

TESTIMONY ON HB 2680-1: CAMPAIGN CONTRIBUTION LIMITS

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HB 2680-1 has large loopholes that, when exploited, would render its contribution limits illusory.

HB 2680-1 refers to the proposed -1 amendment to HB 2680, published on OLIS on May 11, 2021.

HB 2680-1v2 refers to the previous, unpublished version of HB 2680 distributed by Rep. Rayfield that was dated April 17, 2021.

This testimony does not address the portion of HB 2680-1 that creates a system of public funding of campaigns.

1. New Loophole: Any union or corporation can contribute \$50,000 (or multiples of \$50,000) of paid staff time to any candidate committee.

This loophole is new. Section 3(4) of HB 2680-1 states:

- (4) When calculating the aggregate amount of contributions a candidate or the principal campaign committee of a candidate may accept under this section:
 - (a) The first \$50,000 of time spent by a staff member of any person, other than an individual, that must otherwise be reported as an in-kind contribution may not be included; and
 - (b) Any in-kind contribution not described in paragraph (a) of this subsection must be included.

The term "this section" means Section 3 of HB 2680-1, which contains the limits on campaign contributions to candidate committees.

Thus, HB 2680-1 allows any union or corporation of any type ("person" is defined to include both) to contribute either \$50,000 or multiples of \$50,000 to any candidate for any state or local office in the form of providing paid workers for the campaign. Those paid workers could include professional political staff persons.

HB 2680-1 does not limit any union or corporation to providing just \$50,000 of paid staff time to a candidate. It appears to allow each union or corporation to provide the "first \$50,000 of time spent by a staff member of any person." Say a corporation pays for 3 staff members to help a candidate campaign. The \$50,000 exception from the limits appears to apply to each of the 3 staff members separately: the "first \$50,000 of time spent by a staff member of any person." There is no limit on the number of staff members that the "person" (union or corporation) can provide to the candidate's campaign.

This very large loophole could be even bigger, because the language does not provide a timeframe for the \$50,000 limit: Is it per year, per election, or per something else?

This \$50,000 x number of staff provided is in addition to the \$1,000 to \$2,900 per election that HB 2680-1 allows any corporation or union to contribute in cash to a candidate.

This new loophole renders the contribution limits of HB 2680-1 illusory. On the attached table of the HB 2680-1 limits, one must add "\$50,000 or multiples of \$50,000 of paid staff time" to the cells for contributions available to all state-level candidate committees and local candidate committees.

SOLUTION: Remove this new loophole.

2. HB 2680-1 authorizes allowable contributions by "persons" instead of "individuals."

HB 2680-1 partially corrects this problem by removing "association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity" from the definition of "person." But the new definition continues to include all unions and corporations, including nonprofit corporations, as "persons" who can make contributions. This will allow folks to create an unlimited number of new corporations and thereby multiply their legal contributions to candidates and committees, like folks in New York did with the "LLC loophole" there.

Some corporations in New York 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.

22 states ban corporate contributions to candidate campaigns. Each of those states also bans union contributions to candidate campaigns, except Iowa, Minnesota, and West Virginia. New Hampshire allows corporate contributions but not union contributions. No ban on corporate or union contributions has been struck down by any court.

Of the 28 other states, 23 limit corporate and union contributions. None of those 23 states allows corporations or unions to make contributions nearly as large as those allowed by HB 2680-1. Not even close.

HB 2680-1 also compromises campaign contribution transparency, because the corporation would be contributing in its own name, and there is no Oregon law requiring it to disclose its sources of funds.

SOLUTION: Return to the previous language in HB 2680 Sections 3 and 4, which authorized contributions by "individuals" and not "persons."

Also, adopt the HB 3343 Section 2(7) definition of "individual:"

(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.

3. HB 2680-1v2 allows effectively unlimited contributions by membership organizations.

HB 2680-1 retains the extremely broad definition of "membership organization." It includes any 501(c) organization not formed or operated for commercial enterprise. It must have "members," but anyone who volunteers any amount of money or time is a "member." Thus, one could create a membership organization with many members by posting a message on social media, with the volunteer activity consisting of signing up for an email list.

Further, many multiple thousands of entities would already qualify as "membership organizations" having hundreds of thousands or millions of members. It also appears that HB 2680-1 allows corporations to be "members."

HB 2680-1 allows any membership organization to contribute to Small Donor Committees (SDC):

- > up to \$250 per member (including in-kind contributions), regardless of the organization's sources of funds; plus
- > \$50,000 of paid staff work time; plus
- > if the membership organization is also a nonprofit corporation, multiples of \$50,000 of paid staff work time (see explanation in Part 1 of this memo).

For purposes of this limit, the membership organization's members need not have any connection to Oregon.

Any membership organization could thus provide campaign staffs to SDCs, which could use those paid staff in an essentially unlimited way. HB 2680-1 limits the contribution by any non-corporate SDC to any candidate to the greater of \$25,000 or \$25 per person with ties to Oregon (lives, works, goes to school) who either contributed to the SDC or was a member of a membership organization that contributed anything to the SDC. The resulting amounts could be huge. For example, the American Association of Retired Persons (AARP) has over 500,000 members in Oregon. So it could contribute \$125 million to any Oregon SDC (not including in-kind staff time), and that SDC could then contribute \$25 times 500,000 (\$12.5 million) to any candidate.

HB 2680-1 would actually allow AARP to contribute far more to an SDC, because the \$250 per member limit on the contribution to the

SDC by the membership organization is not restricted to members who have any connection to Oregon. AARP has over 38 million members and so could contribute \$9.5 billion to any Oregon SDC.

It appears that the SDC can also flow through the unlimited paid staff time from corporate membership organizations to any number of candidates.

HB 2680-1 allows membership organizations to provide these huge amounts of money and services to candidates without disclosing their sources of funds. Section 4(5)(b)(B) states:

(B) The name and any identifying information about an individual member of a membership organization may not be disclosed as a public record under ORS 192.311 to 192.478.

SOLUTION: Remove the membership organization provisions or very substantially tighten them.

4. HB 2680-1 allows unions and corporations to contribute to Small Donor Committees.

This is a new loophole. In all previous versions, only individuals could contribute to Small Donor Committees (SDC). HB 2680-1 expands that to allow unions and corporations to contribute to SDCs in the same amounts as individuals. It also allows unions and corporations to be "members" of "membership organizations" that can provide huge funds to candidates, as explained in the section above.

SOLUTION: Remove the new provision allowing unions and corporations to contribute to and be members of membership organizations.

5. HB 2680-1 allows unjustifiably large (or small) contributions to and from some entities.

The HB 2680-1 limits on contributions to Caucus Committees are too high, allowing contributions of \$40,000 per year from any candidate committee at any level (local, state, or federal), whether or not connected to Oregon.

The HB 2680-1 limits on contributions from Caucus Committees are too high, allowing any Caucus Committee to contribute \$40,000 per year to any local or state candidate.

On the attached table of HB 2680-1 limits, the green cells illustrate the unwarranted difference between the contribution limits applicable to Caucus Committees and those applicable to Political Party Committees. Caucus Committees are controlled by incumbents. Allowing them contribution limits that are more than 13 times higher than for Political Party Committees will no doubt attract challenges under the First Amendment as overly favorable to incumbents.

SOLUTION: Treat Caucus Committees the same as multicandidate committees or at least very substantially reduce the sizes of contributions they can accept and give.

6. HB 2680-1v2 does not provide for effective enforcement.

HB 2680-1 authorizes only the Secretary of State and sometimes the Attorney General to enforce its provisions. Campaign finance regulation that depends entirely on partisan elected officials enforcing them can create an appearance or reality of bias or selective enforcement. Citizen enforcement mechanisms are needed, such as those in the 2016 Multnomah County Measure 26-184 and the 2018 Portland Measure 26-200.

HB 2680-1 also has inadequate maximum penalties of only 150% of the unlawful contribution.

**SOLUTION: Adopt the HB 3343 Sections 7-8 enforcement provisions.
Adopt the HB 3343 Section 7(2) penalties:**

7. HB 2680-1 does not ban earmarking of contributions.

The identity of contributors to a campaign can be cloaked by running the funds through other committees first. HB 2680-1 should add restrictions on PAC-to-PAC transfers that can be used for cloaking.

SOLUTION: Adopt the HB 3343 Section 6(8) language:

(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.

8. **HB 2680-1 does not require self-funded candidates to disclose their monetary contributions in campaign ads.**

Voters should know how much "self-money" is being spent.

SOLUTION: Adopt the self-funded candidate disclaimer requirements in HB 3343 Section 4(4).

9. **HB 2680-1 does not impose any limits on money carried over to the next election cycle.**

The creation of war chests heavily advantages incumbents, as challengers will have to raise all of their funds under the contribution limits that were not applicable when the incumbents raised their war chests.

SOLUTION: Adopt the candidate committee close-out provision of HB 3343 Section 6(5).

10. **HB 2680-1 does not close the campaign contribution loophole in Oregon's bribery statute.**

Bribing public officials with campaign contributions in Oregon is legal, because "pecuniary benefit" in the bribery statute is defined to exclude campaign contributions.

SOLUTION: 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.~~

11. HB 2680-1 does not provide free space in the Voters' Pamphlet for candidates who agree to cap expenditures or contributions.

The following candidates should get should earn free space in the Voters Pamphlet:

- > A candidate pledged to spend less than a certain amount (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)
- > A candidate pledged to abide by contribution limits that are half of those allowed by law.

SOLUTION: Adopt this new language:

Any candidate for public office who agrees that the candidate's principal campaign committee shall expend less than fifty cents per eligible voter in the contest shall be titled to file a statement for the voters' pamphlet under ORS 251.095 or ORS 251.335 without payment of a fee. If expenditures by the candidate's principal campaign committee exceed that amount, the committee shall remit to the proper filing officer the fee that would otherwise be required.

12. HB 2680-1 has no legislative findings that 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 state and federal courts.

SOLUTION: Add legislative findings to HB 2680-1, stating 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.

Contribution Limits HB 2680-1 (Rayfield) -- May 11, 2021 version
(except where noted, all limits are per election = primary and general are separate)

Donors	Recipients					
	State-Level Candidate Committee	Local Candidate Committee	State Party Multicandidate Committee	Caucus Committee	Multicandidate Committee	Small Donor Committee
"Person" (includes any corporation, union, or individual)	\$2,900 Statewide \$2,000 Senate* \$1,000 House	\$1,000 per election	\$2,900 per year	\$2,900 per year	\$2,900 per year	\$250 per "person" per year plus \$250 x organization's members who live anywhere; plus multiples of \$50,000 of paid staff time; corporations are "persons" and can be members of membership organizations; identities of members can be secret
"Person" (only any corporation or union)	\$50,000 or multiples of \$50,000 in paid staff time	\$50,000 or multiples of \$50,000 in paid staff time				
State-Level Candidate Committee	\$2,900 Statewide \$2,000 Senate* \$1,000 House	\$1,000 per election	\$2,900 per year	\$40,000	\$2,900 per year	0
Local Candidate Committee	\$2,900 Statewide \$2,000 Senate \$1,000 House	\$1,000 per election	\$2,900 per year	\$40,000	\$2,900 per year	0
State Party Multicandidate Committee (1 per party)	\$30,000 Statewide \$10,000 Senate \$10,000 House	\$2,900 per election	\$2,900 per year	\$2,900 per year	\$2,900 per year	0
Caucus Committee (2 per party)	\$40,000 per year	\$40,000 per election	\$2,900 per year	\$40,000 per year	\$2,900 per year	0
Multicandidate Committee	\$2,900 Statewide \$2,000 Senate* \$1,000 House	\$1,000 per election	\$2,900 per year	\$3,000 per year	\$2,900 per year	0
Small Donor Committee (SDC)	The greater of \$25,000 or \$25 per person who resides, works, or goes to school in Oregon and who contributed to the SDC or was a member of a membership organization that contributed anything to to the SDC; plus all paid staff time contributed to the SDC by membership organizations		0	0	0	Unlimited
Oregon Fed Candidate	0	0	\$2,900 per year	\$40,000 per year	0	0
Non-Oregon Fed Candidate	0	0	\$2,900 per year	\$40,000 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

Cells in pink are effectively unlimited.

Cells in green show very high limits for Caucus Committees compared with Political Party Committees.