PROBLEMS WE FIXED IN HB 4024

Honest Elections Oregon

March 6, 2024

This lists the major changes in HB 4024 that the Honest Elections Oregon coalition negotiated. Some of the changes to the original HB 4024-3 amendment were implemented in the HB 4024-5 amendment on March 1. Others are implemented in the HB 4024-8 amendment released last night.

1. Reduce Small Donor Committee (SDC) contribution limits to candidates to $10 per annual donor to the SDC for statewide candidates and $5 per donor to the SDC to other candidates.

HB 4024-8 replaces the HB 4024-5 limits of $33,000 per 2,500 donors to the SDC and a total of $3,300 for any SDC with fewer than 2,500 annual donors. The new limits are higher for small SDCs (fewer than 2,500 donors) and lower for large SDCs (2,500 or more annual donors).

2. Reduce Small Donor Committee (SDC) contributions to multicandidate committee committees.

HB 4024-3 allowed any SDC to contribute $25,000 to any multicandidate committee per election = $50,000 in the election year

HB 4024-5 reduced that to $5,000 to any multicandidate committee per election = $10,000 in the election year

3. Restrict the definition of "person" in the contribution limits.

HB 4024-3 authorized 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.

HB 4024-8 restricts the term "person" for contribution limits:

> "For purposes of candidate contributions, clubs, societies, associations, organizations other than membership organizations, and anonymous LLCS are not authorized contributors."

4. Equalize contribution limits between major party and minor party candidates.

HB 4024-3 and HB 4024-5 allowed major party candidates to receive double the contributions allowed to minor party candidates, merely because major party candidates have a primary election, and the contribution limits to candidates are expressed as "per election." HB 4024-8 fixes this unfairness by deeming that a candidate seeking a minor party nomination is participating in the ongoing primary election, even though that candidate will not appear on any primary election ballot. So the minor party candidate can receive an instance of the contributions allowed by HB 4024-8 during the same period as a major party candidate running in the primary.

5. Anti-proliferation of membership organizations in order to evade the contribution limits.

HB 4024-3 had ineffective language that allowed anyone to create and fund an unlimited number of membership organization, as long as each was under the "control" of a different person or group.

HB 4024-5 changed the anti-proliferation provision to:

> SECTION 3.(1)(a) For purposes of the contribution limits established in sections 4 and 5 of this 2024 Act, contributions made or donations received by multiple membership organizations are considered to be made or received by a single membership organization, if the membership organizations are established, financed, maintained or controlled by the same person or substantially the same group of persons, including any parent, subsidiary, branch, division, department or local unit of the person or group of persons.

6. Anti-proliferation of entities in general in order to evade any requirement of the Act.

HB 4024-5 added this generic anti-proliferation provision:

> SECTION 17.(2) A person may not establish an entity solely for the purpose of obscuring the original source of funds used to pay for candidate campaign independent expenditures or evading contribution limits.

The HB 4024-5 version included the word "solely," which meant the prohibition applied only if there was no other reason for creating the entity, rendering enforcement effectively impossible.

HB 4024-8 removes the word "solely," thus making the prohibition enforceable.

7. Reduce Membership Organization cash contributions.

HB 4024-3 allowed any Membership Organization to contribute per "election":

> $33,000 to any statewide candidate

> $16,500 to any non-statewide candidate

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

HB 4024-5 reduced the limit on contributions by a Membership Organization to a multicandidate committee from $25,000 per year to $5,000 per year.

HB 4024-8 reduces the limits on contributions by a Membership Organization to a statewide candidate from $33,000 per election to $26,400 per election.

HB 4024-8 reduces the limits on contributions by a Membership Organization to a non-statewide candidate from $16,500 per election to $13,200 per election.

8. Reducing allowable in-kind services from Membership Organizations to candidates.

HB 4024-3 allowed any Membership Organization to provide 36 FTE to any statewide candidate and 12 FTE to any candidate for the Oregon Legislature, consisting of services of any type, as long as not by professional political consultants or those who have had such jobs during past 18 months.

HB 4024-8 reduced the allowable in-kind services by membership organizations: "provided that the staff time is limited to administrative support, direct voter contact, community organizing, community outreach and staff support for direct voter contact, community organizing or community outreach activities."

The allowance for in-kind services from Membership Organizations does not apply to candidates for local office, for Circuit Court Judge, or for District Attorney.

9. Reducing in-kind contributions by anyone and any entity.

HB 4024-3 allowed any person or entity to provide to any candidate (apparently per rolling 12-month period):

> 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 translation services (unlimited)
> $5,000 of food and beverages
> $5,000 of transportation
> $1,000 of small gifts

Of particular concern was 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?"
>
> 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.

HB 4024-5 restricted in-kind legal services to those required to comply with election laws or defend against charges of violations and reduced the food and transportation in-kinds for non-statewide candidates to $2,500.

10. Political party contribution limits.

HB 4024-3 limited any political party to contributing $5,000 to any candidate. This is very low and could serve as a poison pill that could prompt the United States Supreme Court to strike down the entire set of contribution limits, as they did for the Vermont contribution limits in 2006.

HB 4024-8 increases the limits for any Oregon official political party (as a whole) to $30,000 to a statewide candidate and $15,000 to any other candidate.

Oregon has two official major parties and six active minor parties.

11. Closing the "campaign contribution" loophole in Oregon's bribery laws.

Current Oregon law on criminal bribery of public officials, ORS 162.005-.035, has loophole unique to Oregon. It exempts campaign contribution from the definition of "pecuniary benefit," so someone can negotiate "to influence the public servant's vote, opinion, judgment, action, decision or exercise of discretion in an official capacity" in direct exchange for a campaign contribution. No other state has this exemption. Oregon courts have ruled that campaign contributions can be used this way, even if the contributions are never disclosed to the public, on ORESTAR or otherwise.

HB 4024-3 did not address this.

HB 4024-5 closes the bribery exception, if "the contribution is made in exchange for a promise to perform or not perform an official act."

12. Reducing ability of candidates to carry unspent campaign funds over to future elections.

HB 4024-3 did not address this.

HB 4024-5 required candidates to divest themselves of most campaign funds remaining after the election. But it allowed candidates to give the carryover funds to "501c organizations," which includes labor unions and business associations. This raises the prospect that the recipient unions and business associations could then "return" the funds to the candidate in the next election cycle, directly or indirectly. This is unfair to competing candidates.

HB 4024-8 changes "501c" to "501(c)(3)", which defines tax-exempt charitable or educational foundations that are prohibited by federal tax law from contributing to candidates or making independent expenditures for or against candidates. So any recipient 501(c)(3) could not give the money back to the

candidate without violating federal tax law.

13. Not destroying the City of Portland program for providing limited public funding to candidates for city office.

HB 4024-3 stated that candidates for any state or local office may receive contributions only from the sources and in the amounts authorized by HB 4024-3. But nowhere in HB 4024-3 was any mention of a candidate receiving funds from a public funding program, such as the Portland program that matches small private contributions ($20 or less) with public funds. Thus, HB 4024-3 would have abolished the Portland public funding program and would have prohibited any other local government from adopting one.

HB 4024-5 expressly allows candidates to receive public funding, if any government entity provides such funding.

14. Not restricting the contribution limits adopted by local governments.

The voters of Multnomah County adopted (by charter amendment) a $500 limit on contributions to candidates per election cycle (a 4-year period for each office) by individuals or political committees in 2016 by a "yes" vote of 89%. The voters of the City of Portland did the same (by charter amendment) in 2018 by a "yes" vote of 87%.

HB 4024-3 prohibited 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.

HB 4024-5 preserves the authority of Multnomah County and the City of Portland (or their voters by initiative) to implement any contribution limits they adopt. It also effectively preserves the opportunity for other local governments and their voters to adopt such contribution limits.

15. Prohibiting contributions and expenditures by foreign corporations, entities, and nationals.

HB 4024-3 did not address this.

HB 4024-5 bans foreign corporations, entities, and nationals from making "a candidate campaign contribution or expenditure, or make a donation used by an entity to pay for candidate campaign independent expenditures."

16. Correcting an erroneous definition that would have disabled the disclosure and disclaimer "drill down" requirements.

HB 4024-3 and HB 4024-5 contained an erroneous definition of "business income" that would have allowed any person or entity to receive large donations or dues from others for spending on political advertisements without ever disclosing the sources of those donations or dues. It would have exempted from the disclosure and disclaimer requirements the source of any such donation or dues from a person or entity exceeding $5,000 in a year.

HB 4024-8 corrects this error by requiring drill down to the original sources of such donations or dues.

17. Not exempting individual ads or small groupings of ads from the disclaimer requirements.

HB 4024-3 and HB 4024-5 removed the disclaimer requirements for "a communication in support of or in opposition to a clearly identified candidate" that costs less than $10,000. That could allow a media buyer to break up a large ad buy into smaller pieces so that all of the invoices would be below $10,000.

HB 4024-8 closes this loophole by requiring the disclaimers on any communication "that costs at least $10,000 for the entire placement of the communication and substantially similar communications.

18. Increased penalties for violation of campaign finance laws.

HB 4024-3 did not address this.

HB 4024-5 authorized but did not require the Secretary of State to adopt by rule increased penalties "for successive knowing and willful violations of the disclosure provisions of this 2024 Act."

HB 4024-8 requires the Secretary of State to adopt by rule increased penalties "for successive knowing and willful violations" of either the disclosure provisions and of the contributions limits.

19. Making enforcement more independent from partisan public officers.

Under current law, decisions on enforcing campaign finance law are made by the Secretary of State or by the Attorney General (in very limited cases). They are both elected on a partisan basis. Non-enforcement or excessively lenient enforcement decisions are not subject to judicial review, because only the person

or entity charged with the violation can appeal the decision by the Secretary of State or Attorney General.

HB 4024-3 did not address this.

HB 4024-8 provides that, in cases where the potential penalty exceeds $10,000:

> the complainant may require the conducting of an evidentiary hearing before an Administrative Law Judge at the Office of Administrative Hearings; and

> the final decision is made by the Administrative Law Judge, not by a partisan elected official.

20. Other problems with HB 4024-3 and HB 4024-5.

We provided corrections to many other glitches and irrational provisions of HB 4024-3 and HB 4024-5.