

**How Minnesota's Campaign Finance Law
Helped Elect a Third-Party Governor**

**Peter S. Wattson
Senate Counsel
State of Minnesota**

Council on Governmental Ethics Laws

**COGEL
Annual Conference**

**Westin Hotel
Providence, Rhode Island
December 8, 1999**

I. Introduction

A. "We Shocked the World!"

On November 3, 1998, the voters of Minnesota elected Jesse Ventura, a radio talk show host, high school football conditioning coach, former pro wrestler, and former Navy SEAL, as their governor. As he said at the time, "We shocked the world!" I assume you are among those who were shocked, and are curious to know how he did it. The purpose of this paper is to give an outsider's view of how Minnesota's unusual campaign finance law, and certain features of its election law, helped to make that victory possible.

B. Could it Happen to You?

I emphasize that Minnesota's campaign finance law is unusual because I assume that one of the things you are wondering is whether the election of this Reform Party governor was a fluke or the start of a national trend. You are wondering whether this could happen in your state. Could it happen to you? Let us examine Minnesota's law and see how it may differ from yours.

II. Minnesota's Campaign Finance Law

A. Historical Background

Minnesota has long been a leader in campaign finance reform. It had campaign reporting requirements and spending limits for decades before Watergate. In 1974, in response to Watergate, it enacted an ethics in government act, Laws 1974, ch. 470, including several campaign finance reforms. It imposed new contribution limits and spending limits, §§ 25, 27, codified as amended at Minn. Stat. §§ 10A.25, 10A.27. It provided public financing for candidates for statewide office and for legislators through an income tax checkoff. § 31, codified as amended at Minn. Stat. § 10A.31. And it provided a tax credit of \$12.50 per person for contributions to candidates for state office, or \$5 for contributions to a political party. § 35, codified at Minn. Stat. § 290.06, subd. 11 (repealed 1987).

B. Contribution Limits

In 1974, Minnesota's contribution limits were set at ten percent of the spending limit. For example, the governor's spending limit was about \$600,000, so the limit on contributions to a candidate for governor was about \$60,000. The limit on contributions to a candidate for state representative was about \$750. A political party could not contribute more than 50 percent of the spending limit to a candidate, or \$300,000 to a candidate for governor. Laws 1974, ch. 470, § 27, codified as amended at Minn. Stat. § 10A.27.

In 1977, following the U.S. Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), a federal district court in Minnesota struck down the expenditure limits,

taking the contribution limits with them. *Bang v. Chase*, 442 F. Supp. 758 (D. Minn. 1977), *aff'd sub nom. Bang v. Noreen*, 436 U.S. 941 (1978) (mem.).

The 1978 Legislature responded by enacting contribution limits that were not tied to spending limits but were the same amounts as computed under the old system, i.e., \$60,000 for governor and \$750 for state representative in election years, with a separate limit for non-election years that was, for most candidates, 20 percent of their election-year limit. Laws 1978, ch. 463, § 76, amending Minn. Stat. § 10A.27.

In 1991, the governor's contribution limit was reduced from \$60,000 to \$20,000. Laws 1991, ch. 349, § 17, amending Minn. Stat. § 10A.27. Governor Carlson vetoed the bill, but returned the bill to the Senate after the three-day deadline, so the veto was declared invalid and the bill declared law by the Ramsey County District Court in *Seventy-seventh Minnesota State Senate v. Carlson*, No. C3-91-7547 (Aug. 2, 1991).

The present limits were set as part of the campaign finance reform act of 1993, Laws 1993, ch. 318, art. 2, § 26, amending Minn. Stat. § 10A.27, subd. 1. For example:

Governor and Lieutenant Governor	\$2,000
Attorney General	\$1,000
State Senator	\$ 500
State Representative	\$ 500

Governor Carlson, having learned the proper veto technique in 1991, vetoed the first campaign finance reform bill presented to him in 1993, H.F. No. 163, Laws 1993, ch. 173, but signed a second one that added limits on independent expenditures, H.F. No. 201, Laws 1993, ch. 318. The limits on independent expenditures have now been thrown out by the federal courts, *see, Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994), and *Republican Party of Minnesota v. Pauly*, No. 98-1698 ADM/AJB (Sep. 17, 1999), but the \$2,000 limit on contributions to a candidate for governor remains.

C. Political Contribution Refund Program

1. Tax Credit Becomes a Refund

The tax credit for political contributions was repealed in 1987, in an effort to simplify the income tax form following the enactment of the Internal Revenue Code of 1986. Laws 1987, ch. 268, art. 1, § 127. But it was reinstated in 1990, with the dollar amounts increased to \$50 per person for contributions either to a state candidate or to a political party and a separate form was required to claim it. Laws 1990, ch. 608, art. 3, § 28, coded as Minn. Stat. § 290.06, subd. 23. In 1991, the tax credit was made a refund, so the amount a taxpayer may receive from the State is no longer limited by the amount of taxes owed. Laws 1991, ch. 291, art. 6, § 24.

2. Spending Limit Agreement

To be eligible to participate in the political contribution refund program, a candidate must sign a spending limit agreement. Minn. Stat. § 290.06, subd. 23. The spending limit agreement binds the candidate to spend no more than a certain amount, which varies by office, in the election year and 20 percent of that amount in non-election years. Minn. Stat. §§ 10A.322, 10A.25. The spending limits have been adjusted periodically by the Legislature to keep them high enough to run a legitimate campaign, and are further adjusted each election year in accordance with changes in the consumer price index. Minn. Stat. § 10A.255. For example, the spending limits for the 1998 election year were as follows:

Governor and Lieutenant Governor	\$1,926,127
Attorney General	\$ 321,023
State Representative	\$ 24,083

The spending limits allow for two significant upward adjustments. First, any candidate running for the office the first time receives a ten-percent increase in the spending limit. Second, any candidate involved in a contested primary, i.e., one who received less than twice as many votes as any opponent, is given a 20 percent increase in spending limit.

The spending limits are high enough, and the public subsidy generous enough, that almost all candidates who may participate in the program choose to sign a spending limit agreement. In every election since 1990, over 90 percent of all candidates have signed a spending limit agreement. In 1998, the participation rate for candidates who raised or spent more than \$100 on their campaigns was 98 percent. Campaign Finance and Public Disclosure Board, "1998 Campaign Finance Summary," 6 (1998).

3. Official Receipt Form

Once the candidate has signed a spending limit agreement and filed it with the Campaign Finance and Public Disclosure Board, the board provides the candidate with a supply of official political contribution receipt forms. Minn. Stat. § 10A.322, subd. 4. Upon receipt of a private contribution, the candidate gives a form to the contributor, who files it with the Commissioner of Revenue. Minn. Stat. § 290.06, subd. 23. The contributor may file only one form per year, to cover all the contributions made that year, but it may be filed at any time during the year and up to April 15 in the year after the contribution was made. *Id.*

4. Refund to Contributors

The Commissioner of Revenue then refunds the amount of the contribution, up to \$50 for an individual or \$100 for a married couple filing jointly. *Id.* The refund applications are processed throughout the year, so that a contributor may expect to receive the refund within about eight weeks after filing it. The refunds are paid out under an open appropriation from the general fund.

5. Attitude Toward the Program

Even though the program has now been in place for over eight years, people still find it hard to believe. "You mean, if I make a contribution of up to \$50, I can get all my money back?" Yes, you can. In 1998, the State paid over \$2.2 million in political contribution refunds. The program provides public money to fund political campaigns, but who gets the money is decided by each individual contributor, \$50 at a time.

The program was designed to, and does, provide candidates with the early money they need to get their campaign started. But no public money is spent until a candidate has first received the same amount from an individual contributor.

D. Income Tax Checkoff

1. Party Account

a. Paid after primary

The second major source of public money for Minnesota candidates is the income tax checkoff. Immediately following the state primary in September, all candidates who have signed a spending limit agreement, filed an affidavit of private contributions, have an opponent in either the primary or the general election, and whose names will appear on the ballot in the general election receive a payment from the State. Minn. Stat. § 10A.31, subd. 6. The payment comes from money checked off on the individual income tax form. Minn. Stat. § 10A.31, subds. 1-5.

b. Affidavit of contributions

The private contributions a candidate must raise in order to be eligible to receive a public subsidy are not really "matching" contributions. The amount the candidate receives from the State does not vary depending on the amount raised privately. Rather, the private contributions are a threshold the candidate must raise to prove the candidate is viable. All viable candidates are treated the same, regardless of the amounts they raise privately.

The amount of contributions required depends on the office. For example:

Governor and Lieutenant Governor	\$35,000
Attorney General	\$15,000
State Senator	\$ 3,000
State Representative	\$ 1,500

Minn. Stat. § 10A.323.

The contributions must be from individuals eligible to vote in the state, counting only the first \$50 received from each contributor. An individual may contribute more, up to \$500 to a candidate for the legislature or \$2,000 to a candidate for governor. But only the first \$50 from each individual counts toward the threshold requirement. Each contributor must be eligible to vote in the state, but contributors to a candidate for the Legislature need not be residents of the legislative district.

c. In accordance with amounts checked off for the party

The payment after the primary comes from the party account in the state elections campaign fund. The party account consists of the amounts designated by taxpayers for a particular political party. The amount of the checkoff is \$5 per taxpayer. Its cost is paid by a transfer from the general fund to the state elections campaign fund, so checking off does not increase the amount the taxpayer pays or reduce the amount of the taxpayer's refund. The amounts checked off for each party are credited to the party's account and allocated among the various statewide and legislative offices in accordance with a statutory formula.

The amount allocated for legislative offices is further allocated to legislative districts in accordance with the amounts checked off for that party by taxpayers living in the district. Allocating the amounts back to the legislative districts from which it came was the result of a decision by the federal district court in the case of *Bang v. Chase*, 442 F. Supp. 758 (D. Minn. 1977), *aff'd sub nom. Bang v. Noreen*, 436 U.S. 941 (1978) (mem.). The court threw out the original allocation formula, which allocated the checkoff money back to legislative districts based on the political party's strength statewide. The court said the original formula discriminated against certain candidates based on their party affiliation, since the support for a particular party statewide had "no rational relation to the support for particular parties or for particular candidates within legislative districts." 442 F. Supp. at 768. The result of this court-mandated change in the formula was to provide the most public money to candidates where it was least needed, i.e., the most money goes to Democratic candidates in strong Democratic districts and to Republican candidates in strong Republican districts.

d. Not more than the candidate's spending limit

There is a limit on how much party account money a candidate may receive. Since the money only goes to candidates who have signed a spending limit agreement, they may not be paid from the party account more than their spending limit. Minn. Stat. § 10A.31, subd. 6.

2. General Account

a. Paid after general election

Immediately after the general election, most of the candidates who received money from the party account after the state primary receive a payment of income tax checkoff money from the general account. Minn. Stat. § 10A.31, subd. 7. The general account consists of amounts

checked off by taxpayers who chose to distribute their money equally among all eligible candidates, rather than only to the candidates of one party. As with the checkoff to the party account, the checkoff to the general account is financed by an appropriation transfer from the general fund to the state elections campaign fund and has no impact on the amount paid by the taxpayer.

b. Must have received enough votes

As with the party account, to receive a payment from the general account a candidate must have signed a spending limit agreement, filed an affidavit of contributions, and had an opponent in either the primary or the general election. In addition, the candidate must have received at least a certain number of votes in the general election. A candidate running statewide must have received at least five percent of the votes cast in the general election for that office. A candidate for the Legislature must have received at least ten percent of the votes cast for that seat. Minn. Stat. § 10A.31, subd. 7.

c. Not more than 50 percent of spending limit

The money in the general account is divided equally among all eligible candidates, except that no candidate may be paid an amount from the general account that would cause the sum of the money from the party account plus the money from the general account to exceed 50 percent of the candidate's spending limit. Money not paid to a candidate because of the 50-percent limit is allocated back to all the other candidates until all have reached the 50-percent limit or the balance in the account is exhausted.

E. General Fund Appropriation

The income tax checkoff program began in 1974. It hit its peak in participation in 1977 at 27 percent of all taxpayers. It has been in decline ever since, down to 9 percent in 1997. The amounts provided by the checkoff program have increased from time to time, in spite of the declining participation rate, because the Legislature has increased the dollar amount. The dollar amount began at \$1, was increased to \$2 in 1980, Laws 1980, ch. 587, art. 3, §§ 4-6, and increased to \$5 in 1987. Laws 1987, ch. 268, art. 1, §§ 1-3.

By the 1990s, it was obvious that the checkoff alone, even if it were increased again at regular intervals, would not provide the public money needed to level the playing field in political campaigns. Another source was needed.

In 1993, as part of the negotiations over a major overhaul of the campaign finance system, Governor Carlson insisted on supplementing the general account with a permanent appropriation from the general fund. The amount agreed to was \$1.5 million for each election. It was written into the statutes as a standing appropriation, so the Legislature would not need to reauthorize it every two years. Minn. Stat. § 10A.31, subd. 4. Likewise, it was Governor

Carlson who insisted on adding the 50-percent limit, so that this new public money would not be wasted on races that were not competitive.

F. Does this Sound like Campaign Finance in Your State?

That completes our look at Minnesota's campaign finance law. I assume your state has contribution limits, but do you have spending limits? Do most of the candidates agree to them? Do you have public financing for campaigns for your constitutional officers? For the legislature? Do you have an income tax checkoff? A political contribution refund program? Do you provide some money for all eligible candidates out of your general fund? Most states do not.

III. Minnesota's Election Law

Minnesota's election law is less unusual than our campaign finance law, but there are still some features that are different from the election law of most states and that helped to elect our third-party governor.

A. The 5-Percent Threshold

The performance of a statewide candidate at the polls in Minnesota is important, both under our campaign finance law and under our election law. It determines, not only whether the candidate will receive money from the general account for the election just completed, but also how the candidate's party will be treated on the ballot in the next election.

In order for a party to be classified as a "major party," it must have run a candidate for statewide partisan office at the last general election who received votes in every county in the state and not less than five percent of the number of individuals who voted in that election or it must have filed a petition with that many signatures with the secretary of state. Minn. Stat. § 200.02, subd. 7. Once the party has a candidate who reaches the five-percent threshold, it becomes a major party for the next election.

B. Getting on the Ballot Is Easy

Getting on the ballot in Minnesota is relatively easy. For candidates of a major party, it is even easier.

1. Late deadline (mid-July)

The filing deadline is not until mid-July. Minn. Stat. § 204B.09, subd. 1. This gives all the candidates, especially first-time candidates, more time to organize and pick up any signatures that may be necessary to get on the ballot.

2. Low filing fee

A candidate who seeks the nomination of a major party has a further advantage. Major party candidates don't even need to file a petition; they only need file an affidavit of candidacy and pay a modest filing fee. Minn. Stat. §§ 204B.03. For example, the filing fees are as follows:

Governor	\$300
Legislator	\$100

Minn. Stat. § 204B.11, subd. 1.

Other states have filing fees ten times as high. *See, e.g.*, Tex. Elec. Code § 172.024.

C. Primary is Late

In addition to having more time to get on the ballot, Minnesota candidates have more time before they must face their first election. The state primary is not until September—the second Tuesday after Labor Day. Minn. Stat. § 204D.03, subd. 1. This gives a first-time candidate, especially an insurgent, more time to organize supporters and get them to the polls.

D. Voting is Easy

If the candidate can motivate supporters enough to get them to the polls, once they get there, voting is easy. They need not have registered before they arrive. They may register at the polling place on election day. Minn. Stat. § 201.054, subd. 1. All they need to do is complete a registration card, take an oath, and provide proof of residence. Minn. Stat. § 201.061, subd. 3. They may prove their residence by showing their Minnesota driver's license, a student I.D. or fee statement or similar documentation, or by having a voter who is registered to vote in the precinct vouch for them. *Id.*

E. Does this Sound like an Election in Your State?

Does this sound like an election in your state? Can a candidate for governor get on the ballot for just \$300? Is your primary as late as mid-September? Do you have election day registration? If not, and if you don't have a campaign finance system like Minnesota's, it is less likely that a third-party candidate will be elected your governor.

Let us now take a look at how Jesse Ventura did it.

IV. The Ventura Campaign

Jesse Ventura's campaign manager was Dean Barkley. Mr. Barkley was a practicing attorney in the small town of Loretto, Minnesota, one of the western suburbs of Minneapolis. He had run for congress in 1992 as an independent and had been actively involved in lobbying the Legislature during the 1993 session when it considered the major campaign finance reform bill of that year. His concern was to ensure that the "reforms" did not discriminate against independents and minor party candidates.

A. Dean Barkley's Senate Campaigns

1. 1994 Independence Party

In 1994, Dean Barkley ran for the U.S. Senate as the candidate of the newly-formed Independence Party. He received only 95,400 votes, but that was just over five percent of the total number of persons who voted in that election, thus qualifying the Independence Party for major party status. The party's name was added to the income tax form for the income tax checkoff and its candidates no longer needed to petition to get on the ballot. Meeting the five-percent threshold did not have any impact on his campaign finances. Minnesota had enacted a public subsidy program for congressional candidates in 1990, Laws 1990, ch. 608, art. 4, but that had been declared pre-empted by federal law, which provided no public financing. *Weber v. Heaney*, 793 F. Supp. 1438 (D. Minn. 1992). Public financing, even in Minnesota, does not extend to congressional races.

2. 1996 Reform Party

In 1996, Dean Barkley ran again for the U.S. Senate, this time as the candidate of the Reform Party, to which the Independence Party had changed its name. He received 152,333 votes, which was almost seven percent of the number of persons who voted in the election. The Reform Party retained its major party status. Again, his efforts generated lots of love, no money. But they also brought him into close contact with Jesse Ventura.

Jesse had been one of Dean Barkley's campaign workers. As they walked in parades together, Dean saw first hand Jesse's crowd appeal. As he remarked to Jesse at one point, "I think we have the wrong candidate!" Dean began work to convince Jesse to run for governor in 1998.

B. Getting Jesse Started

1. Humphrey started on time

Skip Humphrey, who had served in the state Senate for ten years and 16 years as attorney general, had long been planning to run for governor in 1998. He began at the usual time for a serious candidate, signing a spending limit agreement in January 1997. That permitted him to begin raising money from contributors who could then get their first \$50 back via the political

contribution refund program. In that first year, one year before election year, his contributors received \$57,824 in political contribution refunds.

2. Ventura started later

Jesse Ventura, the unconventional candidate, started nine months later. He signed a spending limit agreement on October 3, 1997. His contributors received only \$850 in political contribution refunds that year.

3. Coleman was last to seek public financing

The Republican nominee, Norm Coleman, had been re-elected mayor of St. Paul in November 1996. He had made no secret of his ambition to become governor, but had to wait just a little while before formally declaring his candidacy.

Coleman also had to give serious thought to whether he would sign a spending limit agreement. His adult life had been spent on the public payroll, serving as an assistant in Attorney General Humphrey's office until he ran, with Humphrey's blessing, for the office of Mayor of St. Paul. Having been elected to his first term as a Democrat, he had switched parties and been elected as a Republican in 1996. He was not personally wealthy, but now had access to Republican contributors. He might have tried skipping the limits, but his contributors would still be limited to \$2,000 each. Then, again, there was the political pressure to accept spending limits. Since virtually all candidates in recent years had agreed to abide by the limits, the burden would be on him to explain why he had to spend more. Finally, there was the lure of the public money. If he accepted the limits, and won his party's nomination, he could expect to receive about \$250,000 from the party account and \$300,000 from the general account toward his campaign expenditures of about \$2 million. In addition, his contributors could participate in the refund program, which could be expected to generate another \$150,000 to \$200,000 in public assistance for his campaign.

Finally, for whatever reasons, Norm Coleman decided to sign a public subsidy agreement. But he waited until February 1998, so his contributors did not get any contribution refunds for 1997.

C. PCR Program Provided Money to Get Jesse's Message Out

During 1998, Skip Humphrey, a politician from birth and the first of the major party nominees to enter the governor's race, raised \$181,089 in contributions for which his contributors claimed a refund. Jesse Ventura, the former wrestler turned talk show host, candidate of the tiny Reform Party, raised \$177,658—almost as much as Skip Humphrey and more than Norm Coleman. Coleman, with access to the Republican Party fund-raising machine and all those wealthy contributors, raised only \$175,937 for which his contributors claimed a refund.

The political contribution refund program did what it was supposed to do: it provided early public money to candidates to get their message out in line with the support they were generating from private contributors. It helped to level the playing field among the three major party candidates. And, it may have helped induce all three candidates to accept spending limits.

D. Spending Limit Held Down Coleman's Spending

The spending limits were important to the Ventura Campaign because they helped to hold down his opponents' spending. The Coleman Campaign had over \$3 million available to spend. The Humphrey Campaign had over \$2.5 million. The Ventura Campaign had just over \$1 million—a third of what Coleman had available. But Coleman couldn't spend all the money he raised. As a first-time candidate, his spending limit was increased by ten percent, to about \$2.1 million, but that was still almost \$1 million less than he raised. Humphrey, who had a contested primary that gave him a 20 percent increase, had a spending limit about \$200,000 less than he raised.

The spending limits too did what they were supposed to: they helped to level the playing field and make it possible for a candidate with broad public support, but little money, to compete.

E. After the Primary, Jesse Got Party Account Money

After the state primary, held September 15, each campaign received its party account money. It wasn't much for the Ventura Campaign, since the Reform Party had generated just \$16,539 in checkoff money in the previous four years. The Humphrey Campaign received \$293,262, while the Coleman campaign received \$249,358. The party account continued to perform its function of rewarding the candidates of the parties with the most loyal followers over the previous four years, not the insurgent candidate of the moment.

F. Getting General Account Money Was a Problem

With their party account money safely in hand, the Democratic and Republican Party candidates could look forward to their share of general account money, to be distributed after the election. The pool was about \$930,000, and it would be evenly divided among the candidates for governor who received at least five percent of the vote. Those two major parties could be sure of getting at least a third of the total, or \$310,000 each. They might even be able to borrow money before the election based on their lender's confidence that the general account money would be coming to them after the election.

For the Reform Party candidate, the general account money was not such a sure thing. Dean Barkley had been able to win over five percent of the vote in two elections for the U.S. Senate, but Jesse Ventura had never run statewide. His poll numbers were good, but he had no track record.

The Ventura Campaign needed money before November 3. They needed that \$310,000 to produce the commercials that would air in the last few weeks of the campaign and to pay for Jesse's "Victory Tour," a motor home caravan that would tour the state in the last 72 hours before the election, energizing his supporters and urging them to get to the polls on election day.

Even if a lender might be found who would believe the polls that said Jesse would do well, there was no mechanism under the campaign finance law for the lender to take a security interest in the general account payment. The check from the State had to be payable to the campaign committee of the candidate; it could not be made payable to the committee and a bank. Minn. Stat. § 10A.31, subd. 10 (1998).

G. General Account Money Made the Difference

Finally, in mid-October, the Ventura Campaign was able to obtain a loan from a small neighborhood bank, made possible by polling data that showed Jesse Ventura was likely to get enough votes to qualify for the general account money. The commercials were produced, the "victory tour" was run, and Jesse's supporters thronged to the polls on election day.

H. Election Day

Once there, they were able to vote, even though many had never voted before. They simply registered at the polls on election day. In 1994, the last gubernatorial election year, election-day registrations had accounted for 179,360 voters, or ten percent of those who voted. In 1998, 332,720 voters registered on election day, an increase of 153,360 voters, or 85 percent, over the last gubernatorial election. In overwhelming numbers, they voted for Jesse Ventura. He beat Norm Coleman by 56,523 votes.

V. Conclusion

Jesse Ventura had a message. Minnesota's campaign finance law helped him get that message to the voters. It also helped to restrain his opponents from drowning out his message with the lavish spending their greater fund-raising ability would have made possible. Finally, Minnesota's election law, and the open elections it facilitates, made it easy for him to get his name on the ballot and for his supporters to vote for him on election day.

From what you know about your own campaign finance and election laws, could the election of a third-party governor happen in your state? Could it happen to you?