

TESTIMONY ON HB 4024

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Honest Elections Oregon

Rules Committee of Oregon State Senate

March 7, 2024

The changes that the Honest Elections Oregon coalition was able to obtain to HB 4024-3 and HB 4024-5 take HB 4024-8 (A-Engrossed) over the threshold of acceptability, particularly compared with the alternative.

The alternative would have been a legislative referral to voters of a measure based on earlier version (perhaps HB 4024-3 or perhaps worse), with the Oregon Legislature then writing its own ballot title and explanatory statement in order to obtain more votes for the referral than for would be earned by our Initiative Petition 9 (IP 9). If the referral were passed by voters with more votes than received by IP 9, all of its provisions in conflict with the text of the referral would be nullified. That would very likely constitute all of IP 9, as the referral would be written to accomplish that. And, as House Republican Leader Rep. Helfrich stated at the House Rules Committee work session on HB 4024-8, the outcome of the election would be influenced by which side spends the most money. Since the largest labor union and business interests in Oregon would be on one side, facing only impecunious activists, by far the bigger spender would be no surprise.

I thank Chair Julie Fahey and her assistant, Scott Moore, for conducting the negotiation process in a very professional manner.

I attach a list of changes that the Honest Elections Oregon coalition obtained to HB 4024-3 and HB 4024-5.

I attach a table showing the contribution limits in HB 4024-8 (A-Engrossed).

I attach a list of volunteer activists essential to the cause of true campaign finance reform in Oregon since 1998.

PROBLEMS WE FIXED IN HB 4024

Honest Elections Oregon Coalition

March 7, 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 on March 5.

- 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 periods 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.

HB 4024-5 also added this provision:

SECTION 3.(1)(c) Notwithstanding paragraph (a) of this subsection, membership organizations may not be considered established, financed, maintained or controlled by the same person or within the same group of persons if the membership organizations have the authority to make independent decisions as to which candidates, if any, to support or oppose.

To qualify for this exception to the prohibition on proliferation of membership organizations by the same person substantially the same group of persons, the membership organization will need to demonstrate true independence in deciding which candidates to support or oppose, uninfluenced by the organization's sources of funds.

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. If enabling the person to make additional campaign contributions is one of his motivations for creating the entity, then its creation is unlawful. If enabling the person to obscure the original source of funds used to pay for independent expenditures is one of the motivations for creating the entity, then its creation is unlawful.

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." "Administrative support" and "staff support" mean clerical-type services, not professional services.

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 any person authorized to make contributions.

HB 4024-3 allowed any person authorized to make contributions to provide to candidates in the aggregate (per 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 per election to any candidate. This 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 per election to a statewide candidate and \$15,000 per election 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. Oregon courts have ruled that campaign contributions can be used this way, even if the contributions are not 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." An "official act" can be a vote, action, judgment, decision, or exercise of discretion in an official capacity. The expression of an opinion by a public official might not be 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 who have not had leftover funds to give to 501c organizations.

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 expressly preserves the authority of Multnomah County and the City of Portland (or their voters by initiative) to implement any contribution limits they adopt, except that it requires that a Small Donor Committee be allowed to receive contributions only from individuals (human beings) and only of up to \$250 per year per individual contributor. It also effectively preserves the opportunity for other local governments and their voters to adopt such contribution limits. It states:

* * * a local government may adopt contribution limits that are lower than those required by this section for elections of the local government.

- (ii) Any contribution limits adopted by a local government under this subparagraph must allow a candidate or the principal campaign committee of a candidate for an election contest of the local government to accept contributions from any political committee from which a candidate or the principal campaign committee of a candidate for the office of state Representative may accept contributions under subsection (2)(a) of this section.

That means that the local government must allow candidates (or candidate committees) to accept contributions from other candidate committees, from multicandidate committees, from legislative caucus committees, from political party committees, and Small Donor Committees. It does not require that the local government allow any particular level of contributions from any of those committees to any candidate. Thus, a local government could set any level of allowed contributions from those committees, other than zero, provided that those levels are lower than those required by HB 4024-8 for candidates running for State Representative.

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."

This means that a foreign corporation, entity, or national is prohibited from donating to any entity that either makes independent expenditures pertaining to candidates or provides funds to other entities to make such 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 be interpreted as allowing a media buyer to avoid the disclaimer requirements by, for example, breaking 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." That means that the disclaimer requirements apply, even if the media buyer runs the same or similar advertisements on several outlets (TV, internet, etc.) and pays each outlet less than \$10,000, as long as the total amount spend on the advertisement and substantially similar advertisements equals or exceeds \$10,000. The disclaimer requirements also apply, even if the media buyer pays separate invoices of less than \$10,000 each "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 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 effectively 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:

- > any person who filed a complaint alleging a violation (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 in the case is made by the Administrative Law Judge, not by a partisan elected official.

Under existing law, such a final decision in a contested case may be appealed to the Oregon Court of Appeals by any party in the case.

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.

Contribution Limits in HB 4024-8 (adopted by House)

(per Election, except where noted)

(primary and general are considered separate elections)

Contributors ↓	Recipients					
	State-Level Candidate Committee (includes Legislature candidates)	Local Candidate Committee	Political Party Multicandidate Committees (together for each party)	Caucus Committee (1 per party per chamber)	Multicandidate Committee	Small Donor Committee (SDC)
"Person" (includes corporation, LLC, union, club, association, etc.)	\$3,300	\$3,300	\$10,000 per year	\$10,000 per year	\$5,000 per election cycle (2 years)	\$250 per year
State-Level Candidate Committee	\$2,000	\$2,000	\$5,000 per year	\$5,000 per year	\$5,000 per year	0
Local Candidate Committee	\$2,000	\$2,000	\$5,000 per year	\$5,000 per year	\$5,000 per year	0
Political Party Multicandidate Committees (together for each party)	\$30,000 Statewide Office \$15,000 all other	\$15,000	\$15,000 per year	\$15,000 per year	\$5,000 per election cycle (2 years)	0
Caucus Committees (1/party per chamber)	\$30,000 Statewide Office \$15,000 all other	\$15,000	\$15,000 per year	\$15,000 per year	\$5,000 per year	0
Multicandidate Committee	\$5,000 per election cycle (2 years)	\$5,000 per election cycle (2 years)	\$15,000 per year	\$15,000 per year	\$5,000 per year	0
Small Donor Committee (SDC)	For statewide candidate: per election, \$10 times the number of donors to the SDC during the current election cycle (2 years) For other candidate: per election, \$5 times the number of donors to the SDC during the current election cycle (2 years)		\$10,000 per year	\$10,000 per year	\$5,000 per year	0
Membership Organization (501c only; must have been alive for 18 months; must have members who pay dues or volunteer time) Members can be entities, such as corporations, unions, LLCs, etc. Section 16(2) provides: "A person may not establish an entity for the purpose of obscuring the original source of funds used to pay for candidate campaign independent expenditures or evading contribution limits."	\$26,400 to statewide candidate per election \$13,200 to other candidate per election PLUS: To any statewide candidate per year: 36 FTE months of "full-time staff equivalence," consisting of "administrative support, direct voter contact, community organizing, community outreach and staff support for direct voter contact, community organizing or community outreach activities." If a full year of such services by one person is worth \$40,000, this amounts to a value of \$120,000. To any other candidate per year: 12 FTE months of the same definition of staff services. If a full year of such services by one person is worth \$40,000, this amounts to a value of \$40,000. Membership Organizations are considered consolidated, "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."		\$10,000 per year	\$10,000 per year	\$5,000 per year	0
Federal or Other Non-Oregon Candidate Committee	0	0	0	0	0	0

Statewide Office means Governor, Secretary of State, State Treasurer, Attorney General, or Commissioner of the Bureau of Labor and Industries.

**PEOPLE ESSENTIAL TO THE CAUSE
OF TRUE CAMPAIGN FINANCE REFORM
IN OREGON SINCE 1998**

FROM THE START:

Harry Lonsdale
Linda Williams
Liz Trojan
David Delk
Greg Kafoury
Joan Horton
Sal Peralta
Travis Diskin
Norm Turrill
Jim Robison
Seth Woolley
Ron Buel
Bryn Hazell

INITIATIVE PETITION 9 (2024) CHIEF PETITIONERS

David Delk
Rebecca Gladstone
Jason Kafoury

CENTRAL TO STATEWIDE INITIATIVE EFFORTS

Bill Vollmer
Charlie Fisher
Chris Henry
David Hess
David Kolker
Dawn Regier
Debi Ferrer
Drew Kaza
Emma Darden
Emma Lugo
Gary Lietke

Greg Bourget
Greg McKelvey
James Sasinowski
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Jeff Golden
Jefferson Smith
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Nathalie Paravicini
Patrick Llewellyn
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Bill Bold
Blair Bobier
Cathy Chudy
Derek Bradley
Derek Cressman
Dominic Kukla
Ellen Ito
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