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Background Brief on …

Campaign Finance:

Contribution & Expenditure Limits

This brief is designed to provide an overview of Oregon's current regulations on campaign contributions and expenditures. We also present policy choices, and show how other states and the federal government regulate in this area.

A long history of legal cases constricts the choices available to policy makers. The reason that policy choices are restricted is because courts have found the use of money in political campaigns the equivalent of expressing political opinion; laws regulating those areas may violate constitutional free speech guarantees.

The courts expect lawmakers to demonstrate an understanding of constitutional rights. However, well-intentioned, general concerns about the improper influence of money are rarely sufficient to justify limits on campaign financing. States must provide evidence showing specific harms to the public interest that the laws are intended to prevent. A state must also take care to "narrowly tailor" any laws to target the identified harm to minimize the impact on free speech rights.

Contribution Limits

The Oregon Supreme Court has found that limits on contributions to political campaigns generally violate the Oregon Constitution. The passage of Ballot Measure 47 (2006) technically put contribution limits in Oregon statute, but those limits are not enforceable unless or until the constitution is amended or interpreted to allow such limits.

Legal History – The Oregon Supreme Court looked at contribution limits for the first time when reviewing Ballot Measure 9 (1994). Ballot Measure 9 limited campaign contributions by individuals and political action committees **(PACs)** in legislative and statewide races.

In *VanNatta v. Keisling*, 324 Or. 514; 931P.2d 770 (1997), the court found that campaign contributions are a form of speech protected by the Oregon Constitution. Article 1, section 8 of the constitution provides: …

> If the Oregon Constitution is amended or interpreted by the Supreme Court to allow contribution limits, the provisions of ORS chapter 259 could become operative. However, this law goes further than most states, and several sections likely raise federal constitutional concerns. Federal courts have found limits on candidates' personal contributions and individuals' independent expenditures violate the U.S. Constitution.

Other States – As of early 2011, Oregon was one of four states with no limits on contributions (along with Missouri, Utah and Virginia). There are seven states (Alabama, Indiana, Iowa, Mississippi, North Dakota, Pennsylvania and Texas) with minimal contribution limits, these states limit or prohibit contributions by corporations and unions to candidates, but contributions from all other sources are unlimited. The remaining 39 states have established limitations on contributions to candidates from individuals, political parties, PACs, corporation and unions. In the 2011-2012 the average limits are:

Individual Contribution Limits per Election Cycle in 39 States

Office	Average	High	Low
Governor	$8,579	$60,800 (NY)	$872 (AZ)
Senate	$4,003	$23,087 (OH)	$320 (MT)
House	$3,632	$23,087 (OH)	$320 (MT)

Attempts to Ban Out-of-District Contributions – Ballot Measure 6 (1994) amended the Oregon Constitution to limit out-of-district contributions to 10 percent of the total. Vermont attempted to limit out-of-state contributions to 25 percent. Federal courts found that both limits violated the U.S. First Amendment because neither state had evidence that out-of-district or out-of-state contributions posed special dangers of corruption.

In 1998, the U.S. Ninth Circuit Court of Appeals noted that Oregon's Ballot Measure 6 banned all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption (*VanNatta v. Keisling*, 151 F.3d 1215 (9^{th} Cir. 1998)).

Many states, like Connecticut, require that all PACs donating to candidates be registered in the state.

ORESTAR

While Oregon does not limit contributions, all contributions and expenditures related to any candidate, measure, or political party active in any election including initiative, referendum, and recall petition drives are required to be disclosed. All campaign finance transactions are required to be filed electronically using the Secretary of State's Oregon Elections System for Tracking and Reporting (ORESTAR).

In 2005, the Oregon Legislature passed House Bill 3458, which required all campaign contributions and expenditures to be reported to the Secretary of State's office within a rolling 30-day time period and created ORESTAR. Beginning in 2007, the public has been able to search for campaign contribution and spending information for state and local candidates, campaigns and political action committees throughout Oregon.

Campaign finance regulation and election offenses are specified in ORS Chapter 260. A candidate, measure, or political party active in any election including initiative, referendum, and recall petition committee that expects to receive a total of more than $3,000 or spend a total of more than $3,000 for a calendar year, must file all transactions electronically using ORESTAR. They are required to disclose contributions and expenditures within 30 days, or within seven days during the six weeks before an election.

A committee is required to report detailed information about a contributor or payee if the total amount received from the same contributor or paid to the same payee exceeds $100 in a calendar year (January 1 – December 31). The aggregate for a contributor includes transaction types such as cash contributions, in-kind contributions, non-exempt loans, and all pledge types. The aggregate for a payee includes transaction subtypes account payable, cash expenditure, non-exempt loan payment, and personal expenditure for reimbursement.
The six transaction types that must be disclosed under campaign finance reporting requirements are: contribution/pledge, expenditure/account payable, other receipt, and other disbursement. There are also two other types, Other Account Receivable and Other, that may be used to report a transaction.

In addition to contributions, all expenditures made by state and local candidates, campaigns and political action committees are required to be disclosed using ORESTAR. The types of expenditures that are allowable by a committee include:

- Payment or furnishing of money or any other thing of value;
- Incurring or repayment of indebtedness or obligation by or on behalf of a candidate, committee or person in consideration for any services, supplies, or equipment;
- Any other thing of value performed or furnished for any reason, including support of or opposition to a candidate, committee, or measure;
- Reducing the debt of a candidate for nomination or election to public office; or
- Contributions made by a candidate or committee to or on behalf of any other candidate or committee.

All committees are prohibited from using campaign funds for any person's personal use. "Personal" means any use of a committee's funds to fulfill a personal commitment, obligation, or expense that would exist irrespective of the campaign or duties as a public office holder, or duties involved with a political or petition committee.

Examples of prohibited personal use include, but are not limited to:

- Purchase of household food items, clothing or supplies;
- Mortgage, rent, or utility payments for real or personal property that is owned by any individual and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage;
- Admission to a sporting event, concert, theater, or other form of entertainment, unless part of a specific campaign or office holder activity;
- Dues, fees, or gratuities at a country club, health club, recreational facility, or vacation property, unless they are part of the costs of a specific fundraising event that takes place on the club's or facility's premises; salary to a person, unless the person is providing bona fide services to the committee or the candidate's public office. Candidates must not pay themselves a salary or otherwise compensate themselves for lost income or for professional services rendered to their committees.

Oregon election law requires complete, accurate, and timely disclosure of contributions and expenditures by committees. If a committee fails to provide sufficient information or does not meet the statutorily specified reporting deadlines, the Secretary of State can impose financial penalties on the committee.
The primary types of campaign finance elections violations stem from late and insufficient contribution and expenditures filings. These types of violations include:

- Contribution or expenditure transaction that is filed after its due date;
- Cash balance adjustment transaction;
- Certificate of Limited Contributions and Expenditures (PC 7) filed after its due date; or

- Statement of Independent Expenditures (PC 10) filed after its due date.

The maximum penalty for each late transaction or for insufficient transaction is 10 percent of the amount of the transaction. The maximum penalty for a late Certificate of Limited Contributions and Expenditures is $300. The maximum penalty for a late Statement of Independent Expenditures (form PC 10) is 10 percent of the total amount reported on a PC 10.

Role of U.S. Constitution

The U.S. Supreme Court has approved contribution limits for national political office, thus allowing the current federal contribution limits. In its landmark case *Buckley v. Valeo*, 424 U.S. 1 (1976), the court found dangers of corruption sufficient to allow reasonable limits to free speech rights of the First Amendment to the U.S. Constitution, which provides:

> Congress shall make no law . . .
> abridging the freedom of speech …

In *Buckley*, the court found that campaign expenditures were more central to the core of free expression and therefore struck down a federal law limiting expenditures.

The Oregon Supreme Court rejected this distinction in *VanNatta v. Keisling*. Because Oregon's constitution is more protective of free expression rights than the federal, Oregon courts first analyze laws under the state constitution. If a law passes muster under Article I, section 8, a court will then turn to analysis under federal law. In that way, the U.S. Supreme Court's analysis serves as a minimum level of protection of free speech. The First Amendment applies to the states via the 24th Amendment, so all of Oregon's laws are subject to the First Amendment. However Oregon is free to further protect speech.

If the Oregon Constitution is either amended or interpreted by the Oregon Supreme Court to allow contribution limits, then the federal framework for analyzing these laws will be front and center. The U.S. Supreme Court analysis is built on the concept that limits on contributions are a permissible method to avoid the dangers of corruption. In general, courts tend to look at the entire law together. For example, while some limits might be suspect standing alone, they may be upheld if shown they are intended to plug loopholes. By the same token, courts frown on outright bans, believing in most cases some form of limited contributions ought to be allowed.

Public Financing

Half of the states provide some form of public financing, although many programs are limited in scope and provide only partial funding. Revenue for these programs is generated from a range of sources including income taxpayer check-offs, legislative appropriations, sale of unclaimed property, fees, and surcharges.

In all cases, participation is optional. Candidates who participate agree to abide by spending limits and to limit or cease raising private contributions. [*Source: National Conference of State Legislatures*]

The U.S. Supreme Court upheld the federal concept of public financing, stating it is permissible to condition acceptance of public funds on an agreement to limit expenditures.

The Oregon Supreme Court has addressed public financing indirectly. In *Deras v. Myers*, the court stated that a form of public subsidy would be "less clearly subject to constitutional attack." and, see below, in the *VanNatta* case, the court upheld tax credits as an "indirect form" of public financing.

Tax Credits

ORS 316.102 provides a tax credit for political contributions ($50 for individuals/$100 if filing jointly). In the 2008 tax year, taxpayers claimed $8.2 million in tax credits, paid from the General Fund. The amount varies with political cycles but $12 million per biennium is a good average. [*Source: Legislative Revenue Office*]

Ballot Measure 9 conditioned the credit so that it only applied to candidates for statewide and legislative offices if they agreed to participate in spending limits.

In *VanNatta*, the Oregon Supreme Court upheld that portion of Ballot Measure 9, finding that withholding a tax credit from those who contribute to candidates not choosing limits does not implicate Article I, section 8:

> [The tax credit] is, in effect, an indirect form of public campaign financing. No taxpayer is entitled to a tax credit for political contributions. The legislative choice to allow such a credit, but only under limited circumstances, does not appear to implicate Article I, section 8.

That section of ORS 316.102 was repealed in 1999.

Federal Contribution Limits

Federal election laws provide that individuals can only contribute $2,300 to candidates, while PACs are limited to $5,000. The law also limits contributions to parties and to PACs, and provides some aggregate limits.

In *Citizens United v. Federal Election Commission* (2010), the United States Supreme Court held that corporate funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment.

The Supreme Court invalidated two provisions of the Federal Election Campaign Act (**FECA**), finding that they were unconstitutional under the First Amendment. The decision reversed the long-standing prohibition on corporations using their general treasury funds to make independent expenditures. The court also overturned section 203 of the Bipartisan Campaign Reform Act of 2002 **(BCRA),** which prohibits corporations from using their general treasury funds for "electioneering communications." An electioneering communication is an advertisement that clearly identifies a federal candidate within 60 days of a general election or 30 days of a primary election.

In effect, the court held that corporations have the same First Amendment speech protections as individuals. Therefore, federal campaign finance law no longer restricts corporations or labor unions from using general treasury funds to make independent expenditures for any communication expressly advocating election or defeat of a candidate and permits corporations and unions to use treasury funds for electioneering communications.

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Additional Resources:

National Conference of State Legislatures
http://www.ncsl.org/

Federal Elections Commission
http://www.fec.gov/

ORESTAR
http://oregonvotes.org/index.html