TESTIMONY ON SJR 18 AND PROPOSED AMENDMENTS

Daniel Meek

Senate Committee on Rules

June 3, 2019

I submit this testimony on behalf of Honest Elections Oregon, the Oregon Progressive Party, and the Independent Party of Oregon.

We testified in favor of the version of SJR 18 that was ultimately adopted by the Senate Committee on Campaign Finance Reform on March 29, 2019.

SJR 18 ENSURES THAT CAMPAIGN FINANCE REGULATION CAN PROCEED WITHOUT LEGAL CHALLENGES STEMMING FROM THE OREGON CONSTITUTION

The SJR 18 referral to voters is necessary only to guarantee that campaign finance regulations in Oregon can be adopted and enforced and not be hindered by lawsuits claiming preclusion by the Oregon Constitution. In fact, Oregon's free speech clause is the same as that of 36 other states,[1] all of which limit campaign contributions and all of which require that political ads identify at least their primary sponsor. No court has held that those state free speech clauses preclude the adoption and enforcement of limits on campaign contributions or mandatory taglines on political advertisements.

The current constitutionality of such requirements in Oregon is established by the memorandum I filed in *In the Matter of Validation Proceeding To Determine the Regularity and Legality of City of Portland Charter Chapter 3, Article 3 and Portland City Code Chapter 2.10 Regulating Campaign Finance and Disclosure* (Multnomah County Circuit Court No. 19CV06544). I have submitted this memorandum for the record of this hearing.

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1. Oregon Constitution, Article I, § 8, states:

> No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

The clauses in the other 36 states use this same language, except some of them use the word "publish" in place of "print."

SJR 18 ensures that such campaign finance regulations will not face legal challenges based upon the Oregon Constitution, even though such legal challenges should ultimately fail in any event. It also provides local governments with assurance that may be necessary before they will enact campaign finance reforms.

THE -A10 AMENDMENT

The only amendment posted on OLIS is the -A10 amendment offered by Chair Burdick. It would add these words to the section of SJR 18 authorizing limits on campaign contributions:

> "in a manner that does not prevent candidates and political committees from gathering the resources necessary for effective advocacy."

Chair Burdick earlier stated at a session of the Senate Committee on Campaign Finance Reform that she wanted to amend SJR 18 to specify that all limits had to be "reasonable." I sent her an email memo on April 29 (attached), which stated in part:

> The Ninth Circuit has recently recognized this standard in a decision that the United States Supreme Court declined to review just a few months ago: "As judges, our limited role is to ensure that a state chooses limits that are not "so radical in effect as to render political association ineffective . . ." **Lair v. Motl**, 873 F3d 1170, 1183 (9th Cir 2017), *cert denied sub nom* ***Lair v. Mangan***, 139 SCt 916, 202 LEd2d 644 (2019).
>
> > The final part of the closely drawn inquiry asks whether Montana's limits prevent candidates from amassing sufficient resources to campaign effectively.
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> ***Lair v. Motl***, 873 F3d at 1184.
>
> The "amassing sufficient resources to campaign effectively" standard is much more specific than "reasonable." And it already applies, due to United States Supreme Court decisions, to all contribution limits adopted by any state.
>
> In sum, adding a "reasonableness" requirement to the constitutional amendment is not necessary, in my view, and could well render the amendment ineffective. It would certainly subject all limits on contributions to significant uncertainty.

So Chair Burdick is now proposing to place the "gathering resources" language directly into SJR 18. I believe that such amendment is not necessary, as the same language constitutes settled United States Supreme Court doctrine since 1976. Further, it would make Oregon

Subject: Advice Against Adding "Reasonableness" Test to Constitutional Amendment for Campaign Finance Reform
From: Dan Meek <dan@meek.net>
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Dear Senator Burdick,

At the hearing of the Senate Committee on Campaign Finance Reform last Wednesday, I first heard of the idea of including in the constitutional amendment a requirement that contribution limits be "reasonable." This idea causes me concern.

"Reasonable" is a very vague standard. It would allow the justices of the Oregon Supreme Court to strike down just about any contribution limit they don't happen to like. It would defeat what to me is the purpose of the constitutional amendment, which is to overcome that Court's very poor opinion in 1997.

I also believe that a "reasonableness" requirement is not necessary to accomplish the objective of avoiding limits that are so low that they prevent candidates from running effective campaigns. Since ***Buckley v. Valeo*** (1976), the United States Supreme Court has imposed this standard upon contribution limits under the First Amendment:

> As indicated above, we referred instead to the outer limits of contribution regulation by asking whether there was any showing that the limits were so low as to impede the ability of candidates to "amas[s] the resources necessary for effective advocacy," [***Buckley***,] 424 U.S., at 21, 96 SCt 612. We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless.

Nixon v. Shrink Missouri Gov't PAC, 528 US 377, 397, 120 SCt 897 (2000).

The Ninth Circuit has recently recognized this standard in a decision that the United States Supreme Court declined to review just a few months ago: "As judges, our limited role is to ensure that a state chooses limits that are not "so radical in effect as to render political association ineffective . . ." ***Lair v. Motl***, 873 F3d 1170, 1183 (9th Cir 2017), *cert denied sub nom* ***Lair v. Mangan***, 139 SCt 916, 202 LEd2d 644 (2019).

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Lair v. Motl, 873 F3d at 1184.

The "amassing sufficient resources to campaign effectively" standard is much more specific than "reasonable." And it already applies, due to United States Supreme Court decisions, to all contribution limits adopted by any state or local government.

In sum, adding a "reasonableness" requirement to the constitutional amendment is not necessary, in my view, and could well render the amendment ineffective. It would certainly subject all limits on contributions to significant uncertainty.

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