

OUT-OF-STATE FUNDRAISING BANS AND RESTRICTIONS: OUT OF LINE WITH THE FIRST AMENDMENT

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State policy experiments restricting out-of-state giving to candidates and causes have taken different forms throughout recent history. Some have limited the amount or percentage of contributions that candidates and committees may accept from out-of-state donors. Others have forbidden out-of-state contributions to ballot measure committees entirely. The common thread? **All are unconstitutional.** Any policy imposing direct limits on – or outright banning – out-of-state contributions will ultimately prohibit some Americans from engaging in First Amendment-protected activity. For individuals barred from giving any amount to a candidate or cause, the outcome is the same whether due to a percentage-based restriction or a total ban on out-of-state donors.

Critically, the negative impacts of such restrictions are not limited to would-be donors living outside a state. Many state-based organizations will lose access to critical fundraising networks, and many national organizations will be prohibited or hindered from engaging in a state. The end result is less speech and less information for voters.

Legislation that discriminates against out-of-state voices and impedes in-state speech harms citizens' ability to meaningfully participate in policy debates and elections. While the short-term political goals often motivating out-of-state fundraising restrictions are dubious, successful litigation challenging such restrictions is certain.

3 KEY CONSEQUENCES OF RESTRICTING OUT-OF-STATE GIVING

Harms Nonprofit Civic Engagement and Associational Freedom. Many state-based nonprofits active in policy debates are affiliated with and/or funded in part by national organizations that receive donations from members and supporters across the country. In an environment with out-of-state funding limits, both the national organization *and* the state chapter are likely to be prohibited from engaging in regulated communications about policy issues central to their missions. For example, an in-state organization may be unable to inform like-minded citizens in the state of candidates' relevant voting records or may be prevented from speaking to voters about the impacts of ballot measures simply because the group received "too much" funding from its national affiliate.

Denies the Right to Hear From and Speak to Americans in Other States. Many state issues have regional or national implications, and voters may wish to hear from non-state residents or businesses affected by a state's policy choices. Voters may also wish to hear from national organizations with expertise in specific policy areas. Before seeking to silence out-of-state voices, lawmakers should consider their constituents' right to hear those viewpoints. Likewise, those out-of-state residents and businesses may have a vested interest in the outcome of state political debates. Land use and taxation, energy policy and environmental regulations, and criminal justice and immigration are all examples of policies that have tangible impacts beyond a single state's borders.

Unconstitutionally Bans Political Expression. The First Amendment to the U.S. Constitution generally forbids laws that prohibit a particular class of citizens from engaging in political expression. State-level proposals to ban or restrict political contributions by Americans living outside the state are no exception. Though non-discriminatory and sufficiently high contribution limits have survived constitutional scrutiny, any limit on Americans' political contributions must be for the purpose of preventing quid pro quo corruption or its appearance. As courts have emphasized repeatedly, limits applied exclusively to out-of-state donations have no relation to anti-corruption interests. Additionally, while restrictions on foreign nationals engaging in political activity in connection with U.S. elections (whether federal, state, or local) have been upheld as constitutional, the same is **NOT** true for limits on out-of-state persons. The chart that follows highlights five state and local laws aiming to restrict out-of-state political and cause-based giving that were emphatically ruled unconstitutional.

STATE/LOCAL LAWS RESTRICTING OUT-OF-STATE GIVING RULED UNCONSTITUTIONAL

Jurisdiction	Scope of Ban	Court Holding	Reasoning
Alaska	Banned state candidates from receiving more than \$3,000 per year in total from all out-of-state donors	<p style="color: #C00000;">Unconstitutional</p> <p><i>Thompson v. Hebdon</i>, 7 F. 4th 811 (9th Cir. 2021)</p>	<p>“[T]he law aims to curb perceived ‘undue influence’ of out-of-state contributors—an interest that is no longer sufficient after <i>Citizens United</i> and <i>McCutcheon</i>. Indeed, Alaska’s argument that the nonresident limit ‘reduces the appearance that a candidate will be obligated to outside interests rather than constituents’ says nothing about <i>corruption</i>.”</p> <p>“[E]ven if Alaska’s ‘self-governance’ interest could be construed as distinct from the interest in combating influence and access, the Supreme Court’s recent campaign finance decisions leave no room for us to accept the State’s proffered interest. The Supreme Court’s opinions articulate ‘only one’ narrowly defined legitimate state interest in capping campaign contributions: preventing quid pro quo corruption or its appearance.”</p>
Illinois	Banned out-of-state donors from contributing to state judicial candidates	<p style="color: #C00000;">Likely Unconstitutional</p> <p>(granting preliminary injunction)</p> <p><i>Chancey v. Ill. State Bd. of Elections</i>, 635 F. Supp. 3d 627 (N.D. Ill. 2022)</p>	<p>“The Court cannot ignore the gravity of the restriction with which it is faced: A state law prohibits an entire class of people from engaging in a distinct category of political expression during the electoral process . . . why would it matter whether funds sufficient to cast doubt on the integrity of the judiciary originate in-state rather than out of state? The State does not (and cannot) explain why money is more corrupting simply because its source is from outside the state, so the premise that the out-of-state ban on campaign contributions materially enhances the state judiciary’s appearance of integrity is entirely without foundation.”</p>
South Dakota	Banned out-of-state contributions to state ballot measure committees	<p style="color: #C00000;">Unconstitutional</p> <p><i>SD Voice v. Noem</i>, 380 F. Supp. 3d 939 (D. S.D. 2019)</p>	<p>The law “bans all direct political speech from one segment of society, a practice specifically struck down in <i>Citizens United</i>. The total ban on certain out-of-state contributions cannot withstand scrutiny unless the defendants can articulate a compelling reason for the ban. As a matter of law, whatever test is applied results in a finding that IM 24 is unconstitutional.”</p>
Vermont	Banned candidates, parties, and PACs from accepting more than 25% of their total contributions from out-of-state donors	<p style="color: #C00000;">Unconstitutional</p> <p><i>Landell v. Sorrell</i>, 382 F. 3d 91 (2nd Cir. 2004)</p> <p><i>rev'd and remanded on other grounds, Randall v. Sorrell</i>, 548 U.S. 230 (2006)</p>	<p>“[T]he out-of-state contribution limit isolates one group of people (non-residents) and denies them the equivalent First Amendment rights enjoyed by others (Vermont residents) . . . many non-residents have legitimate and strong interests in Vermont and have a right to participate, at least through speech, in those elections. We find no support in the record for the alternative claim that Vermont has an important interest in singling out one class of contributors for limitations.”</p>
Akron, Ohio	Banned candidates from accepting more than 25% of their total contributions from donors who were not city residents	<p style="color: #C00000;">Unconstitutional</p> <p><i>Frank v. City of Akron</i>, 95 F. Supp. 2d 706 (N.D. Ohio 1999)</p> <p><i>rev'd in part on other grounds</i>, 290 F. 3d 813 (6th Cir. 2002)</p>	<p>“[L]imiting the percentage of a candidate’s funds that could be raised from contributors outside the Akron city limits . . . would have the effect of absolutely prohibiting certain individuals, who might work in the City of Akron but reside elsewhere, from contributing to the candidate of their choice,” a restriction the court labeled “so clearly unconstitutional.”</p>

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