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COMMENTS

A COMPARATIVE APPROACH TO REGULATING MONEY POLITICS IN TAIWAN: LEARNING FROM THE MISTAKES OF OTHERS

I. INTRODUCTION

Well-publicized campaign finance scandals in Taiwan demonstrate the need for campaign finance laws that can stop the sale of political influence. Conversely, opponents of campaign finance reform contend that campaign finance laws are ineffective. Similar scandals in the United States prompted significant changes in campaign finance laws. The fallout from Watergate¹ allowed the passage of the Federal Elections Campaign Act Amendments of 1974.² Watergate may have also prompted Canada to adopt the Election Expenses Act of 1974.³ In the United States, a patchwork of campaign finance regulations prohibits the quid pro quo sale of political influence, but these regulations do not guarantee egalitarian elections.⁴ Similarly, Canadian campaign finance regulations designed to equalize candidate funds also fall short of their intended objectives.

1. "In a series of Senate hearings, trials, and news stories, the public learned what Washington politicians had known for decades: campaign-spending laws weren't being enforced, huge sums of money were being raised and spent in secret, and much of it was coming from illegal sources, including business corporations." BROOKS JACKSON, *HONEST GRAFT: BIG MONEY AND THE AMERICAN POLITICAL PROCESS* 72 (2d ed. 1990).

2. See HERBERT E. ALEXANDER, *FINANCING POLITICS: MONEY, ELECTIONS & POLITICAL REFORM* 32-35 (4th ed. 1992) (explaining how the Federal Election Campaign Act of 1971 was amended to establish the Federal Election Commission and limit contributions and spending). The amended Federal Election Campaign Act of 1971 is now codified in 2 U.S.C. § 431 et seq.

3. See J. PATRICK BOYER, *MONEY AND MESSAGE: THE LAW GOVERNING ELECTION FINANCING, ADVERTISING, BROADCASTING AND CAMPAIGNING IN CANADA* 57-58 (1983) (discussing the ramifications of Watergate and Nixon's \$70 million campaign expenses).

4. "The American system is rooted in the assumption of political equality: 'one person, one vote.' But money, which candidates need to harvest votes, is not distributed equally." ALEXANDER, *supra* note 2, at 3 (describing the "substantial inequities of political financing").

Taiwan's campaign finance laws are also in need of reform. Historically, Taiwan's strict campaign finance laws hampered the political expression of minority political parties such as the Democratic Progressive Party (DPP).⁵ Taiwan's parliament, the Legislative Yuan, expanded political freedoms by eliminating many speech restrictive provisions in the campaign finance laws. Unfortunately, some of these changes created loopholes that may result in corruption. The Legislative Yuan should first close potential loopholes in the campaign finance laws and then consider further revisions to promote egalitarian politics.

This Comment compares campaign finance reform in the United States and Canada to suggest a course for revising Taiwan's campaign finance laws. Part II explains the relevance of campaign funding and highlights the danger to democratic legitimacy posed by high election expenditures. Part III provides a background of Taiwan's campaign finance laws. Part IV compares campaign finance laws in Canada, the United States and Taiwan to identify areas in need of reform. Part V recommends specific changes in Taiwan's campaign finance laws.

II. RELEVANCE OF CAMPAIGN FUNDING

To run a successful political campaign, candidates need sufficient financing. Although money alone never guarantees victory in an election, lack of campaign financing usually guarantees defeat.⁶ For example, in the 1994 elections for the U.S. House of Representatives, under-funded challengers received fewer votes than well-funded candidates.⁷ These elections demonstrated that

5. See John F. Copper, *Taiwan's Recent Elections: Fulfilling the Democratic Promise*, in 101 OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 3, 70 (1990) [hereinafter Copper, *Democratic Promise*].

6. See LARRY MAKINSON & JOSHUA GOLDSTEIN, OPEN SECRETS: THE ENCYCLOPEDIA OF CONGRESSIONAL MONEY & POLITICS 5 (Larry Makinson & Joshua Goldstein eds., 2d ed. 1996); see also CONGRESSIONAL QUARTERLY INC., DOLLAR POLITICS 14-15 (Robert A. Diamond ed., 1971) (naming the heaviest spending, yet defeated candidates in the 1970 United States Senate elections).

7. Challenger's Percentage of Vote Based on Spending

<i>Spending by Challengers in United States House of Representatives 1994 Election</i>	<i>Percentage of popular vote</i>
\$0 or unreported	11.0%
\$1-99,999	30.6%
\$100,000-249,999	38.0%
\$250,000-499,999	43.1%
\$500,000 and over	47.5%

challengers needed at least \$500,000 for an even chance of victory.⁸ Challengers raising less than that amount could expect defeat.⁹ Although one could argue that under-funded candidates would not have been successful regardless of the amount of campaign funds raised, the data indicates that successful challengers raised large sums of campaign funds.

Increased use of political advertising has raised the costs of elections. Although there are some electoral differences between the United States, Canada and Taiwan, the increased reliance on institutionalized mass media raised election costs in all three countries. In the United States, “[m]oney has always been a critically important factor in campaigns, but the shift to expensive technology has made it the dominant factor.”¹⁰ Even in Taiwan, where political advertisements are banned on television and radio,¹¹ mass media has increased elections costs.¹²

Since Taiwan’s 1989 elections, high campaign expenses have been especially prevalent.¹³ In 1989, illegal campaign expenses such as vote buying, treating,¹⁴ and lavish parties contributed to high election costs.¹⁵ By the 1995 Legislative Yuan elections, vote

See MAKINSON, *supra* note 6.

8. Correlation Between Amount Spent by Challenger and Odds of Winning

<i>Spending by Challengers in United States House of Representatives 1994 Election</i>	<i>Approximate Odds Of Winning</i>
under \$100,000	0
\$100,000-\$249,999	18:1
\$250,000-\$499,999	6:1
over \$500,000	1:1

See *id.*

9. See *id.*

10. DAN CLAWSON ET AL., MONEY TALKS: CORPORATE PACS AND POLITICAL INFLUENCE 7 (1992) (citing EDSELL, THE CHANGING SHAPE OF POWER: A REALIGNMENT IN PUBLIC POLICY) [hereinafter CORPORATE PACS].

11. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 50(2) (1994) (Taiwan).

12. See Vincent I. Hsieh, *New Channels: Regulation of Taiwan's Cable Television Industry*, L.A. DAILY J., Dec. 23, 1997, at 7 (discussing the need for foreign investment to feed the growth of the cable industry).

13. See Copper, *Democratic Promise*, *supra* note 5, at 70.

14. See CANADA ELECTIONS ACT §§ 66-67 (1970) (Can.) (describing “treating” as treating voters to food and liquor to promote candidates, but excluding “light refreshments”).

15. “Observers [of the election] noted that vote buying and illegal campaign spending were the result of Taiwan’s economic boom combined with the now greater importance of elected officials in influencing economic decisions. Most regarded the growth of ‘money politics’ as unfortunate but also inevitable.” Copper, *Democratic Promise*, *supra* note 5, at 71; see also BOYER, *supra* note 3, at 554 (describing “the ruinous effect such generosity . .

buying had become less prevalent,¹⁶ yet “[p]oliticians did indeed spend a lot of money campaigning, more per seat than in many western countries.”¹⁷

High campaign expenses allow the opportunity for major contributors to influence politicians. Large donors such as political action committees¹⁸ tend to expect access, if not favors, in exchange for their contributions. Former Senator Bob Dole explained that, “[w]hen the Political Action Committees give money, they expect something in return other than good government.”¹⁹ In the United States, most contributors cannot overtly buy a legislative member’s vote on a bill. They do, however, use their access to request legislative assistance for their clients.²⁰

III. BACKGROUND OF CAMPAIGN FINANCE LAWS

Campaign finance regulations primarily prevent corruption. Limiting contributions can prevent an individual from donating large sums of money in an attempt to bribe a candidate. Spending limits and public subsidies may also prevent corruption by decreasing a candidate’s need for contributions. Campaign finance regulations can also equalize wealth through two strategies: limits on candidate and political party spending that reduces the advantage of larger campaign funds; and public subsidies that mitigate the disadvantage of smaller campaign funds.

could have on a candidate’s election funds”).

16. See John F. Copper, *Taiwan’s 1995 Legislative Yuan Election*, in 132 OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 1, 36-37 (1996) [hereinafter Copper, *1995 Election*]; see also TERENCE H. QUALTER, *THE ELECTION PROCESS IN CANADA* 153 (Paul W. Fox ed., 1970) (explaining that vote buying in Canada declined because the number of voters was “simply too large to influence through individual bribes and threats”).

17. Copper, *1995 Election*, *supra* note 16, at 37.

18. “Political action committees [PACs] were born in the 1940s out of a perceived political necessity. When labor unions were prohibited from spending union treasury funds to contribute to federal candidates, they invented the idea of pooling donations from their members and presenting *that* money to candidates instead.” MAKINSON & GOLDSTEIN, *supra* note 6, at 22 (describing how contribution limits created labor union, business and ideological PACs).

19. JACKSON, *supra* note 1, at 244-249 (describing Senator Bob Dole’s support of a campaign finance bill); see also Skip Kaltenheuser, *Contributions to Congressmembers Buy Their Influence*, in *POLITICIANS AND ETHICS* 81, 82 (David Bender et al. eds., 1996) (phrasing Dole’s comment slightly different).

20. See CORPORATE PACS, *supra* note 10, at 91.

A. Campaign Finance Laws in the United States and Canada

Most countries regulate election contributions. The United States regulates campaign finance under the Federal Election Campaign Act of 1971 (FECA)²¹ and the Federal Election Act Amendments of 1974.²² These laws prevent corruption by limiting the size of large contributions.²³ The FECA also limits campaign expenses by setting maximum expenditures.²⁴

In Canada, the Election Expenses Act of 1974²⁵ governs campaign finance. The three goals of the Election Expenses Act of 1974 were: (1) to equalize money available to candidates; (2) to encourage a more open administration of election finances through disclosure of expenses and contributions; and (3) to encourage public participation in the political process through tax credits for contributions.²⁶ The Election Expenses Act of 1974 sought to achieve these goals through expenditure limits, disclosure requirements, and public financing of political parties and candidates.²⁷

B. Campaign Finance Laws in Taiwan

In Taiwan, the Public Officials Election and Recall Law (POERL)²⁸ governs elections of all public officials except the President.²⁹ Enacted only a few years after U.S. and Canadian

21. Federal Election Campaign Act of 1971, Pub. L. No. 92-225 (1972).

22. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974).

23. Federal Election Campaign Act of 1971, Pub. L. No. 92-225 (1972); Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974).

24. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 203 (1972) (amending 18 U.S.C. § 608 to limit contributions and expenditures). The Supreme Court later held the FECA expenditure limits unconstitutional, but upheld contribution limits in *Buckley v. Valeo*, 424 U.S. 1 (1976).

25. Cited in Canada as S.C. 1973-74, c. 51, as amended by S.C. 1977-78, c. 8.

26. See BOYER, *supra* note 3, at 58.

27. See *id.*

28. PUBLIC OFFICIALS ELECTION AND RECALL LAW (1994) (Taiwan) (containing Taiwan's campaign finance regulations) (promulgated by presidential decree (69) t'ai t'ung (1) yi No. 2660 on May 14, 1980).

29. PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 2 (1994) (Taiwan) (defining public officials as members of the Legislative Yuan, the National Assembly, or local public officials). Presently, Taiwan's federal legislative power is split between the National Assembly and the Legislative Yuan, though the DPP has suggested that Taiwan adopt a unicameral congress with three co-equal branches similar to the United States. For an official DPP statement on constitutional reform, see DEMOCRATIC PROGRESSIVE PARTY, GIVE TAIWAN A CHANCE 35 (Maysing H. Yang ed., 1996) [hereinafter GIVE

campaign finance laws, Taiwan's election laws were introduced in a different political atmosphere.

Money politics played a fundamental role in Taiwan's political history. When the Kuomintang (KMT)³⁰ arrived in Taiwan in 1945,³¹ they imposed martial law leaving themselves the only legally recognized political party.³² The KMT confiscated property from the Japanese colonial government to create state run enterprises.³³ To gain support of the Taiwanese elite and maintain control of the central government, the KMT distributed these resources to factional supporters.³⁴ Thus, the KMT maintained control through martial law and through selling favors to local factions in exchange for political support.

The KMT maintained elections³⁵ and allowed non-KMT candidates to run against their candidates.³⁶ Although KMT candidates had the advantage of drawing funds from state run enterprises, non-KMT candidates sometimes won.³⁷ After four decades

TAIWAN A CHANCE].

30. Also known as the Nationalist Party, the Kuomintang lost control of China to the Communists in the civil war. See DAVID E. KAPLAN, *FIRES OF THE DRAGON 19-65* (1992) (describing the KMT's defeat at the hands of the Peoples Liberation Army).

31. Under the command of Chiang Kai-shek, KMT troops seized control of Taiwan by killing about 28,000 civilians. See KAPLAN, *supra* note 30, at 19-65 (describing the KMT history beginning in China to their arrival in Taiwan).

32. The KMT imposed martial law on May 20, 1949, suspending constitutional rights such as street demonstrations and formation of political parties. See Lu Ya-li, *Political Developments in the Republic of China*, in *DEMOCRACY AND DEVELOPMENT IN EAST ASIA* 35, 36-37 (Thomas W. Robinson ed., 1991). Street protests and organizing political parties were considered crimes. One famous trial in 1960 involved Lei Chen, the chief editor of Free China Magazine, who was sentenced to ten years in prison for attempting to organize an opposition party to the KMT. See Ting Tin-yu, *Sociocultural Developments in the Republic of China*, in *DEMOCRACY AND DEVELOPMENT IN EAST ASIA* 75, 82 (Thomas W. Robinson ed., 1991).

33. See GIVE TAIWAN A CHANCE, *supra* note 29, at 49 (describing the foundation of money and factional politics in Taiwan); see also John F. Copper & George P. Chen, *Taiwan's Elections: Political Development and Democratization in the Republic of China*, in 64 *OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD.* 1, 41-42 (1984) (commenting that the KMT also appropriated residential property during a housing shortage).

34. See GIVE TAIWAN A CHANCE, *supra* note 29, at 49 (explaining that the KMT successfully became "a distribution center of interests").

35. See Copper & Chen, *supra* note 33, at 42 (commenting that, in 1983, the KMT maintained meaningful local elections, but left national elections a hypocritical facade of democracy).

36. See Ralph N. Clough, *The Enduring Influence of the ROC on Taiwan Today*, 148 *CHINA Q.* 1054, 1059 (1996).

37. See *id.* at 1059.

of martial law, the KMT initiated political reforms.³⁸ In 1986, the KMT experimented with limited elections and later allowed political opposition.³⁹ By 1989, the more liberal Democratic Progressive Party (DPP) emerged as the KMT's main political competitor.⁴⁰ The DPP steadily gained influence after 1986, despite the restrictive election laws.⁴¹ In 1993, a right wing faction of the KMT broke away to form the New Party.⁴² By 1995, the KMT maintained only a narrow majority in the Legislative Yuan.⁴³

38. See Lu Ya-li, *supra* note 32, at 35 (stating "In 1986, the leadership of the Republic of China (ROC) on Taiwan decided to launch political reforms aimed at transforming the island's authoritarian system into a constitutional democracy.").

39. The 1986 election was referred to as a "democratic holiday" since it was primarily a practice exercise in democratic elections. See Yangsun Chou & Andrew J. Nathan, *Democratizing Transition in Taiwan*, in 80 OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD. 2, 17 (1987) (citing *Elections in Taiwan, December 6, 1986: Rules of the Game for the "Democratic Holiday,"* ASIA WATCH, Nov. 1986).

40. See Copper, *Democratic Promise*, *supra* note 5, at 7-11 (describing the founding of the DPP in 1986 and their unexpected victory in the 1989 elections); see also Hung-mao Tien & Yun-han Chu, *Building Democracy in Taiwan*, 148 China Q. 1141, 1154-55 (1996).

41. "The [1986 election] results must be interpreted in light of the structure of the Taiwan political system, which limits the campaign to two weeks and restricts publicity, expenditures, and access to the mass media, and in which there normally is considerable vote buying and other irregularities." Chou & Nathan, *supra* note 39, at 17 (citing *Elections in Taiwan, December 6, 1986: Rules of the Game for the 'Democratic Holiday,'* ASIA WATCH, November 1986) (discussing the growth of the DPP despite restrictive election laws, "Despite these disadvantages, the DPP got 18.90% of the vote in the National Assembly election . . . and 22.17% in the Legislative Yuan election."); see also MARTIN L. LASATER, *A STEP TOWARD DEMOCRACY: THE DECEMBER 1989 ELECTIONS IN TAIWAN, REPUBLIC OF CHINA 89* (1990) (explaining how election restrictions on campaigning, political organization, and freedom of expression help maintain the dominant party system commonly found in Southeast Asia).

42. See Tien & Chu, *supra* note 40, at 1151.

43. Distribution of Popular Votes and Seats in Recent Elections for Representative Bodies

	KMT	DPP	New Party	Independent
<i>1992 Legislative Yuan Election</i>				
Popular Vote	52.51%	30.79%	N/A	16.70%
Seats	101	51	N/A	9
Percentage of seats	62.7%	31.7%	N/A	5.6%
<i>1995 Legislative Yuan Election</i>				
Popular Vote	46.06%	33.17%	12.95%	7.82%
Seats	85	54	21	4
Percentage of seats	51.8%	32.9%	12.8%	2.4%

See *id.* at 1158; see also Clough, *supra* note 36, at 1059 (1996) (remarking that the KMT almost failed to elect their Legislative Yuan speaker by one vote on Feb. 1, 1996).

The March 1996 elections ended the democratic transition period.⁴⁴ For the first time the parliament was entirely elected by the people.⁴⁵ Taiwan's inclusive political climate allowed formerly exiled overseas Taiwanese to return as candidates.⁴⁶ By 1996, the former one-party authoritarian regime had yielded to coalition politics.⁴⁷

The KMT drafted the original POERL in 1980, when Taiwan was under martial law.⁴⁸ Most of the original campaign finance provisions of the POERL are remnants of that era.⁴⁹ To maintain tight control over the elections, the 1986 POERL included contribution limits, expenditure limits, speech restrictions and reporting requirements. With an established democratic system, the Legislative Yuan removed many of the most speech restrictive provisions. Unfortunately, the revised laws contain potential loopholes that may allow corruption. To safeguard past democratic gains, the Legislative Yuan should revise the campaign finance laws to prevent corruption.⁵⁰ The Legislative Yuan could also use campaign finance laws to further egalitarian politics.

IV. AREAS FOR POTENTIAL REFORM

A. Contribution Limits

Contribution limits primarily deter exchanges of contributions for a candidate's future favors because contributors may seek to influence a candidate with campaign contributions. These campaign contributions can be made in many ways, including, for example, free trips on luxurious corporate jets.⁵¹ On the other hand,

44. See Tien & Chu, *supra* note 40, at 1141; see also *Taiwan President Views Future of Chinese World*, CHRISTIAN SCI. MONITOR, May 21, 1997, at 19 (describing Lee Teng-hui as Taiwan's "first democratically elected president").

45. See Tien & Chu, *supra* note 40, at 1141.

46. See *id.* at 1154.

47. See *id.* at 1163-64.

48. See PUBLIC OFFICIALS ELECTION AND RECALL LAW (1983) (Taiwan), translated in Copper & Chen, *supra* note 33, at 1, 128-149 (describing the election law as "Effective during the Period of Mobilization for Suppressing Communist Rebellion").

49. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(1) (1983) (Taiwan); cf. PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(1) (1994) (Taiwan).

50. See GIVE TAIWAN A CHANCE, *supra* note 29, at 48 (warning that "unless thorough reform is undertaken, the fruits of democratization will be eroded away by money politics and triads").

51. One PAC officer explained that their company refused to use the company jet to fly members of Congress because of the corrupting influence it might have. "You may or

some lobbyists complain that incumbents demand campaign contributions for their time and attention.⁵²

Contribution limits can reduce misbehavior on both sides. Capping the amount of large donations can also force candidates to seek campaign contributions from a larger number of donors. This would obligate candidates to a broader constituency rather than to a few special interest groups.

Canada and the United States employ two divergent approaches towards contribution limits. Canadian federal law does not limit the size⁵³ or source of contributions.⁵⁴ It only requires candidates to report the amount of the contribution, and the identity and class of a contributor donating over Can\$100.⁵⁵ Canadian political candidates are free to solicit money from foreign and domestic sources, including individuals, trade unions, corporations and other organizations.⁵⁶ Unlike the United States, Canada relies primarily on disclosure to prevent corruption.

The United States perceives that large campaign contributions can foster corruption. To address this concern, the Federal Election Campaign Act of 1971 (FECA)⁵⁷ limits the amount of contributions to candidates, party committees and political action committees.⁵⁸ In *Buckley v. Valeo*, the Supreme Court held that

may not be able to imagine the pressure that is placed on people flying in corporate airplanes. The temptation is tremendous. Get a member in the air for two hours—feed him, drinks, take him someplace . . .” CORPORATE PACS, *supra* note 10, at 78.

52. “One lobbyist told the Wall Street Journal that for Senator Alfonse D’Amato (R-N.Y.), ‘Nothing is enough. It’s continuous pressure. If you don’t contribute, they don’t return your calls.’” CORPORATE PACS, *supra* note 10, at 60. One PAC officer contributed to Lloyd Bentsen (D-Tex. and chair of the Senate Finance Committee) after being told “point blank that ‘you don’t contribute to us; why should we even help you?’” *Id.*

53. See BOYER, *supra* note 3, at 58 (stating that “federal election finance laws today provide no limit on the amount that a contributor may give to a party or candidate”).

54. See Khayyam Zev Paltiel, *Canadian Election Expense Legislation, 1963-85: A Critical Appraisal Or Was The Effort Worth It?*, in COMPARATIVE POLITICAL FINANCE IN THE 1980S 51, 66 (Herbert E. Alexander ed., 1990).

55. See *id.*

56. See *id.*

57. See Federal Election Campaign Act of 1971, Pub. L. No. 92-225 (1972).

58. Federal Contribution Limits

	To a candidate or candidate committee per election	To a national party committee per calendar year	To any other political committee per calendar year**	Total per calendar year
Individual may give:	\$1000	\$20,000	\$5000	\$25,000

contributions limits were constitutional.⁵⁹ Equating campaign contributions with political speech, the Court reasoned that limits on political speech are constitutionally permissible only when they (1) serve a sufficiently important state interest and (2) are closely drawn to avoid unnecessary abridgment of associational freedoms.⁶⁰ Furthermore, the Court held that the \$1000 per candidate limit provided by the FECA was necessary to prevent corruption or apparent corruption.⁶¹

The state interest in *Buckley* only justifies restricting campaign contributions which are large enough to potentially corrupt politicians.⁶² In *Carver v. Nixon*,⁶³ the Eighth Circuit Court of Appeals considered the constitutionality of a state statute⁶⁴ which limited individual campaign contributions to between \$100 and \$300 per election.⁶⁵ The court perceived the contribution limits were more severe and less justified than the \$1000 limit held constitutional in *Buckley*.⁶⁶ The court then concluded that the limits

Multicandidate committee* may give:	\$5000	\$15,000	\$5000	no limit
Other political committee may give:	\$1000	\$20,000	\$5000	no limit

* A multicandidate committee is a political committee with more than 50 contributors that has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. See 2 U.S.C. §441a(a)(4) (1994).

** Exception: If a contributor gives to a committee knowing that a substantial portion of the contribution will be used to support a particular candidate, then the contribution counts against the donor's limit for that candidate (first column on the chart).

This chart can be derived from 2 U.S.C. §441a(a) (1994), see also 11 C.F.R. 110.1-110.2 (1997).

59. See *Buckley v. Valeo*, 424 U.S. 1, 28-29 (1976).

60. See *id.* at 25-27.

61. See *id.*

62. "To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined." *Buckley*, 424 U.S. at 26-27 (describing the state interest of preventing corruption).

63. *Carver v. Nixon*, 72 F.3d 633, 635-36 (8th Cir. 1995), *cert. denied*, *Nixon v. Carver*, 116 S. Ct. 2579 (1996).

64. Adopted by initiative under proposition A, per election per candidate campaign contributions were limited to: \$100 for elections in districts with fewer than 100,000 residents; \$200 in districts of 100,000 or more residents; and \$300 for statewide candidates such as Governor, Lieutenant Governor, Attorney General, Auditor, Treasurer and Secretary of State. See MO. ANN. STAT. § 130.100 (West 1994).

65. See *Carver*, at 641-43.

66. See *id.* at 644.

violated contributors' constitutional rights of freedom of speech and association.⁶⁷ Thus, the U.S. Constitution guarantees the right of individuals to make small campaign contributions.

In addition to regulating the size of contributions, campaign finance laws in the United States also limit the source of contributions.⁶⁸ The FECA does not allow corporations to contribute to campaigns from corporate funds.⁶⁹ Corporations are allowed to establish PACs to raise voluntary contributions.⁷⁰ Unfortunately, the voluntariness of these contributions is debatable because corporations can coerce contributions from their officers and employees.⁷¹

In Taiwan, the POERL not only allows corporate contributions,⁷² but also allows corporations to contribute *more* than individuals. The POERL limits contributions to the lesser of a set limit or an income percentage.⁷³ Individual contributions are limited to N.T.\$20,000 (U.S.\$714)⁷⁴ per candidate and N.T.\$200,000 (U.S.\$7140) per party, and 20% of the individual's annual income.⁷⁵ "Profit seeking enterprises" are limited to the lesser of N.T.\$300,000 (U.S.\$10,714) per candidate and N.T.\$3,000,000 (U.S.\$107,143) per party, or 10% of their annual income.⁷⁶ Thus, corporations are allowed to contribute more than ten times an individual's allowable contribution.

Allowing corporate contributions is problematic because corporations can make contributions in exchange for improper political favors. Allowing large corporate contributions compounds the risk of corruption. The POERL allows corporations seeking pub-

67. *See id.*

68. *See* 2 U.S.C. § 441a (1994) (regulating contributions from various classes of individuals and organizations).

69. *See* 2 U.S.C. § 441b(a) (1994); *see also* United States v. Congress of Industrial Org., 335 U.S. 106, 113 (1948) (tracing the origin of the ban on corporate contributions to the Act of Jan. 26, 1907, and stating that the legislation seemed to have been motivated by preventing corporate influence in elections).

70. *See generally* CORPORATE PACS, *supra* note 10 (explaining the internal workings of corporate PACs).

71. *See id.* at 37-41 (providing anecdotal evidence of coercion).

72. *See* PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(3) (1994) (Taiwan) (listing prohibited sources of campaign contributions such as public officials and foreign entities).

73. *See* PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(5) (1994) (Taiwan).

74. The currency of Taiwan is the New Taiwan dollar (N.T.). Assume a currency conversion of N.T.\$28 to U.S.\$1. *See* ECONOMIST, Mar. 14, 1997, at 108.

75. *See* PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(5) (1994) (Taiwan).

76. *See id.*

lic contracts to contribute to the same public officials who will later approve those contracts.⁷⁷ Mandatory reporting requirements can discourage candidates from accepting such contributions. Faced with the high costs of campaigning, however, candidates may prefer to risk embarrassment in the media rather than a large debt. Allowing large corporate contributions also gives KMT candidates the advantage of contributions from KMT owned enterprises.⁷⁸ Some DPP candidates in the 1989 elections complained that KMT candidates misused funds from KMT owned industries.⁷⁹

Because of contribution loopholes, merely lowering the amount of corporate contributions will be ineffective. The "soft money"⁸⁰ loophole in the United States is one way individuals and corporate PACs circumvent contribution limits.⁸¹ In the United States, the FECA strictly limits the amount of money individuals and PACs can give to specific candidates,⁸² yet the FECA does not regulate contributions provided for party building efforts.⁸³

Contributions to state and local party organizations are supposed to fund state and local volunteer activities such as voter registration, get-out-the-vote drives and bumper stickers.⁸⁴ In practice, local party organizations often misuse funds by advocating specific candidates.⁸⁵ State and local party organizations can circumvent contribution limits by spending soft money on behalf of the national party.⁸⁶ Thus, soft money can finance television advertising for presidential candidates.⁸⁷ Although soft money can

77. See *id.* art. 45(3) (prohibiting contributions by government enterprises and corporations who receive contributions from the government).

78. See *infra* note 182.

79. See Copper, *Democratic Promise*, *supra* note 5, at 70 (referring to vote buying in the 1989 elections, the author states that "DPP candidates accused the KMT of using funds from party-owned companies in illegal ways").

80. "[T]he principal loophole in the federal campaign spending law is something that has come to be called 'soft money'. In the broadest sense, soft money encompasses any contributions not regulated by federal election laws." MAKINSON & GOLDSTEIN, *supra* note 6, at 20; see also 2 USC § 431(8)(B) (1994) (enumerating a list of donations not considered contributions for the purpose of campaign finance regulations).

81. See *id.*

82. See contributions limits chart, *supra* note 58.

83. See MAKINSON & GOLDSTEIN, *supra* note 6, at 20.

84. See *id.*; see also 2 USC § 431(8)(B).

85. See MAKINSON & GOLDSTEIN, *supra* note 6, at 20.

86. See ALEXANDER, *supra* note 2, at 104 (explaining how the soft money loophole was particularly troubling in the 1988 general election).

87. See MAKINSON & GOLDSTEIN, *supra* note 6, at 20.

promote grass-roots political participation, some campaign finance reform advocates called for a ban on soft money.⁸⁸ A less drastic alternative would be to regulate the use of “party money” to advocate a particular candidate.

Taiwan does regulate contributions for general party building. In 1994, the POERL limited individuals to the lesser of N.T.\$200,000 (U.S.\$7140) per party or 20% of the person’s annual income.⁸⁹ “Profit seeking enterprises” were limited to the lesser of N.T.\$3,000,000 (U.S.\$107,143) per party or 10% of their annual income.

Taiwan faces an even larger soft money loophole than that of the United States. The POERL limits contributions from individuals and profit organizations to candidates and political parties, but fails to regulate contributions from nonprofit organizations such as PACs. Corporations and individuals reaching the maximum contribution limit can simply contribute through a PAC to avoid contribution limits.⁹⁰ The contribution limits in the POERL fail to prevent the corrupting influence of large contributions and corporate contributions.

The tax deductibility of campaign contributions in the POERL also favors corporations over individuals. Campaign contributions have been tax deductible since the 1989 elections, subject to certain limitations.⁹¹ Individuals can still deduct up to N.T.\$20,000 for contributions to candidates and up to 20% of their gross income for contributions to political parties.⁹² Businesses are still allowed to deduct campaign contributions as ordinary business expenses. They can deduct up to N.T.\$300,000 for contributions to candidates⁹³ and up to 10% of their taxes for contribu-

88. “By far the most important campaign finance issue Congress must wrestle with is how to close the ‘soft money’ loophole.” Jonathan Cohn, *Reform School* (visited Jan. 17, 1998) <http://motherjones.com/coinop_congress/97mojo_400/reform.html> (advocating a ban on soft money under the McCain-Feingold Bill); see also Richard Lacayo, *The Gang’s All Here*, TIME, Oct. 6, 1997, at 43 (predicting the failure of the McCain-Feingold Bill).

89. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(5) (1994) (Taiwan).

90. See *id.*

91. See *id.* (requiring for tax deductibility that (1) the candidate get at least 5% of the popular vote, (2) the candidate be a public official higher than the provincial level, and (3) any profit enterprises donating money did not operate at a loss for the past three years).

92. See *Campaign Contributions Are Tax Deductible*, TAIWAN TRIBUNE, Oct. 8, 1997, at 1 (source in Chinese).

93. See *id.*

tions to political parties.⁹⁴ Encouraging large corporate contributions implies that businesses are expected to contribute to receive preferential treatment or avoid unfavorable taxes. Favoring corporate contributions over individual contributions may also discourage small individual contributions.

The POERL also treats a campaign contribution as a personal gift to a candidate.⁹⁵ The POERL condones the commingling of personal and campaign funds by allowing a candidate a personal tax deduction for campaign expenditures that exceed contributions.⁹⁶ Allowing the commingling of campaign funds with personal funds risks corruption and adds to the appearance of corruption.

B. Expenditure Limits

Expenditure limits set a maximum dollar amount for candidate and political party campaign expenses. Expenditure limits diminish the advantage of personal fortune and large campaign funds. By spending less, candidates should be less indebted to large campaign contributors. Expenditure ceilings, however, also limit candidate speech since advertising expenses are a part of campaign expenditures.⁹⁷ Even as early as Canada's 1979 general election, the majority of campaign expenditures paid for television and radio advertising.⁹⁸ Thus, every election system's expenditure

94. *See id.*

95. *See* PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(5) (1994) (Taiwan) (calculating the candidate's personal tax deduction as campaign expenses minus campaign contributions).

96. *See id.*

97. Sometimes advertising expenses comprise the majority of campaign expenses. *See* advertising expense chart *infra* note 98.

98. "Table 10-1 Advertising Expenses, By Medium and Party, 1979"

	Conservatives	Liberal	NDP	Other	Total
Print	10%	24%	24%	70%	18%
Radio	34%	23%	19%	14%	27%
Television	56%	53%	58%	16%	55%
Total spent on Advertisements	2,745,501	2,434,405	1,333,080	63,704	
Percent of total Expenditures	71%	62%	61%	65%	65%

Frederick J. Fletcher, *Playing the Game: The Mass Media and the 1979 Campaign, in CANADA AT THE POLLS, 1979 AND 1980: A STUDY OF THE GENERAL ELECTIONS* 280, 288-289 (Howard R. Penniman ed., 1981) (tabulating calculated data reported in Chief Electoral Officer, *Special Report to the Speaker of the House of Commons Respecting Election Expenses of Registered Parties and Candidates for the Thirty-first General Elec-*

regulations necessarily balance the value of political speech against the value of egalitarian elections.

The United States values unlimited political speech over egalitarian elections. The Supreme Court in *Buckley v. Valeo*,⁹⁹ held that the FECA's campaign expenditure limits were unconstitutional.¹⁰⁰ The Court reasoned that restricting expenditures necessarily reduced the quantity of political speech because television and radio ads were "indispensable instruments of effective political speech."¹⁰¹ After equating speech with political advertising expenses, the Court required an important government interest to justify the FECA's restriction on political expression.¹⁰² The Court then held that no government interest could justify the FECA's campaign expenditure limits,¹⁰³ noting that the Act's contribution limits and disclosure provisions already alleviated the potential for corruption.¹⁰⁴

The Court also concluded that the government's interest in promoting egalitarian elections did not justify the FECA's expenditure ceiling.¹⁰⁵ The Court asserted that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed 'to secure the widest

tion, May 22, 1979 (Ottawa: Ministry of Supply and Services, 1980)).

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

100. See Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101, 88 Stat. 1263 (1974) (amending 18 U.S.C. § 608). Section 608 (c)(1)(A), (B) limited nomination and election expenditures. Presidential candidates were limited to ten million dollars for nomination and twenty million dollars for general election campaigning. Section 608(c)(1)(C) and (D) limited senatorial campaign spending according to the voting-age population with a minimum dollar amount in States with small populations. Senate primaries were limited to the greater of eight cents multiplied by the voting-age population or \$100,000. Senate elections were limited to 12 cents multiplied by the voting-age population or \$150,000. Section 608(c)(1)(C)-(E) limited campaigns for both primaries and general elections in the House of Representatives to \$70,000 each, however, a state with only one representative was allowed the senatorial ceiling. Section 608(d) adjusted these limits for inflation at the beginning of each calendar year by the average percentage rise in the consumer price index for the 12 preceding months.

101. *Buckley*, 424 U.S. at 19.

102. See *id.* at 44.

103. See *id.* at 45 (describing 18 U.S.C. § 608(e) (1974)); see also Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101, 88 Stat. 1263 (1974) (amending 18 U.S.C. § 608).

104. See *Buckley*, 424 U.S. at 19.

105. See *id.* at 48-49; see also Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101, 88 Stat. 1263 (1974) (adding campaign expenditure limits in 18 U.S.C. § 608(e)(1) (1974)).

possible dissemination of information . . .”¹⁰⁶ Thus, the desire to promote egalitarian elections through expenditure limits failed to justify the abridgment of candidates’ First Amendment rights.¹⁰⁷

Canada’s use of spending limits demonstrates its preference for egalitarian public participation over unlimited political speech. Most Canadian jurisdictions impose spending limits during the election period.¹⁰⁸ The Canadian Supreme Court weighed the value of egalitarian elections against the value of free speech. In *Regina v. Blake*,¹⁰⁹ the Canadian Supreme Court addressed the constitutionality of *advertising* expenditure limits in the Elections Finances Act of Manitoba.¹¹⁰ Unlike the United States, the Canadian Supreme Court refused to equate speech with advertising expenditures, and held that limiting advertising expenses did not restrict the speech of political candidates.¹¹¹ The Canadian Supreme Court also decided that promoting public confidence and egalitarian political participation would justify the regulations even if limiting advertising expenses restricted the speech of political candidates.¹¹²

Canadian federal law continues to limit campaign expenses.¹¹³ Unfortunately, political parties can circumvent expenditure limits because expenditures are narrowly defined as only those that directly promote or oppose the election of a candidate during the official election period.¹¹⁴ Canadian law fails to recognize expenses outside the official election period, such as money spent on offices, staff and overhead.¹¹⁵ When a political party provides offices and staff to promote a candidate, only a small portion of

106. *Buckley*, 424 U.S. at 48-49.

107. *See id.*

108. *See Zev Paltiel, supra* note 54, at 67.

109. *See Regina v. Blake* [1988] 5 W.C.B.2d 23.

110. *See id.*

111. *See id.* (responding to the U.S. Supreme Court in *Buckley* by stating “it is clear that the purely ‘libertarian’ values which the U.S. Supreme Court held were enshrined in the American Constitution are not the same values enshrined in our own Constitution”).

112. *See id.* (stating that “even if § 51(2) were found to be an infringement of [the freedom of expression under] § 2(b) it would constitute a reasonable limit on freedom of speech”).

113. *See Election Expenses Act, R.S.C., ch. 51, § 13.2 (1974) (Can.)* (limiting party expenditures to Can\$.30 per registered voter).

114. *See Zev Paltiel, supra* note 54, at 67.

115. *See id.* (explaining that Canadian law considers money spent outside the official election period as ongoing expenses as opposed to election expenses).

these expenses are considered a candidate's campaign expenses.¹¹⁶

Taiwan's campaign finance law has included expenditure limits since the drafting of the POERL in 1980.¹¹⁷ The POERL calculates the campaign expenditure limits for each pair of presidential and vice presidential candidates by multiplying 70% of Taiwan's total population with N.T.\$15 and then adding N.T.\$80 million.¹¹⁸ This formula would have allowed N.T.\$302.45 million (U.S.\$10.8 million)¹¹⁹ for the 1996 presidential and vice presidential elections.¹²⁰ The POERL also limits campaign expenditures for non-presidential public officials.¹²¹ To determine expenditure limits in the National Assembly, Legislative Yuan, State Council, and municipal city council, the POERL multiplies 70% of the total population times N.T.\$15 plus a fixed amount.¹²² For provincial governor, municipal mayor, magistrate and city mayor elections, the POERL sets the maximum expenditure at 70% of the total population multiplied by N.T.\$8 plus a fixed amount.¹²³ The fixed amount varies according to the office and ranges from N.T.\$10 million (U.S.\$357,143) for a provincial governor¹²⁴ to N.T.\$80,000 (U.S.\$2857) for an aboriginal tribal chief.¹²⁵

Taiwan's expenditure limits are effective when properly enforced. Taiwan's expenditure ceilings might seem high, but Legislative Yuan candidates often exceeded them, even in 1989 when

116. See *id.* (noting that campaign overhead expenses can be paid by the party); see also Election Expenses Act, R.S.C., ch. 51, § 13.2(1.1) (1974) (Can.) (excluding as expenditures, money spent by the party for the candidate).

117. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(1) (1983) (Taiwan).

118. See Taiwan's Government Information Office (last visited Oct. 10, 1997) <<http://www.gio.gov.tw/info/election/eleclaw.html>> (providing a summary of the PRESIDENTIAL AND VICE PRESIDENTIAL ELECTION AND RECALL LAW (1996) (Taiwan)).

119. The currency of Taiwan is the New Taiwan dollar (N.T.). Assume a currency conversion of N.T.\$28 to U.S.\$1. See ECONOMIST, Mar. 14, 1997, at 108.

120. This quick calculation was provided by Taiwan's Government Information Office, *supra* note 118.

121. See PUBLIC OFFICIALS ELECTION AND RECALL LAW, ch. 3, art. 45(2) (1994) (Taiwan).

122. See *id.*

123. See *id.*

124. Assuming a 21.3 million total population in Taiwan and a N.T.\$28 to U.S.\$1 conversion, a candidate for the Provincial Governor would be allowed approximately U.S.\$8 million to campaign.

125. See PUBLIC OFFICIALS ELECTION AND RECALL LAW, ch. 3, art. 45(2) (1994) (Taiwan).

inflation had not yet eroded the limits.¹²⁶ One Legislative Yuan KMT candidate, Wu Li-yi stated publicly that "he would spend N.T.\$30 million (over one million U.S. dollars) on the election and his DPP opponent would spend double that."¹²⁷

Taiwan should reconsider the role of expenditure limits in the campaign finance regulations. When first drafted in 1980, the POERL represented the current balance of free political speech against egalitarian elections. After the lifting of martial law and the democratization of the elections, the legislature should rebalance free political speech against the campaign expenditure limits.

C. Advertising Regulations

Limits on advertising directly control the amount of speech available to candidates, but can also provide a more level playing field. Canada justifies political advertising regulations on the basis of equitable apportionment of airwave resources.¹²⁸ Canada's Election Expenses Act limits political advertisements to the last twenty-eight days of the campaign period.¹²⁹ Thus, wealthy candidates cannot benefit from early advertising campaigns. Shorter advertising campaigns, being more affordable, allow candidates a more equal opportunity to advertise.

While Canada can claim to limit political speech for equitable reasons, Taiwan's partisan media history shows that direct advertising limits have had inequitable results. Traditionally, the KMT government controlled all of Taiwan's news media.¹³⁰ During the elections, the news media could give the KMT generous and favorable news coverage while briefly mentioning opposition candi-

126. Some election observers of the 1989 elections noted that "[s]pending in excess of legal limits was also commonplace." See Copper, *Democratic Promise*, *supra* note 5, at 70 (describing the 1989 Legislative Yuan elections).

127. *Id.* Assuming a 1989 population of 2.5 million in Taipei and a N.T.\$28 to U.S.\$1 conversion, a candidate for the Legislative Yuan representing Taipei would be allowed roughly N.T.\$32,300,000 or U.S.\$1,150,000 to campaign.

128. See BOYER, *supra* note 3, at 320-21 (listing the policies that "diminish absolute freedom of speech.").

129. See Election Expense Act, R.S.C., ch. 51, §§ 13.7, 61.2 (1974) (Can.); see also BOYER, *supra* note 3, at 329-31 (discussing the "blackout" limitation that only allows advertising by parties and candidates during the 28 day period).

130. See Copper, *Democratic Promise*, *supra* note 5, at 71 (mentioning the DPP's complaints of the KMT's television monopoly during the 1989 Legislative Yuan elections); see also GIVE TAIWAN A CHANCE, *supra* note 29, at 51-52 (criticizing the KMT for using their network television stations to exert social control over the Taiwanese people).

dates. The POERL also banned political advertisement on television and radio, allowing candidates only government sponsored television and radio news coverage.¹³¹ When the POERL was first enacted in 1980 it also prohibited political demonstrations.¹³² By 1989, the POERL allowed street demonstrations, public speeches and political rallies, but restricted when and where they could be held.¹³³ Thus, the POERL limited DPP candidates to print media such as magazines, newspapers and direct mail.

In 1994, political advertisements on television and radio were still banned.¹³⁴ When the KMT also refused to grant television and radio station licenses to the DPP, the DPP sponsored the creation of illegal cable television and pirate radio stations to campaign for the 1992 elections.¹³⁵ These illegal stations provided election coverage, community news and political commentary.¹³⁶ In 1993, the Legislative Yuan legalized cable television and began licensing spare frequencies.¹³⁷ With the proliferation of cable television, Taiwan truly developed into a mass media society¹³⁸ and candidates began appearing on talk shows.¹³⁹

When the Legislative Yuan reconsiders the television and radio advertising ban, they may agree with the U.S. Supreme Court in *Buckley*, finding television and radio to be "indispensable instruments of effective political speech."¹⁴⁰ The Legislative Yuan must then decide how to regulate network and cable advertising.

131. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 50(2) (1994) (Taiwan).

132. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 55 (1983) (Taiwan). The law targeted non-KMT candidates since non-KMT candidates relied on street demonstrations after being excluded from television and radio.

133. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 55 (1989) (Taiwan) (limiting speeches and rallies to officially designated times and areas).

134. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 50(2) (1994) (Taiwan).

135. See Tien & Chu, *supra* note 40, at 1155 (1996) (explaining that the government began to grant network television licenses and radio licenses in the summer of 1995 because they could no longer control all the pirate stations).

136. See *id.* (describing the illegal radio stations as the "most effective campaign weapons of the two opposition parties" for certain 1993 and 1994 elections).

137. See *id.* (noting that the Legislative Yuan revised the Broadcast and Television Law on August 2, 1993, and enacted the Cable Television Law a week later).

138. See Thomas B. Gold, *Taiwan Society at the Fin de Siècle*, 148 THE CHINA Q. 1104, 1107 (1996) (describing "a youth-oriented pop music industry" and the rise of Asian MTV).

139. See Copper, *Democratic Promise*, *supra* note 5, at 32-33 (attributing an increased influence of cable television, talk shows and political debates to the success of the smaller New Party in Taiwan's 1995 Legislative Yuan elections).

140. *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).

D. Independent Expenditure Limits

Campaign finance regulations can also regulate independent expenditures. Independent expenditures are "funds spent independently by interest groups to either support or oppose candidates."¹⁴¹ Usually these expenditures pay for political advertising through television, radio or direct mail. Expenditures are only "independent" where they pay for political messages not prepared in coordination with a candidate.¹⁴²

Limiting candidate and party spending while allowing unlimited independent expenditures would encourage contributors to incur expenses on behalf of candidates. Wealthy special interests could outspend candidates and political parties.

The Canadian legislature feared manipulation of the electoral system by wealthy special interests.¹⁴³ In 1974, this concern prompted them to prohibit independent expenditures in the Election Expenses Act.¹⁴⁴ Since the Canada Election Act required the publisher's name and address on election literature,¹⁴⁵ only registered political parties and candidates could authorize election literature. Opponents of the independent expenditures ban claimed that these laws effectively prohibited all speech unauthorized by registered political parties and candidates.¹⁴⁶

The Canadian Supreme Court held the prohibition on independent expenditures unconstitutional in *National Citizens' Coalition Inc. v. Attorney General Canada*.¹⁴⁷ Under section one of the Canadian Charter of Rights and Freedoms,¹⁴⁸ the Court weighed

141. MAKINSON & GOLDSTEIN, *supra* note 6, at 19 (noting that in the elections for the United States Senate and House of Representatives, independent expenditures amounted to \$5.2 million in 1993-1994, "a sharp decline from the \$11.1 million spent two years earlier.").

142. In 2 U.S.C. § 431(17) (1994) an independent expenditure is defined as:

[A]n expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

2 U.S.C. § 431(17) (1994); *see also* 11 C.F.R. § 100.16 (1997).

143. *See National Citizens' Coalition Inc. v. Attorney Gen. Canada* [1984] 14 C.R.R. 61 (Alta. Q.B.).

144. *See Election Expenses Act*, R.S.C., ch. 51, § 12 (1974) (Can.) (amending Canada Elections Act, R.S.C., ch. 14 (1st Supp.), § 70.1(1) (1970) (Can.)).

145. *See Canada Elections Act*, R.S.C., ch. 14 (1st. Supp.), § 72 (1970) (Can.).

146. *See Zev Paltiel*, *supra* note 54, at 60.

147. *National Citizens' Coalition Inc.*, 14 C.R.R. at 61.

148. The Canadian Charter of Rights and Freedoms (Charter) was an amendment to

equality in federal elections against the individual's freedom of expression¹⁴⁹ through special interests. The Court concluded that free speech outweighed the risk of election manipulation.¹⁵⁰

This holding unintentionally created a loophole in Canada's expenditure regulations.¹⁵¹ Since advertising expenses comprised the majority of independent expenditures,¹⁵² contributors could spend unlimited amounts of money promoting a candidate instead of directly contributing to the candidate's campaign.¹⁵³ In addition, candidates could avoid exceeding expenditure limits by allowing wealthy special interests to pay for advertising expenses.

The U.S. Congress also tried to eliminate independent expenditures,¹⁵⁴ but the U.S. Supreme Court held that such limitations unconstitutionally restricted political speech.¹⁵⁵ In *Buckley*, the Court reasoned that no stated state interest could justify limiting independent expenditures because advertising money was of limited utility if the contributor did not coordinate with the candi-

the Canadian Constitution enacted by the Canada Act of 1982 (U.K.). CAN. CONST. (Constitution Act, 1982) pt. 1 (Canadian Charter of Rights and Freedoms). The Charter expressly provides for judicial review and enumerates a long list of individual rights. See OONAGH E. FITZGERALD, UNDERSTANDING CHARTER REMEDIES: A PRACTITIONER'S GUIDE 1.3 (Carswell 1994) (boasting that the Charter is more legitimate and contains a more constitutional basis for judicial review than the United States Constitution). Section one reads "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by the law as can be demonstrably justified in a free and democratic society." See The Canadian Charter of Rights, Annotated Vol. 1, CA-1 (Canadian Law Book Inc. 1997).

149. See The Canadian Charter of Rights, Annotated Vol. 1, CA-1 (Canadian Law Book Inc.) (1997) (stating the freedom of expression guaranteed by section 2(b) of the Canadian Charter of Rights and Freedoms).

150. See *id.* at § 2(b): 140010 (summarizing the holding and rationale in *National Citizen's Coalition Inc. v. Attorney General for Canada* (1984), 11 D.L.R.4th 481.); see also Zev Paltiel, *supra* note 54, at 59-62 (discussing policies the Court considered in concluding that sections 70.1(1) and 72 of the Canada Elections Act violated the freedom of speech guaranteed by section 2(b) of the Canadian Charter of Rights and Freedoms).

151. See Zev Paltiel, *supra* note 54, at 63 (arguing that parliament must close the loophole, "[o]therwise, the way is now clear for unlimited 'third party' spending which will make a mockery of the act, to the benefit of the affluent. Advocacy groups, single-issue organizations and interest groups will be able to go beyond promoting the issue they favor to direct involvement in election campaigns . . .").

152. For a table of advertising expenses for the Canadian 1979 campaigns, see *supra* note 98.

153. See *Regina v. Blake* [1988] 5 W.C.B.2d 23, 23 (stating that groups not directly affiliated with a candidate or registered political party could spend unlimited amounts).

154. See 18 U.S.C. § 608(e)(1) (1974); see also *Buckley v. Valeo*, 424 U.S. 1, 48-51 (1976).

155. See *Buckley*, 424 U.S. at 48-51.

date.¹⁵⁶ Also, the lack of a prior agreement would limit the possibility of exchanging of advertisements for political favors.¹⁵⁷ Thus, the United States allows unlimited independent expenditures.

To prevent independent expenditures from circumventing contribution limits, U.S. campaign finance laws treat money spent expressly advocating a candidate as a contribution to that candidate.¹⁵⁸ Thus, contribution limits prevent unlimited independent expenditures.

Early elections in Taiwan allowed little political participation by noncandidates. To prevent disorder and interference by noncandidates the POERL banned all independent speech by allowing only candidates, their registered assistants and political parties to participate in "campaign activities."¹⁵⁹ "Campaign activities" included public speeches, printing or distributing campaign materials, public demonstrations, and mass-media broadcasting or advertising.¹⁶⁰ Strict regulations in the POERL went as far as requiring handbills be signed by the registered candidate.¹⁶¹

By 1994, Taiwan's Legislative Yuan liberalized political speech and eventually lifted the ban on independent speech.¹⁶² Unfettered political speech should foster democracy, however, wealthy special interests are now allowed to spend unlimited amounts of money to influence elections. One could argue that political advertising by special interests would strengthen a democracy. Unfortunately, contributors reaching their contribution limit can circumvent the limits by substituting independent political advertising for donations.

156. *See id.*

157. *See id.*

158. "[E]xpenditures made by any person in cooperation, consultation, or in concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." 2 U.S.C. § 441(a)(7)(B)(i) (1994).

159. PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 56 (1983) (Taiwan).

160. *Id.*

161. *See id.* art. 51. Compare Copper & Chen, *supra* note 33, at 64 (referring to a provision in the original POERL that, like the Canadian provision, required handbills bear the printer's name and address), with Canada Elections Act, R.S.C., ch. 14 (1st. Supp.), § 72 (1970) (Can.) (requiring election literature bear the publisher's name and address).

162. *See* PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 56 (1994) (Taiwan) (noting that the provisions of article 56 have been deleted).

E. Public Subsidies for Candidates and Parties

Public subsidization of election campaigns can mitigate high campaign costs and reduce the risk of corruption. Public subsidies can also serve egalitarian goals by assisting under-funded candidates. On the other hand, public subsidies can create their own problems.

In the United States, only presidential campaigns are publicly funded.¹⁶³ The Presidential Campaign Fund receives revenue from a provision on the individual income tax return form.¹⁶⁴ The provision allows each taxpayer to designate a certain amount of money to subsidize the presidential campaigns.¹⁶⁵ Even though taxpayers are told that contributing to the fund will not change their personal tax liability or refund, participation has never exceeded 30%.¹⁶⁶

The Presidential Campaign Fund disburses the funds raised in the voluntary tax checkoff to candidates who agree to limit their expenses.¹⁶⁷ Unfortunately, these expenses do not include spending soft money.¹⁶⁸ Thus, public financing in the United States merely gives qualified candidates equal shares of the revenues from the tax checkoff.¹⁶⁹ This scheme assists small parties that are able to raise the requisite number of contributions. Because candidates need only collect a large number of contributions to qualify for public funds,¹⁷⁰ the public cannot individually choose a recipient candidate or the amount of the public subsidy.¹⁷¹

Candidates receiving a fixed subsidy for each vote received would be funded in proportion to their popularity. Taiwan's pub-

163. See ALEXANDER, *supra* note 2, at 99 (explaining the structure of public financing in the United States).

164. See *id.* at 100-03 (explaining how the tax checkoff funds the Presidential Election Campaign Fund).

165. See *id.*

166. See *id.* at 101 (claiming a record participation percentage of 28.7% in 1981).

167. See I.R.C. § 9003 (1997) (requiring candidates to limit their expenses and only accept contributions to cover their total campaign expenditures).

168. See MAKINSON & GOLDSTEIN, *supra* note 6, at 20 (discussing the nature and prevalence of soft money).

169. See I.R.C. § 9004(a)(1) (1997) (providing "equal payments" for eligible candidates of major parties).

170. See *id.* (providing the eligibility requirements for candidates).

171. See Richard L. Hasen, *Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers*, 84 CAL. L. REV. 1, 47 (1996) (arguing that the U.S. system inadequately reflects voter preferences).

lic funding scheme reimburses¹⁷² candidates for public offices.¹⁷³ After a 1989 revision to the POERL,¹⁷⁴ the election commission reimbursed candidates and political parties a certain amount of money for every vote received. Under the 1989 revision, candidates were reimbursed N.T.\$10 (U.S.\$0.39) for every vote in excess of seventy 5% of the votes needed for victory.¹⁷⁵

In 1996, the Legislative Yuan amended the POERL to reimburse political parties.¹⁷⁶ The POERL later increased the amount of the reimbursements. The government also subsidized party expenditures by N.T.\$5 for each vote their candidates received over 5% of the total votes cast in the election.¹⁷⁷ The 1994 POERL also reimbursed candidates N.T.\$30 for each vote exceeding one third of the votes sufficient to win in a one seat election or half the votes it would take to win in an election for two or more seats.¹⁷⁸

Because candidates and political parties are funded in proportion to their popularity, this system favors candidates from large and organized political parties. Small political parties that receive less than 5% of the popular vote may never receive funding.¹⁷⁹ Also, recently registered political parties and candidates in their first election do not receive money until after the election. This deters new political parties because their better funded competitors are also armed with reimbursements from prior elections.

When the KMT controlled Legislative Yuan promulgated the public finance provisions in the POERL for the 1989 elections, they intended public subsidies to prefer large political parties. The KMT continues to promote a two party system.¹⁸⁰ On the other

172. The meaning of reimburse suffers ambiguity when translated from English to Chinese. See Anne S.Y. Cheung, *Towards a Bilingual Legal System—The Development of Chinese Legal Language*, 19 LOY. L.A. INT'L & COMP. L.J. 315, 331 (1997) (describing problems arising from translating English legal language into Chinese legal language). Fortunately, official English versions of statutes drafted in Chinese lack ambiguities arising from translation.

173. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(6) (1994) (Taiwan).

174. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(5) (1989) (Taiwan); see also Copper, *Democratic Promise supra* note 5, at 3, 19 (mentioning a public financing provision in the revised law).

175. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(5) (1989) (Taiwan).

176. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 45(6) (1994) (Taiwan).

177. See *id.*

178. See *id.*

179. See *id.* (requiring a 5% threshold before qualifying for reimbursements).

180. See Tien & Chu, *supra* note 40, at 1160 (explaining the KMT party leadership's desire to change the electoral system to promote a two-party system at the expense of the New Party).

hand, this preference for candidates from large and organized political parties would not deter personally wealthy mavericks from funding their own campaigns as independents.

Public finance can also benefit the KMT. Historically, the KMT relied on their party-owned corporations to finance their candidates' campaigns. In 1991, KMT party-owned enterprises were earning more than N.T.\$4 billion a year (U.S.\$161 million)¹⁸¹ in dividends allowed the KMT to maintain three thousand full time staff.¹⁸² Thus, the KMT has not required a broad base of contributors or even a few large contributors.¹⁸³ Accepting public subsidies would allow KMT candidates to be less indebted to their party-owned corporations. This would legitimize the KMT party by eliminating the appearance of corruption.

While the public subsidy scheme provides many benefits, it is also flawed. The public subsidy scheme appears corrupt because candidates receive the subsidies as personal income. Although the KMT controlled the drafting of the public subsidy provisions, it was the DPP who advocated for public subsidies. DPP candidates have been criticized for accepting reimbursements. Because public subsidies can be expensive, maintaining a public subsidy scheme requires popular support. To maintain the viability of public subsidies, Taiwan's Legislative Yuan should revise the POERL to eliminate the appearance and possibility of corruption.

F. Government Provided Media Time

In addition to providing funds for political parties and candidates, public subsidies can also provide free television or radio time. Because advertising can consume a large portion of a candidate's campaign expenditures,¹⁸⁴ free television or radio time can greatly alleviate campaign costs. Like public subsidies, government provided media time can reduce the risk of corruption and assist under-funded candidates.

Canada has embraced government provided television and

181. Assuming a 1991 exchange rate of N.T.\$28 to U.S.\$1.

182. "[T]he party has either direct or indirect investment in more than 66 companies including nine listed in the Taiwan Stock Exchange and 27 public companies. The book value of the party's stake in these 36 public companies alone was worth more than N.T.\$59.5 billion (U.S.\$2.4 billion) by the end of 1991." Tien & Chu, *supra* note 40, at 1156.

183. *See id.*

184. Even as early as 1979, the majority of campaign expenses paid for advertising on television and radio. *See* Table Advertising Expenses, *supra* note 98.

radio time by requiring every broadcaster provide 6.5 prime time hours "for transmission of political announcements and programs produced by or on behalf of the registered parties."¹⁸⁵ The 6.5 hours are apportioned according to a party's representation in the legislature or by their number of candidates.¹⁸⁶

Taiwan's public finance system is similar to the Canadian system.¹⁸⁷ Taiwan's Central Election Commission buys television time and allocates it to the candidates.¹⁸⁸ Taiwan has also maintained a tradition of televising a live campaign forum,¹⁸⁹ though some candidates prefer not participate in televised presidential debates.¹⁹⁰

The role of the official campaign forum has diminished since it was first sponsored. When the POERL was first drafted, Taiwan only had three KMT controlled broadcast television stations. The government's tight control over the news media forced candidates to rely on the government sponsored programs. Today, cable television provides many channels capable of providing unofficial political news and commentary.¹⁹¹ The DPP's broadcast and cable television stations have diminished the informational role of the government sponsored programs. Because the Election Commission buys television time instead of appropriating it from the stations, Taiwan's Legislative Yuan should consider whether government subsidized television time is worth its cost.

The POERL also requires the Election Commission to pro-

185. Election Expenses Act, R.S.C., § 99.1(1) (1974) (Can.); *see also* Election Expenses Act, R.S.C., § 99.1(16) (1974) (Can.) (penalizing broadcasters up to \$25,000 for noncompliance).

186. *See* BOYER, *supra* note 3, at 456.

187. "Starting from the 1991 National Assembly election, the Central Election Commission has purchased television time from three networks and allocated it among qualified parties in proportion to the number of nominees." Tien & Chu, *supra* note 40, at 1155.

188. *See id.*

189. *See* PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 50(2) (1994) (Taiwan) (requiring the Central Election Commission to provide a minimum of two television presentations of at least one hour each where candidates present their views and debate issues); *see also* Tien & Chu, *supra* note 40, at 1155 (stating that "each candidate is entitled to a 15-minute presentation.").

190. *See* Presidential Press Conference with Lee Teng-hui, President of Taiwan, at Chiehshou Hall, Office of the President (Feb. 23, 1996) *reprinted in* <http://www.gio.gov.tw/info/news/presid_e.html> (providing Lee Teng-hui's explanation that a televised debate would be poor campaign strategy).

191. *See* Hsieh, *supra* note 12, at 7 (discussing foreign investment opportunities in the growing cable industry).

vide an election bulletin detailing each candidate.¹⁹² Because publicizing a candidate by direct mail can be expensive, inadequately funded candidates may not be able to afford even limited mailings. Widely circulated election bulletins ensure that voters have at least minimal familiarity with all candidates before election day. Unfortunately, election bulletins are also expensive. Canada experimented with similar election bulletins for a short while, but then eliminated them because of their cost. Taiwan's Legislative Yuan should also consider whether the Election Commission should continue to prepare election bulletins.

V. RECOMMENDATIONS FOR REVISIONS TO THE POERL

Taiwan's Legislative Yuan should revise the campaign contribution and expenditure limits in the POERL to prevent corruption and the appearance of corruption. The revised POERL can also promote political equality between large and political small parties.

A. Recommendations on Contribution Limits

Contribution limits in Taiwan have followed developments in the United States by limiting large contributions to prevent corruption and the appearance of corruption. Taiwan's Legislative Yuan would probably find inadequate the Canadian scheme of relying solely on disclosure. The POERL should prohibit direct corporate contributions and regulate contributions from nonprofit organizations. Allowing large corporate contributions would allow corporations to buy political favors.

The POERL prohibits contributions from government enterprises and corporations who receive "contributions" from the government.¹⁹³ The term "contributions" seems ambiguous and may not include granting pork projects.¹⁹⁴ Thus, the POERL should also expressly prohibit government contractors from contributing to candidates.

192. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 50(1) (1994) (Taiwan) (requiring that an election bulletin be either mailed, printed in a newspaper or presented on television).

193. See *id.*

194. Compare *id.* (Taiwan) (prohibiting persons who "receive contributions" from contributing), with 18 U.S.C. § 603(a) (1994) (prohibiting contributions by federal employees). Analogizing these laws would equate receiving government "contributions" with receiving government funding or support.

In the United States, the FECA prohibited contributions from government contractors.¹⁹⁵ The current U.S. campaign finance laws define government contractors narrowly.¹⁹⁶ The definition would include closely held corporations, but would exclude their majority shareholders. The Taiwanese Legislative Yuan should construe the term "government contractors" broadly to include business entities and majority owners of business entities that have negotiated or are negotiating a contract with the government. A broad prohibition of contributions from government contractors would prevent corruption and the appearance of corruption.

The Taiwanese Legislative Yuan should further revise the POERL to regulate nonprofit organizations. The United States allows influential PACs, but limits abuse by expressly preventing conduit contributions,¹⁹⁷ and by requiring PACs to be run independent of party fundraising committees. To prevent contributions through straw donors posing as independent nonprofit organizations, the POERL should require nonprofit organizations to be independent from candidates and political parties.

B. Recommendations on Expenditure Limits

Notwithstanding these limitations, the Taiwanese Legislative Yuan should continue to set expenditure limits to promote egalitarian democratic goals. When deciding the scope of expenditure limits, the Legislative Yuan should examine Canadian expenditure limits. Because Canada's narrow definition of campaign expenditures allowed candidates to circumvent the limits, Taiwan's Legislative Yuan should adopt a broad definition of campaign expenditures.

A broad definition of campaign expenditures should include the party overhead that often benefits candidates. In Taiwan, party overhead can be large since most political parties have or are establishing party newspapers, television stations and radio stations. The Legislative Yuan should revise the POERL to consider certain party overhead as campaign expenditures.

Party presses should be considered campaign expenses. Taiwan's media has had a very partisan history. By 1997, the KMT

195. See Federal Election Campaign Act of 1971, Pub. L. No. 92-225 (1972) (prohibiting contributions by government contractors).

196. See 2 U.S.C. § 441c (1997) (providing the current prohibition on contributions by government contractors).

197. See 2 U.S.C. § 441f (1997) (prohibiting straw donors).

still maintained control of most newspapers, radio stations and television stations.¹⁹⁸ Because the KMT controls the three major network stations, the KMT can enjoy favorable coverage while limiting the media access of others.

In response, the DPP created their own television stations, radio stations, newspapers and internet websites.¹⁹⁹ Party run television and radio stations may not be run exclusively to promote a political ideology. It may be difficult to distinguish between candidate campaign advertisements and favorable news coverage. Thus, the POERL should define campaign expenses to include the cost of running a television station to promote candidates.

C. Recommendations on Advertising Regulations

Taiwan's Legislative Yuan should revise the POERL to end the ban on television and radio advertisements. Because the POERL was drafted before cable television, the ban on television advertisements may only be thought to apply to Taiwan's major network television stations. Although advertisements on cable television may be legal, ending the blanket ban on television and radio advertisements would legitimize political speech by removing any uncertainty. Allowing DPP candidates to buy time on major network television stations would also allow them to forego establishing party run stations. Eliminating such unnecessary duplication would lower campaign costs and be more economically efficient.

Although television and radio advertising should not be banned, other policy considerations may justify advertising regulations. For example, Canada allows political advertising, but also intends to control election expenses, equitably apportion airwave resources and prevent incumbents from advertising with treasury funds.²⁰⁰ Thus, Canada's Election Expenses Act limits political advertisements to the last twenty-eight days of the campaign period, with special provisions for radio and television.²⁰¹ Advertis-

198. See Tien & Chu, *supra* note 40, at 1155 (1996) (noting that though the KMT still controls the three television stations, the KMT has allowed cable television).

199. The DPP homepage can be found at <<http://www.dpp.org/>>.

200. See BOYER, *supra* note 3, at 320-21 (listing the policies that "diminish absolute freedom of speech.").

201. See Election Expenses Act, §§ 13.7, 61.2 (1974) (Can.); see also BOYER, *supra* note 3, at 329-31 (discussing the "blackout" limitation that allows advertising by parties and candidates only during the 28-day period).

ing expenses are also campaign expenditures and thus limited accordingly.

To control costs and equitably apportion airwave resources, Taiwan can also adopt the Canadian model of limiting political advertisements to an official election period. During Taiwan's twenty-eight day election period, campaign expenditures should include the cost of party controlled television and radio stations used to advocate particular candidates. This regulation would level the playing field by limiting the KMT's advantage of party controlled television stations. This regulation would also limit election costs, and keep candidates and their political parties out of debt.

D. Recommendations on Independent Expenditure Limits

Because Canada's ban on independent speech was unconstitutional, candidate speech was limited to the benefit of independent speech. Thus, the Canadian legislature failed to equalize the spending ability and influence of wealthy special interests. Although egalitarian spending is a debatable policy goal, unlimited independent speech did create a loophole in Canada's contribution limits. Independent political advertising can now replace contributions. The U.S. legislature, also foiled by the judiciary, limited independent speech by treating political advertising as contributions where contributors coordinate with a candidate regarding the advertising.²⁰²

In Taiwan, unlimited independent speech has fostered political discourse and democracy, but independent speech should be limited to prevent circumvention of contribution limits. Taiwan's Legislative Yuan should revise the POERL to implement the U.S. approach. Political advertising advocating a candidate should be considered a campaign contribution to that candidate.

In addition to limiting political advertising under the contribution limits, further restrictions on independent speech could be justified if the Taiwanese Legislative Yuan decided to implement egalitarian policies. In Taiwan, political advertising has often come from special interests such as party presses and affiliated news media.²⁰³ Although party presses are independent from

202. Rebroadcasting or reprinting a candidate's advertisement is considered sufficiently cooperative to amount to an expenditure. See 2 U.S.C. § 441(a)(7)(B)(ii) (1994).

203. Political activists have long operated newspapers to promote their political views. See Ya-li, *supra* note 32, at 41 (describing organization of opposition to the KMT in the

candidates, they do coordinate with candidates to provide free advertising. The DPP has complained that KMT controlled television and radio stations give the KMT an unfair advantage in elections. Incorporating the cost of political advertising by party presses into the definition of campaign expenditures would provide candidates equal access to mass media. DPP newspapers and KMT television stations would be allowed equal funding.

E. Recommendations on Public Assistance

Taiwan should continue public funding to decrease the role of big money contributors. Further revisions in the public funding laws would decrease corruption and increase public participation. Unfortunately, the current system appears susceptible to corruption and manipulation because DPP candidates are the largest beneficiaries as well as the same group who advocated for the inclusion of a public subsidies provision in the POERL. Thus, Taiwan's Legislative Yuan should revise the POERL to give more subsidies to political parties and less money to candidates. If political parties received the bulk of the subsidies, the public subsidy system would appear less corrupt.

To further decrease corruption and the appearance of corruption, the POERL should expressly prohibit personal use of political contributions and public subsidies. Prohibiting personal use of campaign funds and public subsidies requires a great deal of willpower and discipline. In the United States, some politicians were able to exercise some self control.²⁰⁴ Other politicians had less self control.²⁰⁵ In 1980, the U.S. Congress decided that the law had to change. Thus, they amended the law to expressly prohibit any 'new' members of Congress from using campaign funds for personal use.²⁰⁶

early 1970s which included a party press (Formosan Magazine) even before political parties were allowed); see also Tin-yu, *supra* note 32, at 82 (describing political activist Lei Chen, chief editor of Free China Magazine).

204. "For instance, Representative C.W. Bill Young, Republican of Florida, bought a light blue \$30,000 Lincoln Continental with campaign funds." CORPORATE PACS, *supra* note 10, at 78. Although a Lincoln Continental could be considered a luxury car, candidates do need transportation.

205. "When Joe Minish (D-N.J.) was defeated for reelection in 1984, he pocketed \$200,000 in campaign cash." *Id.* at 79.

206. To prevent possible confusion that Congress did not specifically exempt current members, the amendment expressly exempted Members of Congress serving on January 8, 1980. See Federal Election Campaign Act Amendments of 1979, Pub. L. 96-187, 93 Stat. 1354 (1980) (amending 2 U.S.C. § 439a to expressly prohibit personal use of cam-

By 1993, Congress was mostly comprised of new members who were prohibited from using campaign funds for personal use. These "new" members with nothing to lose, eliminated the grandfather clause.²⁰⁷ Since then, candidates could only use excess campaign contributions by (1) defraying their expenses in connection with official duties, (2) contributing them to charity, or (3) transferring them to a political party committee.²⁰⁸

Taiwan's Legislative Yuan should follow the U.S. approach. Because of political realities, Taiwan's Legislative Yuan may not want to immediately limit their own personal benefits. They can, however, prohibit the personal use of campaign funds by new legislative members. The new legislative members could later eliminate all personal use of campaign funds.

F. Recommendations for Government Sponsored Media Time, Official Campaign Forum, and Official Election Bulletin

Taiwan should revise the POERL to continue the current policy of providing media time to candidates.²⁰⁹ Government provided media time poses less risk of corruption than cash reimbursements because media time would be difficult to pocket for a candidate's personal gain.

The Central Election Commission should not rely solely on candidate produced advertisements to inform the voters. In Canada, government provided television time was not enough for some candidates:

The parties were far from content to rely on free time and news coverage to reach uncommitted voters. Television and radio were the preferred advertising media, most spots running only thirty seconds on television and sixty on radio. Not surprisingly, they tended to be aimed more at image making than informing²¹⁰

paign funds for *new* members of congress).

207. See Ethics Reform Act of 1989, Pub. L. 101-194, Title V, § 504, 103 Stat. 1755 (Nov. 30, 1989) (eliminating the grandfather clause to ban all Members of Congress from using campaign funds for "any personal purpose").

208. See 2 U.S.C. § 439a (1994).

209. "Starting from the 1991 National Assembly election, the Central Election Commission has purchased television time from three networks and allocated it among qualified parties in proportion to the number of nominees." Tien & Chu, *supra* note 40, at 1155.

210. Fletcher, *supra* note 98, at 280, 288-89.

Thus, Taiwan's Central Election Commission should also be allowed to expand the role of the official campaign forum. Under the current law, two presentations of one hour each would only allow a one hour forum with one rebroadcast.²¹¹ This leaves candidates with only fifteen minutes each. To increase the depth of discussion, the Legislative Yuan should require revise the POERL to allow candidates more time.

The official campaign forum would also allow candidates from smaller political parties an equal chance to interact with candidates from major political parties. Voters may not otherwise hear the views of candidates from smaller political parties. Although a small percentage of voters would actually vote for candidates from minority political parties, the presentation of minority views can inform and educate voters. By the same rationale, official election bulletins should also continue because they allow expression of minority political parties' views. This would not allow an excessive number of candidates, because certain provisions in the POERL effectively limit the total number of candidates.²¹²

VI. CONCLUSION

With the establishment of a new democracy, the next step in Taiwan's political evolution is to improve its campaign finance laws. These new laws should try to prevent the quid pro quo sale of political favors. Taiwan's Legislative Yuan could also use the new laws to promote egalitarian political participation. In debating possible revisions to the POERL, Taiwan's Legislative Yuan should examine the historical development of campaign finance laws in the United States and Canada.

History suggests that contribution limits on nonprofit organizations are necessary because interest groups or PACs may develop to exploit the loopholes in the current contribution limits. A potential loophole the expenditure limits can be averted by defining expenditures broadly. Lifting the absolute ban on independent speech allowed greater political participation in Taiwan, it also allowed individuals to incur advertising expenditures on behalf of

211. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 50(2) (1994) (Taiwan) (requiring the Central Election Commission to provide a minimum of two television presentations of at least one hour each where candidates present their views and debate issues).

212. See PUBLIC OFFICIALS ELECTION AND RECALL LAW art. 38 (1994) (Taiwan) (requiring a security deposit for candidate registration).

candidates. To eliminate this potential loophole, such expenditures should be regulated as contributions to the candidate. The POERL should allow Taiwan's Central Election Commission to continue the tradition of official campaign forums and official election bulletins. The POERL should also subsidize candidates by providing public sponsored media time instead of reimbursements. The combination of these revisions would allow greater political participation by voters while preventing corruption in elections.

Although revisions in campaign finance laws seem small compared to proposed constitutional restructuring, campaign finance reform is still necessary. Campaign finance laws can never clean up politics, but revisions in the POERL can instill greater legitimacy and voter confidence in Taiwan's fledgling democracy.

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