June 2010

Inside this Brief

- **Contribution Limits**
- **Role of U.S. Constitution**
- **Public Financing**
- **Tax Credits**
- **Federal Contribution Limits**
- **Staff Contacts**

Legislative Committee Services
State Capitol Building
Salem, Oregon 97301
(503) 986-1813

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 2008, Oregon was one of five states with no limits on contributions (along with Illinois, New Mexico, Utah and Virginia). For the 36 states that limit individual contributions to candidates, averages are:

Individual Contribution Limits per Election Cycle in 36 States

Office	Average	High	Low
Governor	$7,500	$55,900 (NY)	$500
Senate	$3,600	$21,340 (OH)	$250
House	$3,298	$21,340	$250

Forty-four states regulate corporate contributions: half of those limit the amount corporations contribute to candidates, and half ban them outright.

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 (9th Cir. 1998)).

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

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 14th 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.

A system of public financing was proposed on the 2000 ballot (Ballot Measure 6), to be funded by repeal of the tax credit and additional appropriations. Voters defeated the measure.

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.

Staff Contacts

Erin Seiler
Legislative Committee Services
503-986-1647

Gina Zejdlik
Legislative Counsel
503-986-1243

Additional Resources:

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

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