CONCERNS ABOUT TO HB 4024-3

Honest Elections Oregon

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HB 4024-3 has very large loopholes in its contribution limits and disclosure and disclaimer requirements that render those limits and requirements largely irrelevant to sophisticated providers and users of money in Oregon politics.

TABLE OF CONTENTS

We have identified a few of the loopholes, after first receiving a copy of the bill on February 21, 2024. These loopholes were conveyed to the labor-business group supporting HB 4024-3 on February 21, 2024.

CONTRIBUTION LIMITS

Contribution limits expressed as "persons" instead of "individuals."

Initiative Petition 9 (IP 9) and Initiative Petition 42 (IP 42) authorize contributions by "individuals," as does federal law applicable in campaigns for federal office (since federal law bans contributions by corporations and unions)

But HB 4024-3 authorizes contributions by "persons," without changing the current definition of "person" in Oregon campaign finance law, ORS 260.005(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.

In Oregon election law there are no definitions of association or club or organization. Expressing contribution limits in terms of "persons" rather than individuals effectively multiplies the contribution limits available to anyone and any entity, because any of them can create new "persons" and enjoy additional instances of the authorized contributions.

Contribution limits apply only to receipts of contributions, not the giving of contributions.

HB 4024-3 contains no limits on the giving of contributions, only on the receiving of contributions by candidates and committees. This will seriously constrain enforcement, as contributors cannot be charged with violations, no matter how much they contribute. IP 9 and IP 42 impose the limits on both the giving and the receiving of contributions, thus enabling enforcement on both parties and deterring contributions that are not allowed.

Very large in-kind contributions by anyone and any entity.

HB 4024-3 allows any person to provide to any candidate (apparently per rolling 12-month period--another complication):

> physical space (office space, parking, etc.) limited to 2,500 square feet
> legal services (undefined and unlimited)

- other personal services of child care, elder care, and transportation services (unlimited)
- $5,000 of food and beverages
- $5,000 of transportation
- $1,000 of small gifts

Of particular concern is the unlimited quantity of "legal services," which is undefined. As FORBES magazine stated in its article *"Legal Services" Are Whatever Buyers Need to Solve Business Challenges* (March 3, 2019):

> Lawyers have a penchant for defining terms. Why then is there no commonly accepted meaning for "legal services?"
>
> Both Thomson Reuters and ALM rightly put the Big Four [accounting firms] in their own category among legal service providers. Each has a global brand, geographic imprint, deep C-Suite ties, Fortune 1000 client penetration, vast war chests, technological, digital, and process expertise, multidisciplinary workforces, digital transformation expertise, and significant investment in human resources, technology, and ongoing training. The Big Four are all focused on winning more "legal" business from their managed services capability. They are offering an integrated services model that operates at the intersection of tax, finance, consulting, strategy, information technology and project management.

So "legal services" could encompass everything necessary to run a campaign, and HB 4024-3 allows the donation of unlimited "legal services" to every candidate by any individual, corporation, union, club, association, foreign corporation, etc.

Membership Organizations allowed to receive and make very large contributions.

HB 4024-3 allows Membership Organizations to be composed of individuals or entities, which means that every trade organization is a membership organization.

HB 4024-3 allows Membership Organizations to receive unlimited donations from any person (individuals, corporations, unions, associations, foreign corporations or entities, etc.). It allows any Membership Organization to contribute per "election":

- $3,300 x 10 per election (totals to $6,600 x 10 per election cycle) [that means $66,000 in the election year] to any statewide candidate

- $3,300 x 5 per election (totals to $6,600 x 5 per election cycle) [that means $33,000 in the election year] to any legislative candidate

> $25,000 to any and all multicandidate committees, with no limit on the number of multicandidate committees

Any Membership Organization may also contribute to any statewide candidate 36 FTE per calendar year of in-kind services, with no stated restrictions as to what those services are--except that they cannot be persons who served as paid campaign consultants during the previous 18 months. That still allows the Membership Organization to hire expensive professionals, providing a value in the range of $450,000 to any statewide candidate per calendar year. If the candidate begins her campaign in the year before the election year, this contribution can be in the range of $900,000 over the two calendar years (36 FTE x $150,000/year value of professional x 2 calendar years). The allowed in-kind contribution to any non-statewide is 12 FTE per year per candidate and could amount to $300,000 (12 FTE x $150,000/year value of professional x 2 calendar years).

The HB 4024-3 has ineffective anti-proliferation language for Membership Organizations:

> SECTION 3. (1) If two or more membership organizations are substantially controlled by the same person or group of persons, they are considered one membership organization for purposes of this act.

That does not cover when multiple Membership Organizations are established or funded by the same source, which is covered in IP 9. The HB 4024-3 language would allow a well-funded individual or entity to create several Membership Organizations and provide unlimited funding to all of them, as long as each of them is nominally under the "control" of a different person.

The HB 4024-3 allows non-human entities (corporations, unions, clubs, associations, etc.) to be members of Membership Organizations, thus introducing another proliferation problem.

Small Donor Committees (SDCs) allowed to make very large contributions.

Under HB 4024-3, anyone and any entity can create an SDC. SDCs can receive contributions from any individual (although HB 4024-3 does not define "individual").

HB 4024-3 allows any SDC to contribute to any statewide candidate (twice during the election year) basically $33,000 times each increment of 2,500 contributors to the SDC. Thus, if a SDC has 10,000 donors, it can contribute to any statewide candidate $33,000 x 4 = $132,000 twice during the election year = $264,000.

HB 4024-3 allows any (SDC) to contribute to any candidate for the Oregon Legislature (twice during the election year) basically $16,500 times each increment of 2,500 contributors to the SDC. Thus, if a SDC has 10,000 donors, it can contribute to any legislative candidate $16,500 x 4 = $66,000 twice during the election year = $132,000.

The HB 4024-3 also allows any Small Donor Committee (SDC) to contribute to any multicandidate committee the same that it can contribute to a legislative candidate: $132,000 during the election year. There is no limit on the number of multicandidate committees receiving those funds. Each multicandidate committee can then contribute to candidates, political parties, caucus committees, and other multicandidate committees.

These very high SDC limits are only for very large SDCs, those with 2,500 or more contributors. HB 4024-3 has unreasonably low limits for small SDCs. For example, an SDC with up to 2,499 contributors can contribute only $3,300 to a candidate per election. That is far less than allowed by IP 9, which would allow such an SDC to contribute $20,000 to a statewide candidate or $10,000 to any other state candidate or $5,000 to any local candidate.

HB 4024-3 allows candidates of major parties twice the contributions as candidates of minor parties.

HB 4024's contribution limits are per "election," with the official primary and general elections apparently considered to be separate. Since minor parties in Oregon are not allowed to have official primary elections, supporters of their candidates can contribute only once up to the contribution limits. But others can apparently contribute to any major party candidate up to the contribution limits twice, once for the primary and again for the general Election.

HB 4024-3 severely restricts political parties.

The HB 4024-3 contribution limits on political parties are extraordinarily low. All of the entities and divisions of any political party, taken together, can contribute only $5,000 to a candidate per election. In contrast, IP 9 allows $50,000 to a statewide candidate and $10,000 to any other candidate.

HB 4024-3 allows each political party to have only one "political party multicandidate committee" and apparently (but not clearly) intends that all contributions by all entities and divisions of the party be made through that committee.

HB 4024-3 restricts the contribution limits adopted by local governments.

The voters of Multnomah County adopted a $500 limit on contributions to candidates per election cycle by individuals or political committees in 2016 by a "yes" vote of 89%. The voters of the City of Portland did the same in 2018 by a "yes" vote of 87%.

Section 3(c)(B) of HB 4024-3 prohibits any local government from adopting contribution limits that do not allow contributions to candidates by other candidate committees, multicandidate committees, legislative caucus committees, and political party committees.

Foreign corporations and entities allowed to make expenditures and contributions.

IP 9 bans contributions and independent expenditures in Oregon elections by all foreign corporations and entities. Without that ban, they can make unlimited contributions and independent expenditures regarding ballot measures and can form Membership Organizations and take advantage of the extremely high limits on contributions to candidates from such organizations.

No limits on carrying over funds from one election cycle to another.

HB 4024-3 does not limit the ability of candidates or political committees to carry over unlimited funds from one election cycle to another, which gives them unfair advantage over newcomers, who would be required to comply with the limits. Such benefit to incumbents is considered a severe "red flag" by the United States Supreme Court, warranting striking down the entire law as violation of the First Amendment.

DISCLOSURE REQUIREMENTS

The disclosure requirements in the HB 4024-3 appear illusory. There are no disclosure requirements applicable to amounts raised or spent by candidate campaigns or ballot measure campaigns (for or against).

The only requirements apply to independent expenditures about candidates and only to persons spending $50,000 or more on such independent expenditure during the election cycle. Such independent spenders are required only to disclose their "donors" of $5,000 or more (no time period specified). There are no anti-proliferation provisions applicable to "donors," so any source of funds could create clubs or associations and split up its donations so that none of them reach the $5,000 threshold and none of them have to be disclosed.

National experts who have read HB 4024-3 find it confusing:

> Tracing to original sources is only required for a donor "who spends an aggregate of $50,000 on independent expenditures in an election cycle" (Section 13(4)(a)). Read literally, it means a donor must separately spend $50,000 on independent expenditures directly, i.e., on its own ads, which means there will be no tracing to original sources because big donors will just not buy their own ads (and largely already don't do that, which is why tracing is important).

HB 4024-3 effectively has no drill down to the original sources of funds. If funds are considered "business income," then only the name of the business is required, and the business need not disclose where its funds originated. The labor-business group's proposal includes as "business income" to any entity "contributions or donations" that are "membership or union dues **or donations paid to the person**." So an entity can receive unlimited "donations paid to the person" ("person" includes entities) and convey those funds to the independent spender without disclosing the sources of those funds. IP 9 does not have this loophole, because it limits such "membership or union dues or donations paid to the person" to $2,500 per year.

A national expert comments:

> The definition of "business income" has no cap on the amount of membership dues or donations that may be included (Section 13(4)(c)(A)); this would seemingly allow, for example, a trade association to say that election year membership dues are $100,000 and thereby hide the true sources of their money.

There is no established timeline for the disclosure required by the labor-business group proposal.

DISCLAIMER REQUIREMENTS

Current law does not require any disclaimers (taglines) on advertising paid for by candidate committees or advertising bout ballot measures. It applies only to some independent expenditure advertising about candidates and is (and has been) easily evaded by routing funds through nice-sounding nonprofit corporations. It also exempts all advertising paid for by for-profit corporations, who need not disclose their sources of funds for the ads.

HB 4024-3 contains no change to the existing ineffective disclaimer requirements, except that:

- it exempts all advertisements costing less than $10,000 each from any disclaimer requirement

- it requires certain advertisements to have links to websites where more information may be found

A national expert states:

> Existing law is amended to only require top donor disclaimers on ads that individually cost $10,000 or more (Section 15, ORS 260.266(2)(a), (5)). Disclaimers should generally apply based on the spender, not the cost of the ad itself, and taking this approach could incentivize buying multiple $9,000 ads to avoid disclaimers.

IP 9, in contrast, requires that candidate or independent spenders spending more than $10,000 on political advertising about candidates or measures name the 4 largest funders to them of more than $5,000 each.

PENALTIES AND ENFORCEMENT PROVISIONS

HB 4024-3 has only one very minor change to existing enforcement procedures, which allow partisan officeholders to waive violations or impose less than adequate penalties without being subject to judicial review. The change is that the person alleging a violation of campaign finance law can request that the Secretary of State convene an administrative hearing, if the potential penalty for the alleged violation is $10,000 or higher. The result of an administrative hearing, even if the request is granted, is ultimately a decision on the alleged violation by the Secretary of State, not by any independent person. HB 4024-3 provides for no judicial review, if the Secretary of State disregards the complaint or imposes an inadequate penalty. IP 9 provides for the opportunity for judicial review in that circumstance.

VOTERS' PAMPHLET CHANGES

The HB 4024-3 includes no improvements to the Voters' Pamphlet. IP 9 doubles the space allowed for each candidate, eliminates the fee for low-funded candidates, and requires that the Secretary of State maintain an online Voters' Pamphlet that shows the largest original source donors to each candidate and each ballot measure.

NO CLOSING OF BRIBERY LOOPHOLE

HB 4024-3 does not close the loophole in Oregon's law defining bribery of public officials, which allows bribery by means of campaign contributions. IP 9 closes the loophole.

OPERATIVE DATES DO NOT WORK

The HB 4024-3 has an operative date for the contribution limits of January 1, 2026. That would be in the middle of an election cycle and thus would not work, because established candidates and political players would have amassed money under the prior "no limits" system earlier in the same election cycle, while new candidates and new players would be required to comply with the limits. Such benefit to incumbents is considered a severe "red flag" by the United States Supreme Court, warranting striking down the entire law as a violation of the First Amendment.

The HB 4024-3 has an operative date for the disclosure requirements of January 1, 2028. That is a substantial delay of over 3 years, particularly since their proposal repeals the existing disclosure requirements for entities making large independent expenditures (ORS 260.275 - .285).