



LPRO: Legislative Policy and Research Office

# CAMPAIGN FINANCE

## BACKGROUND BRIEF

This brief will provide an overview of the primary types of campaign finance regulations and methods of regulation employed in Oregon.

There are three main methods employed by states for regulating campaign finance that are commonly utilized in combination: disclosure, contribution limits and public financing. These methods of regulation are implemented:

- Requiring disclosure and reporting of campaign contributions and expenditures;
- Setting contribution limits to campaigns; and
- Providing a system for public financing of elections.

A candidate, political action committee or political party must register with the state election administration agency, maintain receipts from contributions and expenditures, and report them on dates established by the legislature. This information is published by the election administration agency so that it is searchable by the public so that they can see the sources of a funding for elections.

The second method of regulating campaign finance is with the establishment of contributions limits on the amount of money any group or individual can contribute to a campaign. States have established limits on how much an individual can contribute to a state campaign; how much a political party can contribute to candidate; or much PACs can contribute.

The third method states use to regulate campaign spending is by providing a means by which candidates can accept public funds to conduct their campaign.

### ROLE OF THE COURTS

The ability to regulate campaign finance has been limited by a substantial body of federal and state case law. Decisions made by the Courts limit the choices available to lawmakers when considering campaign finance

policy. Consistently, state and federal courts have found the use of money in political campaigns is the equivalent of expressing political opinion; laws regulating those areas may violate constitutional free speech guarantees. The impact of the Courts position primarily limits the ability to regulate campaign contributions and expenditures.

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States must provide evidence showing specific harms to the public interest that the laws are intended to prevent. A state must also take care to “narrowly tailor” any laws to target the identified harm to minimize the impact on free speech rights.

The U.S. Supreme Court analysis is built on the concept that limits on contributions are a permissible method to avoid the dangers of corruption. In general, courts tend to look at the entire law together. For example, while some limits might be suspect standing alone, they may be upheld if shown they are intended to plug loopholes. By the same token, courts frown on outright bans, believing in most cases some form of limited contributions ought to be allowed.

### CONTRIBUTION LIMITS

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Oregon is one of four states with no limits on contributions (along with Missouri, Utah, and Virginia). The Oregon Supreme Court has found that limits on contributions to political campaigns generally violate the Oregon Constitution. The passage of Ballot Measure 47 (2006) technically put contribution limits in Oregon statute, but those limits are not enforceable unless or until the constitution is amended or interpreted to allow such limits.

### OREGON LEGAL HISTORY

Oregon’s constitution is more protective of free expression rights than the federal, Oregon courts first analyze laws under the state constitution. If a law passes muster under Article I, section 8, a court will then turn to analysis under federal law. In that way, the U.S. Supreme Court’s analysis serves as a minimum level of protection of free speech. The First Amendment applies to the states via the 24<sup>th</sup> Amendment, so all of Oregon’s laws

are subject to the First Amendment. However Oregon is free to further protect speech.

If the Oregon Constitution is either amended or interpreted by the Oregon Supreme Court to allow contribution limits, then the federal framework for analyzing these laws will be front and center

The Oregon Supreme Court first looked at contribution limits when reviewing Ballot Measure 9 (1994). Ballot Measure 9 limited campaign contributions by individuals and political action committees (PACs) in legislative and statewide races.

The measure was challenged In [VanNatta v. Keisling, 324 Or. 514; 931P.2d 770 \(1997\)](#), the court found that campaign contributions are a form of speech protected by the Oregon Constitution. Article 1, section 8 of the constitution provides: ...

“If the Oregon Constitution is amended or interpreted by the Supreme Court to allow contribution limits, the provisions of ORS chapter 259 could become operative. However, this law goes further than most states, and several sections likely raise federal constitutional concerns. Federal courts have found limits on candidates’ personal contributions and individuals’ independent expenditures violate the U.S. Constitution.”

In 2012, the Oregon Supreme Court considered the case of *Hazell v. Brown* regarding the implementation of campaign contributions that were adopted in Ballot Measure 47 (2006). The Secretary of State and the Attorney General determined in 2006 that since Ballot Measure 46, the constitutional amendment to allow the legislature or the people to create limits on campaign



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contributions and spending by enacting a statute, did not pass, the statutory limitations would not be enforced. The Court concluded that the campaign finance limits were inoperative and that according to the plain text of the measure itself, the limits were dormant.

### FEDERAL LAW

Currently, federal election laws provide that individuals can only contribute \$2,700 to candidates, while PACs are limited to \$5,000. For the [2015-2016 cycle](#), the federal limits for individuals and PACs are:

states to amend or completely change their election protocols. Each state is also subject to decisions from both local and federal courts.

This page provides an overview of some of the most important Supreme Court decisions dealing with Campaign Finance

- [Buckley v. Valeo, 424 U.S. 1 \(1976\)](#), the court found dangers of corruption sufficient to allow reasonable limits to free speech rights of the First Amendment to the U.S. Constitution, which provides:

Congress shall make no law abridging the freedom of speech...

### CONTRIBUTION LIMITS FOR 2015-2016 FEDERAL ELECTIONS

DONORS	RECIPIENT			
	Candidate Committee	PAC1 (SSF/ Nonconnected)	National Party Committee	Additional National Party Committee
Candidate Committee	\$2,700* per election	\$5,000 per year	\$33,400* per year	\$100,200* per account, per year
PAC - Multicandidate	\$5,000 per election	\$5,000 per year	\$15,000 per year	\$45,000 per account, per year
PAC - NonMulticandidate	\$2,700* per election	\$5,000 per year	\$33,400* per year	\$100,200* per account, per year

The U.S. Supreme Court has approved contribution limits for national political office, thus allowing the current federal contribution limits.

### FEDERAL LEGAL HISTORY

Though states must foot the bill and institute provisions for elections and any campaign finance regulations, the federal government retains judicial review over these in the form of U.S. Supreme Court rulings. Binding for all 50 states, these decisions oftentimes force

In *Buckley*, the court found that campaign expenditures were more central to the core of free expression and therefore struck down a federal law limiting expenditures.

- [Randall v. Sorrell, 548 U.S. 230 \(2006\)](#), the U. S. Supreme Court found that States cannot limit independent expenditures, and must ensure their contribution limits are high enough to enable the candidate to run an effective campaign.



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- [Citizens United v. Federal Election Commission \(2010\)](#), the U. S. Supreme Court held that corporate funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment.

After this decision, corporations and unions can spend unlimited sums of money on ads and other communications designed to support or oppose a candidate. In effect, the court held that corporations have the same First Amendment speech protections as individuals. Therefore, federal campaign finance law no longer restricts corporations or labor unions from using general treasury funds to make independent expenditures for any communication expressly advocating election or defeat of a candidate and permits corporations and unions to use treasury funds for electioneering communications.

Corporations are still prohibited from contributing directly to federal candidates, but can contribute unlimited sums to organizations, such as Super PACs and 501(c)4s, that support or oppose a candidate.

- [McCutcheon v. Federal Election Commission \(2014\)](#), the U.S Supreme Court overturned the limits on aggregate federal campaign contributions set forward in Section 441 of the Federal Election Campaign Act. The ruling means that states can place a limit on how much any individual or group contributes to any one campaign, but cannot impose aggregate limits on how much and individual or group contributes to all campaigns during an election cycle.

### OTHER STATES

States impose different types of contribution limits and statutory restrictions. The types of limits include:

- 28 states have restrictions on ability of state party committees to contribute money to a candidate's campaign;
- 22 states completely prohibit corporations from contributing to political campaigns;
- 37 states impose limits on contributions on PACs; and
- 38 states restrict the amount of money that any one individual can contribute to a state campaign.

The average contributions limits established by states on contributions to candidates from individuals, political parties, PACs, corporations and unions during the 2013-2014 were:

#### Individual Contribution Limits per Election Cycle in 38 States

Office	Average	High	Low
Governor	\$5,619	\$50,000 (NY)	\$500 (AK)
Senate	\$2507	\$12,532 (OH)	\$170 (MT)
House	\$2,375	\$12,532 (OH)	\$170 (MT)

Source: National Conference of State Legislatures

### ATTEMPTS TO BAN OUT-OF-DISTRICT CONTRIBUTIONS

Ballot Measure 6 (1994) amended the Oregon Constitution to limit out-of-district contributions to 10 percent of the total amount of candidates' contributions. Vermont attempted to limit out-of-state contributions to 25 percent. Federal courts found that both limits violated the U.S. First Amendment because neither state had evidence that out-of-district nor out-of-state



contributions posed special dangers of corruption.

In 1998, the U.S. Ninth Circuit Court of Appeals noted that Oregon's Ballot Measure 6 banned all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption (*VanNatta v. Keisling*, 151 F.3d 1215 (9<sup>th</sup> Cir. 1998)).

Many states, like Connecticut, require that all PACs donating to candidates be registered in the state.

### DISCLOSURE AND ORESTAR

While Oregon does not limit contributions, all contributions and expenditures related to any candidate, measure, or political party active in any election including initiative, referendum, and recall petition drives are required to be disclosed. All campaign finance transactions are required to be filed electronically using the Secretary of State's Oregon Elections System for Tracking and Reporting (ORESTAR).

In 2005, the Oregon Legislature passed House Bill 3458 which created ORESTAR and required all campaign contributions and expenditures to be reported to the Secretary of State's office within a rolling 30-day time period. Beginning in 2007, the public has been able to search for campaign contribution and spending information for state and local candidates, campaigns, and political action committees throughout Oregon.

Campaign finance regulation and election offenses are specified in ORS Chapter 260. A candidate, measure, or political party active in any election including initiative, referendum, and recall petition committee that expects to receive a total of more than **\$3,000** or spend a total of more than **\$3,000** for a calendar year, must file all transactions electronically using

ORESTAR. They are required to disclose contributions and expenditures within 30 days, or within seven days during the six weeks before an election.

A candidate is not required to form a committee if the candidate meets all of the three conditions:

- Candidate serves as the candidate's own treasurer;
- Candidate does not have an existing candidate committee; and
- Candidate does not expect to receive or

spend more than \$750 during a calendar year.

The \$750 includes personal funds spent for any campaign-related costs, such as the candidate filing fee and voters' pamphlet filing fee. If at any time during a calendar year the candidate exceeds \$750 in either contributions or expenditures, the candidate must establish a campaign account within three business days of exceeding the \$750 threshold.

A committee is required to report detailed information about a contributor or payee if the total amount received from the same contributor or paid to the same payee exceeds **\$100** in a calendar year (January 1 – December 31). The aggregate for a contributor includes transaction types such as cash contributions, in-kind contributions, non-exempt loans, and all pledge types. The aggregate for a payee includes transaction subtypes account payable, cash expenditure, non-exempt loan payment, and personal expenditure for reimbursement.

There are six transaction types that must be disclosed under campaign finance reporting requirements: Contribution/Pledge, Expenditure/Account Payable, Other



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Receipt, and Other Disbursement. There are also two other types: Other Account Receivable and Other, that may be used to report a transaction.

In addition to contributions, all expenditures made by state and local candidates, campaigns and political action committees are required to be disclosed using ORESTAR. The types of expenditures that are allowable by a committee include:

- Payment or furnishing of money or any other thing of value;
- Incurring or repayment of indebtedness or obligation by or on behalf of a candidate, committee, or person in consideration for any services, supplies, or equipment;
- Any other thing of value performed or furnished for any reason, including support of or opposition to a candidate, committee, or measure;
- Reducing the debt of a candidate for nomination or election to public office; or
- Contributions made by a candidate or committee to or on behalf of any other candidate or committee.

All committees are prohibited from using campaign funds for any person's personal use. "Personal" means any use of a committee's funds to fulfill a personal commitment, obligation, or expense that would exist irrespective of the campaign or duties as a public office holder, or duties involved with a political or petition committee.

Examples of prohibited personal use include, but are not limited to:

- Purchase of household food items, clothing, or supplies;

- Mortgage, rent, or utility payments for real or personal property that is owned by any individual and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage;
- Admission to a sporting event, concert, theater, or other form of entertainment, unless part of a specific campaign or office holder activity; or
- Dues, fees, or gratuities at a country club, health club, recreational facility, or vacation property, unless they are part of the costs of a specific fundraising event that takes place on the club's or facility's premises; salary to a person, unless the person is providing a bona fide service to the committee or the candidate's public office. Candidates must not pay themselves a salary or otherwise compensate themselves for lost income or for professional services rendered to their committees.

Oregon election law requires complete, accurate, and timely disclosure of contributions and expenditures by committees. If a Committee fails to provide sufficient information or does not meet the statutorily specified reporting deadlines, the Secretary of State can impose financial penalties on the Committee.

The primary types of campaign finance elections violations stem from late and insufficient contribution and expenditure filings. These types of violations include:

- Late contribution and expenditure report.
- Insufficient contribution and expenditure report.



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- New transaction not included on the original contribution and expenditure report.
- State of Independent Expenditures (PC 10) filed after its due date.

The maximum penalty for each late transaction or for insufficient transaction is 10 percent of the amount of the transaction.

The maximum civil penalty for the following offenses is \$1,000:

- Failure to file a Statement of Organization within three business days of receiving a contribution or making an expenditure;
- Failure to file an amended Statement of Organization within 10 days of a change in information; and
- Failure to establish a dedicated campaign account within three business days of receiving a contribution or making an expenditure.

The maximum penalty for a late Statement of Independent Expenditures (form PC 10) is 10 percent of the total amount reported on PC 10.

### PUBLIC FINANCING

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Half of the states provide some form of public financing, although many programs are limited in scope and provide only partial funding. Revenue for these programs is generated from a range of sources including income taxpayer check-offs, legislative appropriations, sale of unclaimed property, fees, and surcharges.

This approach has taken several different forms including:

- Clean Elections Programs: candidates collect small contributions from a number

of individuals (depending on the position sought) to demonstrate that there is enough public support to warrant public funding of his or her campaign. In return, the commission established for the program gives the candidate a sum of money equal to the expenditure limit set for the election.

- Matching Funds Programs: provide matching funds for candidates up to a certain amount.

In all cases, participation is optional. Candidates who participate agree to abide by spending limits and to limit or cease raising private contributions. *Source: National Conference of State Legislatures*

The U.S. Supreme Court upheld the federal concept of public financing, stating it is permissible to condition acceptance of public funds on an agreement to limit expenditures.

The Oregon Supreme Court has addressed public financing indirectly. In *Deras v. Myers*, the court stated that a form of public subsidy would be “less clearly subject to constitutional attack.” And, see below, in the *VanNatta* case, the court upheld tax credits as an “indirect form” of public financing.

### POLITICAL TAX CREDIT

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ORS 316.102 provides a nonrefundable tax credit of \$50 for individuals/\$100 if filing jointly, for political contributions to major or minor political party; candidates for federal, state or local elective office or political action committee.

The Oregon Legislature means tested the political tax credit in 2013. The credit is allowed for joint filers with income under \$200,000 and for individual filers with income under \$100,000.



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In the 2014 tax year, taxpayers claimed \$5.3 million in tax credits, paid from the General Fund. *Source: Legislative Revenue Office*

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### ADDITIONAL RESOURCES

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National Conference of State Legislatures  
<http://www.ncsl.org/>

Federal Elections Commission  
<http://www.fec.gov/>

ORESTAR  
<http://oregonvotes.org/index.html>

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