



STATE OF OREGON
Legislative Counsel Committee

March 22, 2019

To: Senator Ginny Burdick
From: Daniel R. Gilbert, Senior Deputy Legislative Counsel
Subject: Independent expenditure disclosure requirement

You requested that we draft a set of amendments to Senate Bill 1018 that impose a requirement that all independent expenditures include a statement that the communication was paid for and produced without the coordination or prior consent of any candidate in the election for the position. These amendments are enclosed.

We believe that this requirement may raise constitutional issues under Article I, section 8, of the Oregon Constitution, as it is currently interpreted by the Oregon Supreme Court. Specifically, it could be argued that this requirement prohibits certain speech per se (independent expenditures without the required statements), regardless of whether the speech caused harm. Furthermore, we do not believe that this requirement would fit within any historical exception. See *State v. Robertson*, 293 Or. 402 (1982). See also 49 Op. Att'y Gen. 179 (1999) (finding that former ORS 260.522, which required identification of source of political publication, violated Article I, section 8, of the Oregon Constitution).

Please note that while we believe this requirement may raise constitutional issues under current Oregon Supreme Court jurisprudence, the court is about to hear and decide upon a potentially relevant case. Specifically, on November 1, 2019, the Oregon Supreme Court is scheduled to hear oral arguments regarding the constitutionality of Multnomah County Home Rule Charter section 11.60 and Implementing Ordinance No. 1243 Regulating Campaign Finance and Disclosure (Multnomah County charter and ordinance).¹ The Multnomah County charter and ordinance include, *inter alia*, "paid for by" disclosure requirements for all political communications.² It is therefore very possible that the Oregon Supreme Court's decision in this case will significantly alter our analysis of the constitutionality of independent expenditure disclosure requirements.

Encl.

¹ See Campaign Finance Charter Amendment FAQ, Multnomah County, <https://multco.us/multnomah-county/campaign-finance-charter-amendment-faq> (visited March 21, 2019).

² Section 11.60 (3) of the Multnomah County Home Rule Charter now states that "each Communication to voters related to a Multnomah County Candidate Election shall prominently disclose the Individual and Entities that are the five largest true original sources, in excess of \$500 each, of the Contributions and/or Independent Expenditures used to fund the Communication."