COMMENTS ON HB 2714-3 (revised): CONTRIBUTION LIMITS

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May 18, 2019

These comments are on the version of HB 2714-3 that was distributed on Friday, May 17.

I think all of the proposed limits are still too high, but my comments here apply only to the structure and language of the proposal.

HB 2714-3: CAMPAIGN CONTRIBUTION LIMITS

The problem remains that the proposed limits are so high that the result will be a proliferation of committees, because the creation of a committee gives the creator an additional large increment of contribution authority (both in receiving contributions and making them).

Nor are there effective limits on the number of these large-contribution receiving committees that can be created: Political Party Committee or Caucus political committee.

Still No Certain Limit on Number of Caucus Political Committees

The least limited committees are Caucus Political Committees and State Party Committees, which can accept $2,800 per year from any individual and any Multicandidate Committee plus unlimited contributions from Candidate Committees, State Party Committees, other Caucus Political Committees, Small Donor Committees (SDCs), and federal candidate committees.[1] Such committees can then spend those funds with virtually no limits (only limits of $2,800 per year to any Caucus Political Committee, Multicandidate Committee, or Recall Committee).

I do not favor the creation of this sort of super-committee. But if it must exist, it needs to be limited to as few as possible.

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1. It is also allowed unlimited contributions from any candidate committee of a candidate for federal office. This is a loophole I will discuss later.

The drafters have made several changes I have suggested on this topic. The committee non-proliferation provisions have been modified as I requested. But the definition of Caucus political committee remains inadequate.

HB 2714-3 has a new definition of "Caucus political committee" in Section 6:

> (8) As used in this section:
>
> (a) "Caucus political committee" means a political committee:
>
> (A) Established by the caucus of a major political party or a minor political party in the Senate or the House of Representatives;
>
> (B) Established under rules or bylaws created by the caucus by which it was established; and
>
> (C) Controlled by an elected leader of the caucus by which it was established.

While this is an improvement over the earlier definition, it still does not definitely limit the number of Caucus Political Committees to one per party per chamber of the Legislature. There is no definition of "the caucus of a major political party." There could be several caucuses of a major political party, each of which would be "the caucus." There could be an "elected leader" of each such caucus.

What is needed is a numeric limit on the number of Caucus Political Committees that any party can have. That limit should be 2 and should be stated in the definition of "Caucus political committee."

A Very High Limit on Number of Political Party Committees

HB 2614-3 allows Political Party Committees to can accept $2,800 per year from any individual and any Multicandidate Committee plus unlimited contributions from Candidate Committees, other Political Party Committees, Caucus Political Committees, SDCs, and federal candidate committees. Political Party Committees can then spend those funds with virtually no limits (only limits of $2,800 per year to any Caucus Political Committee, Multicandidate Committee, or Recall Committee).

The proposal places only this limit on the number of Political Party Committees.

> (B) Each major political party and minor political party may establish no more than one statewide political party committee and no more than one political party committee per county in this state.

That gives each party 37 state political party committees, each of which can receive and spend those very large amounts.

> **What is needed is a reasonable numeric limit on the number of these almost unfettered committees that any party can have. That limit should be 1 statewide committee and should be stated in the definition of "Political Party Committee."**
>
> **As for county party committees, they could be treated the same as Multi-Candidate Committees, with the lower limits applicable to those committees.**

The Federal Candidate Money Loophole

The proposal allows any Caucus Political Committee or Political Party Committee to accept unlimited contributions from federal candidate committees. This huge loophole is not shown on the chart of Contribution Limits distributed with HB 2714-3.

Federal candidate committees (for candidates for Congress or President) obviously collect tens or even hundreds of millions of dollars per election cycle. The proposal would allow an unlimited amount of these dollars (from an unlimited number of federal candidates) to flow into Caucus Political Committees and Political Party Committees, which in turn would be allowed to re-contribute or spend those dollars with virtually no limits (see page 1 above).

The language of HB 2714-3 would allow Caucus Political Committees and Political Party Committees to receive unlimited funds from any federal candidate committee. That would include the committees of bona fide candidates for President or U.S. Congress. It would also include an unlimited number of federal committees that could be created for the purpose of funnelling money into Oregon campaigns.

Under current law, each federal candidate committee can accept contributions, per election (twice per election cycle) of up to $2,800 from any individual, $2,000 from any other federal candidate committee, $5,000 from any

multicandidate PAC, $2,800 from any non-multicandidate PAC, $5,000 from any state or local political party committee, and $5,000 from any national party committee. Under HB 2714-3, all of these funds could be funnelled into any Caucus Political Committee or any Political Party Committee, which could then redirect any amounts to any candidate campaigns.

Note also that Oregon law allows federal committees to not report anything to ORESTAR. Federal reporting requirements allow long delays in reporting. And, as long as HB 2716 has no drill-down provisions, laundering funds through federal committees will allow Oregon candidates to avoid disclosing in their advertisements the true largest sources of their funds.

This loophole should be removed.

Allowing Unlimited Use of Personal Funds without Taglines

The proposal expressly allows unlimited use of a candidate's "personal funds." I have previously written about how this is a huge loophole to funnel corporate funds into campaigns. **At a minimum, candidates using substantial amounts of "personal funds" should be required to disclose that in all of their advertising, including the amount of personal funds so dedicated.** Unfortunately, the most recent version of HB 2716 does not require that.

No Provision about Money Balances held by Existing Committees

Existing committees can have lots of money as of the operative date of the proposal in December 2020. The proposal is silent as to whether these money balances can be retained and used after the operative date, except for SDCs. Say an existing candidate committee of an incumbent holds a balance of $1 million on that date and that the candidate's opponents in the 2022 elections have no such balance. Those opponents will have to raise all of their funds under the contribution limits, while the incumbent is apparently allowed to spend the $1 million collected during the no-limits period.

There need to be limits on the money balances that existing committees can carry forward after the operative date and/or a requirement that those funds e donated to Oregon charities.

The Ninth Circuit Court of Appeals in ***Lair v. Motl***, 873 F3d 1170, 1186, (9th Cir 2017), *cert denied sub nom.* ***Lair v. Mangan***, 139 S Ct 916 (2019), noted that a feature that preserved the validity of Montana's limits on campaign

contributions was that "by prohibiting 'incumbents from using excess funds from one campaign in future campaigns,' Montana 'keeps incumbents from building campaign war chests and gaining a fundraising head start over challengers.'"

The $1,000 Limit on Contributions to All Local Candidates Should be Subject to Local Override only in a Downward Direction

Section 3(1)(b) now states:

> (b) Except as otherwise provided by a local provision or paragraph (c) of this subsection, the limits on aggregate contributions that may be accepted by a candidate or the principal campaign committee of a candidate for the office of state Representative under this section also apply to a candidate or the principal campaign committee of a candidate for any elected office that is not a state office.

That language would allow a local government to override the $1,000 limit with any limit it wishes or no limit at all. Local governments should be allowed to alter the otherwise applicable limit only in a downward direction. I suggest this revision:

> (b) The limits on aggregate contributions that may be accepted by a candidate or the principal campaign committee of a candidate for the office of state Representative under this section also apply to a candidate or the principal campaign committee of a candidate for any elected office that is not a state office, unless local governments adopt lower limits applicable to such candidate.

Subsection (3)(1)(c) stands by itself. It is not necessary to refer to it in Subsection (3)(1)(b).

HB 2714-3 defines "local provision" by referring to any "provision adopted by a city, county or other local government." But it does not define "local government." I suggest:

> "Local government" means the government of any county, city, municipality, regional government, or district.

The Metropolitan Service District ("Metro") is actually a regional government, as are 7 regional councils of governments (COGs).

Small Donor Contribution Limit Preemption

HB 2714-3 has a new provision in Section 3:

> (1) (c) Notwithstanding any local provision, a candidate for any elected office not listed in this section may accept unlimited contributions from a small donor political committee.

This would preempt the provisions in the Multnomah County and Portland charters that limit "small donor committees" to receiving contributions only from individuals in amounts of $100 or less per individual per year. This would allow a state-level SDC, receiving contributions of up to $250 per individual per year, to make unlimited contributions to candidates in Multnomah County and Portland races, preempting the local provisions.

Overriding the voters of Multnomah County and Portland is not a good idea. Anything this language would accomplish could be better achieved with this:

> A small donor committee at the state level may create a subaccount to qualify as a small donor committee under a local law. Any lawful contribution received from an individual by the state-level small donor committee may be allocated, in whole or in part, to the subaccount. Such allocation shall not prevent the subaccount from qualifying as a small donor committee under the local law, if each contribution amount allocated to the subaccount would comply with the local law, if it were made by the individual who contributed it to the state-level small donor committee.
>
> The state-level small donor committee shall report, pursuant to ORS 260.057, every such allocation to a subaccount. Each expenditure by a state-level small donor committee reported pursuant to ORS 260.057 shall identify the subaccount, if any, from which it was made.

This would enable state-level SDCs to participate in local elections without overriding the local provisions regarding SDCs.

Omission of Petition Committees from Registration Choices

In order to define which committees are allowed to make contributions in candidate races, the proposal changes the way political committees register with ORESTAR. It requires the treasurer of every committee to specify the type of committee being registered. But the list of choices does not include petition committees, which is a type required by Oregon law. A petition committee is different from a measure committee.

Unnecessary Requirement that Miscellaneous Committees Convert Entirely into Either Multicandidate Committees or Measure Committees

Under current law, miscellaneous committees can make contributions and expenditures regarding one or more candidates and/or one or more measures. Section 12 of HB 2714-3 automatically converts all existing miscellaneous committees to multicandidate committees on March 31, 2021, but requires that the Secretary of State allow each miscellaneous committee a "single opportunity" to reorganize as a measure committee.

An exiting miscellaneous committee should not be required to convert either 100% to a Multicandidate Committee or 100% to a measure committee. It should also be allowed to bifurcate into both a Multicandidate Committee and a measure committee and to allocate its existing funds between those committees (subject to the carry-over limitations suggested above).
under HB 2714-3.

Write-In Candidates

The proposal includes in the definition of "separate election" a definition of "candidate" that includes "a write-in candidate for state office at a primary election, general election or special election." Write-in candidates are not required to announce themselves as such prior to any election. Nor is there any requirement--or even opportunity--for such candidates to register with any level of government. So this definition does not work. It should be amended to add "who has created a candidate committee."

Need for Severability Clause

The very short severability clause in HB 2714-3 is an improvement. I still recommend the severability clause from Measure 47 (2006).

The Operative Effective Date should be November 4, 2020

The 2022 election cycle begins on November 4, 2020, the day after the 2020 general election. HB 2714-3 sets its operative date as December 3, 2020. How can the limits work for the 2022 election cycle, when the proposed operative date of HB 2714-3 is one month after that election cycle begins?

Setting the operative date as December 3, 2020, would allow anyone to circumvent the limits by making and/or receiving large contributions during all of November and the first 2 days of December.

The drafters probably chose December 3, 2020, as that would ordinarily be the date that the constitutional amendment proposed by SJR 18 would take effect. Article IV, § 1, of the Oregon Constitution states:

> (4)(d) Notwithstanding section 1, Article XVII of this Constitution, an initiative or referendum measure becomes effective 30 days after the day on which it is enacted or approved by a majority of the votes cast thereon.

But an initiated constitutional amendment can make its own exception to that generic effective date. SJR 18 should set its effective date as November 4, 2020.

Need for Legislative Findings

I refer to my May 4 comments on this subject.

Need for Provision Allowing Entities to Create Separate Committees

I refer to my May 4 comments on this subject.