

TESTIMONY ON HB 2680-1 AND HB 3343

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and Oregon Progressive Party

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HB 3343 was a late addition to the March 30, 2021, hearing, this testimony focuses on HB 2680-1.¹

Each section outlines a problem with HB 2680-1 and then indicates whether HB 3343 avoids that problem.

This testimony often refers to HB 2714A (2019), the bill that passed in the Oregon House of Representatives but not in the Oregon Senate in the 2019 regular session. HB 2680-1 is based on HB 2714A but has several provisions that are different.

I. HB 2680-1 CONTAINS SEVERAL LARGE LOOPHOLES THAT WOULD UNDERMINE THE SYSTEM.

A. Connecting allowable contributions to "persons" instead of "individuals."

Based on the applicable ORS 260.005 definition of "person," all of the contributions allowed to be made by individuals in previous iterations can be made also by corporations, unions, associations, firms, clubs, or organizations of any sort. Oregon statutes provide no further applicable definitions of "associations" or "clubs" or "organizations." The only requirement is that they comprise "combinations of individuals having collective capacity."

Therefore, any two individuals could form hundreds of "associations" or "clubs" or "organizations," and each one would be entitled to contribute up to the maximum allowed to every candidate and every political committee.

A very major change from HB 2714A of 2019 and from the filed version of HB 2680 is HB 2680-1's use of the term "person" in place of the term "individual" when defining who can contribute funds to candidates and committees.

An "individual" is a human being and is expressly defined as such in Measure 47 (2006) and HB 3343 (Salinas), which states in its Section 2(7):

1. HB 2680-1 is the version of HB 2680 circulated by Representative Dan Rayfield to interested parties on March 19, 2021. It does not refer to a formally submitted amendment to HB 2680. Rep. Rayfield also circulated a HB 2680-2, which does not attempt to limit contributions to any sort of political committee other than candidate committees. Thus, it would allow unlimited contributions from all sources to miscellaneous committees, political party committees, Caucus Committees of the Oregon Legislature.

(a) "Individual," except as provided in paragraph (b) of this subsection, means a human being who is entitled to vote in federal elections.

(b) "Individual" means any human being, when a limitation or prohibition on an action is imposed under sections 2 to 9 of this 2021 Act.

HB 2680-1 now switches to "persons" all references to "individuals" in HB 2714A and previous versions of HB 2680. "Persons" is defined at ORS 260.005(16):

(16) "Person" means an individual, corporation, limited liability company, labor organization, association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity.

HB 2680-1 does not change that definition. Thus, all of the contributions allowed to be made by individuals in previous iterations can be made under HB 2680-1 also by corporations, unions, associations, firms, clubs, or organizations of any sort.

Oregon statutes provide no further applicable definitions of "associations" or "clubs" or "organizations." The only requirement is that they comprise "combinations of individuals having collective capacity." Any two individuals could form hundreds of "associations" or "clubs" or "organizations," and each one would be entitled to contribute up to the maximum allowed by HB 2680-1 to every candidate and every political committee. **This would render the contribution limits illusory.**

It would also destroy the ability of voters to know where the campaign money is originating. An "association," "club" or "organization" would be contributing in its own name, and there is no Oregon law requiring any of them to disclose their sources of funds.

The proliferation of artificial "persons" occurred in New York, when the law allowed limited liability companies (LLCs) to contribute as if they were human beings. Some corporations formed 50 or more LLCs for the purpose of contributing the larger amounts allowed for "persons," as the law limited any corporation to an aggregate total of \$5,000 in campaign contributions per year. These groups of LLCs contributed over \$200 million to New York candidates. Common Cause New York called it "the granddaddy of our biggest campaign finance and corruption problems." New York closed the LLC loophole in 2019.

We have heard that Legislative Counsel suggested this change for some sort of "constitutional" reason. No such reason exists. Currently, federal law and 22 states prohibit corporations and other non-human entities from contributing to candidate campaigns or to committees that support or oppose candidates. The United States Supreme Court has consistently upheld such prohibitions. See *FEC v. Beaumont*, 539 U.S. 146 (2003), which upheld the federal ban even as applied to nonprofit corporations.

HB 2680-1 provides that political committees "established, financed, maintained or controlled by the same person or substantially the same group of persons" shall be treated as one political committee. That "anti-proliferation" provision applies to political committees but not to associations, clubs, or organizations.

HB 3343 does not have this problem, because it uses the defined term "individuals" (human beings) and not the broader term "persons."

B. Allowing local government veto of contribution limits.

HB 2680-1 establishes contribution limits for candidates for local office equal to the same limits applicable to candidates for State Representative. But HB 2680-1 then allows local governments to veto the contribution limits applicable to local candidates or to set their own, different limits.

In California, the recent adoption of such a local-veto provision has resulted in many local governments adopting extremely high contribution limits or no limits at all. For example, the cities of Carson and Riverside adopted contribution limits of infinity.

It would take just one city, school board, or weed control district to adopt "infinite limits" to enable any and all wealthy interests to donate unlimited funds to local candidates in that jurisdiction, with the understanding that such funds would be re-contributed to Caucus Committees, Party Committees, or candidates.

HB 3343 does not have this problem, because it allows local governments to change the contribution limits applicable to local offices in a downward direction only.

C. Limiting contributions to political party committees only those contributions made "for the purpose of" specified electoral activity.

HB 2680-1 states that contributions limits to political parties only apply to contributions "for the purpose of: (A) Making any direct monetary contribution to a candidate or the principal campaign committee of a candidate for any office; or (B) The dissemination of any communication in support of or in opposition to a clearly identified candidate if the communication is made in coordination with any candidate or the principal campaign committee of any candidate;"

This new language (not in HB 2714A of 2019) apparently sets no limits on contributions to political party committees, as long as the contributor does not specify that the funds are to be used for those purposes.

So that political parties can carry out their other functions, each should be required to fund all of its candidate-supporting activities from its Political Party Finance Committee, and the contribution limits should apply to all contributions to such Committee, without the new hedging language. The party can carry out its other functions (voter registration, party building, lobbying on bills, etc.) using a different bank account.

HB 3343 does not have this problem, because it does not use a special definition of "contribution" for political parties. HB 3343 could be clarified to ensure the opportunity for political parties to maintain separate accounts that cannot be used to support or oppose candidates.

D. Donations from "membership organizations" to Small Donor Committees.

HB 2680-1 sets no limits on contributions to candidates or other committees by Small Donor Committees (SDCs). So it is important to examine the limits on funds flowing into SDCs.

HB 2680-1 allows any membership organization to contribute up to \$250 per year per member to Small Donor Committees, even if the amount of dues paid by any member is one cent and even if the dues payments cover effectively zero of the contribution amount. There is no restriction of members to individuals who live or work in Oregon.

For example, HB 2680-1 would allow the National Rifle Association, with 5 million members, to contribute \$1.25 billion to an Oregon small donor committee. Further, anyone could form a new membership organization, advertise it on social media, charge dues of one cent per year, and gather up thousands of members. It could then contribute to small donor committees \$250 times its number of members, using money derived from any source, such as very large contributions from wealthy individuals or even corporations.

David Koch (or any individual or corporation or other entity) could give \$1 million to an organization with 4,000 members, and the organization could pass it all through to a Small Donor Committee, even if the other 3,999 members each paid dues of 1 cent or volunteered 1 second of time.

HB 2680-1 also does not include under the \$250 per person cap the in-kind contributions by any employee of any membership organization to the small donor committee. Though the language is unclear, it may be read to allow unlimited in-kind contributions from membership organizations to small donor committees.

There are large changes from HB 2714 (2019), which included this limit:

(b) A membership organization may make contributions to one or more small donor political committees. The aggregate total contributions, including in-kind contributions, that a membership organization may make to small donor political committees may not exceed 40 percent of each individual member's membership dues or the aggregate total of each individual member's donations that were received by the membership organization during the previous 12 months, with a limit of \$250 from the dues or donations paid by each individual member per calendar year.

Conversely, HB 2680-1 states:

(b) (A) A membership organization may make contributions to one or more small donor political committees. Except as provided in subparagraph (B) of this paragraph, the aggregate total contributions, including in kind contributions, that a membership organization may make to small donor political committees may not exceed an aggregate amount of \$250 per member of the membership organization, based on the number of members at the end of the prior calendar year or at the time of the contribution, whichever is larger.

(B) In kind contributions from individuals who are currently employed by the membership organization:

(i) Must be reported as contributions; and

(ii) May not be included when calculating the amount a membership organization may contribute to a small donor political committee under subparagraph (A) of this paragraph.

If there are to be membership dues pass-through provisions, they should be limited to the dues paid by Oregon residents. HB 2680-1, Section 4(6)(b)(A) should be amended by adding:

These calculations shall include only individual members who reside in or are employed in Oregon.

HB 3343 does not have this problem, because it does not have provisions allowing membership organizations to transfer dues payments or other moneys to Small Donor Committees.

E. Unwise State Preemption of Local Small Donor Contribution Limits.

HB 2680-1, Section 3(1)(c) states:

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 Small Donor Committee, 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.

While the Legislature has the power to override the voters of Multnomah County and Portland, doing so in this way is not a good idea. Anything that language would accomplish could be better achieved with this:

- (c) ~~Notwithstanding any local provision, a candidate or the principal campaign committee of a candidate for any elected office that is not a state office may accept unlimited contributions from a small donor political committee. A small donor committee 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, provided that each contribution amount so allocated 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 Small Donor Committees to participate in local elections without overriding the local provisions regarding Small Donor Committees.

HB 3343 might also have this problem, because its Section 6(2) states:

Except for contribution limits applicable to small donor committees, any local government may adopt contribution limits that are lower than those required by sections 2 to 9 of this 2021 Act for election contests of the local government.

We believe the intent of that language was to prevent local government limits on contributions by Small Donor Committees, but it could be interpreted as also precluding local government limits on contributions to Small Donor Committees.

II. ALLOWABLE CONTRIBUTIONS TO AND FROM SOME ENTITIES ARE UNJUSTIFIABLY LARGE (OR SMALL).

HB 2680-1 offers a unique combination of limits on contributions into such committees, illustrated by the accompanying table (Contribution Limits HB 2680-1). As noted below, Caucus Committees can (nominally) accept far more money than can Party Committees, even though HB 2680-1 limits each party to one committee. HB 2680-1 also allows Caucus Committees to contribute far more to candidate campaigns than can Party Committees.

A. Caucus Committees.

1. Contributions Flowing Into: No Effective Limits.

HB 2680-1 allows Caucus Committees to receive \$3,000 per year from any person, including any corporation, union, association, club, or organization. Since there is no definition of association, club, or organization, this would enable effectively unlimited contributions resulting from the proliferation of such "persons."

HB 2680-1 also allows Caucus Committees to receive \$50,000 per election (\$100,000 per election cycle) from any candidate committee, including for any local, state, or federal candidate. And there is no provision preventing the creation of Potempkin candidate committees for the real purpose of gathering up contributions from wealthy donors and passing them along to the Caucus Committees.

And, Since HB 2680-1 allows local governments to remove all limits on contributions to local contests, this allows a very large pipe for money to flow to Caucus Committees.

As indicated in the table below, it appears that only 5 states recognize "caucus committees" as different from ordinary political committees. Those states has special, higher limits on contributions by individuals to caucus committees. Those limits are higher than for ordinary political committees but lower than for political party committees.

Limits on Contributions by Individuals to Party and Caucus Committees		
	Political Party	Legislative Caucus
Alaska	5000	--
California	35200	--
Colorado	3650	--
Connecticut	10000	2000
Hawaii	25000	--
Illinois	10800	--
Kansas	15000	--
Kentucky	2500	2500
Louisiana	100000	--
New Hampshire	1000	--
New Jersey	25000	25000
New Mexico	5400	--
New York	102300	--
Ohio	37597	18799
Oklahoma	10000	--
Rhode Island	1000	--
South Carolina	3500	3500
South Dakota	10000	--
Vermont	10000	--
West Virginia	1000	--
"--" means caucus committees do not appear to exist in that state		

2. Contributions Flowing Out Of: Overly High Limits.

HB 2680-1 allows any of the four Caucus Committees to contribute \$50,000 per year to any candidate for state or local office. If a candidate emerges before January 1 of the election year, that amounts to \$100,000 to any candidate. And, since local governments can veto the contribution limits applicable to candidates for local office, Caucus Committees under HB 2680-1 can contribute unlimited amounts to local candidates in such jurisdictions.

B. Political Party Committees.

1. Contributions Flowing Into: No Effective Limits.

As noted above, HB 2680-1 allows unlimited contributions to Party Committees from all persons, all multicandidate committees, and all Caucus Committees, unless the contribution is given for the specific "purpose" of making direct monetary contributions to candidates or making expenditures coordinated with candidates. This is a new definition of contribution, applicable only to Party Committees. HB 2680-1 also allows contributions of \$10,000 per year to any Party Committee by any candidate committee, including for local, state, and Oregon federal candidates.

Even if the specific "purpose" loophole were removed, HB 2680-1 also allows Party Committees to receive \$3,000 per year from any person, including any corporation, union, association, club, or organization. Since there is no definition of association, club, or organization, this would enable effectively unlimited contributions resulting from the proliferation of such "persons."

The table below shows the limits in other states on contributions by candidate committees to Party Committees: 23-26 states have limits on funds flowing into state political parties from candidate committees. The lowest limit (0 during campaigns) is in place in 11 states. 5 other states have limits of \$5,400 or less.

Limits on Contributions by Candidate Committees to Party Committees		
	During Campaign	After Election
Alabama	5000	5000
Alaska	0	0
Arizona	0	0
Arkansas	0	surplus* only
California	35200	35200
Colorado	575	575
Connecticut	0	0
Delaware	20000	20000
Florida	0	25000 of surplus*
Hawaii	25000	25000
Kansas	15000	15000
Kentucky	0	surplus* only
Louisiana	0	surplus* only
Michigan	unclear	unclear
Montana	unclear	unclear
New Hampshire	1000	1000
New Jersey	25000	25000
New Mexico	5400	5400
Ohio	35597	35597
Oklahoma	0	25000 of surplus*
Rhode Island	1000	1000
South Carolina	0	surplus* only
Tennessee	unclear	unclear
Vermont	10000	10000
Washington	0	surplus* only
West Virginia	1000	15000 of surplus*
*Surplus means only funds left over after the election.		

2. Contributions Flowing Out Of: Much Lower than for Caucus Committees.

HB 2680-1 limits any Party Committee to contributing only \$3,000 per year to any candidate. This is much lower than the \$50,000 per year allowed for Caucus Committees.

HB 2680-1's \$3,000 limits would likely draw critical scrutiny from the federal courts. The United States Supreme Court in *Randall v. Sorrell*, 548 US 230, 126 SCt 2479, 165 LEd2d 482 (2006), invalidated Vermont's contributions in large part due to its very low limit on contributions by political parties to candidates (\$400 for statewide candidates).

11 states allow state political parties to contribute to any candidate only the same as any individual can contribute to that candidate:

Arkansas	Missouri
Georgia	Nevada
Hawaii	New Hampshire
Kansas (in contested primaries)	New Mexico
Maine	West Virginia
Maryland	

Other states allow state political parties to contribute to any candidate a multiple of what any individual can contribute to that candidate:

- Idaho (2x)
- Massachusetts (3x)
- Minnesota (10x)
- Montana (about 2-3x for legislative candidates)
- South Carolina (14x for statewide, 5x for legislative)

The table below shows state limits on contributions by state political parties to any candidate. None of them are in the range of the \$3,000 proposed by HB 2680-1.

Limits on Contributions by State Party Committees to Candidates				
	Governor	Other Statewide	Senate	House
Alaska	\$100,000		\$15,000	\$10,000
Arizona	\$80,100	\$80,100	\$10,100	\$10,100
Colorado	\$615,075	\$113,905	\$22,125	\$15,975
Connecticut	\$50,000	\$35,000	\$10,000	\$5,000
Delaware	\$75,000	\$25,000	\$5,000	\$3,000
Florida	\$250,000	\$250,000	\$50,000	\$50,000
Michigan	\$136,000	\$136,000	\$20,000	\$10,000
Montana	\$23,850	\$8,600	\$1,400	\$850
Ohio	\$716,720	\$716,720	\$142,963	\$71,164
Oklahoma	\$25,000	\$10,000	\$10,000	\$10,000
Rhode Island	\$25,000	\$25,000	\$25,000	\$25,000
South Carolina	\$50,000	\$50,000	\$5,000	\$5,000
Tennessee	\$393,800	\$393,800	\$63,000	\$31,600

Using a multiplier of the individual limits does not necessarily make sense. As for the states with numeric limits, the limits that seem to make the most sense are those of Connecticut, Delaware, Montana, and South Carolina, as statewide and Governor candidates need to reach many more voters than legislative candidates.

HB 3343 does not have these problems, because it sets forth a different set of contribution limits, illustrated by the accompanying table (Contribution Limits HB 3343). There are no paths to unlimited contributions. State Political Party Committees are allowed to receive \$5,000 from any individual and \$10,000 from any candidate or multicandidate committee. A party can contribute \$10,000 to any non-statewide candidate and \$50,000 to a statewide candidate--compared with only \$3,000 in HB 2680-1. HB 3343 does not elevate Caucus Committees over Party Committees.

III. THE PROPOSED ENFORCEMENT MECHANISMS ARE INADEQUATE.

A. Lack of paths for citizen actions in addition to enforcement by elected officials.

HB 2680-1 authorizes only the Secretary of State and sometimes the Attorney General to enforce its provisions. Campaign finance regulations that depend entirely on partisan elected officials enforcing them can create an appearance or reality of bias or selective enforcement. Effective enforcement depends upon having paths for citizens to bring enforcement actions, including complaints with administrative officials, appeals of the results of those complaints to court, and direct court actions to compel enforcement of decisions upholding the imposition of penalties.

B. Inadequate Maximum Penalties.

HB 2680-1 limits fines to an insufficient 150% of the amount of the unlawful contribution. Financial penalties must be sufficiently large to deter behavior and not create a new "cost of doing business."

HB 3343 does not have these problems.

Similar to the 2016 Multnomah County Measure 26-184 and the 2018 Portland Measure 26-200, HB 3343 allows citizens to file complaints with administrative officials, to appeal the results of those complaints to court, and to go to court to compel enforcement of decisions upholding the imposition of penalties. HB 3343 also allows citizens to file their own allegations of violations directly in Circuit Court, with any resulting penalties paid to the State Treasury.

The Multnomah County measure, Portland measure, and HB 3343 provide for minimum fines of twice the amount of the unlawful contribution and maximum fines of twenty times the amount of the unlawful contribution.

IV. SELF-FUNDED CANDIDATES SHOULD BE REQUIRED TO PROMINENTLY DISCLOSE THEIR MONETARY CONTRIBUTIONS.

While limits on self-funding by candidates may or may not pass U.S. Constitutional muster, there is no constitutional barrier to requiring self-funded candidates to disclose the amounts they are spending on their own campaigns in their advertisements.

HB 3343 does not have this problem, because it does require such advertisements to disclose how much money each self-funded candidate has spent on her own campaign, if that amount is over \$1,000. This would provide voters needed transparency at the time they see the ads and allow them to make informed decisions.

V. CANDIDATE COMMITTEES SHOULD BE RESET WITH THE ADOPTION OF LIMITS AND AFTER EACH CYCLE, ONCE LIMITS ARE IN EFFECT.

As of the operative date of any contribution limits, some existing committees will have lots of money in the bank. This heavily advantages incumbents, as challengers will have to raise all of their funds under the contribution limits, while incumbents have war chests raised under the previous "no limits" regime. This could create U.S. Constitutional concerns; the U.S. Supreme Court has expressed concern about campaign finance changes that benefit incumbents over challengers.

HB 2680-1 does not impose any limits on these money balances.

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.'" Without a resetting of candidate committees after a general election, HB 2680-1 could be struck down as too pro-incumbent and too anti-challenger.

HB 3343 does not have this problem, because it directs nearly all campaign funds that are not spent as of 60 days after the close of the election cycle to the Oregon Secretary of State to offset the cost of the Voters' Pamphlet. The funds could also be directed into a Public Campaign Fund, if a system of public funding of campaigns were adopted. This would prevent incumbents from carrying over war chests to future cycles.

VI. THE ACT SHOULD INCLUDE PROVISION ALLOWING ENTITIES TO CREATE SEPARATE POLITICAL COMMITTEES.

The United States Supreme Court has more frequently upheld limits on contributions and expenditures, if the statute expressly allows corporations and other entities to establish committees that can accept contributions from officers, employees, and the like. The contributions to these committees can be limited. In the language of the proposal, these would be Multicandidate Committees.

HB 3343 contains the necessary language:

SECTION 5. Separate Segregated Political Committee Funds.

Notwithstanding any other provision of sections 2 to 9 of this 2021 Act, a business entity or labor union may establish or administer a separate, segregated fund that operates as a political committee, if:

- (1) The fund consists solely of voluntary contributions from the individual employees, officers, shareholders or members of the entity, with the aggregate amount contributed by each individual conforming to the limits set forth in section 3 of this 2021 Act;
- (2) The fund files as a political committee in the manner set forth in ORS 260.042;
- (3) The entity uses no more than \$500 per year of treasury moneys to create or administer the fund, with expenditures described under this subsection reported as a specifically allowed contribution to the political committee; and
- (4) Any solicitation for contributions directed to employees of a business entity states that there is no required contribution and that the employees decision to contribute or not contribute will not affect the employees employment and will not be provided to the employees supervisors or managers.

VII. THE CAMPAIGN CONTRIBUTION LOOPHOLE IN OREGON'S BRIBERY STATUTE SHOULD BE REMOVED.

In Oregon, bribing public officials with campaign contributions in Oregon is legal. The bribery statutes, ORS 162.005, 162.105, and 162.025, all depend upon the briber offering or the target accepting a "pecuniary benefit."

162.005 Definitions for ORS 162.005 to 162.425. As used in ORS 162.005 to 162.425, unless the context requires otherwise: (1) "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain, but does not include a political campaign contribution reported in accordance with ORS chapter 260.

The statute excludes all campaign contributions from the definition of "pecuniary benefit." So, no matter what the public official agrees to do in exchange for a political contribution, the actions of the donor and of the public official or candidate do not constitute bribery.

And the public official can use campaign contribution money for almost anything. She can literally put the money into her personal bank account as a salary or for rent on maintaining an office in her spare bedroom, etc.

Any public official in Oregon can maintain campaign committees and accept contributions and make expenditures, whether or not the public official ever runs for office again.

And the Oregon Court of Appeals ruled in 1993 that there is no possibility of "bribe giving" from the making of a campaign contribution, even if the campaign contribution is not reported to the government.

[W]e should exercise our good sense and read the bribery statute as exempting any campaign contribution that is required to be reported by the donee under ORS chapter 260, even if the donee fails to report it.

State v. Gyenes, 121 OrApp 208, 213, 855 P2d 642, 644 (1993).

ORS 162.005(1) should be amended to read:

(1) "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic

gain, but does not include a political campaign contribution reported in accordance with ORS chapter 260.

HB 3343 should be similarly amended.

VIII. CANDIDATES WHO AGREE TO CAP EXPENDITURES OR CONTRIBUTIONS SHOULD RECEIVE FREE SPACE IN THE VOTERS PAMPHLET.

The Oregon Voters Pamphlet is an efficient means for a candidate to reach the relevant voters. A candidate campaign pledged to spend less than a certain amount should be rewarded with free space in the Voters Pamphlet. The threshold might be 50 cents per eligible voter in a campaign for Governor, 25 cents/voter in a campaign for other statewide office, and \$1/voter for all other campaigns.

Free Voters' Pamphlet space might instead be made available, if the candidate agrees to abide by contribution limits that are half of those allowed by law. Some other fraction might be chosen.

HB 3343 should be similarly amended.

IX. LEGISLATIVE FINDINGS WOULD BOLSTER THE CONSTITUTIONAL VALIDITY OF THE ACT.

The determination of validity under the U.S. Constitution involves issues of fact. If the statute at issue does not have legislative findings, then the defenders of the law in court may face difficult evidentiary issues.

Legislative findings in statutes are accorded near complete deference by the courts. *State ex rel. Van Winkle v. Farmers Union Co-op Creamery of Sheridan*, 160 Or 205, 219-220, 84 P2d 471, 476-77 (1938), adopted the reasoning of *United States v. Carolene Products Co.*, 304 US 144, 58 S Ct 778, 82 LEd 1234 (1938), instructing courts to give great weight to legislative findings in considering the constitutionality of an Oregon law.

Measure 47 (2006) has extensive findings (its Section 1). The findings for HB 2680-1 need not be that long, but they should state that limits on contributions are necessary to combat corruption and the appearance of corruption and that the limits specified in the statute are sufficient to enable candidates to run

effective campaigns, do not inhibit effective advocacy by challengers, or mute the voices of political parties.

HB 3343 should also include legislative findings.

X. THE ACT SHOULD CLEARLY BAN EARMARKING OF CONTRIBUTIONS.

One way to cloak the identity of contributors to a campaign is to run the funds through other committees first. HB 2680-1 has no generally applicable restrictions on PAC-to-PAC transfers that implement a cloaking strategy.

HB 3343 provides the required language in its Section 6(8):

(a) The principal campaign committee of a candidate may not make a contribution to any other political committee if the contribution was in any way directed or instructed by an individual or entity that made a contribution to the principal campaign committee.

(b) A violation of paragraph (a) of this subsection shall result in the forfeiture of all amounts contributed, in addition to any other penalties that may be assessed by law.

XI. REASONABLE LIMITS WILL NOT PUSH ACTIVITY INTO INDEPENDENT EXPENDITURES.

Some say that reasonably low limits (and lack of loopholes) will cause wealthy donors to use independent expenditures instead of contributing to candidates and committees.

The academic literature does not support that conclusion. A study published in *ELECTION LAW JOURNAL* in 2020 concluded that the presence or absence of limits on contributions to candidates and parties had little effect upon the magnitude of independent expenditures, finding "the associations between IEs and contribution limits are inconsistent and generally not significant." The study also found that removing these [contribution] limits in the states that have them would not be likely

to significantly stem the level of independent spending taking place in those states.²

Further, Oregon's current selective disclaimer requirements also provide strong incentive for wealthy donors (including organizations) to make contributions instead of independent expenditures. Under ORS 260.266 (adopted as HB 2716 in 2019), any advertisement paid for with independent expenditures must disclose "the names of the five persons that have made the largest aggregate donations of \$10,000 or more to the person" who made the independent expenditure. Conversely, when advertisements are paid for by candidate committees or political committees, none of the contributors to the committees need to be identified.

XII. CONTRIBUTION LIMITS RESULT IN MORE ELECTORAL COMPETITION, GREATER SUCCESS FOR CHALLENGERS AND MINORITY CANDIDATES.

The 2009 report of the Brennan Center at New York University School of Law, *ELECTORAL COMPETITION AND LOW CONTRIBUTION LIMITS*³ states:

New data culled from elections in 42 states over 26 years (1980-2006) show that lower contribution limits of \$500 or less for individual contributors and political action committees (PACs) made elections for state assembly more competitive. In real-world elections, the benefits of low contribution limits largely redound to challengers.

In sum, this new statistical analytic research on state house races demonstrates:

- > Contribution limits lead to more competitive elections: the lower the limit, the more competitive the election.
- > Lower contribution limits (\$500 and below) increase the likelihood that challengers will beat incumbents.

2. Charles R. Hunt, Jaclyn J. Kettler, Michael J. Malbin, Brendan Glavin, and Keith E. Hamm, *Assessing Group Incentives, Independent Spending, and Campaign Finance Law by Comparing the States*, ELECTION LAW JOURNAL, September 17, 2020 (<http://doi.org/10.1089/elj.2019.0570>).

3. <https://www.brennancenter.org/sites/default/files/legacy/publications/Electoral.Competition.pdf>

- > Lower contribution limits reduce incumbents considerable financial fundraising advantage.

The research shows that low contribution limits increase the number of contested races, improve the rate of competitive races, and reduce the fundraising gaps between incumbents and challengers.

The pro-competitive effect of contribution limits is most striking in states with the lowest contribution limits. Relative to races without any contribution limits, the tightest limit considered--a \$500 cap on contributions by individuals--reduces the average margin of victory of incumbents by 16.7 percentage points.

Dr. Stratmann's findings are consistent with the empirical research of other scholars in the field, who found that contribution limits produce closer margins of victory and help challengers at the expense of incumbents.³¹

31. Kihong Eom & Donald A. Gross, *Contribution Limits and Disparity in Contributions between Gubernatorial Candidates*, Vol. 59 No. 1 POL. RES. Q. 99-110 (2006); Jeffrey Milyo, David Primo & Timothy Groseclose, *State Campaign Finance Reform, Competitiveness, and Party Advantage in Gubernatorial Elections*, THE MARKETPLACE OF DEMOCRACY 268-85 (Michael McDonald & John Samples eds., 2006); Thomas Stratmann & Francisco J. Aparicio-Castillo, *Competition Policy for Elections: Do Campaign Contribution Limits Matter?*, 127 PUB. CHOICE 177 (2006).

Similar results were found in Canada.

These findings regarding incumbents v. challengers also apply to BIPOC candidates, as they are typically challengers. Further, a 2018 study by the Center for Responsive Politics of candidates for Congress showed that, while white candidates received far more in large contributions (over \$200 each) than non-white candidates, fundraising from smaller contributions was relatively even between white and non-white candidates.⁴ For example, white women candidates on average raised 2.8 times more than Black women candidates from large contributions but only 1.4 times more from smaller contributions.

4. Center for Responsive Politics, RACE, GENDER, AND MONEY IN POLITICS: CAMPAIGN FINANCE AND FEDERAL CANDIDATES IN THE 2018 MIDTERMS (2018).

BIPOC candidates can compete more effectively with establishment candidates, if all are limited to contributions of reasonable size.

Contribution Limits HB 2680-1 (Rayfield)

(except where noted, all limits are per election = primary and general are separate)

Donors	Recipients					
	State-Level Candidate Committee	Local Candidate Committee	State Party Committee	Caucus Committee	Multicandidate Committee	Small Donor Committee
“Person” (includes corporations, unions, associations, clubs, etc.)	\$3,000 Statewide \$2,000 Senate* \$1,500 House per election	\$1,500 per election but Local Option up to Unlimited	\$3,000 per year nominally but actually unlimited due to special definition of contribution	\$3,000 per year	\$3,000 per year	\$250 per year plus \$250 x an organization’s members
State-Level Candidate Committee	\$3,000 Statewide \$2,000 Senate* \$1,500 House per election	\$1,500 per election but Local Option up to Unlimited	\$10,000 per year	\$50,000 per election	\$3,000 per year	0
Local Candidate Committee	\$3,000 Statewide \$2,000 Senate \$1,500 House per election	\$1,500 per election but Local Option up to Unlimited	\$10,000 per year	\$50,000 per election	\$3,000 per year	0
State Party Committee (1 per party)	\$3,000 per year	\$0 per election but Local Option up to Unlimited	N/A	\$3,000 per year	\$3,000 per year	0
Caucus Committee (2 per party)	\$50,000 per year	\$0 per election but Local Option up to Unlimited	\$3,000 per year nominally but actually unlimited due to special definition of contribution	\$50,000 per year	\$3,000 per year	0
Multicandidate Committee	\$3,000 Statewide \$2,000 Senate* \$1,500 House per election	\$1,500 but Local Option up to Unlimited	\$3,000 per year nominally but actually unlimited due to special definition of contribution	\$3,000 per year	\$3,000 per year	0
Small Donor Committee	Unlimited	Unlimited; No Local Option	0	0	0	Unlimited
Oregon Fed Candidate	0	0	\$10,000 per year	\$50,000 per year	0	0
Non-Oregon Fed Candidate	0	0	0	\$50,000 per year	0	0

Statewide principal candidate committee refers to a candidate running for Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Judge of Court of Appeals, or Justice of Oregon Supreme Court.

* also Circuit Court judge

Pink shading means it was “unlimited” in HB 2714A, whether or not limited in HB 2680-1.

Contribution Limits HB 3343 (2021) (Salinas)

(per Election Cycle, except where noted)

Donors	Recipients				
	State-Level Candidate Committee (includes Legislature)	Local Candidate Committee	State Party Committee	Multicandidate Committee	Small Donor Committee
Individual	\$1,000 Statewide \$500 all other	\$500	\$5,000 per year	\$500 per year	\$100 per year
State-Level Candidate Committee (includes Legislature)	\$1,000 Statewide \$500 all other	\$500	\$10,000 per year	\$500 per year	0
Local Candidate Committee	\$500	\$500	\$10,000 per year	\$500 per year	0
State Party Committee (each party gets 1)	\$50,000 Statewide \$10,000 all other	\$10,000	0	0	0
Multicandidate Committee	\$1,000 Statewide \$500 all other	\$500	\$10,000 per year	\$500 per year	0
Small Donor Committee	20-fold of Multicandidate Committee	20-fold of Multicandidate Committee	0	0	0
Oregon Federal Candidate	0	0	0	0	0
Non-Oregon Federal Candidate	0	0	0	0	0

Statewide principal candidate committee refers to a candidate running for Governor, Secretary of State, State Treasurer, Attorney General, or Commissioner of the Bureau of Labor and Industries.

The bill does not provide for Caucus Committees. A legislative caucus can create a Multicandidate Committee.

An “election cycle” goes from the day after the general election for the public office until and including the date of the next general election for that office.

Contribution Limits HB 2714A (2019)

(except where noted, limits are per election = primary and general are separate)

Donors	Recipients						
	State-Level Candidate Committee	Local Candidate Committee	State Party Committee	Caucus Committee	Recall Committee	Multicandidate Committee	Small Donor Committee
“Person” (includes corporations, unions, associations, clubs, etc.)	\$2,800 Statewide \$1,500 Senate \$1,000 House per election	Local Option up to Unlimited	\$5,600 per year	\$2,800 per year	\$2,800 Statewide \$1,500 Senate \$1,000 House per election	\$2,800 per year	\$250 per year
State-Level Candidate Committee	\$2,800 Statewide \$1,500 Senate \$1,000 House per election	Local Option up to Unlimited	Unlimited	Unlimited	\$2,800 Statewide \$1,500 Senate \$1,000 House per election	\$2,800 per year	0
Local Candidate Committee	\$1,000 per election	Local Option up to Unlimited	Unlimited	Unlimited	\$1,000 per election	\$2,800 per year	0
State Party Committee	Unlimited	Unlimited	N/A	Unlimited	Unlimited	\$2,800 per year	0
Caucus Committee	Unlimited	Unlimited	\$2,800 per year	Unlimited	\$2,800 Statewide \$1,500 Senate \$1,000 House per election	\$2,800 per year	0
Multicandidate Committee	\$2,800 Statewide \$1,500 Senate \$1,000 House per election	Local Option up to Unlimited	\$2,800 per year	\$2,800 per year	\$2,800 Statewide \$1,500 Senate \$1,000 House per election	\$2,800 per year	0
Small Donor Committee	Unlimited	Unlimited	0	0	Unlimited	0	Unlimited
Oregon Fed Candidate	0	0	Unlimited	Unlimited	0	0	0
Non-Oregon Fed Candidate	0	0	0	Unlimited	0	0	0