THE CAMPAIGN LEGAL CENTER

1411 K Street NW, Suite 1400 / Washington, DC 20005
tel (202) 736-2200 / fax (202) 736-2222
http://www.campaignlegalcenter.org

April 17, 2015

Senate Committee on Rules
Oregon State Legislature
Salem, Oregon 97301

Re: Comments on *Senate Joint Resolution 5* Regarding a Proposed Amendment to Oregon Constitution

Dear Chair Diane Rosenbaum and Members of the Committee:

On behalf of the Campaign Legal Center (CLC), I respectfully submit the following comments regarding *Senate Joint Resolution 5* and the constitutionality of limiting contributions made in connection with campaigns for the nomination or election to public office. CLC is a nonpartisan, nonprofit organization that works in the area of campaign finance law, and participates in state and federal court litigation throughout the nation regarding contribution limits, disclosure, political advertising, enforcement issues, and other campaign finance matters. CLC has participated in numerous Supreme Court cases addressing state and federal campaign finance issues, including *McConnell v. FEC*, 540 U.S. 93 (2003), *Citizens United v. FEC*, 558 U.S. 310 (2010), and *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014). CLC has also provided expert advice to federal, state and local legislatures and administrative bodies and served as legal counsel to parties and *amici* in numerous campaign finance cases in federal and state courts.

I am currently senior counsel at CLC. Prior to joining CLC, I served as the president and CEO of Americans for Campaign Reform, executive director of the Center for Responsive Politics and was the general counsel of the Federal Election Commission. I also practiced political law at the firm of Skadden, Arps, Slate, Meagher & Flom,

Beginning with *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court has made clear that the Constitution of the United State does not prohibit the government from regulating contributions to political candidates and party committees. The Supreme Court has consistently found that limits on contributions to candidates impose only a marginal restriction upon the contributor's ability to engage in free communication, because the symbolic communicative value of a contribution bears little relation to its size, and because such limits leave persons free

to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. At the same time, reasonable contribution limits directly and materially advance the government's interest in preventing exchanges of large financial contributions for political favors.

At the same time, the Court in *Buckley* found that limiting "the actuality and appearance of corruption resulting from large individual financial contributions" was a constitutionally sufficient justification for contribution limits, and upheld the limits on contributions to candidates and political committees. Id. at 23-36. "Congress was surely entitled to conclude … that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." Id. at 28. In short, contributions made to a candidate or political committee to fund the candidate's or committee's speech can be subject to limitations that would be unconstitutional if applied to an individual spending money to express his or her own her own views independently of a candidate.

During the two decades following *Buckley*, the Court was called upon to review the constitutionality of numerous provisions of FECA. Applying *Buckley's* framework in each case, "the Court essentially weighed the First Amendment interest in permitting candidates (and their supporters) to spend money to advance their political views against a compelling governmental interest in assuring the electoral system's legitimacy [and] protecting it from the appearance and reality of corruption." *Colorado Republicans v. FEC), 518 U.S. 60,* 609 *(1996)* (internal quotations and citations omitted).

The Supreme Court reaffirmed the distinction between the regulation of contributions and the regulation of independent expenditures in *McConnell*:

> Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits—interests in preventing "both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." We have said that these interests directly implicate "the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process."

540 U.S. at 136-37 (internal citations and quotation marks omitted).

The Court has left the legislature with wide latitude in deciding where to set the contribution limits. "[A] court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000. Such distinctions in degree become significant only when they can be said to amount to differences in kind." *Id,* at 30 (internal quotations and citations omitted). It has, however, found that when a limit is set too low, it can effectively become an

unconstitutional prohibition on individual political contributions. *Randall v. Sorrell*, 548 U.S. 230 (2006.)

In *Citizens United*, the Court expanded the right to make independent expenditures from individuals to corporations (and presumably labor unions) where the expenditures were undertaken totally independently of a candidate. In so doing, the Supreme Court utilized the same constitutional framework that it had used to uphold contribution limit, noting that "[t]he *Buckley* Court, nevertheless, sustained limits on direct contributions in order to ensure against the reality or appearance of corruption." 558 U.S. at 357. In fact, in *Citizens United*, the Court acknowledged that it had found "there is a sufficient governmental interest in ensur[ing] that substantial aggregations of wealth amassed by corporations would not be used to incur political debts from legislators who are aided by the contributions" to support restrictions designed to *prohibit the use of corporate treasury funds* to make political contributions directly to candidates. Id. (Italics added. Internal quotations and citations omitted).

In summary, for four decades, the Supreme Court has found reasonable limits on contributions to candidates and political party committees constitutional because they serve the important interests in preventing "both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." These same interests have supported the constitutionality of prohibitions on corporate contributions to candidates.

Thank you for the opportunity to submit comments on the proposed legislation.

Respectfully submitted,

/s/ Lawrence M. Noble

Lawrence M. Noble
Senior Counsel
Campaign Legal Center