



**December 2015
Task Force on
Campaign Finance Reform**

Chair:

Hon. Jeanne Atkins

Membership:

Sen. Brian Boquist

Sen. Diane Rosenbaum

Rep. Vic Gilliam

Rep. Dan Rayfield

Justin Delaney

Dave Ellis

Nikki Fisher

Rob Harris

Margie Hughes

Mee Seon Kwon

Daniel Lewkow

Trent Lutz

Kyle Markley

David Rosenfeld

Norman Turrill

Seth Woolley

Staff:

Erin Seiler

Task Force on Campaign Finance Reform

Report to the 78th Legislative Assembly

Executive Summary¹²

In 2015, the 78th Legislative Assembly enacted [House Bill 2178](#). The measure established a 17-member Task Force on Campaign Finance Reform (the Task Force) to “conduct an analysis and determine the best method or methods to address campaign finance reforms”. The measure also called for the Task Force to submit a report, along with any potential recommendations for legislation to be initiated in the 2016 Legislative session to the House and Senate Interim Committees on Rules, no later than December 31, 2015. Although this early reporting date was set out in the measure, it is clear that the Task Force will continue its work after December and does not dissolve until July 2, 2017.

Task Force on Campaign Finance Reform

The composition of the Task Force was specified in the enabling legislation. The Task Force was required to include the Secretary of State, as Chairperson; 2 members appointed by the President of the Senate; 2 members appointed by the Speaker of the House of Representatives; 12-members appointed by the Secretary of State representing specific interests: 5 members to represent interests of political parties in Oregon, with at least one member representing each of the major political parties in Oregon; 2 members to represent interests of electors who are not affiliated with any political party; 1 member to represent interests of the League of Women Voters of Oregon; 1 member to represent interests of organizations that focus on campaign finance reform; 1 member to represent interests of nonprofit organizations; 1 member to represent interests of for-profit organizations; and 1 member to represent interests of nonprofit organizations that focus on voter registration.

The 17-member Task Force consists of the following members:

- Secretary of State Jeanne Atkins, Chairwoman
- Two members appointed by the President of the Senate:
 - Sen. Brian Boquist and Sen. Diane Rosenbaum;
- Two members appointed by the Speaker of the House of Representatives:
 - Rep. Vic Gilliam and Rep. Dan Rayfield
- 12-members appointed by the Secretary of State:
 - Five members to represent interests of political parties in Oregon, with at least one member representing each of the major political parties in Oregon:
 - Major political parties:
 - Rob Harris, Independent Party of Oregon; Margie Hughes, Oregon Republican Party; and Trent Lutz, Democratic Party of Oregon.
 - Minor political parties:

¹ The Task Force on Campaign Finance Reform approved the Executive Summary 15-0-2 on December 10, 2015

² The Task Force on Campaign Finance Reform Committee Materials are available at <https://olis.leg.state.or.us/liz/201511/Committees/JTF CFR/Overview>

- Kyle Markley, Libertarian Party and Seth Woolley, Progressive Party and the Pacific Green Party
- Two members to represent interests of electors who are not affiliated with any political party:
 - Dave Ellis and David Rosenfeld
- One member to represent interests of the League of Women Voters of Oregon:
 - Norman Turrill, League of Women Voters of Oregon
- One member to represent interests of organizations that focus on campaign finance reform:
 - Daniel Lewkow, Common Cause Oregon
- One member to represent interests of nonprofit organizations:
 - Mee Seon Kwon, Center for Intercultural Organizing
- One member to represent interests of for-profit organizations:
 - Justin Delaney, Oregon Business Council
- One member to represent interests of nonprofit organizations that focus on voter registration:
 - Nikki Fisher, The Bus Project

The Task Force charge from HB 2178:

House Bill 2178 stated that the Task Force was responsible for conducting an analysis and determining the best method or methods to address campaign finance reforms. The Task Force prepared an executive summary report of the Task Force conversations, provided links to exhibits relied upon and included legislative recommendations to 78th Legislative Assembly. was required to prepare submit a report in the manner provided by [ORS 192.245](#)³ and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to rules no later than December 31, 2015.

The Task Force established early on specific values and goals to guide their decisions in proposing reforms: Those values and goals included:

- Proposals should improve the public perception of campaigns, elections and candidates;
- Proposals should expand, where possible, an opportunity for there to be an informed electorate through transparency in reporting contributions and expenditures⁴;
- Proposals should serve to expand the number of voices participating in democracy;
- Proposals should improve access to democracy to underrepresented populations; and

³ **192.245 Form of report to legislature.** (1) Whenever a law of this state requires a written report be submitted to the Legislative Assembly, the requirement shall be met by distribution of an executive summary of no more than two pages sent to every member of the Legislative Assembly by electronic mail and one copy of the report to the Legislative Administrator. This requirement does not preclude providing a copy of any report to a specific legislative committee if required by law. The requirements of this subsection are not met if the executive summary is distributed to members of the Legislative Assembly in paper format. (2) The executive summary described in subsection (1) of this section shall include an explanation of how a member of the Legislative Assembly may obtain a copy of the report. If the report is also available on the Internet, the executive summary shall include the online location of the report. (3) Notwithstanding subsection (1) of this section, if a member of the Legislative Assembly requests a paper copy of a report or executive summary, the agency or other entity responsible for submitting the report or executive summary to the Legislative Assembly shall supply a paper copy of the report or executive summary to the member report is also available on the Internet, the executive summary shall include the online location of the report.

⁴ There was not unanimous agreement on this statement, as 2 members (Delaney and Markley) emphasized the importance of maintaining the privacy of those making contributions and expenditures.

- Proposals should reflect campaign finance issues/realities in Oregon rather than issues occurring in other states or at the national level.

The Task Force Work Plan

Upon finalization of the Task Force appointments on September 4, 2015, Chair Atkins set the schedule of Task Force meeting dates that would be used to formulate its report and recommendations in advance of the reporting date. The Task Force held four meetings in advance to its reporting date and one meeting prior to the start of the February Legislative Session. The meetings were on:

<u>September 11, 2015</u>	<u>October 1, 2015</u>
<u>November 19, 2009</u>	<u>December 10, 2015</u>
<u>January 12, 2016</u>	

In order to “conduct an analysis and determine the best method or methods to address campaign finance reforms”, the Task Force identified four campaign finance policy areas to study, analyze, and consider possible statutory or constitutional reforms. The policy areas were:

- 1) Disclosure (reporting of contributions and expenditures);
- 2) Independent Expenditures;
- 3) Limitations on contribution and expenditures; and
- 4) Public financing programs.

Within each policy area the Task Force reviewed current Oregon statutes; applicable federal statutes; case law; and current methods for of state regulation in policy area. The Task Force received presentations on the following topics:

- Current state and federal case law governing campaign finance law;
- Overview of Oregon's contribution and expenditures reporting system ORESTAR – Oregon’s Election System for Tracking and Reporting (ORESTAR)
- Overview of reporting requirements for independent expenditures and in-kind contributions;
- Types of public financing programs and structures including:
 - Models of public financing in other jurisdictions;
 - The People’s Pledge;
- Contribution limits implemented by other states or municipalities;
 - Overview of contribution limits
 - Federal Limits
 - Limits in other states
 - Implementation of limits in Oregon
 - Current barriers to establishment of limits
 - Constitutional amendment

The Task Force received the following presentations: Overview of [current campaign finance system](#) including state and federal case law from the Office of Legislative Counsels Deputy Legislative Counsel Dan Gilbert; overview of [Oregon’s contribution and reporting system](#)

[\(ORESTAR\)](#) from the Elections Division of the Office of the Secretary of State; and an overview on [models of public financing systems in other states](#) and [contributions limits established in other states](#) from [National Conference of State Legislatures Election Program Manager Wendy Underhill](#).

General Findings to Date:

At this early stage of the process, there are only a few general findings that are appropriate to attribute to the Task Force. These are laid out below and followed by some specific findings related to the specific subjects about which presentations have been made.

It is important to identify that the findings, both generally and specifically, come from limited state and national data, anecdotal evidence and personal experience working in, and with, campaign finance issues. The Task Force did not have the opportunity prior to its initial reporting deadline to fully investigate, research and seek comprehensive and agreed-upon empirical data to make definitive cause and effect conclusions regarding its findings.

- The public is mistrustful of our political system; the role that money plays in elections and the impact those contributions have on the decisions of those elected;
- Campaign finance reforms are limited by both state and federal constitutions and court decisions;
- Reform should be a multi-faceted approach, to minimize hydraulic effects of any new rules affecting campaign finance contributions and expenditures;
- Oregon is [one of 12 states that does not have contribution limits](#) on individual donors for state candidates⁵ and [one of six with no limits or prohibitions on any type of donor](#); and
- Cost of elections has the effect of limiting participation both of candidates and contributors⁶.

The Task Force has had initial presentations and discussion on the following topics and has reached the following preliminary findings:

Regarding the lack of contribution or expenditure limits on campaigns in Oregon.

- [Available public polling](#) has supported setting limits on contributions candidates can receive;
- Limits may have the potential to prevent quid pro quo corruption of public officials; but specific data comparing Oregon campaigns with those in other states that have limits is preliminary at best;
- The Oregon Constitution currently prevents the establishment of statutory contribution limits;
- Contribution limits are further limited by [state and federal court decisions](#);

⁵ Cruikshank, B (2015). "Contributions Limits Overview". Retrieved from <http://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx>

⁶ Delaney disagrees with statement based on lack on evidence to support it

- Oregon has no enforceable statutes governing contributions; but [statutes do exist that could be “brought to life” if the state Constitution were amended](#); that statute has not been analyzed by the Task Force;
- Establishment of candidate campaign contribution limits under the Federal Constitution is not forbidden, but given the trend of US Supreme Court decisions, there is some risk of successful legal challenge depending on the type and level of limits imposed;
- Whether the public believes limits should be applied equally to recall and ballot measure campaigns as well as candidate campaigns has not been resolved;
- Imposition of limits could result in more contributions from individuals if the public were persuaded that their participation mattered⁷; and
- Limiting direct contributions by individuals, businesses, and unions when independent expenditures cannot be limited may replace one problem with another.

Regarding current Oregon laws providing transparency:

- Oregon has a robust [contributions](#) and expenditures reporting system;
- [Public disclosure](#) allows public to know who is contributing to campaigns;
- Strong and consistent enforcement of reporting is needed to promote accountability;
- Changes in reporting requirements can be done with low risk of successful legal challenge;
- [Current reporting penalties](#) may not be enough to be a disincentive to prevent purposeful late reporting of contributions and expenditures (monetary and in-kind);
- Investigatory timeline is likely too long to be effective tool to deter purposeful late reporting;
- The system is complaint driven; there is little in the way of ongoing proactive investigation or auditing; and
- The need to provide detailed reporting for all contributions above \$100 may create a barrier for new candidates, volunteer treasurers and raise privacy concerns for potential donors.

Regarding independent expenditures (IEs)⁸:

- There is lack of transparency in IEs and a perceived lack of reporting of donors involved in IEs;
- Oregon has no requirements for disclosure of entity paying for ads or other materials; nor does it require disclosure on campaign materials of top contributors to entity making IEs;
- Outside individuals’ or organizations’ spending can result in a few dominating voices during campaigns potentially drowning out the voices of smaller donors and even candidates⁹;
- State and federal constitutions prevent any ability to limit IEs made in support of a candidate;

⁷ Delaney disagrees with statement based on lack on evidence to support it

⁸ A minority of the Task Force took a different position, in that government should not limit or regulate IEs in any manner and objects to the Task Force characterization of unlimited IEs as a problem. They take the position that limits on IEs would suppress independent political speech and violate free speech rights.

⁹ Markley disagrees to this point, as it is his position that government may not and should not do anything about this issue, citing *Citizens United v. FEC*, 558 U.S. 310 (2010) (slip op., at 34), “the rule that political speech cannot be limited based on a speaker’s wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker’s identity.”

- Current Oregon statutes do not adequately account for the breadth of organizations that may now be involved in IEs; and
- Oregon campaign law does not prohibit coordination between candidates and organizations making IEs, but only requires appropriate reporting if there are in-kind or direct reporting's. Penalties of for misreporting are limited if later "coordination" is identified.

Regarding public financing:

- Currently, the only form of public support for campaigns in Oregon is the [Oregon Political Tax Credit](#);
- A small group of large donors can finance campaigns; a large number of small donors and candidates without access to large donors cannot reasonably compete and are rarely viable;
- There are some concerns that "subsidizing" other people's political speech through public financing or the tax credit violates an important principle, even if constitutional;
- The participation of more donors could improve the distance between candidates and parties with legislative interest and reduce the potential influence of individual donors;
- Giving small donors & candidates without access to large donors a reasonable chance of competing against large donor-financed campaigns, will increase the number of people who can participate in elections as donors, volunteers and candidates¹⁰; and
- There is low risk of successful legal challenge to the general establishment of a public financing program. However, some types of incentives could be successfully challenged.

Cross-cutting Policy Findings:

- The inter-relationship of various reform ideas makes it difficult to predict the outcome of any single proposal. It is likely that more than one reform would need to be initiated to assure that unintended consequences do not overwhelm the good that would come from one reform.

¹⁰ Delaney objects to the inclusion of this statement as without empirical support.

Recommendations Actionable During the 2016 Legislative Session:

December 10, 2015 Recommendation: The Task Force continues to work on and explore drafting options for a legislative concept to amend Article II, Section 8 of the Oregon Constitution to limit contributions for candidates for public office.

VOTE: 11 – 4 – 2 (Nays: Delaney; Gilliam; Lutz; Boquist)

January 12th, 2016 Question: How many would support or oppose moving forward in the 2016 Legislative Session with a constitutional referral?

VOTE: 9– 5 – 3 (Nays: Delaney; Gilliam; Lutz; Markley; Rosenfeld; Excused: Boquist, Hughes, Rayfield)

Upon the majority vote, the Task Force considered 4 different constitutional amendment proposals:

- ***Proposal #1 – LC 137***
 - An amendment to Oregon Constitution to permit Legislative Assembly, or people through initiative process, to enact laws limiting or prohibiting contributions made in connection with campaigns for nomination or election to public office.
- ***Proposal #2 – Proposed by Norman Turrill***
 - Constitutional amendment to limit electoral campaign contributions; limit electoral campaign expenditures; and require disclosure to the public and in electoral communications of the true sources of those contributions or expenditures.
 - Statutory amendment to stay all the provisions contained in the 2006 Ballot Measure 47 until the date that major party candidates may file for Oregon’s 2018 primary election.
- ***Proposal #3 – Initiative Petition #77 – Proposed by Rob Harris and Seth Woolley***
 - Constitutional amendment to limit political campaign contributions and expenditures and authorizing mandatory public disclosure of true sources and amounts of contributions and expenditures.
- ***Proposal #4 – Proposed by Rob Harris***
 - An amendment to Oregon Constitution to permit Legislative Assembly, or people through initiative process, to enact laws limiting or prohibiting contributions made in connection with campaigns for nomination or election to public office.
 - Statutory amendment to stay all the provisions contained in the 2006 Ballot Measure 47 until the date that major party candidates may file for Oregon’s 2018 primary election.

A majority of the Task Force supported moving forward Proposal #1 for consideration during the 2016 Legislative Session.

VOTE: 10 – 2 – 3 - 2 (Nays: Lutz; Markley; Excused: Boquist, Hughes, Rayfield; Abstain: Delaney; Gilliam)

Two members abstained from voting for the specific constitutional amendment recommendation, having previously voter “no” on moving forward with a recommendation

Task Force on Campaign Finance Reform Minority Report

In 2015, the 78th Legislative Assembly enacted House Bill 2178. The measure established a 17-member Task Force on Campaign Finance Reform (the Task Force) to “conduct an analysis and determine the best method or methods to address campaign finance reforms”. The composition of the Task Force was specified in the enabling legislation. The Task Force was required to include the Secretary of State, as Chairperson; 2 members appointed by the President of the Senate; 2 members appointed by the Speaker of the House of Representatives; 12-members appointed by the Secretary of State representing specific interests: 5 members to represent interests of political parties in Oregon, with at least one member representing each of the major political parties in Oregon; 2 members to represent interests of electors who are not affiliated with any political party; 1 member to represent interests of the League of Women Voters of Oregon; 1 member to represent interests of organizations that focus on campaign finance reform; 1 member to represent interests of nonprofit organizations; 1 member to represent interests of for-profit organizations; and 1 member to represent interests of nonprofit organizations that focus on voter registration. The measure called for the Task Force to submit a report, along with any potential recommendations for legislation to be initiated in the 2016 Legislative session to the House and Senate Interim Committees on Rules, no later than December 31, 2015. Although this early reporting date was set out in the measure, it is clear that the Task Force will continue its work after December and does not dissolve until July 2, 2017.

To preface the presentation of the following minority report, the authors would like to thank the Secretary of State and staff for their leadership and professionalism in convening the Task Force.

In the Task Force meetings, it was apparent early in the discussion that a majority of the appointees were predisposed to recommend an Oregon Constitutional amendment to allow for the establishment of campaign contribution limits. The composition, as set out in HB 2178, affected the membership, as the required organizational representation meant nearly half of the group -- including the Chair -- were on record on the issue of contribution limits including a number of appointees being affiliated with organizations that have publicly endorsed and lobbied for contribution limits in Oregon. It is important to address the membership because the lack of corresponding representation from those with dissenting viewpoints affected the discussions and recommendations produced by the Task Force. For instance, the attorney who argued the *VanNatta v. Keisling* case to the Oregon Supreme Court and who has since been a well-known opponent of contribution limits, was excluded from membership on the taskforce, notwithstanding his request to participate.

A minority of the Task Force does not believe that the Task Force was presented with sufficient evidence about the implications of a constitutional amendment to conclude that it is wise, or that an amendment would foster a campaign environment consistent with our adopted principles. The Task Force has largely the same information provided to legislators during the 2015 Legislative Session when they most considered, and could not agree on [Senate Joint Resolution 5](#).

Moreover, the predisposition to amend the Constitution to permit contribution limits did not allow for the space for a full consideration of alternative means of campaign finance reform, or the presentation of adequate information to conclude that an amendment permitting contribution limits was prudent. We believe that an endorsement of a Constitutional amendment is premature without first understanding the shifts in the election landscape that will occur should legislators subsequently vote to adopt limits.

An example of one question that has not been adequately answered by the Task Force is the impact on the electorate and on the voice of candidates with the large-scale increase in the use of independent expenditures (IEs) and spending by Super-PACs that are a consequence of contribution limits. The Task Force was also presented with alternatives to a constitutional amendment which have not yet been adequately investigated, including The People's Pledge where candidates voluntarily agree to limits subject to penalties for violations. Finally, despite initial enthusiasm by the Task Force to explore and pursue enhanced contribution disclosure requirements, consideration of this important – and practical – topic has fallen off in favor of focusing on an amendment.

During the four meetings prior to the Task Force's initial reporting deadline, the Task Force was presented with information about campaign finance issues in Oregon; reporting requirements; public financing systems and federal and state case law governing possible campaign finance reforms. However, the information presented was not substantive enough to allow for the Task Force to make the finding and conclusions presented in the majority Task Force report, nor to adequately investigate alternatives to a constitutional amendment. The signatories to the minority Report believe that the Executive Summary and Task Force Report (dated 12-31-2015) contain findings and recommendations that are not yet supported by evidence and analysis presented to the Task Force.

We believe that the adoption of contribution limits are an inevitable result of amending the Oregon Constitution to permit such limits, and that an attendant rise in IE's and Super-PAC spending is an inevitable result of contribution limits. IE and Super-PAC spending moves us further away from, and not towards, transparency in Oregon elections, an outcome in stark contrast to the principles adopted by the Task Force.

Therefore, the following minority report reflects the concerns that have been raised by a minority of the Task Force with regards to campaign finance reform issues, the implications of an amendment to the Oregon Constitution permitting contribution limits and the lack of adequate information yet to conclude that an amendment is prudent.

Summary of Minority Report Findings and Recommendations

Representing the views of Task Force members Justin Delaney, Representative Vic Gilliam, and Kyle Markley

In the majority report, the Task Force adopted multiple findings that currently are without empirical support, and it is these unsupported findings that have prematurely led to an

endorsement of a constitutional amendment to permit contribution limits. Examples of the unsupported findings are as follows:

General Findings to Date;

- Cost of elections has the effect of limiting participation both of candidates and contributors.

We disagree with the statement that the cost of elections has the effect of limiting participation of contributors. The Task Force was not presented evidence that the cost of elections has had a prohibitive effect on contributor's participation in elections.

Regarding the lack of contribution or expenditure limits on campaigns in Oregon.

- Imposition of limits could result in more contributions from individuals if the public were persuaded that their participation mattered

We do not agree with inclusion of the statement, as this statement is aspirational and not based on any evidence the Task Force has been presented.

- Limiting direct contributions by individuals, businesses and unions when independent expenditures cannot be limited may replace one problem with another.

This statement embodies the dilemma the majority report faces in recommending a constitutional amendment before Task Force work has concluded. As seen at the federal level and in states with contribution limits, independent expenditures and Super-PACs are the logical result of placing limits on direct contributions to candidates. Anonymous super-PAC spending is directly contrary to the Task Force's adopted principle of increased transparency in campaign contributions.

We have no information from which to quantify the size or scope of the shift in dollars that would occur post-contribution limits. The Task Force has not heard any evidence from states which have witnessed this shift after adopting limits. At the federal level, dollars have increasingly flowed to IE's and super-PACs, and many Task Force members agreed that is an outcome that is not desirable in Oregon, nor is the lack of transparency inherent in Super-PACs consistent with a key principle adopted by the Task Force. Finally, virtually no examination has been made of the impact of taking campaigns away from the candidates themselves. Campaigns run by an IE group or Super-PAC by law cannot coordinate with a candidate, meaning that the electorate will hear campaign messaging that is not endorsed by the candidate. These unresolved concerns and discrepancies point to the conclusion that the Task Force is premature in endorsing a Constitutional Amendment allowing limits.

Second, some minority report signatories believe this statement about IE's in the majority report mischaracterizes unlimited independent expenditures as a problem and contradicts one of the adopted values of the Task Force "to expand the number of voices participating in democracy." The implication that IE's are a problem in the campaign finance system, and should be subject to

limitations, may actually decrease the number of voices participating in democracy, resulting in a grave impairment of free speech rights.

Regarding public financing:

- Giving small donors & candidates without access to large donors a reasonable chance of competing against large donor-financed campaigns, will increase the number of people who can participate in elections as donors, volunteers & candidates.

The Task Force received basic information about different types of public financing systems adopted by other states and municipalities, but the Task Force has not yet received any information about the impact of public financing systems on participation. Currently, there has been no evidence provided to the Task Force that public financing will increase the number of people who can participate as donors or volunteers. This conclusion is unfounded, it should not be included in the report, nor utilized as evidence to support policy recommendations.

Moreover, there has been one public financing program adopted in Oregon, the operation of which did not achieve the goals set out in the majority report. In 2006, the City of Portland adopted public financing for city-wide candidates for office. Candidates were able to choose to participate in the system and receive public funds after qualification or choose to raise funds in a traditional manner. The program was operative for three election cycles, 2006-2010, before voters' ended the program at the November 2010 General Election.¹¹ There has not been a full accounting of the reasons the program was not successful, but there were widely publicized instances of misuse of public dollars by candidates who had no serious intention of seeking office. Moreover, the Task Force has not yet been provided with information about the operation of public financing programs in other states, with regards to sustainability, impact on contributions and participation. As part of its future considerations, the Task Force needs to study the shortcomings of these programs and what hydraulics may occur when public financing is implemented.

We believe that the Task Force has more work to do, and more evidence to hear, and that it is premature to present something as momentous as an amendment to the free speech rights contained in the Oregon Constitution to the Oregon Legislature in 2016.

¹¹ 2010 General Election results for City of Portland Measure 26-108 – Yes: 49.62%; No: 50.38%

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December 15, 2016
Task Force on
Campaign Finance Reform

Chair:

Hon. Jeanne Atkins

Membership:

Sen. Brian Boquist
Sen. Diane Rosenbaum
Rep. Bill Kennemer
Rep. Dan Rayfield
Cyreena Boston
Justin Delaney
Dave Ellis
Nikki Fisher
Andrew Kaza
Margie Hughes
Daniel Lewkow
Brad Martin
Kyle Markley
Rob Raschio
Norman Turrill
Seth Woolley

Staff:

Erin Seiler

Task Force on Campaign Finance Reform

Report to the 79th Legislative Assembly

The legislature convened on February 1, 2016 for its 35-day annual session. At its meeting on January 12th, 2016, the Task Force on Campaign Finance Reform (Task Force), which was created in 2015 by HB 2178, recommended that the Legislative Assembly consider an amendment to the Oregon Constitution to permit the legislature, or people through initiative process, to enact laws limiting or prohibiting contributions made in connection with campaigns for nomination or election to public office. Upon adjournment, no action had been taken on a constitutional amendment to address contribution limits.

In May 2016, the Task Force reconvened, with a slightly changed membership and a focus on campaign finance reform in the following areas: Transparency (reporting of contributions and expenditures including independent expenditures) and incentivizing small donors through the Political Tax Credit and public financing programs.

The new members of the Task Force were:

- Rep. Bill Kennemer replaced Rep. Vic Gilliam
- Rob Raschio replaced David Rosenfeld
- Cyrenna Boston replaced Mee Soon Kwon
- Brad Martin replaced Trent Lutz
- Andrew Kaza replaced Rob Harris

The Task Force held five meetings in advance of the start of the 2017 Legislative Session. The meetings were on:

<u>May 26, 2016</u>	<u>August 18, 2016</u>
<u>September 20, 2016</u>	<u>November 17, 2016</u>
	<u>December 15, 2016</u>

These meetings focused on identifying and analyzing campaign finance reform policy options to incentivize small donors and improve disclosure in the areas of: public financing; political tax credits and contributions and expenditures disclosures including independent expenditures. The Task Force sought input on best practices in public financing from Every Voice and local governments considering public financing options; received input on the Oregon Political Tax Credit including history of utilization, utilization of tax credit by socio-demographics and impact of possible changes to the tax credit and from the Secretary of State and the Elections Division on current disclosure requirements and possible changes to the contributions and expenditures disclosures including how independent expenditures are disclosed.

The Chair subsequently designated three work groups to identify and make specific policy recommendations for the full Task Force to consider. The work groups focused on finding campaign finance reform recommendations that would garner broad support from the Task Force.

Recommendations Actionable to the 2017 Legislative Assembly

Political Tax Credit

Chris Allanach, a Senior Economist from the Legislative Revenue Office, provided the Task Force with an overview on the utilization of the [Oregon Political Tax Credit](#). Mr. Allanach addressed the history of claimants; difference in claimants in Presidential Election, Non-Presidential Election and off-year election years; utilization of tax credit by socio-demographics including age, income and filer type; and the impact of number of claimants between 2010 and 2014 following the implementation of means testing.

During the presentation Mr. Allanach identified strengths and weaknesses in the available information about the political tax credit including:

- The inability to determine how individuals use their political donations (candidate campaign, PAC or political party). This is information that is not available because on tax returns as all donations are valued the same and limited to tax liability. In order to determine this information, the Task Force or some other group would need to link tax returns to contributions reported to ORESTAR. That would be challenging because of privacy of personal information on tax forms and information not required when reporting in ORESTAR (i.e., SSN);
- The difficulty evaluating the political tax credit is because purpose is not spelled out in statute and tax returns do not indicate the reason for a donation (is the donation made specifically because of credit or make donation and just happen to take it). For general purposes of evaluation, it is assumed that its intent is to incentivize small donations and broaden the campaign finance donation base;
- There are patterns and trends in utilization by Oregonians, as it increases during Presidential Elections and general utilization of the credit has increased between 1998 and 2008. However, it is unclear what drove that increase as we are not able to tease out if it has incentivized new people or is dead-weight loss, i.e., people who have made or will make a contribution anyway and just take the credit because it is available to them;
- It is possible to determine the number of people who are eligible to claim it, but do not claim it and determine if there is a connection between the number of people who file electronically (programs prompt you to answer if you qualify for credit) and the number of people who have taxes professionally prepared, as both increase awareness.
- It is possible to know the number of taxpayers who are prohibited from using because of means testing or do not have any income to claim, as there is concern that the impact of the means testing is unconstitutional; and
- We are not able to determine the fraction of total contributions from the political tax credits.

Other states

There are four other states with a political tax credit:

- [Arkansas Political Contribution Credit](#) - A credit of up to \$50.00 per taxpayer (\$100.00 for a joint return) is allowed against your Arkansas Individual Income Tax liability for cash contributions made to a candidate seeking nomination or election to a public office; candidate's campaign committee; political action committee; and political party. The credit does not apply to contributions made to candidates for federal offices.
- [Minnesota Political Contribution Refund](#) – Could donate \$50.00 (single) or \$100.00 (joint) to candidates for legislature; statewide office or political party; suspended July 1, 2015 through June 30, 2017 (SF 888, sec. 82, 2015-16).
- [Ohio Political Contributions Credit](#) – A nonrefundable credit, up to \$50.00 per taxpayer (\$100.00 for a joint return) is allowed against a taxpayer's aggregate tax liability for contributions of money made to the campaign committee of candidates for any of the following public offices: governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, member of the state board of education, chief justice of the supreme court, justice of the supreme court, or member of the general assembly.
- [Virginia Political Contribution Credit](#) – Can claim the credit for contributions to political candidates in a primary, special or general election for local or state office. The Virginia credit is equal to 50 percent of the political contributions made to candidates for state and local offices, not to exceed \$25.00 for an individual taxpayer or \$50.00 for taxpayers filing a joint return. The credit is nonrefundable and unused credits cannot be carried forward to subsequent years.

The following states have repealed/suspended their political tax credit/refund: Arizona, Hawaii, Montana and Oklahoma.

There are specific pieces of information that the Task Force did not have about the other states' program including:

- An analysis of states that have it (and how they are different from Oregon, if they are);
- An analysis of why four states have dropped their programs.

Political Tax Credit Work Group Discussion

Participants: Jeanne Atkins, Chair; Justin Delaney, Rep. Bill Kenemer, Brad Martin

During the discussion of the Political Tax Credit, the Work Group identified the positive and negative aspects of the credit including recognition of the political realities of the credit.

The positive aspects of the political tax credit according to the Work Group are:

- It is voluntary;
- Encourages participation by individuals who cannot or do not want to donate large amounts; and
- Engages people directly.

The negative aspects of the political tax credit are:

- The state “subsidizes,” by using state funds, the speech of individuals at the cost of other programs;
- The means-test established in 2013¹² :
 - Only incentivizes a small group of individuals.
 - At the very least bad policy; at worst it could be unconstitutional as discriminatory
- Not refundable, so not as useful for low-income Oregonians; and
- Amount of the tax credit (\$100 on a joint return or \$50 on any other type of return) has not been updated in many years.

Political realities of the political tax credit are: that this is a policy that is in place already; does not have a partisan division at this time, as individual candidates and political action committees across the partisan spectrum encourage utilization of the political tax credit; and is neutral and available for candidates or other political groups to use as an organizing or giving tool. However, the political tax credit may be viewed as more a tool for individuals or organizers of groups (labor, other policy-oriented groups) as opposed to a tool for business groups to raise political funds. Generally, the Work Group had a positive view of the potential for expanding the use of the tax credit.

Possible Policy Recommendations and Potential Fiscal Impact

The Work Group recognized that policy changes to the Political Tax Credit would have a fiscal and revenue impact, therefore they presented four possible changes to the Legislative Revenue Office for feedback on the financial impact. In providing feedback to the Task Force, Mr. Allanach recognized that there is significant “seasonality” to the Political Tax Credit that aligns with the election cycle and that there is uncertainty that the policy changes identified would affect that seasonality. He operated from the position that they would represent a “level shift” in the amount of tax credits claimed.

¹² (ORS 316.102 (3): A taxpayer may not claim the credit, if the taxpayer has federal adjusted gross income in excess of \$200,000 on a joint return or \$100,000 on any other type of return)

The preliminary/potential annual costs of each of the policy changes are:

- The credit was increased to 75/150:
 - Projection of annual cost: Increase to \$75/\$150: \$1.0 million per year
- The credit was made refundable:
 - Projection of annual cost: \$0.4 million per year
- The means-testing was eliminated:
 - Projection of annual cost: \$0.8 million per year
- All three of the above at once:
 - Projection of annual cost: \$2.4 million per year¹³

¹³ Per Allanach: The individual policies are close to additive, but there is some interaction that explains why item 4 costs more than the sum of items 1-3.

December 15, 2016 Statement of Findings Regarding the Political Tax Credit:

Oregon campaign contribution tax credit is useful in encouraging small contributions by individuals and gives candidates and political committees the opportunity to do positive outreach to constituents. The program has had bi-partisan support over the years.

The statement generally reflects the position of the Task Force, although: more than one member felt that the positive effect was small; and one member completely opposes the tax credit on the principle that any positive effects of participation is outweighed by the fact that the tax credit diverts public resources to support one person's political speech. One member also expressed the view that means testing this particular credit is a fatal flaw since it supports the speech of one group over the speech of another which could render it unconstitutional.

VOTE: 13 – 1 – 3 (Nays: Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Political Tax Credit Policy Recommendations:

- **Raise the amount of the credit to \$75/individual, \$150 for joint filers;**
- **Remove the recently adopted means-testing;**
- **Allow for application to receive cash credit rather than incorporating into calculation of tax;**
- **Make tax refundable; and**
- **Allow for credit to be carried over to next tax year.**

The Task Force discussed the impact of each of the recommended changes to the political tax credit with regards to the state budget and General Fund; administrative feasibility; likelihood of increasing utilization by Oregonians; and general utility.

Only one recommendation received majority support. The Task Force supported making the tax credit refundable, although all members conceded that making this a budget priority in the 2017 legislative session would be challenging.

VOTE: 9– 5 – 3 (Nays: Delaney, Ellis, Hughes, Kennemer and Markley; Excused: Boquist, Boston and Raschio)

Public Financing

The Task Force received presentations about different types of public financing models; types of programs currently in operation in other cities and states; opportunities for a public financing program in Oregon and a specific program being considered in the City of Portland.

From Every Voice, both Susan Mottet, the Senior Legislative Campaign Strategist and Tam Doan, the Research Director, addressed different types of public financing models; types of programs currently in operation in other cities and states; opportunities for a public financing program in Oregon. Specifically, Ms. Mottet addressed following issues:

- Polling regarding [public support for small-donor funded elections](#).
- Whether small-donor funded elections is an effective campaign finance reform?
- Do small-donor funded elections diversify who is funding elections?
 - Examples: [New York City and Arizona](#)
- Is there [voter support](#) for small-donor based campaign finance reforms?
- Is it legislatively feasible to pass a small-donor funded program?
- What are the different models for public financing? What are the pro and cons?
 - Matching Funds system: a jurisdiction provides matching funds for candidates up to a certain amount - could be one-time or continuous amount of funds, up to a limit;
 - Voucher program: eligible residents in jurisdiction receive vouchers valued at a specific amount to send to candidate of their choice; and
 - Grant system: candidates collect a specific number of small contributions to demonstrate that they are a viable candidate; the candidate then receives a grant equal to the established limit set for the office being sought.
- Characteristics of a successful public financing system. Examples of successful public financing programs.
- What are would the negative impacts of public financing system?

In addition, to looking broadly at public financing programs, the Task Force learned about a specific public financing system being considered by the City of Portland. Tim Crail, the Chief of Staff for Portland Commissioner Amanda Fritz explained the provisions of the Voter-Owned Elections program that voters' ended in 2010. He addressed the objectives of the program, which candidates participated in the program, impact on elections in Portland, what issues arose and what contributed to its repeal. Cristina Nieves, Policy Advisor to Commissioner Fritz explained the [objectives and provisions](#) of new [Open and Accountable Elections](#) being proposed by Commissioner Fritz.¹⁴

The Task Force asked the following questions

- How will in-kind donations be treated?
- What is the reason for the increase reporting requirements?

¹⁴ [Adopted by Portland City Council on December 14, 2016](#)

- Have they considered an alternative signature collection process for people who have physical limitations, family circumstances or lack of institutional support volunteers to canvass city?
- How will the program balance rigorous reporting requirements and incentivizing participation by new and first time candidates?
- What is the anticipated cost of program to City of Portland?
- What is the cost of competitive primary and general election in city of Portland? Average? Median?
- How will program outreach potential candidates or work to achieve diversity among candidates?

Public Financing Work Group Discussion

Participants: Jeanne Atkins, Chair; Andrew Kaza, Daniel Lewkow and Sen. Diane Rosenbaum

During the discussion of public financing, the Work Group identified the positive and negative aspects of a public financing system.

The positive aspects of a public financing system as highlighted by the Work Group:

- Provides financial support beyond that of the usual big donors;
- Jurisdictions are seeing it as a way to address campaign finance issues in light of constitutional restrictions on contribution limits;
- There is some evidence, that over time, a public financing system helps diversify types of candidates; and
- Public finance, as a concept, has a cross-section of support from Task Force members:
 - 10 members viewed some form of public financing as positive;
 - 4 members opposed public financing.

The negative aspects of a public financing system as highlighted by the Work Group:

- Previous attempts at creating and successfully implementing have produced negative results:
 - Defeat of Ballet Measure 6 (2000): Provides Public Funding to Candidates Who Limit Spending, Private Contributions
 - The City of Portland's Voter-Owned Elections program was repealed ¹⁵;
- Funding source for a public financing system; if it was a General Fund program, it would compete with other programs that are state responsibilities;
 - Using public funds for program could present perception problem - politicians getting state dollars that should go to address state problems.
- Implementation of a public financing program would require a significant initial investment to create administrative structure and process.

¹⁵ Program was repealed November 2, 2010 – [Measure 26-108 \(2010\)](#)

Possible Public Finance System Options/Considerations:

- Vouchers Program (funds go to donors, not politicians):
 - Example: [City of Seattle: Democracy Voucher Program](#) - eligible Seattle residents can assign four Democracy Vouchers, each valued at \$25, to candidates in City of Seattle elections.
- Grants:
 - Matching Funds system: a jurisdiction provides matching funds for candidates up to a certain amount - could be one-time or continuous amount of funds, up to a limit.
 - Small-donor system: candidates collect small contributions from a number of individuals to demonstrate public support to warrant public funding of campaign. In return, public dollars are provided to the candidate up to an established amount.
- Participation in the public financing system must be voluntary, but can have conditions for participation such as:
 - Requiring validation of candidacy (petitions/donations);
 - On accepting large donations;
 - On accepting donations from political action committees; and
 - On spending.
- Potential funding sources:
 - Tax return checkoff;
 - Permit the Secretary of State to retain fines and filing fees paid to the Secretary of State (currently they go to General Fund); and
 - General Fund.
- If a state program, what races would participate:
 - The larger the number of candidates, the more impact in terms of changing contribution and expenditure landscape;
 - The more candidates who participate, the more it costs;
 - Difficult to develop a “pilot” public financing system with a randomly selected set of races; potentially result in significant pushback about fairness.
 - Probably need to test with a category of candidates, i.e., all judicial races or all state representatives
 - Would public financing system include all Statewide races? Judicial races? Legislative races?

Information the group would like to have:

- Summary of several of the public financing systems including cost of program, source of funding, administrative structure and impact on campaigns (or potential impact). Possible programs to review:
 - City of Seattle Democracy Voucher Program,
 - Maine Clean Elections Program; and
 - City of Portland’s Open and Accountable Elections.
- Estimation of the cost for a program involving only statewide candidates in Oregon.
 - Funding available to candidates needs to be big enough to make a difference, but small enough to be affordable by the jurisdiction.

December 15, 2016 Statement of Findings Regarding Public Financing:

Public financing may be the one constitutionally appropriate way to make significant change in the source of campaign funding at this time. While there are some Task Force members who completely oppose public financing, additional exploration is supported by a cross-section of the group.

The statement generally reflects the position of the Task Force, although: more than one member felt that the additional exploration of public financing programs was not necessary, as there are multiple systems in place for which the impact is largely known and data is available; and more than one member opposes all forms of public financing programs.

VOTE: 11– 3 – 3 (Nays: Delaney, Kennemer and Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Public Financing Policy Recommendations:

- **Pass a pilot program in 2017 with elements such as those adopted by the City of Portland¹⁶;**
- **Delay passage of a state program while evaluating outcome in Portland and in other cities/states where new programs have been adopted; and**
- **Contract with Legislative Policy and Research Office to evaluate the necessary elements of such a program, investigate costs and possible “pay fors” and develop administrative options. A minimum of \$50,000 for this project should be appropriated.**

The Task Force discussed each of the public financing recommendations in the context of funding sources and available General Fund support; scope of a public financing program; information currently available about public financing programs in other jurisdictions and the Task Force did not take a position on the adoption of a specific type of public financing program but rather they endorsed the concept of a public financing system, but that it is best to leave discretion up to the legislature to describe the program (whether pilot program, small–donor program or additional research). Therefore, the Task Force choose not to take any action on the proposals.

- **The Task Force recommends that the legislature move forward with active debate regarding a possible public financing system. The Task Force encourages application of the values identified by the Task Force (see page 7 of the Task Force on Campaign Finance Report to the 78th Legislative Assembly) and that investments be made where additional resources are needed to clarify outstanding questions.**

VOTE: 10– 4 – 3 (Nays: Delaney, Hughes, Kennemer & Markley; Excused: Boquist, Boston & Raschio)

¹⁶ [Adopted by Portland City Council on December 14, 2016](#)

Transparency and Penalties

Transparency and Penalties Work Group Discussion

Participants: Jeanne Atkins, Chair; Dave Ellis, Margie Hughes, Kyle Markley and Rep. Dan Rayfield

The Work Group had a wide-ranging discussion of issues related to disclosure of contributions and expenditures, reporting requirements, functionality of ORESTAR and penalties for violations. The themes that emerged were:

- Oregon’s campaign finance reporting system should not penalize new candidates and volunteer treasurers for unintentional reporting errors.
- The current [campaign finance reporting requirements are complex and favor candidates and campaigns](#) with more resources including experienced treasurers, campaign staff and organizational structures.
 - Possible ways to address issues include:
 - Clarification of reporting rules/statutes, make them easier to understand.
 - Simplification of reporting requirements.
 - Increase outreach to candidate and political action committees or/and provide ORESTAR training for treasurers.
- Penalties for violating reporting requirements should be strong enough to incentivize accurate reporting. Some Work Group members voiced concern that the [current penalties](#) are insufficient to incentivize reporting.
- Auditing of reporting and reporting violations, should focus on candidates or political action committees with repeat violations or whom a pattern of violations has occurred which could be perceived as intentionally trying to “game” the reporting system.
 - The Work Group would like to see enhanced penalties for intentionally violating reporting requirements; increase education or reduction in liability when reporting violations appear to be clerical error or mistake.
 - Identified Challenges:
 - Increasing investigatory abilities requires additional budgetary resources; and
 - Determining “intent” would be difficult for Elections Division or Oregon Department of Justice.
 - The Work Group supported increasing fines for reporting violations but in coordination with a more proactive auditing function - focused on identifying more serious/repeated reporting requirement violations.
 - Identified challenges:
 - What would be the fairest way to proactively audit a committee?
 - Audits would be random?
 - Audits could focus on committees with repeat violations?

- Audits could focus on a particular kind of campaign committee, i.e., Independent Expenditure filers?
- Establishing of liability for reporting violations and subsequent penalties; who should be liable - Treasurer; Treasurer and alternate Treasurer; candidate; or political action committee?¹⁷
- ORESTAR should focus on transparency for the public.
 - ORESTAR should allow:
 - Individuals to “follow the money;”
 - Identify publically those who are violating campaign finance reporting requirements;
 - Allow for the media to obtain reports on fines assessed to campaign committees;
 - Prepare an annual report identifying all political action committees that have been fined; and
 - Have ORESTAR report cumulative fines on the political action committee summary page.¹⁸

¹⁷ Not consensus of work group

¹⁸ Not consensus of work group

December 15, 2016 Statement of Findings Regarding Transparency and Penalties:

Oregon has long relied on “transparency” to be the disinfectant of our political system, allowing the public to determine whether or not contributors are having undue influence. The ORESTAR system has been a largely successful method of providing campaign finance expenditure and contribution activity to the public. However, it can and should be improved in three areas: First, it is difficult for small parties, new candidates and volunteer treasurers to develop sufficient expertise in compliance to avoid unintentional errors. Second, penalties may be insufficient when deliberate failure to file or file timely are involved. Third, the public is not aware enough of the information to be found in ORESTAR to have it serve as intended.

The statement generally reflects the position of the Task Force, as the Task Force considered the purpose of ORESTAR, the system’s ability to inform the public about money being contributed and expended during an election and the relationship between contributions and expenditures and influence.

VOTE: 13 – 1 – 3 (Nays: Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Transparency and Penalties Administrative and Legislative Recommendations

Administrative recommendations

- **Greater education opportunities for candidates and treasurers should be offered;**
- **A “consumer analysis” should be completed that allows the Elections Division to hear directly from those potentially affected, as well as the public, about how ORESTAR works;**
- **The Secretary of State’s Office should create an application programming interface to increase public access to ORESTAR; and**
- **The Elections Division should regularly make public the fines assessed against campaigns.**

The Task Force discussed the difficulties of navigating ORESTAR as both a filer within the system and a public user of the system. They identified administrative steps that could be taken by the Secretary of State to improve compliance, prevent unintentional reporting errors by new or first-time treasurers/candidates and improve ORESTAR as a tool for use by the public. The Task Force identified ways that the Secretary of State’s Office could improve the transparency in all aspects of ORESTAR for users including search functions; better connection between independent expenditure filers and the candidate or issue the money was spent on; and transparency in reporting violations.

VOTE: 14– 0 – 3 (Excused: Boquist, Boston and Raschio)

- **The Secretary of State’s Office should open up the source code for ORESTAR.**

The Task Force discussed the value of opening the source code for ORESTAR for public scrutiny. Members identified how opening the source code would permit smaller political parties and groups to learn and understand how the system works. It would help ensure compliance and security through outside auditing by multiple entities.

VOTE: 14– 0 – 3 (Excused: Boquist, Boston and Raschio)

Legislative Recommendations

- **An expanded enforcement effort should be developed, funded and staffed in order to address repeat offenders and/or efforts by filers to avoid timely reporting.**

The Task Force discussed the Secretary of State’s Election Division establishing a more proactive system of auditing ORESTAR disclosure, a system that could focus on identifying more serious/repeat reporting requirement violations. The Task Force emphasized that any system developed, should have adequate fiscal resources to support staffing and implementation needs.

The enhanced enforcement system would work in connection with enhanced penalties for intentionally violating reporting requirement; while providing latitude when a good-faith effort was made to report with the establishment of safe harbors or reasonable exemptions for late filings.

In their discussions, the Task Force recognized the difficulties of identifying “intentional” reporting errors and “unintentional” reporting errors; identifying circumstances that an individual reporting could not have foreseen, impacting the ability to meet required disclosure timeline, resulting in late filings and fines. The circumstances could include power outages, system malfunction and familial/personal health emergencies. Thus, the enhanced enforcement, enhanced penalties, should be accompanied with a process of consideration regarding why reporting was late before assessing fine.

However, while largely supportive of the recommendation, it was not unanimous, as one member believes that encouraging political activity, such as contributions to candidates, far outweighs the benefit of increased reporting.

VOTE: 13– 1 – 3 (Nay: Markley; Excused: Boquist, Boston and Raschio)

- **Timelines for reporting independent Expenditures (IEs) to ORESTAR should be aligned with timelines for reporting of all other contributions and expenditures by political committees.**

The Task Force had previously discussed the limited ability to regulate IEs, based on current [state and federal court decisions](#). However, one area that could be regulated legislatively relates to disclosure requirements. Currently, independent expenditures filers are required to file a statement

of independent expenditures not later than seven calendar days after the total amount of independent expenditures exceeds \$750 in a calendar year.¹⁹

The Task Force endorsed the recommendation from member Norman Turrill, that transparency of IEs could be improved with requiring more timely disclosure by IE filers through the alignment of IE reporting requirements with the timelines for disclosure by all required filers.²⁰

VOTE: 13– 1 – 3 (Nay: Markley; Excused: Boquist, Boston and Raschio)

¹⁹ ORS 260.044 (1)

²⁰ ORS 260.057

Attributions on Campaign Materials

December 15, 2016 Statement of Findings Regarding Attributions on Campaign Materials

Current, Constitutional interpretation regarding required attributions on campaign materials may reflect appropriate protections for anonymous speech, but hinders transparency and accountability in our election system.

In 2001, the Legislative Assembly repealed ORS 260.522, the statute requiring disclosure/disclaimers on all campaign materials. The repeal was based in part, if not entirely, on a 1999 Attorney General opinion (OP 8266, March 10, 1999 RE: constitutionality of ORS 260.522) which prohibits most anonymous signs, publications and broadcasts used in political campaigns) indicating that the provision was likely unconstitutional (as it has never been court tested). The Attorney General opinion was based primarily on the free expression provisions of Article I, section 8 of Oregon Constitution and Article I, section 8 prohibits some state election-related provisions that are permissible under the First Amendment to the U.S. Constitution (e.g., contribution limits).

Aware of the current constitutional interpretation, the Task Force discussed the impact that the inability to require disclosure or attributions on campaign materials has on transparency and the ability for the public to know who is contributing to campaigns. In particular, the impact that the inability to require attributions or disclosure of entity paying for ads has the ability to know who or what entity is paying for IEs. Several Task Force members, while they agree with the facts of the statement of findings regarding attributions on campaign materials, believe that anonymous political speech has value and that freedom of speech is a greater value than transparency. Further, stating that anonymous political speech can focus on the merits of the issues rather than on the people or groups who are “speaking”. Thus, anonymous political speech will protect speakers from social, or potential criminal, backlash when an idea is unpopular.

VOTE: 12– 2 – 3 (Nay: Delaney and Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Attributions on Campaign Material Policy Recommendations:

- **An effort should be made to develop legislative options that would meet constitutional standards but would make those distributing anonymous campaign materials more easily held to reporting requirements.**

The Task Force discussed the possibility of reestablishing a requirement for attributions on campaign materials or some substantially similar statutory requirement. In their discussions, the first question that arose for the Task Force was whether changes jurisprudence had changed substantially enough since 1999 to be more permissive with respect to disclosure requirements similar to those contained in ORS 260.522. The Task Force received a Legislative Counsel (LC) opinion regarding current judicial interpretation on the issue. In the opinion, LC does not believe that the Oregon Supreme Court’s Article I, section 8 jurisprudence has changed in a way that would cause the Attorney General or the court to reach a different conclusion regarding a disclosure law similar to ORS 260.522.

The Task Force acknowledged the analysis from LC, and in the case of several members disagreed with the analysis, in part pointing out that no formal court decision had been rendered and that there is firm constitutional prescription regarding the issue. Moreover, the Task Force was presented an analysis that described how legislation could possibly be drafted and tailored in a manner that could increase the likelihood of withstanding a challenge to its constitutionality under Oregon law. Therefore, the Task Force supports the development of a legislative option that would be cohesive with the constitution.

Rep. Rayfield presented two legislative concepts that attempt to address attribution:

- Legislative Concept 1731: Requires identification of source of communications, or declaration of decision to remain anonymous, to be placed on communications made in support of or opposition to candidate or measure; and
- Legislative Concept 1791: Requires communications made in support of or opposition to candidate or measure to identify whether candidate, petition committee or political committee authorized communication.

The Task Force did not specifically endorse either legislative concept.

VOTE: 13– 1 – 3 (Nay: Markley; Excused: Boquist, Boston and Raschio)

Recommendations for Possible Next Steps:

The Task Force identified issues related to campaign finance reform where additional research and/or data could assist in the development of future reform ideas:

- Data analysis over multiple election cycles that compares:
 - Amount of money spent on elections in Oregon compared to states with contribution limits;
 - Amount spent on independent expenditures in states with campaign contribution limits; and
 - Changes in the cost of elections.
- More recent polling data exploring the changing attitudes among voters, particularly newer voters, regarding campaign finance;
- Review and study previous statewide and local public financing programs in Oregon and elsewhere in order to determine reasons programs have or have not been sustainable;
- Impact of establishing incentives that encourage candidates to [participate in voluntary campaign spending and independence expenditure agreements](#) such as [The People's Pledge](#);
- Inter-relationship between establishing a system of public financing and contribution limits;
- Study increasing the monetary threshold requiring public disclosure of the identities of campaign contributors; and
- Study increasing the threshold for candidates to be exempt from campaign finance regulation from \$750 to \$3,500.



December 15, 2016
Task Force on
Campaign Finance Reform

Chair:

Hon. Jeanne Atkins

Membership:

Sen. Brian Boquist
Sen. Diane Rosenbaum
Rep. Bill Kennemer
Rep. Dan Rayfield
Cyreena Boston
Justin Delaney
Dave Ellis
Nikki Fisher
Andrew Kaza
Margie Hughes
Daniel Lewkow
Brad Martin
Kyle Markley
Rob Raschio
Norman Turrill
Seth Woolley

Staff:

Erin Seiler

Task Force on Campaign Finance Reform

Report to the 79th Legislative Assembly

The legislature convened on February 1, 2016 for its 35-day annual session. At its meeting on January 12th, 2016, the Task Force on Campaign Finance Reform (Task Force), which was created in 2015 by HB 2178, recommended that the Legislative Assembly consider an amendment to the Oregon Constitution to permit the legislature, or people through initiative process, to enact laws limiting or prohibiting contributions made in connection with campaigns for nomination or election to public office. Upon adjournment, no action had been taken on a constitutional amendment to address contribution limits.

In May 2016, the Task Force reconvened, with a slightly changed membership and a focus on campaign finance reform in the following areas: Transparency (reporting of contributions and expenditures including independent expenditures) and incentivizing small donors through the Political Tax Credit and public financing programs.

The new members of the Task Force were:

- Rep. Bill Kennemer replaced Rep. Vic Gilliam
- Rob Raschio replaced David Rosenfeld
- Cyrenna Boston replaced Mee Soon Kwon
- Brad Martin replaced Trent Lutz
- Andrew Kaza replaced Rob Harris

The Task Force held five meetings in advance of the start of the 2017 Legislative Session. The meetings were on:

May 26, 2016	August 18, 2016
September 20, 2016	November 17, 2016
	December 15, 2016

These meetings focused on identifying and analyzing campaign finance reform policy options to incentivize small donors and improve disclosure in the areas of: public financing; political tax credits and contributions and expenditures disclosures including independent expenditures. The Task Force sought input on best practices in public financing from Every Voice and local governments considering public financing options; received input on the Oregon Political Tax Credit including history of utilization, utilization of tax credit by socio-demographics and impact of possible changes to the tax credit and from the Secretary of State and the Elections Division on current disclosure requirements and possible changes to the contributions and expenditures disclosures including how independent expenditures are disclosed.

The Chair subsequently designated three work groups to identify and make specific policy recommendations for the full Task Force to consider. The work groups focused on finding campaign finance reform recommendations that would garner broad support from the Task Force.

Recommendations Actionable to the 2017 Legislative Assembly

Political Tax Credit

Chris Allanach, a Senior Economist from the Legislative Revenue Office, provided the Task Force with an overview on the utilization of the [Oregon Political Tax Credit](#). Mr. Allanach addressed the history of claimants; difference in claimants in Presidential Election, Non-Presidential Election and off-year election years; utilization of tax credit by socio-demographics including age, income and filer type; and the impact of number of claimants between 2010 and 2014 following the implementation of means testing.

During the presentation Mr. Allanach identified strengths and weaknesses in the available information about the political tax credit including:

- The inability to determine how individuals use their political donations (candidate campaign, PAC or political party). This is information that is not available because on tax returns as all donations are valued the same and limited to tax liability. In order to determine this information, the Task Force or some other group would need to link tax returns to contributions reported to ORESTAR. That would be challenging because of privacy of personal information on tax forms and information not required when reporting in ORESTAR (i.e., SSN);
- The difficulty evaluating the political tax credit is because purpose is not spelled out in statute and tax returns do not indicate the reason for a donation (is the donation made specifically because of credit or make donation and just happen to take it). For general purposes of evaluation, it is assumed that its intent is to incentivize small donations and broaden the campaign finance donation base;
- There are patterns and trends in utilization by Oregonians, as it increases during Presidential Elections and general utilization of the credit has increased between 1998 and 2008. However, it is unclear what drove that increase as we are not able to tease out if it has incentivized new people or is dead-weight loss, i.e., people who have made or will make a contribution anyway and just take the credit because it is available to them;
- It is possible to determine the number of people who are eligible to claim it, but do not claim it and determine if there is a connection between the number of people who file electronically (programs prompt you to answer if you qualify for credit) and the number of people who have taxes professionally prepared, as both increase awareness.
- It is possible to know the number of taxpayers who are prohibited from using because of means testing or do not have any income to claim, as there is concern that the impact of the means testing is unconstitutional; and
- We are not able to determine the fraction of total contributions from the political tax credits.

Other states

There are four other states with a political tax credit:

- [Arkansas Political Contribution Credit](#) - A credit of up to \$50.00 per taxpayer (\$100.00 for a joint return) is allowed against your Arkansas Individual Income Tax liability for cash contributions made to a candidate seeking nomination or election to a public office; candidate's campaign committee; political action committee; and political party. The credit does not apply to contributions made to candidates for federal offices.
- [Minnesota Political Contribution Refund](#) – Could donate \$50.00 (single) or \$100.00 (joint) to candidates for legislature; statewide office or political party; suspended July 1, 2015 through June 30, 2017 (SF 888, sec. 82, 2015-16).
- [Ohio Political Contributions Credit](#) – A nonrefundable credit, up to \$50.00 per taxpayer (\$100.00 for a joint return) is allowed against a taxpayer's aggregate tax liability for contributions of money made to the campaign committee of candidates for any of the following public offices: governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, member of the state board of education, chief justice of the supreme court, justice of the supreme court, or member of the general assembly.
- [Virginia Political Contribution Credit](#) – Can claim the credit for contributions to political candidates in a primary, special or general election for local or state office. The Virginia credit is equal to 50 percent of the political contributions made to candidates for state and local offices, not to exceed \$25.00 for an individual taxpayer or \$50.00 for taxpayers filing a joint return. The credit is nonrefundable and unused credits cannot be carried forward to subsequent years.

The following states have repealed/suspended their political tax credit/refund: Arizona, Hawaii, Montana and Oklahoma.

There are specific pieces of information that the Task Force did not have about the other states' program including:

- An analysis of states that have it (and how they are different from Oregon, if they are);
- An analysis of why four states have dropped their programs.

Political Tax Credit Work Group Discussion

Participants: Jeanne Atkins, Chair; Justin Delaney, Rep. Bill Kennemer, Brad Martin

During the discussion of the Political Tax Credit, the Work Group identified the positive and negative aspects of the credit including recognition of the political realities of the credit.

The positive aspects of the political tax credit according to the Work Group are:

- It is voluntary;
- Encourages participation by individuals who cannot or do not want to donate large amounts; and
- Engages people directly.

The negative aspects of the political tax credit are:

- The state “subsidizes,” by using state funds, the speech of individuals at the cost of other programs;
- The means-test established in 2013²¹ :
 - Only incentivizes a small group of individuals.
 - At the very least bad policy; at worst it could be unconstitutional as discriminatory
- Not refundable, so not as useful for low-income Oregonians; and
- Amount of the tax credit (\$100 on a joint return or \$50 on any other type of return) has not been updated in many years.

Political realities of the political tax credit are: that this is a policy that is in place already; does not have a partisan division at this time, as individual candidates and political action committees across the partisan spectrum encourage utilization of the political tax credit; and is neutral and available for candidates or other political groups to use as an organizing or giving tool. However, the political tax credit may be viewed as more a tool for individuals or organizers of groups (labor, other policy-oriented groups) as opposed to a tool for business groups to raise political funds. Generally, the Work Group had a positive view of the potential for expanding the use of the tax credit.

Possible Policy Recommendations and Potential Fiscal Impact

The Work Group recognized that policy changes to the Political Tax Credit would have a fiscal and revenue impact, therefore they presented four possible changes to the Legislative Revenue Office for feedback on the financial impact. In providing feedback to the Task Force, Mr. Allanach recognized that there is significant “seasonality” to the Political Tax Credit that aligns with the election cycle and that there is uncertainty that the policy changes identified would affect that seasonality. He operated from the position that they would represent a “level shift” in the amount of tax credits claimed.

The preliminary/potential annual costs of each of the policy changes are:

- The credit was increased to 75/150:

²¹ (ORS 316.102 (3): A taxpayer may not claim the credit, if the taxpayer has federal adjusted gross income in excess of \$200,000 on a joint return or \$100,000 on any other type of return)

- Projection of annual cost: Increase to \$75/\$150: \$1.0 million per year
- The credit was made refundable:
 - Projection of annual cost: \$0.4 million per year
- The means-testing was eliminated:
 - Projection of annual cost: \$0.8 million per year
- All three of the above at once:
 - Projection of annual cost: \$2.4 million per year²²

December 15, 2016 Statement of Findings Regarding the Political Tax Credit:

²² Per Allanach: The individual policies are close to additive, but there is some interaction that explains why item 4 costs more than the sum of items 1-3.

Oregon campaign contribution tax credit is useful in encouraging small contributions by individuals and gives candidates and political committees the opportunity to do positive outreach to constituents. The program has had bi-partisan support over the years.

The statement generally reflects the position of the Task Force, although: more than one member felt that the positive effect was small; and one member completely opposes the tax credit on the principle that any positive effects of participation is outweighed by the fact that the tax credit diverts public resources to support one person's political speech. One member also expressed the view that means testing this particular credit is a fatal flaw since it supports the speech of one group over the speech of another which could render it unconstitutional.

VOTE: 13 – 1 – 3 (Nays: Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Political Tax Credit Policy Recommendations:

- **Raise the amount of the credit to \$75/individual, \$150 for joint filers;**
- **Remove the recently adopted means-testing;**
- **Allow for application to receive cash credit rather than incorporating into calculation of tax;**
- **Make tax refundable; and**
- **Allow for credit to be carried over to next tax year.**

The Task Force discussed the impact of each of the recommended changes to the political tax credit with regards to the state budget and General Fund; administrative feasibility; likelihood of increasing utilization by Oregonians; and general utility.

Only one recommendation received majority support. The Task Force supported making the tax credit refundable, although all members conceded that making this a budget priority in the 2017 legislative session would be challenging.

VOTE: 9– 5 – 3 (Nays: Delaney, Ellis, Hughes, Kennemer and Markley; Excused: Boquist, Boston and Raschio)

Public Financing

The Task Force received presentations about different types of public financing models; types of programs currently in operation in other cities and states; opportunities for a public financing program in Oregon and a specific program being considered in the City of Portland.

From Every Voice, both Susan Mottet, the Senior Legislative Campaign Strategist and Tam Doan, the Research Director, addressed different types of public financing models; types of programs currently in operation in other cities and states; opportunities for a public financing program in Oregon. Specifically, Ms. Mottet addressed following issues:

- Polling regarding [public support for small-donor funded elections](#).
- Whether small-donor funded elections is an effective campaign finance reform?
- Do small-donor funded elections diversify who is funding elections?
 - Examples: [New York City and Arizona](#)
- Is there [voter support](#) for small-donor based campaign finance reforms?
- Is it legislatively feasible to pass a small-donor funded program?
- What are the different models for public financing? What are the pro and cons?
 - Matching Funds system: a jurisdiction provides matching funds for candidates up to a certain amount - could be one-time or continuous amount of funds, up to a limit;
 - Voucher program: eligible residents in jurisdiction receive vouchers valued at a specific amount to send to candidate of their choice; and
 - Grant system: candidates collect a specific number of small contributions to demonstrate that they are a viable candidate; the candidate then receives a grant equal to the established limit set for the office being sought.
- Characteristics of a successful public financing system. Examples of successful public financing programs.
- What are would the negative impacts of public financing system?

In addition, to looking broadly at public financing programs, the Task Force learned about a specific public financing system being considered by the City of Portland. Tim Crail, the Chief of Staff for Portland Commissioner Amanda Fritz explained the provisions of the Voter-Owned Elections program that voters' ended in 2010. He addressed the objectives of the program, which candidates participated in the program, impact on elections in Portland, what issues arose and what contributed to its repeal. Cristina Nieves, Policy Advisor to Commissioner Fritz explained the [objectives and provisions](#) of new [Open and Accountable Elections](#) being proposed by Commissioner Fritz.²³

The Task Force asked the following questions

- How will in-kind donations be treated?
- What is the reason for the increase reporting requirements?
- Have they considered an alternative signature collection process for people who have physically limitations, family circumstances or lack of institutional support volunteers to canvass city?

²³ [Adopted by Portland City Council on December 14, 2016](#)

- How will the program balance rigorous reporting requirements and incentivizing participation by new and first time candidates?
- What is the anticipated cost of program to City of Portland?
- What is the cost of competitive primary and general election in city of Portland? Average? Median?
- How will program outreach potential candidates or work to achieve diversity among candidates?

Public Financing Work Group Discussion

Participants: Jeanne Atkins, Chair; Andrew Kaza, Daniel Lewkow and Sen. Diane Rosenbaum

During the discussion of public financing, the Work Group identified the positive and negative aspects of a public financing system.

The positive aspects of a public financing system as highlighted by the Work Group:

- Provides financial support beyond that of the usual big donors;
- Jurisdictions are seeing it as a way to address campaign finance issues in light of constitutional restrictions on contribution limits;
- There is some evidence, that over time, a public financing system helps diversify types of candidates; and
- Public finance, as a concept, has a cross-section of support from Task Force members:
 - 10 members viewed some form of public financing as positive;
 - 4 members opposed public financing.

The negative aspects of a public financing system as highlighted by the Work Group:

- Previous attempts at creating and successfully implementing have produced negative results:
 - Defeat of Ballet Measure 6 (2000): Provides Public Funding to Candidates Who Limit Spending, Private Contributions
 - The City of Portland’s Voter-Owned Elections program was repealed ²⁴;
- Funding source for a public financing system; if it was a General Fund program, it would compete with other programs that are state responsibilities;
 - Using public funds for program could present perception problem - politicians getting state dollars that should go to address state problems.
- Implementation of a public financing program would require a significant initial investment to create administrative structure and process.

Possible Public Finance System Options/Considerations:

- Vouchers Program (funds go to donors, not politicians):

²⁴ Program was repealed November 2, 2010 – [Measure 26-108 \(2010\)](#)

- Example: [City of Seattle: Democracy Voucher Program](#) - eligible Seattle residents can assign four Democracy Vouchers, each valued at \$25, to candidates in City of Seattle elections.
- Grants:
 - Matching Funds system: a jurisdiction provides matching funds for candidates up to a certain amount - could be one-time or continuous amount of funds, up to a limit.
 - Small-donor system: candidates collect small contributions from a number of individuals to demonstrate public support to warrant public funding of campaign. In return, public dollars are provided to the candidate up to an established amount.
- Participation in the public financing system must be voluntary, but can have conditions for participation such as:
 - Requiring validation of candidacy (petitions/donations);
 - On accepting large donations;
 - On accepting donations from political action committees; and
 - On spending.
- Potential funding sources:
 - Tax return checkoff;
 - Permit the Secretary of State to retain fines and filing fees paid to the Secretary of State (currently they go to General Fund); and
 - General Fund.
- If a state program, what races would participate:
 - The larger the number of candidates, the more impact in terms of changing contribution and expenditure landscape;
 - The more candidates who participate, the more it costs;
 - Difficult to develop a “pilot” public financing system with a randomly selected set of races; potentially result in significant pushback about fairness.
 - Probably need to test with a category of candidates, i.e., all judicial races or all state representatives
 - Would public financing system include all Statewide races? Judicial races? Legislative races?

Information the group would like to have:

- Summary of several of the public financing systems including cost of program, source of funding, administrative structure and impact on campaigns (or potential impact). Possible programs to review:
 - City of Seattle Democracy Voucher Program,
 - Maine Clean Elections Program; and
 - City of Portland’s Open and Accountable Elections.
- Estimation of the cost for a program involving only statewide candidates in Oregon.
 - Funding available to candidates needs to be big enough to make a difference, but small enough to be affordable by the jurisdiction.

December 15, 2016 Statement of Findings Regarding Public Financing:

Public financing may be the one constitutionally appropriate way to make significant change in the source of campaign funding at this time. While there are some Task Force members who completely oppose public financing, additional exploration is supported by a cross-section of the group.

The statement generally reflects the position of the Task Force, although: more than one member felt that the additional exploration of public financing programs was not necessary, as there are multiple systems in place for which the impact is largely known and data is available; and more than one member opposes all forms of public financing programs.

VOTE: 11– 3 – 3 (Nays: Delaney, Kennemer and Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Public Financing Policy Recommendations:

- **Pass a pilot program in 2017 with elements such as those adopted by the City of Portland²⁵;**
- **Delay passage of a state program while evaluating outcome in Portland and in other cities/states where new programs have been adopted; and**
- **Contract with Legislative Policy and Research Office to evaluate the necessary elements of such a program, investigate costs and possible “pay fors” and develop administrative options. A minimum of \$50,000 for this project should be appropriated.**

The Task Force discussed each of the public financing recommendations in the context of funding sources and available General Fund support; scope of a public financing program; information currently available about public financing programs in other jurisdictions and the Task Force did not take a position on the adoption of a specific type of public financing program but rather they endorsed the concept of a public financing system, but that it is best to leave discretion up to the legislature to describe the program (whether pilot program, small–donor program or additional research). Therefore, the Task Force choose not to take any action on the proposals.

- **The Task Force recommends that the legislature move forward with active debate regarding a possible public financing system. The Task Force encourages application of the values identified by the Task Force (see page 7 of the Task Force on Campaign Finance Report to the 78th Legislative Assembly) and that investments be made where additional resources are needed to clarify outstanding questions.**

VOTE: 10– 4 – 3 (Nays: Delaney, Hughes, Kennemer & Markley; Excused: Boquist, Boston & Raschio)

Transparency and Penalties

²⁵ [Adopted by Portland City Council on December 14, 2016](#)

Transparency and Penalties Work Group Discussion

Participants: Jeanne Atkins, Chair; Dave Ellis, Margie Hughes, Kyle Markley and Rep. Dan Rayfield

The Work Group had a wide-ranging discussion of issues related to disclosure of contributions and expenditures, reporting requirements, functionality of ORESTAR and penalties for violations. The themes that emerged were:

- Oregon’s campaign finance reporting system should not penalize new candidates and volunteer treasurers for unintentional reporting errors.
- The current [campaign finance reporting requirements are complex and favor candidates and campaigns](#) with more resources including experienced treasurers, campaign staff and organizational structures.
 - Possible ways to address issues include:
 - Clarification of reporting rules/statutes, make them easier to understand.
 - Simplification of reporting requirements.
 - Increase outreach to candidate and political action committees or/and provide ORESTAR training for treasurers.
- Penalties for violating reporting requirements should be strong enough to incentivize accurate reporting. Some Work Group members voiced concern that the [current penalties](#) are insufficient to incentivize reporting.
- Auditing of reporting and reporting violations, should focus on candidates or political action committees with repeat violations or whom a pattern of violations has occurred which could be perceived as intentionally trying to “game” the reporting system.
 - The Work Group would like to see enhanced penalties for intentionally violating reporting requirements; increase education or reduction in liability when reporting violations appear to be clerical error or mistake.
 - Identified Challenges:
 - Increasing investigatory abilities requires additional budgetary resources; and
 - Determining “intent” would be difficult for Elections Division or Oregon Department of Justice.
 - The Work Group supported increasing fines for reporting violations but in coordination with a more proactive auditing function - focused on identifying more serious/repeated reporting requirement violations.
 - Identified challenges:
 - What would be the fairest way to proactively audit a committee?
 - Audits would be random?
 - Audits could focus on committees with repeat violations?
 - Audits could focus on a particular kind of campaign committee, i.e., Independent Expenditure filers?

- Establishing of liability for reporting violations and subsequent penalties; who should be liable - Treasurer; Treasurer and alternate Treasurer; candidate; or political action committee?²⁶

- ORESTAR should focus on transparency for the public.
 - ORESTAR should allow:
 - Individuals to “follow the money;”
 - Identify publically those who are violating campaign finance reporting requirements;
 - Allow for the media to obtain reports on fines assessed to campaign committees;
 - Prepare an annual report identifying all political action committees that have been fined; and
 - Have ORESTAR report cumulative fines on the political action committee summary page.²⁷

December 15, 2016 Statement of Findings Regarding Transparency and Penalties:

²⁶ Not consensus of work group

²⁷ Not consensus of work group

Oregon has long relied on “transparency” to be the disinfectant of our political system, allowing the public to determine whether or not contributors are having undue influence. The ORESTAR system has been a largely successful method of providing campaign finance expenditure and contribution activity to the public. However, it can and should be improved in three areas: First, it is difficult for small parties, new candidates and volunteer treasurers to develop sufficient expertise in compliance to avoid unintentional errors. Second, penalties may be insufficient when deliberate failure to file or file timely are involved. Third, the public is not aware enough of the information to be found in ORESTAR to have it serve as intended.

The statement generally reflects the position of the Task Force, as the Task Force considered the purpose of ORESTAR, the system’s ability to inform the public about money being contributed and expended during an election and the relationship between contributions and expenditures and influence.

VOTE: 13 – 1 – 3 (Nays: Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Transparency and Penalties Administrative and Legislative Recommendations

Administrative recommendations

- **Greater education opportunities for candidates and treasurers should be offered;**
- **A “consumer analysis” should be completed that allows the Elections Division to hear directly from those potentially affected, as well as the public, about how ORESTAR works;**
- **The Secretary of State’s Office should create an application programming interface to increase public access to ORESTAR; and**
- **The Elections Division should regularly make public the fines assessed against campaigns.**

The Task Force discussed the difficulties of navigating ORESTAR as both a filer within the system and a public user of the system. They identified administrative steps that could be taken by the Secretary of State to improve compliance, prevent unintentional reporting errors by new or first-time treasurers/candidates and improve ORESTAR as a tool for use by the public. The Task Force identified ways that the Secretary of State’s Office could improve the transparency in all aspects of ORESTAR for users including search functions; better connection between independent expenditure filers and the candidate or issue the money was spent on; and transparency in reporting violations.

VOTE: 14– 0 – 3 (Excused: Boquist, Boston and Raschio)

- **The Secretary of State’s Office should open up the source code for ORESTAR.**

The Task Force discussed the value of opening the source code for ORESTAR for public scrutiny. Members identified how opening the source code would permit smaller political parties and groups to learn and understand how the system works. It would help ensure compliance and security through outside auditing by multiple entities.

VOTE: 14– 0 – 3 (Excused: Boquist, Boston and Raschio)

Legislative Recommendations

- **An expanded enforcement effort should be developed, funded and staffed in order to address repeat offenders and/or efforts by filers to avoid timely reporting.**

The Task Force discussed the Secretary of State’s Election Division establishing a more proactive system of auditing ORESTAR disclosure, a system that could focus on identifying more serious/repeat reporting requirement violations. The Task Force emphasized that any system developed, should have adequate fiscal resources to support staffing and implementation needs.

The enhanced enforcement system would work in connection with enhanced penalties for intentionally violating reporting requirement; while providing latitude when a good-faith effort was made to report with the establishment of safe harbors or reasonable exemptions for late filings.

In their discussions, the Task Force recognized the difficulties of identifying “intentional” reporting errors and “unintentional” reporting errors; identifying circumstances that an individual reporting could not have foreseen, impacting the ability to meet required disclosure timeline, resulting in late filings and fines. The circumstances could include power outages, system malfunction and familial/personal health emergencies. Thus, the enhanced enforcement, enhanced penalties, should be accompanied with a process of consideration regarding why reporting was late before assessing fine.

However, while largely supportive of the recommendation, it was not unanimous, as one member believes that encouraging political activity, such as contributions to candidates, far outweighs the benefit of increased reporting.

VOTE: 13– 1 – 3 (Nay: Markley; Excused: Boquist, Boston and Raschio)

- **Timelines for reporting independent Expenditures (IEs) to ORESTAR should be aligned with timelines for reporting of all other contributions and expenditures by political committees.**

The Task Force had previously discussed the limited ability to regulate IEs, based on current [state and federal court decisions](#). However, one area that could be regulated legislatively relates to disclosure requirements. Currently, independent expenditures filers are required to file a statement

of independent expenditures not later than seven calendar days after the total amount of independent expenditures exceeds \$750 in a calendar year.²⁸

The Task Force endorsed the recommendation from member Norman Turrill, that transparency of IEs could be improved with requiring more timely disclosure by IE filers through the alignment of IE reporting requirements with the timelines for disclosure by all required filers.²⁹

VOTE: 13– 1 – 3 (Nay: Markley; Excused: Boquist, Boston and Raschio)

²⁸ ORS 260.044 (1)

²⁹ ORS 260.057

Attributions on Campaign Materials

December 15, 2016 Statement of Findings Regarding Attributions on Campaign Materials

Current, Constitutional interpretation regarding required attributions on campaign materials may reflect appropriate protections for anonymous speech, but hinders transparency and accountability in our election system.

In 2001, the Legislative Assembly repealed ORS 260.522, the statute requiring disclosure/disclaimers on all campaign materials. The repeal was based in part, if not entirely, on a 1999 Attorney General opinion (OP 8266, March 10, 1999 RE: constitutionality of ORS 260.522) which prohibits most anonymous signs, publications and broadcasts used in political campaigns) indicating that the provision was likely unconstitutional (as it has never been court tested). The Attorney General opinion was based primarily on the free expression provisions of Article I, section 8 of Oregon Constitution and Article I, section 8 prohibits some state election-related provisions that are permissible under the First Amendment to the U.S. Constitution (e.g., contribution limits).

Aware of the current constitutional interpretation, the Task Force discussed the impact that the inability to require disclosure or attributions on campaign materials has on transparency and the ability for the public to know who is contributing to campaigns. In particular, the impact that the inability to require attributions or disclosure of entity paying for ads has the ability to know who or what entity is paying for IEs. Several Task Force members, while they agree with the facts of the statement of findings regarding attributions on campaign materials, believe that anonymous political speech has value and that freedom of speech is a greater value than transparency. Further, stating that anonymous political speech can focus on the merits of the issues rather than on the people or groups who are “speaking”. Thus, anonymous political speech will protect speakers from social, or potential criminal, backlash when an idea is unpopular.

VOTE: 12– 2 – 3 (Nay: Delaney and Markley; Excused: Boquist, Boston and Raschio)

December 15, 2016: Attributions on Campaign Material Policy Recommendations:

- **An effort should be made to develop legislative options that would meet constitutional standards but would make those distributing anonymous campaign materials more easily held to reporting requirements.**

The Task Force discussed the possibility of reestablishing a requirement for attributions on campaign materials or some substantially similar statutory requirement. In their discussions, the first question that arose for the Task Force was whether changes jurisprudence had changed substantially enough since 1999 to be more permissive with respect to disclosure requirements similar to those contained in ORS 260.522. The Task Force received a Legislative Counsel (LC) opinion regarding current judicial interpretation on the issue. In the opinion, LC does not believe that the Oregon Supreme Court’s Article I, section 8 jurisprudence has changed in a way that would cause the Attorney General or the court to reach a different conclusion regarding a disclosure law similar to ORS 260.522.

The Task Force acknowledged the analysis from LC, and in the case of several members disagreed with the analysis, in part pointing out that no formal court decision had been rendered and that there is firm constitutional prescription regarding the issue. Moreover, the Task Force was presented an analysis that described how legislation could possibly be drafted and tailored in a manner that could increase the likelihood of withstanding a challenge to its constitutionality under Oregon law. Therefore, the Task Force supports the development of a legislative option that would be cohesive with the constitution.

Rep. Rayfield presented two legislative concepts that attempt to address attribution:

- Legislative Concept 1731: Requires identification of source of communications, or declaration of decision to remain anonymous, to be placed on communications made in support of or opposition to candidate or measure; and
- Legislative Concept 1791: Requires communications made in support of or opposition to candidate or measure to identify whether candidate, petition committee or political committee authorized communication.

The Task Force did not specifically endorse either legislative concept.

VOTE: 13– 1 – 3 (Nay: Markley; Excused: Boquist, Boston and Raschio)

Recommendations for Possible Next Steps:

The Task Force identified issues related to campaign finance reform where additional research and/or data could assist in the development of future reform ideas:

- Data analysis over multiple election cycles that compares:
 - Amount of money spent on elections in Oregon compared to states with contribution limits;
 - Amount spent on independent expenditures in states with campaign contribution limits; and
 - Changes in the cost of elections.
- More recent polling data exploring the changing attitudes among voters, particularly newer voters, regarding campaign finance;
- Review and study previous statewide and local public financing programs in Oregon and elsewhere in order to determine reasons programs have or have not been sustainable;
- Impact of establishing incentives that encourage candidates to [participate in voluntary campaign spending and independence expenditure agreements](#) such as [The People's Pledge](#);
- Inter-relationship between establishing a system of public financing and contribution limits;
- Study increasing the monetary threshold requiring public disclosure of the identities of campaign contributors; and
- Study increasing the threshold for candidates to be exempt from campaign finance regulation from \$750 to \$3,500.