recognized in Kansas as a political party it must nominate a candidate for at least one office elected on a statewide basis, and at least one such statewide candidate must receive at least 1% of the total votes cast for the office); KAN. STAT. ANN. § 25-302c (2015).

9. KAN. STAT. ANN. §§ 25-3301 to -3307 (2015).

10. KAN. SEC'Y OF STATE, 2015 AUGUST VOTER REGISTRATION NUMBERS (2016), [http://kssos.org/elections/15elec/2015\\_August\\_Voter\\_Registration\\_and\\_Party\\_Affiliation\\_Numbers\\_Certified.xlsx](http://kssos.org/elections/15elec/2015_August_Voter_Registration_and_Party_Affiliation_Numbers_Certified.xlsx).

11. KAN. STAT. ANN. § 25-3801 (2015).

12. KAN. STAT. ANN. § 25-4143(i) (2015) (listing the types of party committees which can accept contributions); KAN. REPUBLICAN PARTY, KANSAS REPUBLICAN PARTY CONSTITUTION (2015), [http://media.wix.com/ugd/8353d3\\_4a07b13305b443f2983ac2a9523d8bab.pdf](http://media.wix.com/ugd/8353d3_4a07b13305b443f2983ac2a9523d8bab.pdf); KAN. DEMOCRATIC PARTY, BYLAWS OF THE KANSAS DEMOCRATIC STATE COMMITTEE 5 (2013), [http://s3-us-west-2.amazonaws.com/ksdems/KDP\\_Bylaws.pdf](http://s3-us-west-2.amazonaws.com/ksdems/KDP_Bylaws.pdf).

13. *Party Organization*, KSGOP, <http://www.ksGOP.org/#!/party-organization/c1p5g> (last visited Apr. 18, 2016); *About*, KANSAS DEMS, <http://www.ksdp.org/about/> (last visited Apr. 18, 2016).

14. RAYMOND LA RAJA & BRIAN F. SCHAFFNER, CAMPAIGN FINANCE AND POLITICAL POLARIZATION: WHEN PURISTS PREVAIL 10–20 (2015) (describing different views of what constitutes a political party), <http://quod.lib.umich.edu/u/ump/13855466.0001.001>.

and as a technical operation for winning political campaigns. A related view sees parties as networks of officeholders and candidates who campaign on their own terms but work together as a coalition. However, a different perspective sees political parties as a network of activist groups, each with its own narrow policy objectives. Because the goals are often unconnected, the activists avoid internal policy battles, allowing the coalition to remain unified.<sup>15</sup> A fourth view holds that political parties are a network of groups bound together by formal and informal ties working in an internally combative coalition – think establishment versus tea party.<sup>16</sup>

Political parties have strong Constitutional protections from state regulation.<sup>17</sup> State government substantially regulates state parties in only two areas. First, when the party plays a direct role in the election process. For instance, in Kansas, vacancies in partisan elected offices are filled by the political party of the original elected official.<sup>18</sup> Second, and most importantly, by regulating contributions to parties under the pretext of a compelling government interest in avoidance of corruption or the appearance of corruption.<sup>19</sup> Kansas limits contributions to political parties,<sup>20</sup> caps party contributions to candidates in the party's own primary election,<sup>21</sup> and mandates publicly available periodic financial reports detailing all party expenditures and contributions.<sup>22</sup>

State political parties are also subject to complex federal financial regulation.<sup>23</sup> In 2002, Congress passed the Bipartisan Campaign Reform Act (BCRA),<sup>24</sup> which limited contributions to state parties and expenditures by state

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15. See EDWARD H. FLENTJE & JOSEPH A. AISTRUP, KANSAS POLITICS AND GOVERNMENT, THE CLASH OF POLITICAL CULTURES 20–29 (2010) (articulating a view of the Kansas Republican Party as a “polar alliance” of those supporting economic liberty and those favoring hierarchical social conservatism).

16. LA RAJA & SCHAFFNER, *supra* note 14.

17. See, e.g., *Eu v. San Francisco Cty. Democratic Central Comm’n*, 489 U.S. 214, 223–24 (1989) (holding that state regulation of state party governance violates free speech and free association rights); *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 123–24 (1981) (holding that states cannot regulate state party control of national convention delegate procedures); *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (holding that political parties have the “freedom to identify the people who constitute the association, and to limit the association to those people only.”).

18. KAN. STAT. ANN. §§ 25-3901 to -3908 (2015).

19. KAN. STAT. ANN. §§ 25-4142 to -87 (2015).

20. KAN. STAT. ANN. § 25-4153(d) (2015).

21. KAN. STAT. ANN. § 25-4153(g) (2015).

22. KAN. STAT. ANN. §§ 25-4148 to -52 (2015) The resulting state reports are viewable at Governmental Ethics Comm’n, *Ethics Commission-View Submitted Forms and Reports*, KANSAS.GOV, [http://www.kansas.gov/ethics/Campaign\\_Finance/View\\_Submitted\\_Forms\\_&\\_Reports.html](http://www.kansas.gov/ethics/Campaign_Finance/View_Submitted_Forms_&_Reports.html) (last visited Apr. 19, 2016).

23. 52 U.S.C. §§ 30101–46 (2012). The required federal reports are viewable at *Committee/Candidate Search*, FED. ELECTION COMMISSION, [http://www.fec.gov/finance/disclosure/candcmte\\_info.shtml](http://www.fec.gov/finance/disclosure/candcmte_info.shtml) (last visited Apr. 19, 2016).

24. The Bipartisan Campaign Reform Act of 2002 amended the Federal Election Campaign Act of 1971. The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002).

parties for any activity that affected federal elections.<sup>25</sup> Under the BCRA, since almost everything “affects” federal elections, state party functionality has been significantly degraded<sup>26</sup>. The Kansas Republican Party, which usually had six to eight full time employees before BCRA’s enactment, has since been limited to two or, periodically, three employees.<sup>27</sup>

### III. THE ROLES OF A POLITICAL PARTY

With a goal of controlling government policy, parties are motivated to attract votes and support candidates to win elections. They mediate between citizens and their elected government. Their enduring party “brand” and institutionalized role promotes stability, collective action, and responsiveness in the political system.

Some of the specific roles of political parties:

(1) Win Elections: Parties exist to elect their candidates. To govern, parties must win the maximum number of elections,<sup>28</sup> otherwise their policies would remain nothing more than academic talking points. To win, parties must recruit and run candidates who gain the public’s confidence. Parties coordinate candidate, party, and volunteer efforts; and offer candidate services like training, access to voter data bases, party mail privileges, and phone banks.

(2) Party Brand: The major political parties have long histories and represent a set of guiding principles making the party label an important identifier for voters, many of whom are guided by the candidate’s party label.<sup>29</sup> For all their money and power, outside groups do not run candidates under their name. While the parties seek larger memberships, they must maintain distinct party positions to convey clear meaning to voters. Elections “become meaningless when the two major parties have no difference other than labels.”<sup>30</sup>

(3) Policy Aggregators: Political parties are a coalition, not a consensus. They serve as interest aggregators that pull together disparate interests into

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25. 52 U.S.C. § 30116(a)(1)(D) & (a)(2)(C) (West Supp. 2014) ; 52 U.S.C. § 30125 (b) (West Supp. 2014).

26. 52 U.S.C. § 30101(20)(A) (West Supp. 2014) (defining “federal election activity” to include voter registration, voter identification, voter turnout, generic campaign activity, public communications and staff costs); *See, e.g.*, 11 CFR § 106.7 on allocating expenses between a political party’s federal and non federal accounts.

27. Annual state party handbooks maintained at the state party office.

28. LARRY J. SABATO & BRUCE A. LARSON, *THE PARTY’S JUST BEGUN: SHAPING POLITICAL PARTIES FOR AMERICA’S FUTURE* 77 (2d ed., Longman, 2002) (stating parties do not waste resources on sure winners or certain losers).

29. SAMUEL L. POPKIN, *THE REASONING VOTER: COMMUNICATION AND PERSUASION IN PRESIDENTIAL CAMPAIGNS* 212 (2d ed., 1994) (stating voters spend little time analyzing candidates and instead use shortcuts like party labels to link the policy of a party and candidate to their daily lives).

30. SUSAN DUNN, *ROOSEVELT’S PURGE: HOW FDR FOUGHT TO CHANGE THE DEMOCRATIC PARTY* 52 (2010).

a coalition that pursues a broad complimentary public agenda. In this way, parties overcome the fragmentation of interests by reaching agreement among constituent groups.

(4) Create Democratic Energy: Political parties educate, motivate and engage voters to turn out and vote for the party's candidates. They hold local meetings, picnics, debates and legislative updates; operate social media sites, websites, and distribute newsletters; and train and equip citizens to become candidates for public office.

(5) Monitor the Other Party: Political parties watch, check, and publicly criticize the elected officials of the other party. This is a particularly important role for an opposition party.

(6) Monitor Their Own Elected Officials: Parties hold their own elected officials accountable because voters cannot be expected to constantly monitor and control their own elected representatives. Parties "enforce party discipline, punish defectors, reward loyalists, and keep the brand distinctive."<sup>31</sup> Volunteer party activists who strongly believe in the party's principles keep the party leaders aligned with the voters.<sup>32</sup>

(7) Home to Party Activists: The passionate volunteer party activists, the ones who knock on doors, make calls, show up at rallies and meetings, and spend their free time working for campaigns, have a home in the political party. Candidates, issues, and outside groups may come and go, but political parties are here for the long haul and incite great loyalty from their activists.

#### **IV. DIFFERENCES BETWEEN POLITICAL PARTIES AND OUTSIDE GROUPS**

There is a multiplicity of different types of organizations playing a role in politics. Briefly, the primary types, some with a more direct role than others, some regulated by the state government, some by the federal government, some by both; include:

- (1) candidates (campaign committees);
- (2) political parties;
- (3) traditional PACs (political action committees);
- (4) Super PACs (independent expenditure only, no contributions to candidates);
- (5) 527s (a generic term for political organizations which, because they do not engage in express advocacy for or against a named candidate, do not report to federal or state campaign finance regulators)

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31. Heather K. Gerken, *The Real Problem with Citizens United: Campaign Finance, Dark Money, and Shadow Parties*, 97 MARQ. L. REV. 903, 921 (2013), [http://digitalcommons.law.yale.edu/fss\\_papers/4894](http://digitalcommons.law.yale.edu/fss_papers/4894).

32. *Id.* at 921–22.

- (6) 501(c)(3)s (traditional charity);
- (7) 501(c)(4)s (social welfare organizations or issue groups);
- (8) 501(c)(5)s (labor unions);
- (9) 501(c)(6)s (chambers of commerce)
- (10) individual people and companies.<sup>33</sup>

Some of the major differences between political parties and outside political groups include:

- (1) Governance: State parties are grassroots organizations with leaders elected every two years by hundreds of thousands of voter-members. Swings in voter sentiment shift party leadership. For instance, the Kansas Republican Party elected a more conservative group to leadership in 1994, voted them out in 1998, then back into power in 2006 and 2008. Outside groups, controlled by one or a small group of individuals, are relatively impervious to voter sentiment.
- (2) Membership: A state political party has hundreds of thousands of members, including thousands of very active members. Most outside groups have far fewer members, hire consultants, and spend their funds on mail and TV in targeted elections. Field programs and canvassing, which require extensive face-to-face contact with voters, are too labor intensive. Outside groups focus on the current race since consultants want to get paid and move on.
- (3) Issue Focus: State parties represent a broad basket of complimentary policy positions. Outside groups are devoted to a single issue or a narrow set of policy positions favored by a particular organization, economic niche, segment of society, or an individual willing to bankroll the group.
- (4) Candidate Recruitment: Almost all candidates run as a party representative. Outside groups, which usually have a narrow policy focus, recruit candidates primarily based on that policy. Political parties, focused on winning the maximum number of elections and representing a broad set of policy positions, recruit candidates primarily on whether they can win while serving as the party's standard bearer and articulating the party's positions.
- (5) Coordination: State parties can fully coordinate operations with their candidates. Outside groups generally cannot coordinate with candidates, but can avail themselves of any public information to guide their efforts. More important, the outside groups can fully coordinate with each other, forming shadow networks.<sup>34</sup> This explains why multiple groups, with

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33. A "PAC" is an organization that engages in express advocacy for or against a named candidate. 527 and 501(c) refer to the section of the Internal Revenue Code under which these groups receive income tax exemption. I.R.C. §§ 501(c), 527 (2015). The Sunlight Foundation has produced a useful simple chart on these groups. SUNLIGHT FOUNDATION, THE TANGLED WEB OF CAMPAIGN FINANCE, [http://assets.sunlightfoundation.com.s3.amazonaws.com/images/campaign\\_finance\\_web\\_final.png](http://assets.sunlightfoundation.com.s3.amazonaws.com/images/campaign_finance_web_final.png).

34. See ADAM SCHRAGER & ROB WITWER, *THE BLUEPRINT: HOW THE DEMOCRATS WON*

seemingly distinct issue agendas, often release simultaneous public statements with identical wording and have extensive cross-membership. Parties generally cannot coordinate with outside groups.

(6) Financial Transparency: Kansas political parties must regularly and publicly disclose all contributions and expenditures. PACs and other organizations organized under section 527 also must disclose their finances. Other outside groups, especially 501(c)(4)s, only report aggregate amounts to the IRS, often more than a year after the election they sought to influence, and do not disclose who their donors are. Thus their characterization as the ultimate “shadow organizations” spending “dark money”, whose influence is hard to assess.<sup>35</sup>

(7) Contributions: Kansas regulations limit contributions to state political parties and to candidates. Contributions to outside political groups are unlimited.

(8) Expenditures: Kansas political parties can make unlimited coordinated expenditures on behalf of state candidates but are limited by complex regulations for expenditures on behalf of federal candidates. Outside groups can make unlimited expenditures in support of candidates, as long as the effort is not coordinated with the candidate.

## V. THE PROBLEMS WITH THE CURRENT SYSTEM

Today, outside groups using undisclosed and unlimited money have come close to being more important to campaigns than the candidates or the political parties whom they represent.<sup>36</sup> The public policy of micromanaging campaign finance through regulation has created a less accountable and less transparent system with political power shifting away from broad-based, publicly accountable political parties to secretive unaccountable outside groups.

Campaign finance and its resulting political power, are often referred to in terms of hydraulics, in that money, like water, will surmount any obstacle and find a path to enter the election process.<sup>37</sup> Regulation did not reduce the amount of money in politics, it merely shifted the path the money takes. When reforms limited contributions to political parties, the money went into 527s, then

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COLORADO (AND WHY REPUBLICANS EVERYWHERE SHOULD CARE) (2010) (describing how a small group of liberal millionaires created a network of coordinated liberal groups outside the Colorado Democratic Party, and used it to conduct an innovative operation to drive the Republicans from power in Colorado between 2002 and 2008).

35. Albert Hunt, *A Banner Year for Dark Money in Politics*, BLOOMBERG (Jan. 4, 2016), [http://www.realclearpolitics.com/2016/01/04/a\\_banner\\_year\\_for\\_dark\\_money\\_in\\_politics\\_373166.html](http://www.realclearpolitics.com/2016/01/04/a_banner_year_for_dark_money_in_politics_373166.html); Kenneth P. Vogel, *Undisclosed Dollars Dominate Campaign Spending: Candidates and Their Allies Push the Limits of the Law, While Regulators sit on the sidelines*, POLITICO (Jan. 12, 2016, 5:08 AM), <http://www.politico.com/story/2016/01/undisclosed-dollars-dominate-campaign-spending-217599>.

36. See SCHRAGER & WITWER, *supra* note 34, at 207–08.

37. See, e.g., Issacharoff & Karlan, *supra* note 4; Gerken, *supra* note 31, at 911; LA RAJA & SCHAFFNER, *supra* note 14.

SuperPACs became prominent, and now 501(c)(4)s, the ultimate source of “dark money,” are the favored method of channeling funds into elections.<sup>38</sup>

In elections, money is power. It is expensive to disseminate a candidate’s message, to identify favorable voters, and to get them to vote. It takes tens of thousands of dollars to finance a state legislative campaign and over a million for a competitive congressional or key statewide campaign. And that does not include spending by outside groups to influence the election.

Candidates receive support from both political parties seeking to maximize election victories and from more ideologically driven groups and individuals pursuing narrower policy goals. Under the current regulatory regime, the outside groups can raise unlimited amounts of money with minimal disclosure. Contributions to state parties, however, are limited, fully disclosed, and regulated by complex federal and state regulatory schemes. Given their inherent advantages, money and political power flow to the outside groups, those who are in fact least responsive to the voters.

The relative weakening of political parties in comparison to outside groups creates three problems:

(1) Political Polarization:<sup>39</sup> While some conventional wisdom blames increased political polarization and dysfunctional partisanship on strong political parties, a better explanation is that it actually stems from weaker political parties. Party organizations being broadly based in the electorate represent a balanced set of policy issues. When parties face financing constraints, candidates turn to outside groups, with their strong but narrow policy preferences, for support. This creates stronger bonds between candidates and ideological backers, resulting in elected officials who are less accountable to and less representative of the voters in their districts. This, in turn, creates political fragmentation because party and legislative leaders have less ability to influence legislators to advance common interests.

(2) Diminished Grassroots Influence:<sup>40</sup> The influence of the party grassroots activists comes through interacting regularly with the political leadership through party events and similar channels. The policy positions of elected officials are shaped by the people those officials interact with, and the party’s grassroots activists often serve as early warning of emerging issues important to the voters. The problem arises when outside groups divert the party’s candidates, elected officials and other leaders away from grassroots activists, reducing this interaction. While it is not possible to ignore the party activists and their work, greater outside influence diminishes the grassroots influence and, as a result, candidates can lose touch with the voters.

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38. Gerken, *supra* note 31 at 911; LA RAJA & SCHAFFNER, *supra* note 14, at 5.

39. LA RAJA & SCHAFFNER, *supra* note 14 (laying out in great detail research supporting the conclusion that weaker political parties create greater political polarization).

40. Gerken, *supra* note 31, at 920–21.



(3) **Reduced Public Influence:** The general public is only marginally aware of policies being debated in statehouses. The lack of credible media coverage does not redress the information deficit. Political parties fill the gap between the mass of inattentive voters and the government by serving as a voter-centric intermediary communicating with the broad base of party voters. But stronger outside groups are able to pull candidates to their positions and away from the general public because the parties are less able to involve the general public.

## **VI. SOME SUGGESTED REFORMS TO KANSAS LAW**

Given that the money will continue to flow into elections, the key to reform is to tilt the political playing field so that more political influence and money flow into elections through political parties, the medium most beneficial to society. We are at a point where the outside groups have substantially more flexibility and ability to accept and spend money than the political parties. Redressing the relative balance of power would reduce the three problems outlined above, by shifting power away from narrow ideology-based groups and to the state political parties.

Reforms in three areas will result in relatively stronger political parties in Kansas and redress the imbalance of power. First, allow political parties to take unlimited contributions, just like outside groups, with fewer limits on party expenditures. Second, implement changes which give political parties a greater role in Kansas political life so that more people, acting in self-interest, will become involved in the parties. Last, enact targeted limits on money transfers between outside groups and create more transparency by increasing reporting requirements for outside groups.

### ***A. Some Recent Reforms in Kansas***

Following Theodore Roosevelt's aphorism that "I believe in men who take the next step, not those who theorize about the 200th step. . . . [L]ittle good comes from the individual who is fighting "the system" in the abstract;"<sup>41</sup> a group of bipartisan reformers have been working to change Kansas' political regulatory scheme, one bill at a time. Some of the reforms enacted into law in the last few years include:

**Eliminated Leadership PACs:**<sup>42</sup> Kansas legislators are now prohibited from operating their own PACs. In the past this practice was used to accept unlimited contributions during the legislative session and as a power base outside the political party.

**Moved Local Election Dates:**<sup>43</sup> Local city and school board elections were

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41. Letter from Theodore Roosevelt to Lincoln Steffens June 05, 1908, <http://teachingamericanhistory.org/library/document/to-lincoln-steffens/>.

42. Act of May 14, 2014, ch. 122, 2014 Kan. Sess. Laws 1598.

43. Act of June 8, 2015, ch. 88, 2015 Kan. Sess. Laws 1150.

moved from early April of odd numbered years to November of odd-numbered years. As a result, the political parties will now have a greater opportunity to influence local elections, by having adequate time to recruit candidates, activate volunteers and turnout more voters. This should give the parties greater influence in local government and thereby motivate more individuals to engage in party activity.

Earlier Final Date to Change Party Affiliation Before the Primary Election:<sup>44</sup> This will reduce the practice of individuals switching party registration for the sole purpose of voting in the other party's primary election. Franklin Roosevelt denounced primary elections that permitted non-party members to vote as "morally and completely violated"<sup>45</sup> for defeating the whole idea of giving party voters the right to choose their own candidates for public office.

Eliminated Presidential Primary:<sup>46</sup> Although the Kansas legislature had only funded a Presidential Primary in 1980 and 1992, the statutory authority to take the process away from the parties still existed. In 2015, the authority for the state to conduct a Presidential Primary was eliminated, so that the political parties are now solely responsible for the selection and allocation of their national convention delegates.

### ***B. Additional Suggested Reforms in Kansas***

Eliminate Limits On Contributions to a Party: All state imposed contribution limits to state political parties should be eliminated by striking KSA 25-4153(d). This would place state political parties on an even field with outside groups. If candidates could depend more on political parties for support, they could spend more time serving constituents and forming working relationships. Parties would then be better positioned to recruit good candidates with promises of financial support and work for greater adherence to a party's legislative program. Party organizations would attract resources from even more sources, making them less dependent on any particular source, and the larger amount of contributions would dilute the influence of any specific donor.

Eliminate Restrictions on Party Primary Election Expenditures: Restrictions on political parties contributing to their own candidates during the primary election cycle should be eliminated by striking KSA 25-4153(g). Outside groups can spend unlimited sums to influence the party's primary election. The primary election is the political party's method of selecting its candidates and it should have total freedom to manage its candidate selection process. Moreover, this would give the party the ability to pay any campaign debt for unsuccessful primary contenders, a useful incentive for unsuccessful primary candidates to remain supportive in the general election.

Expand Public Financial Disclosure by Outside Groups: Provide greater

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44. Act of March 25, 2014, ch. 2, 2014 Kan. Sess. Laws 8.

45. DUNN, *supra* note 30, at 141.

46. Act of June 8, 2015, ch. 88, 2015 Kan. Sess. Laws 1150.

system wide financial disclosure and transparency by mandating financial reporting for all groups that decide to participate in elections. This can be accomplished by requiring full financial disclosure by any outside groups whose public statements (TV ads, mailers, etc.) could reasonably be interpreted as favoring or opposing a state candidate.

Current law is highly formalistic, requiring public financial disclosure only if the group's public statements use certain words deemed "express advocacy."<sup>47</sup> Outside groups avoid the need for public financial disclosure merely by avoiding the use of certain wording, even when the meaning of their advertising is patently obvious. Under this reform there is no reduction on what these groups can do or spend, only an expansion of what conduct triggers the need for disclosure.

**Bar Certain Transfers Between Non-Party Political Groups:** One method used to disguise the source and flow of funds is to use multiple intergroup transactions within networks of outside groups. It is a shell game to avoid contribution limits and to make the money trail difficult to track. As an example, if PAC 1 was limited to contributing \$1,000 to a candidate but received \$10,000, it could contribute \$1,000 to the candidate, then move the remaining \$9,000 to PAC 2, which in turn could give \$1,000 to the candidate and then move the remaining \$8,000 to PAC 3, and so on.

Reducing some of this financial gamesmanship and creating greater transparency and public disclosure can be achieved by banning contributions between outside groups. This would not restrict these groups' ability to take contributions, to spend, or to coordinate with each other and to split the costs of joint efforts. It would, however, make it far easier to track the flow of money.

**Bar Candidates from Giving to Politicized 501(c)(4)s:** Prohibit contributions from candidates to 501(c)(4)s making public statements which could reasonably be interpreted as favoring or opposing any candidate. This is a technique used by overly endowed or inactive candidates to evade the prohibition on candidates supporting each other or candidates contributing to a PAC.<sup>48</sup> Accomplishing this would require defining the statutory phrase "community service or civic organization" as used in KSA 25-4157a(a)(5) to exclude politicized 501(c)(4)s.

## VII. CONCLUSION

The amount of money spent in any particular election cycle is determined by factors generally unrelated to campaign finance regulation. Regulation only changes the route the money takes to influence the election outcome. Regulations designed to weaken political parties have merely shifted the flow of funds to other organizations. It is this shift away from transparent, broad-based

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47. KAN. STAT. ANN. § 25-4143(h) (2015).

48. KAN. STAT. ANN. § 25-4157a (2015) (listing the seven permissible expenditures by candidate campaign committees, a contribution to another candidate or to a PAC is not one of them).

political parties to narrowly focused and less transparent outside groups that is responsible for many of the current problems in our election system.

Combining unlimited contributions to political parties with increased public disclosure and increased difficulty of networking the outside groups would redress the imbalance of financial political power between political parties and the other groups. Campaign finance policies that strengthen political parties would allow the public to benefit from diminished influence of narrow ideological groups, less focus on ideological purity, and more public involvement in government.