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Position on Bills at 2023 Session of Oregon Legislature:

HB 2928: Oppose

HB 2928 would repeal the Oregon law limiting anyone from offering more than \$50 per calendar year in gifts to any public official, leaving Oregon with no limit on the offering of gifts to public officials.

The rationale is that the Oregon Supreme Court concluded in 2009 in ***Vannatta v. Oregon Government Ethics Commission***, 337 Or 449 (2009), that the limit on offering of gifts somehow violated the free speech clause of the Oregon Constitution. In the same decision, the Court upheld the \$50 annual limit on what any public official can accept in gifts from any person. So the argument is that repealing the limit on the offering of gifts does not matter.

I disagree. First, the Oregon Supreme Court in 2020 in ***Trojan v. Mehrwein***, 366 Or 295 (2020), expressly repudiated much of the reasoning of the 2009 decision. Here is how Westlaw, the leading law publisher, describes ***Trojan v. Mehrwein*** (2020):

Holdings: The Supreme Court, Walters, J., held that:

- 1 limitations on campaign contributions are not facially unconstitutional, overruling ***Vannatta v. Keisling***, 324 Or 514, 931 P.2d 770 , and abrogating ***Vannatta v. Oregon Government Ethics Comm.***, 347 Or 449, 222 P3d 1077;

So the 2009 Oregon Supreme Court decision invalidating the limit on offering gifts to public officials has been abrogated. The Legal Information Institute defines "abrogate" as:

To abrogate is to formally annul or repeal a law through an act of legislation, constitutional authority, or custom.

The MERRIAM-WEBSTER DICTIONARY (2024) defines it:

as in *to abolish*
to put an end to by formal action

At the least, the state of the Oregon constitutional law in this subject area is in flux. I cannot say that the Oregon Supreme Court would today make the same decision that it made in ***Vannatta v. Oregon Government Ethics Commission*** in 2009 to invalidate the gift offering limit.

So repealing the \$50 gift offering limit is both based on an incorrect view of current Oregon constitutional law and is meaningful. If that limit is repealed, there cannot be a case brought to decide whether the limit is still considered constitutionally invalid. No person is allowed to challenge or seek to validate the constitutionality of a law that does not exist.

Thus, HB 2928 is a method of freezing a 2009 Oregon Supreme Court decision that the leading law publisher lists as "abrogated" and making that decision immune from reconsideration.

You might ask why anyone would offer a gift of more than \$50 per year to a public official, since each public official is prohibited from accepting it. It could be a sign of "goodwill" toward the public official. "We offer you a fully paid vacation to Hawaii. Oh, you cannot accept it? Too bad, because our offer shows that we really like you."

We recommend rejection of this bill.

Oregon Progressive Party

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