December 17, 2020

STATEMENT OF PATRICK LLEWELLYN

Chair Smith Warner, Vice-Chairs Drazan and Holvey, and Members of the Committee:

Thank you for inviting me to speak with the Oregon House Interim Committee on Rules as it considers how to implement campaign contribution limits as part of an effective campaign finance system, and I submit this statement as written testimony on the same. My name is Patrick Llewellyn, and I am Senior Legal Counsel, Campaign Finance, at the Campaign Legal Center (CLC) in Washington, DC. CLC is a nonprofit, nonpartisan organization that advances democracy through law, fighting for every American's right to participate in the democratic process, and our long-term goal is a government responsive to the people. As part of that work, we provide legal expertise to state and local partners and policymakers seeking to implement effective campaign finance laws.

The passage of Measure 107 by Oregon voters presents a unique opportunity for Oregon to consider limits in a comprehensive, rather than piecemeal, way. Other invited speakers presented testimony on some key aspects of incorporating contribution limits in a well-structured campaign finance system, such as Tam Doan from the Center for Popular Democracy on, among other issues, the importance of donor-matching and other public financing programs and Jay Costa from Voters Right to Know on strong transparency requirements. I'd like to focus my testimony on two additional pieces of an effective contribution limits scheme: anti-coordination rules and how to handle particular types of contributors.

First, anti-coordination rules are necessary to ensure that contribution limits are meaningful. Coordination means coordination between candidates and outside spenders, such as super PACs. Because coordinated expenditures are just as valuable to candidates as direct contributions, coordination must be strictly policed to prevent big donors from bankrolling their preferred candidates while sidestepping contribution limits. Since contribution limits are intended to prevent quid pro quo corruption or the appearance of such corruption, strong anti-coordination rules are necessary to accomplish that goal by ensuring that outside spending is truly independent, not simply a contribution in another form. The shortcomings of most jurisdictions' coordination rules often come down to a myopic focus on a particular

expenditure rather than taking a holistic approach, and effective anti-coordination rules must consider a thorough range of coordinated conduct between candidates and spenders—as well as the content of a particular expenditure—in defining coordination. Some examples of coordinated conduct that should be considered are:

- Whether the candidate (or their family member or a campaign official) establishes, finances, maintains, or controls the spending entity;
- Whether the candidate solicited money for the spending entity or appeared as a guest speaker at a fundraiser for that entity;
- Whether the spending entity relies on nonpublic information about campaign strategy or needs; and
- Whether the spending entity uses common vendors or utilizes former employees of the candidate.

Second, there should be different rules for different types of contributors. Federal law and some states have identified certain entities that, by their nature or because of the history of their industry, are more likely to engage in quid pro quo corruption, or that their direct participation will give rise to the appearance of such corruption, and therefore should be banned from directly contributing to candidates. Two examples from federal law, which also have been adopted by some states, should be considered:

- Corporate Contribution Ban. Because of the nature of the corporate form—in other words, the way in which corporations aggregate significant resources through the marketplace—Congress and some state legislatures have correctly concluded that corporate contributions to candidates pose a much higher risk of quid pro quo corruption or giving rise to the appearance of such corruption. Relatedly, because corporations are entities on paper but not actual people, there is a risk that corporate contributions could be used to circumvent contribution limits by allowing individuals to pass money through such entities to increase their contributions beyond legal limits. Because of these risks, federal law and some states ban direct corporate contributions to candidates. These bans have been upheld consistently by courts, including the U.S. Supreme Court. *See FEC v. Beaumont*, 539 U.S. 146 (2003).
- Government Contractor Contribution Ban, aka Pay-to-Play. The rationale underlying a ban on government contractor contributions is relatively straightforward. Because of the relationship between a government contractor and the government, there is a clear risk of contributions being given as quid pro quo for government contracts and that awarding contracts to contributors would foster the appearance of such corruption. Additionally, permitting government contractor contributions runs the risk of entangling political patronage with the proper functioning of the government, placing would-be contractors in the hands of political actors that may implicitly expect financial support from them. For these reasons, the committee should also consider a broader ban that prohibits government contractors from making a contribution for any political purpose, as federal law does. *See* 52 U.S.C. § 30119(a)(1); *Wagner v. FEC*, 793 F.3d 1 (D.C. Cir. 2015) (en banc).

As far as additional contribution bans, Oregon should consider whether there are particular industries with political spending that pose a high risk of quid pro quo corruption.

Lastly, I will briefly discuss political parties, which are a unique type of contributor that are also the recipients of contributions. Contribution limits as it concerns political parties should account for both their unique role in elections and the potential for them to act as aggregators of wealth to pass along to their chosen candidates. At both the federal level and in several states, political parties are subject to contribution limits both for contributions to the parties and for contributions made by the parties to candidates. Such limits are typically higher than limits on individual contributions to candidates, which makes sense in light of the role of political parties in elections. However, allowing for unlimited contributions to political parties or unlimited contributions from political parties to candidates creates the risk that political parties would become either direct or intermediary sources for wealthy special interests to direct big money to their preferred candidates. Accordingly, contributions to political parties and contributions from political parties to candidates should be limited.

Thank you again for the opportunity to speak with you and to submit this written testimony. I am happy to appear at further hearings or speak with you individually about these important issues and others specifically concerning contribution limits and generally about campaign finance regulation. I can be reached at pllewellyn@campaignlegalcenter.org or (202) 736-2200.