House Committee on Rules
Meeting on 2021-03-30
Public testimony of Kyle Markley
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on House Bill 2680

I appreciate that all of the specific dollar limits in HB 2680 are still given as blanks to be filled in later. I would like to offer my input on how to fill in those blanks. Then, I want to ask for an exemption for legal costs, ask for clarification about local political party groups, and point out some unconstitutional provisions.

1. Limits must allow for effective grassroots advocacy

The Supreme Court has allowed contribution limits only to counter *quid pro quo* corruption of elected officials. "When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption." *Citizens United v. FEC,* 558 U.S. 310 at 43. With this context, you should seek to identify what level of contribution is likely to create undue influence – not to set the limits as low as you can get away with. I'll suggest that no amount less than about 5% of a political candidate's campaign budget would lead them to, if elected, treat that donor with favoritism. So, for an example with nice round numbers, if you think campaigns are going to cost around $100,000, then the contribution limit should be no less than $5,000. If you limit contributions that don't risk undue influence, you limit political speech – which is a harm to the public – for no benefit.

Contribution limits to groups other than principal campaign committees are farther removed from the potential for *quid pro quo* corruption and should consequently be higher than limits for donations to candidates.

I founded the Statements for Liberty PAC in 2015, which is dedicated to helping Libertarian candidates publish their candidate statements in the Voters' Pamphlet. Minor party candidates seldom have much financial support, and my PAC is one of the only sources of funding they actually have. It is also important to note that the PAC's bylaws prevent it from giving financial assistance to a candidate beyond helping with their candidate statement fees. To fulfill its mission, my PAC needs to be able to contribute the Voters' Pamphlet fees, which are $3,000 for a statewide office or $750 for the legislature. But even more importantly, we need to be able to raise enough money to pay for those fees.

Low contribution limits to multicandidate committees will ensure that only political positions that are *already* popular will be supported by PACs, due to the limits-enforced necessity of finding a large *number* of donors to fund their political activity. This is outrageously unfair to political minorities because it takes away our practical ability to form *effective* political organizations that could increase the popularity of our ideas.

As the PAC's founder, most of its financial support has come from me, personally. I have contributed a few thousand dollars in each election cycle, and need to be able to keep doing that. We have absolutely relied on receiving donations from a small number of people. Frankly, we want to support a larger number of candidates than we actually have in donors. If a large donation is going to get split up to support many candidates, the rationale for limiting that donation evaporates. Multicandidate committees need higher limits in order to support multiple candidates.

I am a grassroots activist with no connections to either major political party, or to any power centers in business or in labor. If you truly value grassroots activism, you will take my input to heart, and not make limits so low that they suffocate my PAC.

2. An exemption for legal costs is needed

Contribution limits will imperil the Article I, Section 10 rights of candidates, political parties, and other political committees to access the courts.

The ballot access of minor parties and their candidates are often challenged by their opponents. For example, in 2020, Republican candidate Jo Rae Perkins unsuccessfully sued to remove Libertarian candidate Gary Dye – and indeed, the entire Libertarian Party slate of nominees – from the ballot.

The Libertarian Party of Oregon had been engaged in litigation over matters of internal governance for the majority of the last decade at an expense of hundreds of thousands of dollars. The legal fees associated with that litigation, and to defend the Party's candidates in 2020, were paid by a generous individual's in-kind contributions. Those contributions far exceeded the Party's budget for ordinary political work.

There is a very real danger that contribution limits will make it impossible as a practical matter for the Libertarian Party of Oregon to defend itself in court. Contributions made toward legal costs need a broad exemption from limits, not only to protect access to the courts, but also in recognition of the fact that participating in litigation does not raise the specter of *quid pro quo* corruption and is therefore beyond the reach of the state's anti-corruption interest.

3. Effect on local political party groups is unclear

Section 6 subsection (1)(e)(B) states that political parties may not establish more than one political party committee. What will this do to local (e.g. county) political parties? For example, I am a director of both the Libertarian Party of Oregon and of the Libertarian Party of Washington County. The two groups are fully independent organizations, currently not even affiliated with each other.

To make things even more interesting, if you check ORESTAR, you will see that there are two committees named Libertarian Party of Oregon and two committees named Libertarian Party of Washington County. They are all independent, and not all on friendly terms with each other. What is the state going to do to these groups, and how will it decide which groups to do something to?

4. Limits on organizational control are unconstitutional

Section 4, subsection (7) prohibits a person from controlling more than one of each type of political committee at a time. The First Amendment prohibits the state from limiting the number and type of political organizations a person may participate in, or in what capacity. The right to free association protects private political organizations' decisions about how to select their leadership. *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989).

It is especially interesting that this provision would limit control of measure and recall committees. There is absolutely nothing wrong with a single individual wishing to promote or oppose more than one ballot measure, or more than one recall. This provision would limit valuable civic participation for no reason at all.

5. Controls on expenditures related to ballot measures are unconstitutional

Section 6 subsection (1)(g) would add a restriction that “Only a political committee that operates as a measure political committee may use amounts received as contributions to support or oppose one or more measures.” Because there is absolutely no risk of *quid pro quo* corruption relating to ballot measures, this restriction would not survive strict scrutiny and therefore is unconstitutional.

Political parties regularly support or oppose ballot measures. You may not stop them, or any other political groups, from doing so.