



March 13, 2019

HJR 13, SJR 13, SJR 18: All Need Improvement

Dear Committees:

The Oregon Progressive Party (OPP) would support an improved version of these joint resolutions, which has already been drafted by Legislative Counsel.

The need for limits on campaign contributions and mandatory taglines on political advertisements has been amply demonstrated. Voters in Multnomah County and the City of Portland adopted both requirements in amending their charters in 2016 and 2018 by "yes" votes of 89% and 87%, respectively. The Oregon Legislature now needs to refer to voters an effective amendment to the Oregon Constitution to ensure that these limits and taglines remain in place.

The case for campaign finance reform is firmly established by the first three parts of the Oregonian's 4-part series, "Polluted by Money: How Corporate Cash Corrupted One of the Greenest States in America." Those three parts are attached to this testimony, along with an information sheet from the recent Portland City Charter amendment campaign. Much additional literature is available at the Honest Elections website: honest-elections.com.

HJR 13

About the joint resolutions introduced so far: HJR 13 is the best of them, but it has major flaws:

1. HJR 13 defeats the will of the voters in Multnomah County (2016) and Portland (2018) by not applying to the campaign finance reform measures they enacted by overwhelming votes of 89% and 87% in favor. Instead, it only applies to laws enacted on or after December 3, 2020. This is a direct insult to the voters of Oregon's most populous county and city.

2. HJR 13's authorization regarding what we call "taglines" on political advertisements is unnecessarily worded in the singular: "Requiring that an advertisement made in connection with a political campaign identify the person or entity who paid for the advertisement." What the Portland and Multnomah County measures require is:

Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:

- (1) The names of any Political Committees and other Entities that have paid to provide or present it; and
- (2) For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle: (various details)

So the Portland and Multnomah County measures require disclosure of the multiple persons or entities who paid for the advertisement, not just one. HJR 13, conversely, refers to only one "person or entity" who paid for the ad.

Further, it is difficult to say who paid for a particular ad. What matters is from what sources the entire campaign is funded. The Multnomah County and Portland language requires identifying "the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle." It is not tied to an individual ad.

3. HJR 13 contains a serious loophole in its language "Requiring the disclosure of contributions or expenditures, as defined in state law, made in connection with political campaigns." By referring to "as defined in state law," it allows the Legislature to eviscerate the constitutional amendment merely by redefining "contributions or expenditures" in state law. The words "as defined in state law" should be stricken.
4. Another constraint is created by the HJR 13 language "(d) Any other regulation on the use of moneys in political campaigns permitted under federal law." It is unclear what that means. Federal law does not regulate the use of moneys in state or local political campaigns, except

for the law that bans receipt of funds from foreign persons or entities. Other than that, federal law does not "permit" or "not permit" regulation on the use of moneys in state or local political campaigns. For example, you will find no federal law that "permits" limits on contributions in state or local campaigns. Nor will you find a federal law that forbids such limits. So, if all you can do for regulation is what is expressly "permitted under federal law," you cannot do much at all. The U.S. Constitution, however, is interpreted as permitting or not permitting certain state or local regulation of campaign money. Maybe that is what the drafter of HJR 13 means to refer to. So the term "federal law" should be replaced with "the United States Constitution" in HJR 13.

5. HJR 13 fails to protect campaign regulation adopted by initiative from nullification by the sitting Legislature. This has occurred to campaign finance reform enacted initiatives several times in just the past 15 years (Massachusetts 2003, Missouri 2007, South Dakota 2016). The Oregon Legislature in 1973 repealed the contribution limits that had been in place since adopted by initiative in 1906. In contrast, Initiative Petition #1 (2020) protects campaign finance reform laws adopted by initiative from being gutted by politicians elected under the existing big money system by requiring at least 3/4 of them to approve the gutting.

The first 4 of these flaws have been corrected in a revised LC 2934, attached to this testimony. No member has introduced this corrected version.

SJR 13

SJR 13 is similar to HJR 13 and shares all of the 5 flaws noted above. It has the further weakness of not addressing how the amendment would affect campaign finance reform laws enacted by local governments.

HJR 13 makes it clear that the amendment would allow local governments to enact the types of reform listed in HJR 13:

(2) The Legislative Assembly, the governing body of a city, county, municipality or district empowered by law or by this Constitution to enact legislation, or the people through the initiative process, may enact laws or regulations regulating the use of moneys in political campaigns, including: * * *

SJR 13 refers only to the Legislative Assembly and the people through the initiative process. It leaves uncertain whether local governments can also

adopt the types of reforms listed in SJR 13.

SJR 18

SJR 18 suffers from flaw #5 above and has these additional problems:

SJR 18 would add this to Article II, § 8, of the Oregon Constitution:

(2) Notwithstanding section 8, Article I of this Constitution, the Legislative Assembly, or the people through the initiative process, may enact laws limiting or prohibiting contributions received by or made to candidates, or the principal campaign committees of candidates, for nomination or election to public office.

This is a very limited authorization for campaign finance reform legislation. It addresses only limits on "contributions" but not any sort of regulation of "expenditures" or "independent expenditures." Thus, it would not serve as authorization for mandatory taglines on political advertisements.

If voters were to enact the SJR 18 amendment (limited to regulation of contributions), that would still leave Oregon with a **Citizens United** regime (unlimited individual and corporate independent expenditures), even if the United States Supreme Court reverses **Citizens United**.

Reversal of **Citizens United** is a realistic prospect. It remains a 5-4 decision of the Court that entirely contradicted its earlier decisions. Both of the recent justices leaving the Court were in the **Citizens United** majority, which leaves the current lineup with a 5-4 split. One further appointment of a justice by the President following Donald Trump could well result in prompt reversal of it.

In the meantime, the effective response to unlimited independent expenditures are mandatory taglines on political advertisements, identifying the largest funders of the independent expenditure effort.

Thus, the result of SJR 18, if enacted by voters, would be the opportunity for legislation to limit political contributions but not expenditures. Why the Legislature would desire that outcome is a mystery.

Also, SJR 18 addresses only candidate campaigns, not measure campaigns. Decisions of the United States Supreme Court in 1978 and 1981 indicated that spending in measure campaigns could not be restricted. Both decisions included dissents, and both could be reversed in the future.

But SJR 18 would leave measure contributions and spending in Oregon uncontrolled, even if those cases were reversed, because it applies only to candidate campaigns.

The New LC 2934

Four of the five flaws in HJR 13 are corrected in the newest version of LC 2934 (attached).

Initiative Petition #1 (2020)

The best choice is the language of Initiative Petition #1 (2020):

Be it enacted by the People of the State of Oregon, there is added to Article I, Section 8, of the Constitution of Oregon, as follows:

Laws consistent with the freedom of speech guarantee of the United States Constitution may regulate contributions and expenditures, of any type or description, to influence the outcome of any election; provided, that such laws are adopted or amended by an elected legislative body by a three-fourths vote of each chamber or by initiative.

This language could be part of Article I, § 8, or Article II, § 8, or be placed somewhere else in the Oregon Constitution. Its location does not matter.

The certified ballot title for Initiative Petition #1 (2020) is attached.

-
1. ***First National Bank of Boston v. Bellotti***, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978); ***Citizens Against Rent Control/Coal. for Fair House. v. City of Berkeley***, 454 US 290, 297, 102 S Ct 434, 438, 70 L Ed 2d 492 (1981).