



LPRO: Legislative Policy and Research Office

CAMPAIGN FINANCE

BACKGROUND BRIEF

CAMPAIGN FINANCE REGULATION

This brief will provide an overview of the primary types of campaign finance regulation and methods of regulation employed in Oregon.

There are three main methods employed by states for regulating campaign finance that are commonly utilized in combination: disclosure, contribution limits and public financing. These regulatory methods are implemented by:

- Requiring disclosure and reporting of campaign contributions and expenditures;
- Setting contribution limits to campaigns; and
- Providing a system for public financing of elections.

A candidate, political action committee (PAC) or political party must register with the state election administration agency, maintain receipts from contributions and expenditures and report them on dates established by the legislature. This information is published by the election administration agency so that it is publicly

searchable, enabling the public to see the sources of funding for elections.

The second method of regulating campaign finance is the establishment of contribution limits any group or individual can contribute to a campaign. States have established limits on how much an individual can contribute to a state campaign; how much a political party can contribute to a candidate; or how much PACs can contribute.

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The third method states use to regulate campaign spending is by providing a means by which candidates can accept public funds to conduct their campaign.

ROLE OF THE COURTS

The ability to regulate campaign finance has been limited by a substantial body of federal and state case law. Decisions made by the courts limit the choices available to lawmakers when considering campaign finance policy. Consistently, state and federal

courts have found the use of money in political campaigns is the equivalent of expressing political opinion; laws regulating those areas may violate constitutional free speech guarantees. The impact of the court's



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position primarily limits the ability to regulate campaign contributions and expenditures.

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.

The United States 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.

CONTRIBUTION LIMITS

Oregon is one of four states with no limits on contributions (along with Missouri, Utah and Virginia). 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.

OREGON LEGAL HISTORY

As 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 Oregon Supreme Court first looked at contribution limits when reviewing Ballot Measure 9 (1994). Ballot Measure 9 limited campaign contributions by individuals and PACs in legislative and statewide races.

The measure was challenged 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.”

In 2012, the Oregon Supreme Court considered the case of *Hazell v. Brown* regarding the implementation of campaign contributions that were adopted in Ballot Measure 47 (2006). The Secretary of State and the Attorney General determined in 2006 that since Ballot Measure 46, the constitutional amendment to allow the legislature or the people to create limits on campaign



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contributions and spending by enacting a statute, did not pass, the statutory limitations would not be enforced. The Court concluded that the campaign finance limits were inoperative and that according to the plain text of the measure itself, the limits were dormant.

FEDERAL LAW

Currently, federal election laws provide that individuals can only contribute \$2,700 to candidates, while PACs are limited to \$5,000. For the 2015-2016 cycle, the federal limits for individuals and PACs can be found [here](#).

The United States Supreme Court has approved contribution limits for national political office, thus allowing the current federal contribution limits.

FEDERAL LEGAL HISTORY

Though states must foot the bill and institute provisions for elections and any campaign finance regulations, the federal government retains judicial review over these in the form of United States Supreme Court rulings. Binding for all 50 states, these decisions oftentimes force states to amend or completely change their election protocols. Each state is also subject to decisions from both local and federal courts.

The following provides an overview of some of the most important Supreme Court decisions dealing with campaign finance:

- [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.

- [Randall v. Sorrell, 548 U.S. 230 \(2006\)](#). The U.S. Supreme Court found that states cannot limit independent expenditures, and must ensure their contribution limits are high enough to enable the candidate to run an effective campaign.
- [Citizens United v. Federal Election Commission \(2010\)](#). the U.S. Supreme Court held that corporate funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment.

After this decision, corporations and unions can spend unlimited sums of money on ads and other communications designed to support or oppose a candidate. 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.

Corporations are still prohibited from contributing directly to federal candidates, but can contribute unlimited sums to organizations, such as Super PACs and 501(c)4s, that support or oppose a candidate.

- [McCutcheon v. Federal Election Commission \(2014\)](#). the U.S. Supreme Court overturned the limits on aggregate federal campaign contributions set forward in Section 441 of the Federal Election Campaign Act. The ruling means that



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states can place a limit on how much any individual or group contributes to any one campaign, but cannot impose aggregate limits on how much an individual or group contributes to all campaigns during an election cycle.

OTHER STATES

States impose different types of contribution limits and statutory restrictions. The types of limits include:

- 28 states have restrictions on the ability of state party committees to contribute money to a candidate's campaign;
- 22 states completely prohibit corporations from contributing to political campaigns;
- 37 states impose limits on PAC contributions; and
- 38 states restrict the amount of money that any one individual can contribute to a state campaign.

The average contribution limits established by states on contributions to candidates from individuals, political parties, PACs, corporations and unions during 2013-2014 were:

Individual Contribution Limits per Election Cycle in 38 States

Office	Average	High	Low
Governor	\$5,619	\$50,000 (NY)	\$500 (AK)
Senate	\$2507	\$12,532 (OH)	\$170 (MT)
House	\$2,375	\$12,532 (OH)	\$170 (MT)

Source: National Conference of State Legislatures

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 amount of candidates' contributions. Vermont attempted to limit out-of-state contributions to 25 percent. Federal courts found that both limits violated the United States First Amendment because neither state had evidence that out-of-district nor out-of-state contributions posed special dangers of corruption.

In 1998, the United States 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.

DISCLOSURE AND 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 legislature passed House Bill 3458 which created ORESTAR and required all campaign contributions and expenditures to be reported to the Secretary of State's office within a rolling 30-day time period. Beginning in 2007, the public has been able to search for



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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 candidate is not required to form a committee if the candidate meets all of the three conditions:

- Candidate serves as the candidate's own treasurer;
- Candidate does not have an existing candidate committee; and
- Candidate does not expect to receive or spend more than \$750 during a calendar year.

The \$750 includes personal funds spent for any campaign-related costs, such as the candidate filing fee and voters' pamphlet filing fee. If at any time during a calendar year the candidate exceeds \$750 in either contributions or expenditures, the candidate must establish a campaign account within three business days of exceeding the \$750 threshold.

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 pledges. The aggregate for a payee includes transaction subtypes account payable, cash expenditure, non-exempt loan payment and personal expenditure for reimbursement.

There are six transaction types that must be disclosed under campaign finance reporting requirements: 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 PACs 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,



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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; or
- Salary to a person, unless the person is providing a bona fide service to the committee or the candidate's public office. Candidates may 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 expenditure filings. These types of violations include:

- Late contribution and expenditure report;
- Insufficient contribution and expenditure report;
- New transaction not included on the original contribution and expenditure report; and
- Statement of Independent Expenditures (PC 10) filed after its due date.

The maximum penalty for each late or insufficient transaction is 10 percent of the amount of the transaction.

The maximum civil penalty for the following offenses is \$1,000:

- Failure to file a Statement of Organization within three business days of receiving a contribution or making an expenditure;
- Failure to file an amended Statement of Organization within 10 days of a change in information; and
- Failure to establish a dedicated campaign account within three business days of receiving a contribution or making an expenditure.

The maximum penalty for a late Statement of Independent Expenditures (form PC 10) is 10 percent of the total amount reported on PC 10.

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



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income taxpayer check-offs, legislative appropriations, sale of unclaimed property, fees and surcharges.

This approach has taken several different forms including:

- **Clean Elections Programs:** candidates collect small contributions from a number of individuals (depending on the position sought) to demonstrate that there is enough public support to warrant public funding of his or her campaign. In return, the commission established for the program gives the candidate a sum of money equal to the expenditure limit set for the election.
- **Matching Funds Programs:** provide matching funds for candidates up to a certain amount.

In all cases, participation is optional. Candidates who participate agree to abide by spending limits and to limit or cease raising private contributions.

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.” In the *VanNatta* case, the court upheld tax credits as an “indirect form” of public financing.

POLITICAL TAX CREDIT

ORS 316.102 provides a nonrefundable tax credit of \$50 for individuals/\$100 if filing jointly, for political contributions to a major or minor political party; candidates for federal, state or local elective office or PAC.

The Oregon Legislature means tested the political tax credit in 2013. The credit is allowed for joint filers with income under \$200,000 and for individual filers with income under \$100,000.

According to the Legislative Revenue Office, in the 2014 tax year, taxpayers claimed \$5.3 million in tax credits, paid from the General Fund.

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ADDITIONAL RESOURCES

[National Conference of State Legislatures](#)

[Federal Elections Commission](#)

[ORESTAR](#)

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