

Senate Committee on Campaign Finance
January 30, 2019
Testimony of Jeanne Atkins
Former Secretary of State
Chair, HB 2178 (2015) Task Force on Campaign Finance Reform

Chair Golden and Committee Members,

For the record, my name is Jeanne Atkins, and I am here today to talk about the work of the Task Force on Campaign Finance Reform created in 2015 by House Bill 2178. The Task Force, began its work in the Spring of 2015. It produced two reports – one at the end of 2015 and provided to the 2016 Legislature, and one at the end of 2016 after its final meeting. Although the statute provided for the Task Force to continue through the 2017 Legislative session, the new Secretary of State did not hold additional meetings or pursue the recommendations of the Task Force.

You have the reports in front of you – as well as access to the electronic records of the meetings -- so I will just highlight rather than to go into detail on the work done by the group.

Organization and purpose of the Task Force

The statutory mandate of the Task Force was to “conduct an analysis and determine the best method or methods to address campaign finance reforms.”

The bill specifically called for a wide variety of stakeholders who were to be included in the discussion. In addition to legislators from both parties and both chambers, there was to be representation from both major and minor political parties, as well as non-affiliated voters; representatives of specific advocacy organizations working on campaign finance issues, as well as representatives of for-profit and non-profit organizations with memberships that make up the broader electorate.

I particularly draw your attention to the “values and goals” statement that was developed in the early meetings of the Task Force. It was agreed that proposals would be judged by their potential effectiveness in these areas:

1. Improving the public perception of campaigns, elections and candidates
2. Expanding the opportunity for there to be an informed electorate
3. Serving to expand the number of voices participating in democracy

4. Improving access to democracy to underrepresented populations
5. Reflecting campaign finance issues/realities in Oregon

Challenges to achieving consensus

The members of this Task Force worked hard, and in good faith, to find points of agreement over many hours of meetings. But as you might be able to tell from the “values and goals” listed, there were a great variety of views regarding the basic question -- why we should be working on this issue? Those disparate viewpoints were valuable in making sure that all the implications of both findings and proposals for solutions were considered. However, they also made it difficult to achieve strong consensus about either the most important problem or about the solutions that should be prioritized.

Viewpoints spanned the gamut between passionate and deep concern that the public is losing trust in the electoral system generally, and that Oregon’s lack of campaign finance limits is a primary cause of their concern, to equally passionate viewpoints concluding that our transparency measures are sufficient to overcome public concern and that an effort to establish limits on giving or spending violates basic principles of free speech, and, moreover, will have unintended consequences of taking campaigning out of the hands of candidates and putting it in the hands of third parties who cannot be regulated adequately. There were members of the Task Force who felt that our reporting requirements were too complicated and punitive and others who thought – to the contrary – the public’s interests would be better served if the state conducted routine investigations and auditing.

Although it was definitely a minority view that the richest in our state should have more influence in campaigns than others, the majority did agree that, in addition to (or for some members, instead of) setting limits on that influence, it would be wise to emphasize efforts to bring less-well-off donors into the mix. The lack of hard research on the current situation and the potential impact of various proposals on the status quo was a regular discussion. The threads of these discussion are contained in the 2015 report and the minority report that was also filed at that time.

Recommendations other than limits on contributions and expenditures

You can see from the report that the Task Force examined a good many issues and explored a variety of remedies, as well as making an effort to see how each remedy might create unintended consequences. Because of this variety of viewpoints and the extent of discussions

that were undertaken, I think all of the recommendations made by the Task Force are worthy of your consideration as a Committee.

I first want to bring to your attention those recommendations other than setting limits on contributions or expenditures: You can find the analysis, the research relied on, recommendations regarding further research, tentative recommendations and final votes on recommendations if you review pages 16 to 31 of the report. They included the following issues.

1. Encouraging the use of Oregon's political tax credit
2. Begin an active legislative discussion of public financing, particularly small donor incentive programs.
3. Improve ORESTAR, provide training on ORESTAR and develop a means to assure that deliberate failure to report is penalized more substantially than math errors -- and with public notification. In other words, improve understanding of the system and make penalties real.
4. Address the problem of lack of attribution on campaign materials.

Contribution and expenditure limitations

But of course the biggest issue from the beginning of the Task Force was whether the group would recommend amendment of the Oregon Constitution making it explicit that the State can regulate campaign contribution and expenditure levels. And in fact, a majority of the Task Force did make that recommendation in advance of the 2016 Legislative session.

I would characterize the argument this way:

Argument For: the public is mistrustful of our political system, and the influence of big money is at the root of that. Campaign spending generally, as well as instances of candidates receiving of increasingly large donations from both individuals and groups means our elected officials are beholden to only a small portion of the public. Only a strong action like setting campaign limits will really address this concern. We're one of only 12 states that don't have some limits.

Argument Against: It hasn't been established that Oregonians are not participating or have the same level of suspicion and mistrust as national reporting would have us believe. Quid pro quo corruption has not been demonstrated in Oregon. Our reporting system informs the public better than reporting systems elsewhere – sunshine is the best disinfectant. At this point the

influence of outside SuperPACs is nowhere near as strong in our state as it is in Federal races – where limits are in place.

In the end, a majority of the Task Force went with the first set of arguments and not the second. But I will also note there was agreement across the Task Force that “the devil is in the details.” The recommendation was to amend the state constitution but it did not include a specific proposal for how the regulation of campaign finances would work.

For some on the Task Force that felt like a difficult leap – they wanted to know what the system would look like before changing the Constitution. I suspect there was fear that any regulatory scheme would benefit “the other side” – whether that be Republican or Democratic candidates or labor or business interests. A strong thread throughout the debate was the concern that candidates, campaigns, parties and organizational interests be treated fairly. The group was caught in a loop – one can’t seriously explore what limits should look like when the Constitution appears to prohibit any limits at all; yet one can’t amend the Constitution without knowing what the regulatory plan is. The majority voted to escape from that loop by moving forward with an appropriate constitutional provision and allowing the Legislature then to consider appropriate regulation.

What’s different now?

It’s been a scant 2 years since the Task Force last met. So what may have changed? I think the most recent campaign cycle did not diminish – in fact it likely enhanced -- the concerns of what large donations, and big spending, means to our electorate. There is a case challenging earlier interpretations of the state constitution that is on its way to our Supreme Court. Some good work was done in the 2017 session regarding reporting of individual expenditures. But as the report demonstrates, there is still a lot of fertile ground to plow and the pressure to take action is growing.

Personal input

I tried very hard to be an honest broker as Chair of this Task Force and to report accurately on their work today. But given that I am no longer Secretary of State and the Task Force is no longer active, I do want to give you a brief bit of personal input.

As most of you know, I currently serve as Chair of the Democratic Party of Oregon. And party activists would be very disappointed if I didn’t take this opportunity to convey to you our platform’s position – which falls on the side of “take action now – this is important.” Our party

takes the position that money does not equal speech and that the wealthy do not have the right to more speech than the rest of us. Whatever improvements we can make in reporting, public understanding, and more realistic penalties, the fact that our founding document has been interpreted as locking in the right of the wealthy to have a bigger megaphone than the rest of us is a fundamental problem.

I hope you will strongly consider a measure like HJR 13 so we can start the process of getting control over the influence of money in our campaign. Of course we want a good and enforceable system, and majority agreement on what reasonable limits look like. I encourage you to avoid letting the debate on the perfect plan sink what is an important signal to the public that you are taking this issue seriously.

I wish you very good speed in working through this important issue.