IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

In the Matter of: Validation Proceeding to Determine the Regularity and Legality of Multnomah County Home Rule Charter Section 11.60 and Implementing Ordinance No. 1243 Regulating Campaign Finance and Disclosure.	Civil No. 17CV18006 **COMBINED OPENING BRIEF ON REMAND OF THESE INTERVENORS:** Juan Carlos Ordonez, Jim Robison, Moses Ross, James Ofsink, Seth Alan Woolley Elizabeth Trojan, David Delk, Ronald Buel Jason Kafoury

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All of the Citizen Parties (Juan Carlos Ordonez, Jim Robison, Moses Ross, Jason Kafoury, James Ofsink, Seth Alan Woolley, Elizabeth Trojan, David Delk, and Ronald Buel) file this combined brief with Jason Kafoury, *pro se*.[1] They also incorporate all relevant portions of the following briefs filed in this case at the trial or appellate level:

No. 17CV18006:	Opening Brief of the Citizen Parties (July 11, 2017)
No. 17CV18006:	Reply Brief of the Citizen Parties (July 24, 2017) (most relevant portion filed as Exhibit 5, Declaration of Daniel Meek)
No. S066445:	Opening Brief of Intervenors-Appellants Elizabeth Trojan, David Delk, and Ron Buel (July 11, 2019)

They incorporate all relevant portions of the exhibits previously filed in the Circuit Court in this case and those filed in the Oregon Supreme Court phase of this case. The latter consist of the Excerpts of Record and Appendix filed by the Citizen Parties at the Oregon Supreme Court, which are exhibits to the new Second Declaration of Daniel Meek. We refer to material in the Excerpts or Appendix by their page numbers there.

I. NO PARTY HAS MADE THE REQUIRED EVIDENTIARY SHOWING THAT THE CONTRIBUTION LIMITS ARE A BURDEN ON PROTECTED SPEECH.

The Oregon Supreme Court in ***Multnomah County v. Mehrwein***, 366 Or 295, 329, 462 P3d 706 (***Mehrwein***) recognized that there are "factual findings that are necessary to" determining whether the contribution limits violate the First Amendment.

A party challenging the constitutionality of contribution limits must show that the

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1. This brief is shorter than their combined allotment of 45 pages.

restriction is a severe burden on speech in order to invoke strict scrutiny under the First Amendment.

The party challenging the constitutionality of contribution limits must show, with admissible evidence, that the restriction imposes a burden on speech. Courts "have never accepted mere conjecture as adequate to carry a First Amendment burden." ***Nixon v. Shrink Missouri Government PAC***, 528 US 377, 392, 120 SCt 897, 145 LEd2d 886 (2000). The rigor of the court's review depends on the magnitude of challengers' showing. In order to trigger strict scrutiny by the reviewing court, the challenging party must demonstrate a severe burden on speech. If a lesser impairment is demonstrated, the government's rationale and showing become correspondingly lesser as well. With no admissible evidence of burden on expression, the challenge fails.

> We are called upon to decide whether Oregon Ballot Measure 26's prohibition of payment to electoral petition signature gatherers on a piece-work or per signature basis unconstitutionally burdens core political speech. Because the district court did not clearly err in determining that the plaintiffs failed to establish that the challenged measure significantly burdens speech, we cannot hold the Measure imposes a severe burden under the First Amendment. Therefore, because the defendant has established an important regulatory interest in support of the Measure, the plaintiffs have failed to prove that the prohibition violates the First Amendment.

Prete v. Bradbury, 438 F3d 949, 951 (9th Cir 2006). The United States Supreme Court requires the introduction of actual evidence of burden.

> Petitioners bear a heavy burden of persuasion in seeking to invalidate SEA 483 in all its applications. This Court's reasoning in ***Washington State Grange v. Washington State Republican Party***, 552 US 442, 128 SCt 1184, 170 LEd2d 151 applies with added force here. Petitioners argue that Indiana's interests do not justify the burden imposed on voters who cannot afford or obtain a birth certificate and who must make a second trip to the circuit court clerk's office, but it is not possible to quantify, based on the

> evidence in the record, either that burden's magnitude or the portion of the burden that is fully justified.

Crawford v. Marion Cty. Election Bd., 553 US 181, 128 SCt 1610, 1612, 170 LEd2d 574 (2008).

> But on the basis of the evidence in the record it is not possible to quantify either the magnitude of the burden on this narrow class of voters or the portion of the burden imposed on them that is fully justified.
>
> First, the evidence in the record does not provide us with the number of registered voters without photo identification * * *.
>
> Further, the deposition evidence presented in the District Court does not provide any concrete evidence of the burden imposed on voters who currently lack photo identification.

Crawford, 553 US at 200-01.

In this Court's initial examination of Measure 26-184 (hereinafter the "First Round"), no party submitted evidence that the contribution limits would be a severe burden on protected speech; thus, this Court has no evidentiary basis for such a finding. Absent such a finding, those limits are not subject to strict scrutiny and need not be defended as narrowly tailored to achieve a compelling state interest.

The United States Supreme Court requires an evidentiary showing (that the contribution limit imposes a "significant inference with associational rights") to establish the need to satisfy the lesser standard that the contribution limits are "closely drawn' to match a 'sufficiently important interest.'"

> Going back to ***Buckley v. Valeo***, 424 US 1, 96 SCt 612, 46 LEd2d 659 (1976), restrictions on political contributions have been treated as merely "marginal" speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer to the edges than to the core of political expression. See ***Colorado Republican***, *supra*, at 440, 121 SCt 2351. "While contributions may result in political expression if spent by a candidate or an association ..., the transformation of contributions into political debate involves speech by someone other than the contributor."

> ***Buckley***, *supra*, at 2021, 96 SCt 612. This is the reason that instead of requiring contribution regulations to be narrowly tailored to serve a compelling governmental interest, "a contribution limit involving 'significant interference' with associational rights" passes muster if it satisfies the lesser demand of being " 'closely drawn' to match a 'sufficiently important interest.'" ***Nixon***, *supra*, at 387-388, 120 SCt 897 (quoting ***Buckley***, *supra*, at 25, 96 SCt 612); cf. ***Austin***, *supra*, at 657, 110 SCt 1391; ***Buckley***, *supra*, at 4445, 96 SCt 612.9

Fed. Election Comm'n v. Beaumont, 539 US 146, 161-62, 123 SCt 2200, 2210 (2003) (***FEC v. Beaumont***). No party has submitted evidence that the Measure 26-184 contribution limits impose a "significant inference with associational rights" or with speech rights. Absent such a finding, those limits are not even subject to the lesser standard.

The Oregon Supreme Court in ***Mehrwein*** concluded that contribution limits are not content-based restrictions. Thus, strict scrutiny is not automatic under the First Amendment.

Despite the failure of any party to satisfy the first phase of the applicable factual inquiry, the Court should cover the bases by proceeding to the second phase of factual inquiry, as outlined in ***Mehrwein***.

II. THE ISSUES SET FORTH IN *MEHRWEIN*.

The Oregon Supreme Court in ***Mehrwein***, 366 Or at 327, stated:

> The opinion in ***Randall*** framed the question as being whether the contribution limits
>
> > "prevent candidates from amassing the resources necessary for effective [campaign] advocacy'; whether they magnify the advantages of incumbency to the point where they put challengers to a significant disadvantage; in a word, whether they are too low and too strict to survive First Amendment scrutiny."

> ***Randall***, 548 US at 248 (opinion of Breyer, J.) (quoting ***Buckley***, 424 US at 21; alteration in ***Randall***; internal citation omitted).

Thus, the issues of fact identified in ***Mehrwein*** are:

1. whether the contribution limits "prevent candidates from 'amassing the resources necessary for effective [campaign] advocacy'; and

2. whether the contribution limits "magnify the advantages of incumbency to the point where they put challengers to a significant disadvantage."

Mehrwein also noted the "danger sign" analysis in the Breyer concurrence in ***Randall v. Sorrell***, 548 US 230, 126 SCt 2479, 165 LEd2d 482 (2006) (***Randall***).[2] The Ninth Circuit in ***Lair v. Bullock***, 798 F3d 736 (9th Cir 2015) (***Lair II***), applied the ***Randall*** "danger sign" factors in upholding Montana's contribution limits.

> The plurality [in ***Randall***] looked to "five sets of considerations" to determine whether the statute was closely drawn: (1) whether the "contribution limits will significantly restrict the amount of funding available for challengers to run competitive campaigns"; (2) whether "political parties [must] abide by exactly the same low contribution limits that apply to other contributors"; (3) whether "volunteer services" are considered contributions that would count toward the limit; (4) whether the "contribution limits are ... adjusted for inflation"; and (5) "any special justification that might warrant a contribution limit so low or so restrictive." *Id.* at 253-62, 126 SCt 2479; ***Lair I***, 697 F3d at 1210.

Lair II, 798 F3d at 743. It was not any single one of these considerations that led the Court to strike Vermont's limits in ***Randall***, but rather all five "taken together." ***Randall***, 548 US at 261.

This brief will address the ***Mehrwein*** and ***Randall***-identified issues. But first we review the nature of the Measure 26-184 contribution limits and the available sources of factual findings and evidence.

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2. The Oregon Supreme Court concluded that the Breyer concurrence is precedential, as the narrowest grounds for the United States Supreme Court's decision.

III. UNDERSTANDING THE MEASURE 26-184 CONTRIBUTION LIMITS.

Unlike the limits in ***Randall***, Measure 26-184 has no limits on the amounts that any candidate's campaign can spend. While Measure 26-184 has both limits on the making of contributions and receiving of contributions, expressed from the point of view of a contributor, it allows in any Election Cycle any individual to:

1. contribute up to $500 directly to any candidate for Multnomah County public office; plus

2. contribute up to $100 to any number of Small Donor Committees, each of which can contribute to any candidate(s) and can make unlimited independent expenditures to support or oppose any candidate; plus

3. contribute any amount to any number of other Political Committees, each of which can contribute up to $500 directly to any candidate and also make ~~up to $10,000 in~~ independent expenditures to support or oppose any candidate); plus

4. make independent expenditures ~~of up to $5,000~~ to support or oppose any candidate.

Because ***Mehrwein*** invalidated the limits on independent expenditures, those limits are displayed above as stricken out.

In effect, Measure 26-184 allows any individual to spend unlimited amounts of money to support or oppose any candidate, as long as a sufficient number of Small Donor Committees and/or other Political Committees exist or are created. There are no limits on the number of Small Donor Committees or Political Committees. Measure 26-184 does significantly change the way such spending must be disclosed to the public and does significantly limit contributions and independent expenditures by non-humans ("Entities"). And Measure 26-184 indexes all of its limits for inflation.

IV. THE AVAILABLE SOURCES OF FACTUAL FINDINGS AND EVIDENCE.

A. MEASURE 26-184 IS SUPPORTED BY LEGISLATIVE FINDINGS OF FACT ENTITLED TO NEAR TOTAL DEFERENCE.

This is established in the Opening Brief of the Citizen Parties (July 11, 2017), pp. 41-42. These findings are entitled to near complete deference by the courts. See Opening Brief of the Citizen Parties, pp. 42-46.

Measure 26-184 is supported by its own legislative findings of fact and those adopted by Oregon voters in Measure 47 of 2006 (App-10-19), which contains legislative findings of fact setting forth the harms resulting from the absence of limits on political contributions and expenditures and a rationale for each of the limits and why compelling state interests are served.[3]

Measure 26-184 contains pertinent legislative findings of fact:

> Whereas, the people of Multnomah County find that limiting large contributions and expenditures in political campaigns would strengthen democratic institutions, enhance public confidence in government, and reduce the cost of running for office, thereby enabling a greater diversity of persons to seek public office.

These findings fully satisfy the requirement that a non-severe burden on protected speech be rationally related to an important state interest.

Measure 47, in its introduction and Section (1), placed into Oregon law extensive legislative findings of fact setting forth the harms resulting from the absence of limits

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3. While the substantive provisions of Measure 47 of 2006 are not currently operational, its legislative findings of fact remain in Oregon law as ORS Chapter 259, § (1). Further, the opinion in ***Hazell v. Brown***, 352 Or 455, 462, 463, 466, 287 P3d 1079 (2012), expressly relied upon the words of those findings in interpreting the rest of Measure 47 and in making its determinations, so the findings are considered in effect and operational.

on political contributions and expenditures and a rationale for the each of the limits contained in Measure 47 (similar to those in Measure 26-184) and why each serves compelling state interests,

> The purpose of this Act is to restore democracy in Oregon and reduce corruption and the appearance of corruption by limiting political campaign contributions and independent expenditures on candidate races and by increasing timely public disclosure of the sources of those contributions and expenditures.

B. MEASURE 26-184 IS SUPPORTED BY THE DECLARATIONS SUBMITTED BY THE CITIZEN PARTIES.

The Citizen Parties have provided sworn evidence to support the necessary factual findings, including the declarations filed in this case in the First Round and the declarations filed in the similar City of Portland validation case (No 19CV06544) in 2019 and provided to the Oregon Supreme Court in the appellate phase of the current case. The latter declarations are now proffered in this case by means of the Declaration of Daniel Meek and are paginated according to the Appendix to the Citizen Parties' Opening Brief to Oregon Supreme Court. The content of the declarations is summarized in the Brief on the Merits of Amici Curiae Independent Party of Oregon, Oregon Progressive Party, Pacific Green Party & Honest Elections Oregon (July 18, 2019) filed at the Oregon Supreme Court in this case.

The evidence also shows that unlimited campaign contributions in Oregon and Multnomah County pose a threat of corruption and appearance of corruption. Such is demonstrated throughout the Voters' Pamphlet statements on Measure 26-184 (ER-4-11), the literature distributed to most Multnomah County households (Exhibit 3, ER-12-14), the 2016 Report of the Multnomah County Charter Review Committee (MC

ER-35), a letter submitted to that Committee on June 8, 2016 (App-47-48), the declarations of candidates filed below (ER-59-56), and the declarations filed in the similar City of Portland validation case (App-1-6), and articles in THE OREGONIAN showing that Oregon's government and campaign system is "*Polluted by Money*." App-79-115.[4]

V. THE CONTRIBUTION LIMITS ARE NOT "SUBSTANTIALLY LOWER THAN BOTH THE LIMITS PREVIOUSLY UPHELD AND COMPARABLE LIMITS IN OTHER STATES."

Mehrwein, 366 Or at 327-28, stated:

> First, the [***Randall***] opinion identified "danger signs," principally that Vermont's "contribution limits are substantially lower than both the limits we have previously upheld and comparable limits in other States." Id. at 253.

The Reply Brief of the Citizen Parties, pp. 14-15, shows that many states and local governments have contribution limits similar to or lower than those of Measure 26-184 or lower, none of which have been invalidated in court. Exhibit R3 (ER-45-46) shows the contribution limits imposed by 109 California cities for their races for city council. The limit in large cities is typically $250 - $700 (see Berkeley, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, San Jose). Seven cities there have a limit of $100. None of these limits has been invalidated in court.

Exhibit R4 (ER-47-48) shows the contribution limits in Washington, including those applicable to local offices. The contribution limit applicable to all individuals,

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4. If necessary, we request judicial notice of these documents, declarations and articles, pursuant to OEC 201(b)(2). The information contained therein appear to be "legislative facts," for which ordinary rules of judicial notice do not apply. ***State v. Clowes***, 310 Or 686, 692, 801 P2d 789 (1990); ***Ecumenical Ministries of Oregon v. Oregon State Lottery Comm'n***, 318 Or 551, 558, 871 P2d 106 (1994).

PACs, unions, corporations and other entities to a candidate for local office is $1,000 per election. Some local jurisdictions, including Seattle, have adopted lower limits. Seattle limits contributions to candidates for any public office to $500 per election. None of these limits has been invalidated in court.

Exhibit 1 to the Declaration of Daniel Meek includes an updated table of state-level contribution limits. There is no reported invalidating any of these currently effective limits.

Thompson v. Hebdon, 909 F3d 1027, 1036-37 (9th Cir 2018), upheld Alaska's contribution limits, concluding:

> Moreover, although the $500 limit is on the low-end of the range of limits adopted by various states, it is not an outlier. At least four other states (Colorado, Kansas, Maine, and Montana) have the same or lower limit for state house candidates, as do at least five comparably sized cities (Austin, Portland, San Francisco, Santa Cruz, and Seattle). We recently upheld a comparable limit. ***Lair III***, 873 F3d at 1174 tbls. 2 & 3.

Alaska's $500 limit applies to all candidates at all levels, including statewide candidates. The Measure 26-184 limits apply only to candidates for Multnomah County public office, only two of which are elected on a county-wide basis.

Thalheimer v. City of San Diego, 2012 WL 177414 (SD Cal 2012), upheld San Diego's $500 limit on contributions to candidates in city races, fully applying ***Randall***.

> [T]he $500 contribution limit * * * appears to be comparable with the contribution limits in Los Angeles ($500/$1,000), Phoenix ($488), San Antonio ($500/$1,000), San Jose ($200/$500), Jacksonville ($500/$500), and San Francisco ($500/$500). The fact that the challenged limit is lower than similar limits in several other cities is a factor to consider, but does not necessarily mean it is unconstitutionally low. See ***Montana Right to Life Ass'n v. Eddleman***, 43 F3d 1085, 1095 (9th Cir 2003) ("As long as the limits are otherwise constitutional, it is not the prerogative of the courts to fine-tune the dollar amounts of those limits."). Rather, the Court should also consider the limits previously upheld by the courts. See ***Randall***, 548 US at 250-51. In this case, the $500 limit ($1,000 per election cycle) is

> comparable to other contribution limits previously upheld. See, e.g., ***Shrink***, 528 US 377, 120 SCt 897, 145 LEd2d 886 ($275 to $1,075 for statewide office); ***Buckley***, 424 US 1, 96 SCt 612, 46 LEd2d 659 ($1,000 for federal office); ***Eddleman***, 343 F3d 1085 ($100, $200, and $400 for statewide office).

San Diego has a 2019 estimated population of 1,423,851.[5] Multnomah County's 2019 estimated population was 812,855.[6] San Diego has 75% more people than Multnomah County. See pages 18-20 for discussion of how population matters to the cost of effective candidate advocacy.

VI. THE CONTRIBUTION LIMITS DO NOT "PREVENT CANDIDATES FROM AMASSING THE RESOURCES NECESSARY FOR EFFECTIVE CAMPAIGN ADVOCACY."

A. LEGISLATIVE FINDINGS OF FACT.

The legislative findings at ORS Chapter 259, § (1), include ORS 259 § (1)(s):

> When the Measure 9 limits were in effect during the 1996 election cycle, candidates were able to amass sufficient funds to campaign effectively and have their voices rise to the level of public notice, using the contributions allowed by Measure 9. A more recent example shows that the contribution limits in this Act will allow effective campaigns. In 2004, Tom Potter won the election for Mayor of Portland, in a race involving over 350,000 registered voters, while limiting his campaign to contributions from individuals not exceeding $25 per individual in the primary and $100 per individual in the general election campaign. The reasonable limits in this Act will increase competition for public office, foster a greater robustness of political debate in Oregon, and alleviate the adverse effects noted above.

As noted above, legislative findings of fact are entitled to near complete deference by the courts.

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5. https://en.wikipedia.org/wiki/San_Diego.

6. https://en.wikipedia.org/wiki/Multnomah_County,_Oregon.

B. THE FILED DECLARATIONS.

The declarations filed in the First Round and in the similar City of Portland validation case (No. 19CV06544) also establish that the contribution limits do not prevent candidates from amassing the resources necessary for effective campaign advocacy.

Note that the testimony in the declarations is different from that submitted in the recent contribution limit cases in Montana, Alaska, and elsewhere. There, the limits under review had been in effect for some years, so candidates could testify as to their experience in complying with them. Here, the enforcement authorities (Multnomah County and City of Portland) took the position that the contribution limits enacted by Measure 26-184 of 2016) (Multnomah County) and Measure 26-200 of 2018 (Portland) did not take effect until after the Oregon Supreme Court issued its judgment in ***Mehrwein***. Thus, each of the candidates who have provided declarations here were required to compete against opponents unconstrained in accepting unlimited contributions. Consequently, they did not "unilaterally disarm" by strictly limiting contributions to their own campaigns to the $500 from individuals and PACs allowed by the two adopted ballot measures. So, unlike in Alaska and Montana, there is virtually no experience with running under mandatory contribution limits in Oregon. As described above, Oregon had statewide limits in place for the 1996 election cycle, before those limits were invalidated by ***Vannatta v. Keisling*** in 1997. No evidence has been submitted that the 1996 limits precluded prevented candidates from amassing the resources necessary for effective campaign advocacy.

1. CHLOE EUDALY.

Chloe Eudaly, a Portland City Commissioner, testified in her declaration:

2. During the 2016 election cycle, my campaign raised $93,544. Of that, $66,856 (71.5% of the total) consisted of contributions of $500 or less, and $53,871 (57.6% of the total) consisted of contributions of $200 or less.

3. My main opponent, Steve Novick, raised $606,617 in the 2016 election cycle. Of that, $288,548 (47.6% of the total) consisted of contributions of $500 or less.

4. I was able to fund a successful campaign for Portland City Commissioner primarily with contributions of $500 or less.

5. I was able to successfully communicate with Portland voters by attracting volunteers, having house parties, organizing and participating in rallies, distributing lawn signs, producing and distributing innovative campaign materials, utilizing low-cost electronic media to distribute campaign materials and fundraise, employing advanced targeting to fundraise and distribute campaign materials via direct mail, and by earning extensive coverage in the local press by offering substantive solutions to Portland's problems.

6. Limiting campaign contributions to $500 from each individual and political committee will not render political association ineffective in campaigns for Portland public office. It will not drive the sound of candidates' voices below the level of notice or render campaign contributions pointless.

2. JO ANN HARDESTY.

Jo Ann Hardesty testified in her declaration:

4. The following observations are based upon my decades of political experience but are largely drawn from my recent race to become a Portland City Commissioner.

5. It is possible to run a successful campaign for Portland city office on donations of $500 or less from any individual or political committee. Most of my campaign funding came from donations of $500 or less per donor.

6. I was able to successfully convey my message to voters by operating a grassroots campaign which included over 100 house parties, knocking on over 36,000 doors, sending text messages and making calls to voters, distributing 2,000 lawn signs, and mobilizing over 300 active volunteers.

By working to engage with people face-to-face I was able to be heard throughout the entire city while not relying on large campaign contributions.

7. My campaign raised $386,200 for the 2018 primary and general election combined. Of that, $228,195 was received from in donations of $500 or less. $173,696 was received in donations of $200 or less.

8. Limiting campaign contributions to $500 from each individual and political committee will not render political association ineffective, drive the sound of a candidate's voice below the level of notice, or render contributions pointless.

9. If Measure 26-200 had been in effect during the 2018 election cycle, various membership organizations that contributed larger amounts to me would have been able to create Small Donor Committees that could have contributed amounts greater than $500, as long as such committees did not receive any contributions except from individuals in amounts of $100 per calendar year or less. So Measure 26-200 would not have limited my campaign to raising only $228,195 in donations of under $500.

10. If Measure 26-200 had been in effect during the 2018 election cycle, my campaign would not have faced the need to counter the widespread advertising of my opponents, paid for primarily by large contributions.

11. The corruptive influence of money in politics cannot be overstated. Recent reporting on the topic has highlighted how large contributions have negatively impacted attempts to address environmental challenges facing the state. This problem exists in all other topics of lawmaking and at all levels of elected government in Oregon.

12. There is no reason or need for unlimited campaign contributions. Messages can be effectively delivered to the voters with only small contributions, and limiting the contributions from powerful special interests will help reduce the corruptive influence of money in politics.

Of the amounts that the 2018 Hardesty campaign raised in contributions exceeding $500 each, nearly all were from unions and was received in October 2018, within one month of the November 6 general election. By then it was clear that Ms. Hardesty would likely win the election, as she had already prevailed in the May 2018 primary election by a margin of 47% to 21% over her general election opponent,

Loretta Smith.[7] Excluding the amounts received during the final month of the general election campaign, 67% of Ms. Hardesty's funds came in contributions of $500 or less, while only 18% of her opponent's funds came in contributions of $500 or less. Declaration of Seth Woolley. Including the final month, 60% of Ms. Hardesty's funds came in contributions of $500 or less, while only 17% of her opponent's funds came in contributions of $500 or less. Declaration of Seth Woolley.

Ms. Hardesty then won the general election by 62% to 37%, overcoming the fact that Ms. Smith relied heavily on very large contributions. Of all funds raised by Ms. Smith, 47% came in amounts of $5,000 and higher.

3. SHARON MEIERAN.

Multnomah County Commissioner Sharon Meieran testified in her Second Declaration (August 3, 2020):

> 2. During the 2020 2-year election cycle, my campaign raised $47,931. I sought to comply with the Measure 26-184 contribution limits. My success in doing so is addressed in the Declaration of Seth Woolley, who concludes that I achieved near 100% compliance.
>
> 4. I believe that in 2020 I ran an effective campaign for Multnomah County Commissioner, almost entirely under the contribution limits of Measure 26-184 ($500 per individual and political committee).
>
> 5. I was able to successfully communicate with Multnomah County voters by attracting volunteers, knocking on doors, having house parties and rallies, distributing lawn signs, using low-cost electronic media (including websites, email, and social media) and by earning coverage in the local press by offering substantive solutions to Multnomah County's problems.
>
> 6. I believe that limiting campaign contributions elevates the voices of individual voters, encourages broader participation in elections, and

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7. As explained in the Declaration of Jefferson Smith, late contributions to the winner "are not expressions of support for the Democrat in the election. They are means to curry favor with candidates who have already been elected."

enhances democracy. It reduces the opportunities for corruption and the public perception that officeholders are beholden to their large contributors.

7. I believe that limiting campaign contributions in races for Multnomah County office to $500 from each individual and political committee would not in 2020 have rendered political association ineffective in these campaigns and will not do so in the future. It will not drive the sound of candidates' voices below the level of notice or render campaign contributions pointless.

8. If Measure 26-184 had been in effect during the 2016 election cycle, various membership organizations that contributed larger amounts to my campaign would have been able to create Small Donor Committees that could have contributed amounts greater than $500, as long as such committees did not receive any contributions except from individuals in amounts of $100 per calendar year or less.

C. THE 2018 ELECTION CYCLE.

The effective date of the Measure 26-184 limits was September 1, 2017. Despite the lack of enforcement prior to April 2020, the successful candidates for Multnomah County public office in 2018 complied with the limits. Deborah Kafoury won the contest for County Chair, having raised $132,801 during the 2-year election cycle without violating the limits. Jennifer McGuirk (non-incumbent) won the contest for County Auditor, having raised $26,742 during the 2-year election cycle, with 94.4% raised in compliance with the Measure 26-184 limits. Mike Reese (incumbent) won the contest for County Sheriff (with 97% of the vote). Susheela Jayapal (non-incumbent) won the contest for County Commissioner for District 2, having raised $149,069 with no violation of the limits.[8]

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8. All data is from the ORESTAR system maintained by the Secretary of State.

D. THE 2020 ELECTION CYCLE.

The 2020 election cycle does not offer many pertinent examples. Most serious candidates for City of Portland offices used the public funding offered by the Open and Accountable Elections (OAE) program. Some of the non-participating candidates received very large contributions, far in excess of those allowed by Measure 26-184 or Measure 26-200.

Of the three races for Multnomah County Commissioner, two were uncontested. In the only contested race--between Sharon Meieran and Jason Tokuda--Ms. Meieran raised $47,931 during 2019-2020. As explained in the Declaration of Seth Woolley, up to $3,275 did not comply with the limits (93% compliance). But nearly all of that noncompliance could easily have been avoided without reduction of the contributions. For example, she received $1,500 in total contributions directly from two unions. Those are violations, but she could have received $1,000 from the unions' political committees and been in compliance with the limits. She received one $1,000 contribution from a political committee, which was $500 over the limit. She received a contribution of $1,000 from an individual, but it could have been attributed $500 to each spouse. Other than those, there was a total of $775 in non-complying contributions (98.4% compliance).

Her opponent in the primary election, Jason Tokuda, did not register a candidate committee on ORESTAR and certified that his campaign spent less than $3,500. There is no publicly-available record of contributions to his campaign.

E. THE SIZE OF THE TARGET VOTER POPULATION.

The Court should not merely compare the contribution limits examined in other cases with the Measure 26-184 limits. Instead, the Court should consider the size of the voter population affected. The limits discussed in ***Mehrwein*** and ***Randall*** (Vermont) and ***Thompson v. Hebdon*** (Alaska) and ***Lair v. Motl***, 873 F3d 1170 (9th Cir 2017), *cert den sub nom* ***Lair v. Mangan***, 139 SCt 916, 202 LEd2d 644 (2019) ("***Lair III***") (Montana) included statewide limits. The Measure 26-184 limits are applicable only to candidates running countywide in Multnomah County (County Chair, County Auditor, County Sheriff) or running within one of the four Commissioner districts, each with one-fourth of the county's population. A smaller target population of voters means that campaigns cost less. Running from a district reduces the cost of reaching voters by mail, by phone, or by door-to-door canvassing or literature dropping. It also allows a candidate to hold more "public events per voter" than one running county-wide. The Declaration of Seth Woolley documents:

> Local candidate campaigns in Oregon generally communicate with voters by means of the Voters' Pamphlet, internet advertising, direct mail, and some radio and television ads. The cost of a Voters' Pamphlet statement is very low and does vary by the type of office, with a lower fee for local offices. The cost of postcards or brochures sent by direct mail varies almost in proportion to the number of voters reached, because the predominant element of the cost is the postage, not the printing. Internet advertising is similar, because the cost is determined by the number of impressions delivered, and it is possible to target specific geographic areas, such as a Multnomah County commissioner district.

In addition, Multnomah County is within one major media market--the Portland market consisting of 1,112,500 "TV households." Vermont (in ***Randall***), conversely, in within 3 major media markets:[9]

Media Market	TV Households
Boston	2,302,680
Albany	500,400
Burlington	283,080
total	3,086,160

A candidate for Multnomah County office can reach every voter by advertising in one media market of about a million TV households. But a candidate for statewide office in Vermont cannot reach all voters there without advertising in 3 media markets of a combined 3 million TV households.

Elsewhere we discuss ***Zimmerman v. City of Austin*** 881 F3d 378 (5th Cir 2018), *cert denied*, 139 SCt 639, 202 LEd2d 492 (2018) (***Zimmerman v. Austin***), the recent circuit-level decision upholding contribution limits of a major city, Austin ($350 to any candidate). Austin has 736,700 TV households. Austin is the 11th largest city in the United States, with a 2019 estimated population of 978,908.[10] As of November 2018, it had 717,104 registered voters.[11] Multnomah County's 2019 estimated population was 812,855.[12] As of June 2020, it had 532,983 registered voters. Thus,

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9. https://mediatracks.com/resources/nielsen-dma-rankings-2020. Exhibit 4 to the Declaration of Daniel Meek is Nielsen's map of media markets, showing that Vermont is within the 3 listed markets.

10. https://en.wikipedia.org/wiki/Austin,_Texas.

11. http://www.austintexas.gov/election/byrecord.cfm?eid=207.

12. https://en.wikipedia.org/wiki/Multnomah_County,_Oregon.

Austin has more 20% people and 35% more registered voters than Multnomah County, and its contribution limit is 30% below the $500 of Measure 26-184.

Note that most of the county offices covered by the Measure 26-184 contribution limits are run from districts, not county-wide. Each of the four commissioner seats is elected from a district with one-fourth of the county's population County Chair, County Auditor, and County Sheriff are elected county-wide.

F. THE COMMUNICATION OPPORTUNITIES AVAILABLE TO MULTNOMAH COUNTY CANDIDATES.

The Court should also consider the size of the unique communication opportunities available to Oregon candidates under Measure 26-184.

1. SMALL DONOR COMMITTEES.

Measure 26-184 allows candidates to receive unlimited contributions from "Small Donor Committees," defined by Multnomah County Charter § 11.60(7)(j):

> "Small Donor Committee" means a Political Committee which cannot accept Contributions in amounts exceeding one hundred dollars ($100) per Individual contributor per calendar year.

Candidates in ***Randall*** (Vermont), ***Thompson v. Hebdon*** (Alaska), and ***Lair III*** (Montana) and elsewhere do not have this opportunity to raise unlimited campaign funds from organizations of small donors. Apart from Measure 26-184 and Measure 26-200, the "Small Donor Committee" (SDC) feature does not exist in the law of any state except Colorado. In Colorado, SDCs may receive contributions only from individuals and only in amounts of $50 per year; Measure 26-184 allows $100 per individual per year. A Colorado SDC may contribute only limited sums to candidates, generally ten times the amount allowed for a regular political committee. Exhibit 2,

Declaration of Daniel Meek, shows the limits on contributions by Colorado SDCs. Such committee can contribute up to $12,500 for the primary and $12,500 for the general election to any candidate for county office. Measure 26-184 contains no limit on contributions by qualified SDCs to candidates.

The declarations of Portland and Multnomah County candidates quoted above all indicate that their ability to effectively communicate with voters would be enhanced by the SDC feature.

2. THE VOTERS' PAMPHLET.

Oregon has a government-issued Voters' Pamphlet that enables any candidate to reach all registered voters at a low cost. A 325-word statement (with photo) in the Multnomah County Voters' Pamphlet, which is mailed to all registered voter households in the county, is available to any candidate upon submittal of 200 valid voter signatures or payment of $600. There is no evidence that this low-cost method of communicating with voters was available to the Vermont candidates in ***Randall*** or the Montana candidates in ***Lair III***.[13] The Alaska candidates in ***Thompson*** could use the Alaska Voters' Pamphlet.[14]

3. THE OREGON INCOME TAX CREDIT.

Since 1969, candidates for any public office in Oregon have offered their contributors a dollar-for-dollar annual state income tax credit of up to $50 per person

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13. Montana has a Voter Information Pamphlet for ballot measures but not for candidates.

14. National Conference of State Legislatures, VOTER INFORMATION: VARIED STATE REQUIREMENTS (2020). https://www.ncsl.org/research/elections-and-campaigns/voter-information-state-approaches.aspx.

($100 per couple filing jointly). Oregonians received $11.3 million in such tax credits during the 2017-19 biennium, which means that candidates received at least that much from the contributors claiming the tax credits. The Department of Revenue found that 96,410 state income tax returns claimed the credits in 2016.

Vermont, Alaska, and Montana do not have political tax credits. Only Oregon, Arkansas, Ohio, and Virginia do.[15]

G. THE GENERALLY INCREASING ABILITY OF CANDIDATES TO RAISE FUNDS FROM SMALL DONORS.

Further, Bernie Sanders in 2016 demonstrated that effective campaigns, even for President of the United States, can be funded almost entirely by means of small contributions. His campaign used the internet to raise over $231 million from 7 million donations, an average of $33 per donation.[16] The internet offers all candidates the opportunity to raise substantial funds from small donors.

H. THE GENERALLY DECREASING COST OF COMMUNICATING WITH LARGE NUMBERS OF VOTERS.

The Declaration of Seth Woolley states that the advent of Facebook, Google, and other internet portals and platforms has reduced the cost of reaching large numbers of voters: "Communicating with voters is becoming less expensive."

I. THE CASE LAW.

Court opinions have examined and validated contribution limits similar to the level of those in Measure 26-184.

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15. https://money.com/tax-credits-campaign-contributions.

16. https://www.opensecrets.org/pres16/candidate?id=N00000528.

> In sum, challengers and incumbents alike remain capable of running effective campaigns in Montana. Even if some candidates might prefer to seek fewer, larger contributions to meet their fundraising needs (rather than more numerous, smaller contributions), when "a candidate is merely required 'to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression,' the candidate's freedom of speech is not impugned by limits on contributions." ***Id.*** at 1091 (quoting ***Buckley***, 424 US at 2122, 96 SCt 612). We hold Montana's limits do not prevent candidates from amassing sufficient resources to campaign effectively.

Lair III, 873 F3d at 1186 (*cert denied*).

Thompson v. Hebdon, 909 F3d 1027, 1036-37 (9th Cir 2018), upheld Alaska's contribution limits, concluding:

> On the question of whether the $500 limit is "narrowly focused" on that interest, we must uphold the dollar amount unless it is "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." ***Shrink Mo.***, 528 US at 397, 120 SCt 897. * * *
>
> Moreover, although the $500 limit is on the low-end of the range of limits adopted by various states, it is not an outlier. At least four other states (Colorado, Kansas, Maine, and Montana) have the same or lower limit for state house candidates, as do at least five comparably sized cities (Austin, Portland, San Francisco, Santa Cruz, and Seattle). We recently upheld a comparable limit. ***Lair III***, 873 F3d at 1174 tbls. 2 & 3.

Thalheimer v. City of San Diego, 2012 WL 177414 (SD Cal 2012), upheld San Diego's $500 limit on contributions to candidates in city races, fully applying ***Randall***.

> As such, "[t]aken together," the ***Randall*** factors do not suggest that the $500 individual contribution limit in this case "threaten[s] to inhibit effective advocacy" by challengers, "mute[s] the voice of political parties," or otherwise imposes disproportional burdens on First Amendment interests.

Thalheimer, 2012 WL 177414, at *10.

> [T]he $500 contribution limit * * * appears to be comparable with the contribution limits in Los Angeles ($500/$1,000), Phoenix ($488), San Antonio ($500/$1,000), San Jose ($200/$500), Jacksonville ($500/$500), and San Francisco ($500/$500). The fact that the challenged limit is lower than

> similar limits in several other cities is a factor to consider, but does not necessarily mean it is unconstitutionally low. See ***Montana Right to Life Ass'n v. Eddleman***, 43 F3d 1085, 1095 (9th Cir 2003) ("As long as the limits are otherwise constitutional, it is not the prerogative of the courts to fine-tune the dollar amounts of those limits."). Rather, the Court should also consider the limits previously upheld by the courts. See ***Randall***, 548 US at 250-51.

Thalheimer, 2012 WL 177414, at *8.

Zimmerman v. Austin recently upheld the $350 limit on contributions to candidates for the city council of Austin, Texas.

> Here, there was evidence presented, and credited by the district court, that the contribution limit did not prevent candidates from running "full-fledged" campaigns. One former council person testified that the limit did "[n]ot at all" impede her ability to run an effective campaign and that, in fact, the limit was "good for democracy" because it meant that she "was out there talking to a heck of a lot more people." And as to the advantages of incumbency, Zimmerman himself, an incumbent, was defeated when he ran for reelection in 2016. Accordingly, because the limit does not "render political association ineffective, drive the sound of a candidate's voice below the level of notice, [or] render contribution pointless," ***Shrink Mo.***, 528 US at 397, 120 SCt 897, we do not disturb Austin's decision to set the limit at $350. See ***McCutcheon***, 134 SCt at 1456 (stating that a campaign-finance regulation need not be "perfect" or "the single best disposition" but "reasonable" and proportional to the interest served).

Zimmerman v. Austin, *supra*, 881 F3d at 388 (*cert denied*).

VII. THE CONTRIBUTION LIMITS DO NOT "MAGNIFY THE ADVANTAGES OF INCUMBENCY TO THE POINT WHERE THEY PUT CHALLENGERS TO A SIGNIFICANT DISADVANTAGE."

No party has offered any evidence that the Measure 26-184 limits magnify the advantages of incumbency at all.

Without contributions limits in Oregon, incumbency attracts most of the large contributions. The National Institute on Money in Politics reports:

> In 2016, of the 45 incumbents running for seats in the Oregon Legislature, 43 of them outspent their opponents, and all 43 won re-election (100%).[17]
>
> In 2014, of the 40 incumbents running for seats in the Oregon Legislature, 38 of them outspent their opponents, and 37 of them won re-election (97%).[18]

Recent research shows that contribution limits in the range of $500 greatly benefit challengers, not incumbents. The report of the Brennan Center at New York University School of Law, ELECTORAL COMPETITION AND LOW CONTRIBUTION LIMITS (2009)[19] states:

> New research by Dr. Thomas Stratmann and the Brennan Center for Justice shows that the rationale undergirding the Supreme Court's ***Randall*** decision was flawed. The Court incorrectly concluded that low contribution limits act as an incumbency protection plan. To the contrary, the new data culled from elections in 42 states over 26 years (1980-2006) show that lower contribution limits of $500 or less for individual contributors and political action committees (PACs) made elections for state assembly more competitive. In real-world elections, the benefits of low contribution limits largely redound to challengers. * * *
>
> In sum, this new statistical analytic research on state house races demonstrates:
>
> - Contribution limits lead to more competitive elections: the lower the limit, the more competitive the election.
> - Lower contribution limits ($500 and below) increase the likelihood that challengers will beat incumbents.
> - Lower contribution limits reduce incumbents considerable financial fundraising advantage.

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17. https://www.followthemoney.org/research/institute-reports/money-incumbency-in-2015-and-2016-state-legislative-races.

18. https://www.followthemoney.org/research/institute-reports/2013-and-2014-money-and-incumbency-in-state-legislative-races.

19. https://www.brennancenter.org/sites/default/files/legacy/publications/Electoral.Competition.pdf.

The research shows that low contribution limits increase the number of contested races, improve the rate of competitive races, and reduce the fundraising gaps between incumbents and challengers.

Dr. Stratmann finds that:

(1) contribution limits reduce an incumbents considerable financial advantage; and

(2) the lower the contribution limit, the more competitive the election.

The pro-competitive effect of contribution limits is most striking in states with the lowest contribution limits. Dr. Stratmann grouped states with contribution limits into four discrete categories: those states with limits of (a) $500 or less, (b) $501 to $1,000, (c) $1,001 to $2,000 and (d) $2,001 or more.27 He considered both individual and PAC contribution limits on donations to candidates for the state house of representatives.

After controlling for the variables identified above, relative to states that have individual contribution limits of $2,000 or more, an individual contribution limit between $1,001 and $2,000 reduces an incumbent's margin of victory by 5 percentage points; an individual contribution limit between $501 and $1,000 reduces an incumbent's margin of victory by 9.5 percentage points; and an individual contribution limit set at $500 or lower reduces an incumbent's margin of victory by 14.5 percentage points. Relative to races without any contribution limits, the tightest limit considered a $500 cap on contributions by individuals reduces the average margin of victory of incumbents by 16.7 percentage points.

This general pattern is repeated for other measures of competitiveness. For example, relative to states that have individual contribution limits of over $2,000, the likelihood of an incumbent having a viable challenger (defined as an incumbents vote share of less than 85 percent) increases by 14 percent in elections where the limit is between $501 and $1,000, and by 15 percent where the individual contribution limit is set at $500 or less.

Moreover, relative to states that have individual contribution limits of $2,000 and above, those with limits set at $500 or less have roughly a 10 percent greater likelihood of electing challengers.

Dr. Stratmann's findings are consistent with the empirical research of other scholars in the field, who found that contribution limits produce closer margins of victory and help challengers at the expense of incumbents.[31]

31. Kihong Eom & Donald A. Gross, *Contribution Limits and Disparity in Contributions between Gubernatorial Candidates*, Vol. 59 No. 1 POL. RES. Q. 99-110 (2006); Jeffrey Milyo, David Primo & Timothy Groseclose, *State Campaign Finance Reform, Competitiveness, and Party Advantage in Gubernatorial Elections*, THE MARKETPLACE OF DEMOCRACY 268-85 (Michael McDonald & John Samples eds., 2006); Thomas Stratmann & Francisco J. Aparicio-Castillo, *Competition Policy for Elections: Do Campaign Contribution Limits Matter?*, 127 PUB. CHOICE 177 (2006).

See also Thomas Stratmann, *Do Low Contribution Limits Insulate Incumbents from Competition?*, 9 ELECTION L.J. 125, 127 (2010) ("the tighter the limits, the more competitive the elections").[20] The United States Supreme Court stated:

> And, to the extent that incumbents generally are more likely than challengers to attract very large contributions, the Act's $1,000 ceiling has the practical effect of benefiting challengers as a class.

Buckley v. Valeo, 424 US 1, 32, 96 SCt 612, 641, 46 LEd2d 659 (1976).

> Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions.

Buckley v. Valeo, 424 US at 31.

VIII. THE CONTRIBUTION LIMITS DO NOT IMPAIR THE LEGITIMATE FUNCTIONS OF POLITICAL PARTIES.

One of the "danger signs" from ***Randall*** is whether "political parties [must] abide by exactly the same low contribution limits that apply to other contributors." The Vermont limits in ***Randall*** included all partisan races for public office, as did the limits in ***Thompson v. Hebdon*** (Alaska) and ***Lair III*** (Montana). The United States Supreme Court was particularly troubled by the fact that the Vermont statute limited

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20. https://www.liebertpub.com/doi/10.1089/elj.2009.0038.

any political party to contributing only $400 toward the campaign of any candidate, including its own nominees. See Reply Brief of the Citizen Parties, pp. 19-20.

> The Act applies its $200 to $400 limits--precisely the same limits it applies to an individual-- to virtually all affiliates of a political party taken together as if they were a single contributor. Vt. Stat. Ann., Tit. 17, § 2805(a) (2002). That means, for example, that the Vermont Democratic Party, taken together with all its local affiliates, can make one contribution of at most $400 to the Democratic gubernatorial candidate, one contribution of at most $300 to a Democratic candidate for State Senate, and one contribution of at most $200 to a Democratic candidate for the State House of Representatives.

Randall, 548 US at 257.

> We consequently agree with the District Court that the Act's contribution limits "would reduce the voice of political parties" in Vermont to a "whisper." 118 FSupp2d, at 487. And we count the special party-related harms that Act 64 threatens as a further factor weighing against the constitutional validity of the contribution limits.

Randall, 548 US at 259.

Measure 26-184 does not limit what political parties can contribute to those parties' candidates. The limits apply only to Multnomah County public offices, all of which are elected on a nonpartisan basis. Nor does it impose any limit on what any individual or entity can contribute to a political party. The Declaration of Seth Woolley documents that the ORESTAR system does not show that Oregon political parties have contributed to candidates for Multnomah County office.

Also, Measure 26-184 contribution limits are per political committee, not per party. A party can create any number of political committees under Oregon law, There are separate political committees for county-level parties, for example. Measure 26-184 allows political parties to create Small Donor Committees, discussed at pages 20-21, *ante*, which can contribute any amount to any Multnomah County candidate,

provided the funds come from individuals in amounts limited to $100 per person per year. Also, ***Randall*** found that the Vermont limits on party contributions would cut such contributions by 85% to 99%. Here there is no cut in such party contributions, because we can locate no such contributions in Multnomah County races to begin with.

IX. THE CONTRIBUTION LIMITS DO NOT APPLY TO UNPAID VOLUNTEER SERVICES.

One of the "danger signs" from ***Randall*** is whether "volunteer services" are considered contributions that would count toward the limit.

> But the Act does not exclude the expenses those volunteers incur, such as travel expenses, in the course of campaign activities. The Act's broad definitions would seem to count those expenses against the volunteer's contribution limit, at least where the spending was facilitated or approved by campaign officials. * * *
>
> The absence of some such exception may matter in the present context, where contribution limits are very low. That combination, low limits and no exceptions, means that a gubernatorial campaign volunteer who makes four or five round trips driving across the State performing volunteer activities coordinated with the campaign can find that he or she is near, or has surpassed, the contribution limit. So too will a volunteer who offers a campaign the use of her house along with coffee and doughnuts for a few dozen neighbors to meet the candidate, say, two or three times during a campaign. Cf. Vt. Stat. Ann., Tit. 17, § 2809(d) (2002) (excluding expenditures for such activities only up to $100). Such supporters will have to keep careful track of all miles driven, postage supplied (500 stamps equals $200), pencils and pads used, and so forth. And any carelessness in this respect can prove costly, perhaps generating a headline, "Campaign laws violated," that works serious harm to the candidate.

Randall, 548 US 230 at 259-60.

Measure 26-184 uses the state law definition of "contribution," with two exceptions. Multnomah County Charter § 11.60(7)(c) states:

> "Contribution" has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include (1) funds provided by government systems of public funding of campaigns or (2) providing rooms,

> phones, and internet access for use by a candidate committee free or at a reduced charge.

So the Measure 26-184 definition of "contribution" is more lenient than the Vermont definition in ***Randall***.

Further, the Oregon state law definition of "contribution" excludes all of the items found troublesome in ***Randall*** (travel costs, use of house for events, snacks):

> **260.007 Exclusions from definitions of "contribution" and "expenditure."** As used in this chapter, "contribute," "contribution," "expend" or "expenditure" does not include: * * *
>
> (2) An individual's use of the individual's own personal residence, including a community room associated with the individual's residence, to conduct a reception for a candidate or political committee and the individual's cost of invitations, food and beverages provided at the reception. * * *
>
> (4) Any unreimbursed payment for travel expenses an individual, including a candidate, makes on behalf of a candidate or political committee.

X. THE CONTRIBUTION LIMITS ARE ADJUSTED FOR INFLATION.

One of the "danger signs" from ***Randall*** is whether the "contribution limits are * * * adjusted for inflation." The contribution limits in ***Randall*** were not. The Measure 26-184 contribution limits are adjusted for inflation. Portland City Charter § 11.60(5):

> All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

XI. THE CONTRIBUTION LIMITS ARE PER ELECTION CYCLE.

The Measure 26-184 contribution limits apply to a 2-year election cycle, not separately to the primary and general elections. But elections of Multnomah County officials are often accomplished at the primary election, because any candidate who

receives more than 50% of the vote at the primary election is elected, and the general election for that office does not occur. In the current 2020 election cycle, all of the 3 races for Multnomah County Commissioner were decided in the primary election. In the 2018 election cycle, all Multnomah County races were decided in the primary election (County Chair, one Commissioner seat).

XII. THERE ARE SPECIAL JUSTIFICATIONS THAT WARRANT A "LOW" CONTRIBUTION LIMIT.

Randall requires consideration of "any special justification that might warrant a contribution limit so low or so restrictive."

First, we do not consider the Measure 26-184 limits to be "so low or so restrictive." Second, there are special justifications that would warrant low and restrictive contribution limits.

In ***Randall***, the "record contain[ed] no indication that, for example, corruption (or its appearance) in Vermont is significantly more serious a matter than elsewhere." 548 US at 261. The record here shows that the campaign finance system in Oregon, applicable to candidate contests in Multnomah County, presented both the appearance and reality of corruption. This was shown in the declarations filed in First Round and also by the documents contained in the Excerpt of Record and Appendix filed in this case in the Oregon Supreme Court, which include an award-winning 2019 series of articles in THE OREGONIAN entitled *Polluted by Money: How corporate cash corrupted one of the greenest states in America*.[21] Among the scores of relevant facts there is

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21. The series won the National Headliner award from Scripps Howard Publishing, the inaugural Collier Prize for State Government Accountability from the University of Florida College of Journalism and Communication, and the national

(continued...)

that races for the Oregon Legislature attract the highest level of corporate contributions (per capita) than in any other state. It also documents numerous instances of the enormous and decisive influence of campaign funding on government decisions made by Oregon officeholders.

Further, the State Integrity Investigation of the Center for Public Integrity in November 2015 gave Oregon and "F" in systems to avoid government corruption and ranked Oregon 49th out of 50 states in control of "Political Financing" in order to combat corruption.[22] See Declaration of Kristen Eberhard. On the same criterion, the study ranked Vermont (the subject of ***Randall***) 3rd best, ranked Alaska (subject of ***Thompson v. Hebdon***) 2nd best, and ranked Montana (the subject of ***Lair III***) 15th best. The Center for Public Integrity concluded that the political finance corruption problem was far greater in Oregon than in those other states.

21.(...continued)

John B. Oakes Award for Distinguished Environmental Journalism from the Columbia Journalism School. The Columbia judges stated:

> Sometimes the best journalism exposes conduct that's legal--yet so wrong. Journalist Rob Davis of The Oregonian/OregonLive got his arms around the state's laws allowing people and corporations to give political candidates as much as they want, with no limits. That has made Oregon number one in the U.S. among corporate political giving per capita. Davis then showed the stranglehold that corporate money has on policy, especially environmental policy--made more curious in such a liberal state now suffering a backlog of environmental protections.

"Polluted by Money" wins national 2020 Oakes Award, THE OREGONIAN, July 22, 2020.

22. https://publicintegrity.org/accountability/how-does-your-state-rank-for-integrity.

A 2020 study by the National Institute on Money in State Politics (NIMSP) found that candidates for the Oregon Legislature and Governor are more dependent upon large contributions than in 46 of the other states. Exhibit 3, Declaration of Daniel Meek. In the 2018 election cycle, those Oregon candidates received less of their funding from individuals' contributions of $500 or less (8%) than in any state other than California (6%) and Illinois (3%). Conversely, candidates in other states relied more on individuals' contributions or $500 or less, including Alaska (58%), Colorado (44%), Montana (43%), Vermont (42%), and Massachusetts (41%), all of which have low contribution limits.

The trial court in ***Thompson v. Dauphinais***, 217 FSupp3d 1023, 1029 (2016), found as a special circumstance the fact that "Alaska has the second smallest legislature in the United States and the smallest senate, with only twenty senators, which

> means that just ten votes can stop a legislative action such as an oil or gas tax increase from becoming law. Consequently, the incentive to buy a vote, and the chances of successfully doing so, are therefore higher in Alaska than in states with larger legislative bodies.

This conclusion was seconded in the concurring opinion of Chief Judge Thomas in ***Thompson v. Hebdon***, *supra*, 909 F3d at 1045. In Oregon, the action of just 11 Senators can also stop any legislative action, because the Oregon Constitution sets the quorum requirement for each chamber of the Legislature at two-thirds of all members.

XIII. THE UNITED STATES COURTS HAVE CONSISTENTLY UPHELD CONTRIBUTION LIMITS SIMILAR TO THOSE IN MEASURE 26-184.

A. UNITED STATES SUPREME COURT.

Even in cases where parties have documented that contribution limits impose a "severe burden" or "significant interference" with speech or association, the United States Supreme Court has upheld limits similar to those in Measure 26-184. Those cases are discussed in the Reply Brief of the Citizen Parties, pp. 15-20, and include:

Nixon v. Shrink Missouri Government PAC, 528 US 377, 120 SCt 897 (2000)

Randall v. Sorrell, 548 US 230, 126 SCt 2479, 165 LEd2d 482 (2006)

In addition, the US Supreme Court has consistently upheld contribution bans and limits on corporations, unions, and other entities. ***FEC v. Beaumont***, 539 US at 161-62.

B. NINTH CIRCUIT COURT OF APPEALS AND ITS DISTRICT COURTS.

The Ninth Circuit Court of Appeals has consistently upheld limits similar to those in Measure 26-184. Those cases were discussed in the Reply Brief of the Citizen Parties, pp. 20-21, and include:

Lair v. Bullock, 798 F3d 736, 744 (9th Cir 2015).

Thalheimer v. City of San Diego, 2012 WL 177414 (SD Cal 2012)

Montana Right to Life Ass'n v. Eddleman, 43 F3d 1085, 1095 (9th Cir 2003)

Since then, ***Lair III*** validated Montana's contribution limits, which are lower than those adopted in Measure 26-184. Montana's statute limits a candidate for city or

county office to receiving $340 per election cycle from any individual or political committee. The corresponding limit in Measure 26-184 is $500. ***Lair III*** included ***Randall*** in its analysis; the United States Supreme Court denied certiorari.

> Even if we were wrong in ***Lair II*** to hold ***Eddleman*** controls our evaluation of Montana's contribution limits, we would reach the same conclusion under the plurality's decision in ***Randall***.

Lair III, 873 F3d at 1186 (*cert denied*).

Thompson v. Hebdon, 909 F3d 1027 (9th Cir 2018), upheld Alaska's $500 contribution limit on all candidates for all offices. The United States Supreme Court then summarily remanded ***Thompson v. Hebdon*** to the Ninth Circuit for proper consideration of ***Randall***. ***Thompson v. Hebdon***, 140 SCt 348, 205 LEd2d 245 (2019). The Ninth Circuit has not yet issued a decision upon remand.

Thalheimer v. City of San Diego, 2012 WL 177414 (SD Cal 2012), upheld San Diego's $500 limit on contributions to candidates in city races, fully applying ***Randall***.

C. OTHER CIRCUIT COURTS.

Other Circuit Courts have upheld limits similar to or lower than those in Measure 26-184. ***Zimmerman v. Austin***, *supra*, 881 F3d at 38, examined the limits of Austin:

> Second, the $350 limit is on par with limits imposed in other states and localities and upheld by other courts. See ***Randall***, 548 US at 250, 126 SCt 2479 (finding danger sign where limit at issue was below those imposed by other states and upheld in the past). For example, in ***Shrink Mo.*** the Supreme Court upheld Missouri's $275 limit--which, adjusted for inflation, was equivalent to approximately $390 at the time this appeal was filed--on contributions to candidates for any office representing fewer than 100,000 people. See 528 US at 383, 120 SCt 897; see also ***Frank v. City of Akron***, 290 F3d 813, 818 (6th Cir 2002) (upholding limits of $100 on contributions to candidates for ward council member and $300 on contributions to candidates for at-large council member and mayor in city of approximately 217,000). Austin's $350 limit on contributions to candidates for city council, who represent districts of approximately 100,000 people, is not so

> low by comparison as to raise suspicion. Furthermore, and unlike the limit at issue in ***Randall***, Austin's contribution limit is indexed for inflation. Compare 548 US at 25152, 126 SCt 2479 (finding danger sign where contribution limit was lower than those upheld in prior cases and not indexed for inflation) with Austin, Tex. Code, Art. III, § 8(A)(1) (stating that contribution limit shall be adjusted annually in accordance with the Consumer Price Index).

The Second Circuit in ***Ognibene v. Parkes***, 671 F3d 174, 179-80 (2d Cir 2011), *cert denied*, 567 US 935, 133 SCt 28 (2012), upheld these limits adopted in New York City, after considering ***Randall***:

> In 2007, the City Council voted to pass Local Law 34, requiring disclosure of, and restricting contributions from, individuals and entities who have business dealings with the City, as defined in the CFA. The law lowers these donors' contribution limits approximately twelve-fold, to $400 (from the generally-applicable level of $4,950) for the three City-wide offices; to $320 (from $3,850) for Borough offices; and to $250 (from $2,750) for City Council. The law also makes these contributions ineligible for public matching, and extends the ban on corporate contributions to LLCs, LLPs, and partnerships. *Id.* §§ 3703(1)(l), 3703(1a), 3719(2)(b).

The New York City media market has 6,824,120 TV homes, 6 times more than Portland's.[23]

XIV. THE GOVERNMENT INTEREST IN CONTRIBUTION LIMITS MEETS ANY APPLICABLE TEST.

Mehrwein, 366 Or at 329, stated:

> In a First Amendment analysis, the constitutionality of a contribution limit depends not only on whether there are "danger signs," but also on the government's interest in imposing contribution limits and the effect the limits could have on candidates' ability to conduct an effective campaign. * * * Here, the parties and *amici* submitted evidence on the problems that the contribution limits addressed and their likely effects, and the county relies in part on that evidence and other empirical support for its argument that its ordinances survive First Amendment scrutiny. Those arguments turn on facts that are not conceded and on particular inferences that may be but need not be drawn from that evidence. Because the trial court never

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23. https://mediatracks.com/resources/nielsen-dma-rankings-2020.

> reached the First Amendment issue, it did not make the factual findings that are necessary to that analysis. We therefore remand the case to the trial court to address the validity of the county's contribution limits under the First Amendment in the first instance.
>
> As stated in ***FEC v. Beaumont***, *supra*, 539 US at 161-62:
>
> "[A] contribution limit involving 'significant interference' with associational rights" passes muster if it satisfies the lesser demand of being "'closely drawn' to match a 'sufficiently important interest.'" ***Nixon***, *supra*, at 387-388, 120 SCt 897 (quoting ***Buckley***, *supra*, at 25, 96 SCt 612); cf. ***Austin***, *supra*, at 657, 110 SCt 1391; ***Buckley***, *supra*, at 4445, 96 SCt 612.

Here, no party submitted evidence that the Measure 26-184 contribution limits imposed "significant interference with associational rights." Even so, the Reply Brief of the Citizen Parties (pp. 13-21) showed that the limits satisfy the "closely drawn to match a sufficiently important interest" test and even the stricter "narrowly tailored to serve a compelling governmental interest" test.

XV. THE VALIDITY OF THE CHARTER AMENDMENT IS NOT AT ISSUE IN THIS PROCEEDING.

The Reply Brief of the Citizen Parties, pp. 56-57, established that this Court does not have authority under ORS 33.710 to examine the validity of the Charter Amendment, because charter amendments are not among the items listed in ORS 33.710 (f) or (g) as proper subject matter.

As this contention challenges the subject matter jurisdiction of the Court, it is properly raised at any time.

> As we have stated, subject matter jurisdiction cannot be conferred by consent, waiver, or estoppel, and may be raised at any time. ***Schwartz and Battini***, 289 OrApp 332, 338, 410 P3d 319, *review denied*, 362 Or 39, 403 P3d 777 (2017). A court's decision made at a time when the court lacked judicial power to act should be vacated. ***State v. Hemenway***, 353 Or 498, 504, 302 P3d 413 (2013); see ***Garner v. Garner***, 182 Or 549, 561-62, 189

P2d 397 (1948) (A judgment may be void if the court that entered it lacked subject matter jurisdiction.).

Matter of Marriage of Menten, 302 OrApp 425, 428, 461 P3d 1075, 1078 (2020). "[J]udicial orders entered when a court lacked subject-matter jurisdiction may be attacked 'at any time and any place, whether directly or collaterally.'" ***PGE v. Ebasco Services, Inc.***, 353 Or 849, 856, 306 P3d 628 (2013).

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the original of:

COMBINED OPENING BRIEF ON REMAND OF THESE INTERVENORS

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