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

In the Matter of:

Case No. 19CV06544

Validation Proceeding to Determine the
Legality of City of Portland Charter Chapter 3,
Article 3 and Portland City Code Chapter 2.10
Regulating Campaign Finance and Disclosure.

DECLARATION OF NAOMI SHEFFIELD

(In Support of Petitioner City of Portland’s
Motion for Summary Judgment)

I, Naomi Sheffield, Deputy City Attorney representing petitioner City of Portland in the
above-entitled matter, declare as follows:

1. Attached to this declaration as **Exhibit 6** is a true and correct copy of Order on
Petitioner Multnomah County’s Motion for Declaration of Validity, MCC Case No. 17CV18006.

2. Attached to this declaration as **Exhibit 7** is a true and correct copy of the Portland
Mercury editorial Board feature, *A Mercury Voter Guide for the November 2018 Election
Measure 26-200: Portland Campaign Finance Reform – Yes.*

3. Attached to this declaration as **Exhibit 8** is a true and correct copy of Center for
Public Integrity’s 2015 State Integrity Study, *Oregon Gets F Grade in 2015 State Integrity
Investigation.*

4. Attached to this declaration as **Exhibit 9** is a true and correct copy of Oregonian
Editorial, *Editorial Endorsement: Vote ‘yes’ on Portland campaign finance reform.*

5. Attached to this declaration as **Exhibit 10** is a true and correct copy of Willamette
Week’s November 2018 Endorsements for Oregon Ballot Measures, *City of Portland Measure
26-200 Limits campaign contribution in city races.*

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CIRCUIT COURT
FOR MULTNOMAH COUNTY

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

In the Matter of:

Case No. 17CV18006

**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**

ORDER ON

**Petitioner Multnomah County's Motion for
Declaration of Validity**

1 I. Introduction

2 Pursuant to ORS 33.710(2), Petitioner Multnomah County (Petitioner) has commenced
3 this proceeding for the purpose of “having a judicial examination and judgment of the court as to
4 the regularity and legality of Multnomah County Home Rule Charter Section 11.60 and
5 Implementing Ordinance No. 1243 Regulating Campaign Finance and Disclosure.” (hereafter
6 referred to as the charter and ordinance)

7 Specifically, Petitioner asks the court to declare that “Charter Section 11.60 and
8 Ordinance No. 1243 are constitutional, including under Article I, Section 8, of the Oregon
9 Constitution and the First Amendment to the United States Constitution,” and “that Charter
10 Section 11.60 and Ordinance No. 1243 are otherwise permissible under state and federal law and
11 therefore can be fully implemented by the County.”

12 Respondents Associated Oregon Industries, Portland Business Alliance, Portland
13 Metropolitan Association of Realtors, and Alan Merwhein (Industry Respondents) appeared,
14 pursuant to the notice, to “contest the validity of such proceedings, or of any of the acts or things

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1 therein enumerated” ORS 33.720(3). Respondents Ron Buel, David Delk, Jason Kafoury, James
2 Ofsink, Juan Carlos Ordonez, Jim Robison, Moses Ross, Elizabeth Trojan, and Seth Alan
3 Woolley (Citizen Respondents) appeared, pursuant to the notice, to support the validity of the
4 charter rule and its implementing ordinance. ¹

5 The court has jurisdiction over this proceeding based upon the fact -- unchallenged by
6 any party -- that petitioners have complied with ORS 33.720(2): well more than 10 days ago,
7 a notice of this action appeared in “a newspaper of general circulation published in the county
8 where the proceeding is pending,” at a frequency of “at least once a week for three successive
9 weeks.” Jurisdiction having been properly established, the rulings of this court are binding on all
10 the parties and the electors of Multnomah County.

11 As the Citizen Respondents note, the voters of Multnomah County overwhelmingly
12 favored enacting contribution and expenditure limitations to govern the county's elections. While
13 it is the established task of this and any court to strike down a governmental action, regardless of
14 its popularity, when it runs afoul of state and/or federal constitutional protections, Oregon courts
15 have long recognized respect for the other branches mandates that a statute or similar enactment
16 should be “presumed to be constitutional, and all doubt must be resolved in favor of its validity.”
17 *Bergford vs. Clackamas County* 15 Or App 362, 365 (1973), quoting from *Milwaukie Co. of*
18 *Jehovah's Witnesses vs. Mullen* 214 Or 281, 293 (1958).

19 With this duty in mind, the court has conducted a thorough, and even searching, review
20 of the briefs, the cited case law, and other materials that might shed light on the court's legal
21 analysis. What follows is this court's best judgment as to what results are required under

¹Intervenors Taxpayers Association of Oregon and Taxpayers Association of Oregon Political Action Committee (Taxpayer Intervenors) appeared after the expiration of the 10 day jurisdictional limit but moved to intervene pursuant to ORCP 33C. The motion to intervene was denied by order of this court, and they have participated in this proceeding as an *amicus curie*.

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1 Oregon's existing constitutional and statutory jurisprudence that pertains to Multnomah County's
2 charter and ordinance provisions.

3 **II. The Regulatory Scheme Established by the Charter and Ordinance**

4 The charter and ordinance act upon matters relating to the financing of campaigns for
5 elective office in Multnomah in five distinct ways, detailed below.

6 **Contributions:** [§5.201 (A) and (B)] The charter and ordinance impose limits on the
7 amounts that a candidate or candidate committee can receive from individuals and political
8 committees. Individuals and political committees may give no more than \$500 to candidates or
9 candidate committees. Small donor committees, which can only accept contributions of \$100 or
10 less per individual, may give unlimited amounts to candidates and candidate committees. This
11 section does not limit the amount that may be given to a political committee.

12 **Expenditures:** [§ 5.202 (A) and (C)] The charter and ordinance limit aggregate
13 independent expenditures to \$5,000 per election cycle for individuals, and \$10,000 for political
14 committees, if the independent expenditure is funded by individual contributions of no more than
15 \$500 per individual. There is no limit on independent expenditures made by small donor
16 committees. Additionally, individuals and committees may only expend funds if they were
17 collected in the manner prescribed in the contribution limit section of the ordinance.

18 **Disclosure:** [§ 5.203] The county charter and ordinance require that “each
19 Communication to voters related to a Multnomah County Candidate Election shall prominently
20 disclose the Individual and Entities that are the five largest true original sources, in excess of
21 \$500 each, of the Contributions and/or Independent Expenditures used to fund the
22 Communication.”

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1 **Registration:** [§ 5.202(B)] The charter and ordinance require entities to register as
2 political committees within 3 business days of making aggregate independent expenditures
3 exceeding \$750 within any election cycle.

4 **Payroll Deductions:** [§ 5.201(C)] The charter and ordinance require employers who
5 allow payroll deductions for any purpose to also allow deductions for campaign contributions.

6 **III. Analysis**

7 Oregon courts will examine state constitutional issues before addressing federal ones.
8 *State vs. Kennedy* 295 Or 260, 262 (1983). Only if the charter and ordinance survive the state
9 constitutional analysis will the court perform an analysis of the provisions for consistency with
10 the United States Constitution.

11 Oregon constitutional analysis here begins with the case of *State vs. Robertson* 293 Or
12 402 (1982), in which the Oregon Supreme Court established a framework for assessing whether
13 a law violates Article 1 Section 8 of the Oregon Constitution. See also *State vs. Plowman* 314 Or
14 157 (1992). The framework places laws that affect speech into one of three categories: 1) laws
15 that are directed at limiting certain identified speech regardless of the medium of communication
16 or the effects the speech produces; 2) laws that are directed at the pursuit or accomplishment of a
17 harmful result; and 3) laws that, without mentioning speech, might be applied so as to affect it.
18 The *Robertson* court went on to establish that laws within the first category must fall, when
19 challenged under Article I, Section 8, unless “the scope of the restraint is wholly confined within
20 some historical exception that was well established when the first American guarantees of
21 freedom of expression were adopted.” *Robertson* 293 Or at 412.

1 **A. Contributions**

2 In *Vannatta vs. Keisling* 324 Or 514 (1997) (*Vannatta I*) the plaintiff brought a
3 challenge under Article I, Section 8, to limitations on political contributions that were, in many
4 ways, very similar to those at issue here. In that case, the Oregon Supreme Court considered the
5 law to be in the first category established under *Robertson*, and went on to hold campaign
6 contributions are a form of expression protected by Article I, Section 8 without historical
7 exception, resulting in the court striking down the contributions limitations there at issue.

8 The court has considered whether a second case involving the same plaintiff, *Vannatta*
9 *vs. Oregon Ethics Commission* 347 Or 449 (2009), *cert denied* 560 US 906 (2010) (*Vannatta II*),
10 altered *Vannatta I* in a way that supports the constitutionality of the contribution limitations of
11 the charter and ordinance. I find this position, proffered by the proponents of the charter and
12 ordinance, to be unavailing.

13 In *Vannatta II*, the Oregon Supreme Court indeed sought to limit some of the broadest
14 interpretation and application that could be given language contained in *Vannatta I*, noting, for
15 example, that the *Vannatta I* court had not decided that “in every case, the delivery to a public
16 official, a candidate or a campaign of money or something of value also is constitutionally
17 protected expression as a matter of law.” 347 Or at 465. But the *Vannatta II* court employed that
18 clarification to distinguish the gifts at issue there from the political contributions at issue in
19 *Vannatta I*, and so to reach its holding that a ban on giving gifts to legislators was constitutional.
20 For obvious reasons, that distinction cannot save the charter and ordinance, which indeed restrict
21 political contributions.

22 While Petitioner’s argument is demonstrably accurate that since *Vannatta I* was decided,
23 the Oregon Supreme Court, in *Vannatta II* and elsewhere in dissents and dicta, has sought to

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1 clarify and perhaps even limit *Vannatta I*, none of those case law circumscriptions is sufficient to
2 dislodge *Vannatta I* as the controlling authority regarding the limitations placed by the charter
3 and ordinance on political contributions, nor to otherwise assist petitioners in their effort to
4 demonstrate the constitutionality of the charter and ordinance. Indeed, the continued
5 precedential vitality of *Vannatta I* has been affirmed in cases decided since *Vannatta II*, in both
6 the Oregon Court of Appeals and the Oregon Supreme Court. *See eg. Hazell vs. Brown* 352 Or
7 455, 469 (2012); *Hazell vs. Brown* 238 Or App 497, 510-511 (2010) (“*Vanatta I* remains
8 controlling law”).

9 In sum, the court concludes that political contributions which are the subject of the
10 Petitioner’s charter and ordinance are a form of highly-valued expression that falls squarely
11 within, and are not historically excepted from, the protections of Article I, Section 8 of the
12 Oregon Constitution. As such, these contribution limitations are impermissible under the free
13 speech guarantees afforded under Article 1, Section 8.

14 ***B. Expenditures***

15 *Vannatta I* and subsequently decided cases construing Article I, Section 8, such as *Hazell*
16 and *Meyer vs. Bradbury* 341 Or 288 (2006), have uniformly considered campaign expenditures
17 to be a form of speech fully within the protections afforded by Article I, Section 8 of the Oregon
18 Constitution. And beginning with the holding in *Deras vs. Meyer* 272 Or 47 (1975) and
19 continuing to views expressed in the *Hazell* opinion almost four decades later, the Oregon
20 Supreme Court has considered limitations on political expenditures to be in conflict with these
21 Article I, Section 8 protections.

22 Beyond their previously rejected argument against the continued precedential value of
23 *Vannatta I*, the proponents of the charter and ordinance argue the constitutional analysis and

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1 result should be different for restrictions placed upon independent expenditures, which are the
2 focus of the expenditure regulations at issue. This position appears wholly unfounded, the legal
3 proverbial “distinction without a difference.”

4 Thus, as the court has held with regard to political contributions, the limitations on
5 expenditures enacted by Multnomah County through the charter and ordinance are
6 unconstitutional under Article I, Section 8.

7 ***C. Disclosure***

8 The disclosure requirement acts as both a compulsion and a restraint: a compulsion upon
9 the putative political speaker to disclose their identity, and a restraint on anonymous political
10 speech. The Oregon Supreme Court has never held there is a right to anonymous speech, nor
11 whether Article I, Section 8 prohibits compelling speech. Some case law instruction comes in
12 *Vannatta I*, where the Oregon Supreme Court held a requirement of “neutral reporting of
13 objective truth” does not impermissibly burden expression.

14 But in *Vannatta I*, the court was considering a requirement that a public official publish
15 information reported to the county regarding a candidate’s agreement to limit expenditures. That
16 is decidedly different than compelling a private party who makes a campaign communication to
17 disclose whose funds permitted the specific communication to be made.

18 On these questions, I am persuaded by the argument set out in Industry Respondents’
19 Exhibit 1, a March 10, 1999 Opinion from Attorney General Hardy Myers to Secretary of State
20 Phil Keisling regarding the constitutionality of ORS 260.522, which prohibited most anonymous
21 signs, publications and broadcasts used in political campaigns. Attorney General Myers opined
22 that the statute violated Article I, Section 8 because it was directed at speech, not the effects of
23 speech and, under the *Robertson* analytical framework, there was no historical exception that

1 permitted the regulation. I conclude the same with regard to the disclosure provision of the
2 charter and ordinance.

3 In addition to the reasons stated above for setting aside the disclosure requirement, the
4 court has a genuine concern that the ordinance is vague and potentially overly broad.

5 The *Robertson* court, quoting from *Grayned v. City of Rockford* 408 US 104, 108,
6 observed:

7 “Vague laws offend several important values. First, because we assume that man is free
8 to steer between lawful and unlawful conduct, we insist that laws give the person of
9 ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may
10 act accordingly. Vague laws may trap the innocent by not providing fair warning.
11 Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide
12 explicit standards for those who apply them....” (footnotes omitted).”

13
14 Ordinance § 5.203 requires disclosure of the funders of “each” communication to voters
15 that is “related” to an election at which voters will select the County’s public officials. This
16 mandate clearly encompasses a very wide array of communications and communicators: far
17 more communications than can be justified under the legislative findings offered by the
18 Petitioner in support of the charter and ordinance, and more communicators than reasonably can
19 be expected to be “fairly warned” that their chosen exercise of free speech may carry with it a
20 disclosure obligation. These circumstances will inevitably lead to arbitrary enforcement which,
21 while never acceptable, in the elections context is perilous.

22 ***D. Registration***

23 I find this section of the ordinance to be purely administrative in a way that does not
24 burden free expression. This section of the ordinance is constitutional under both the state and
25 federal constitutions.

26 ***E. Payroll Deductions***

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1 ORS 652.610(3) provides that “[a]n employer may not withhold, deduct or divert any
2 portion of any employee’s wages unless” the employer does so in accordance with one of the
3 exceptions listed, including subsection (c):

4 “[t]he employee has voluntarily signed an authorization for a deduction for any other
5 item, provided that the ultimate recipient of the money withheld is not the employer and that the
6 deduction is recorded in the employer's books.”
7

8 A plain reading of subsection (c) shows an employer may deduct money from an
9 employee’s pay if the employee asks the employer to deduct the money, and that there is no
10 restriction on the ultimate recipient of the money, except that it cannot be the employer.

11 Thus, even in the absence of the charter and ordinance, an employer could, at the
12 direction of the employee, deduct money from an employee’s pay and transmit that money to a
13 candidate or committee. The charter and ordinance do not require employers to deduct a portion
14 of an employee’s wages, but rather simply require employers to allow employees to make
15 voluntary political contributions by payroll deduction, if the employer otherwise provides for
16 payroll deductions.

17 As ORS 652.610(3)(c) allows the employee to authorize payroll deductions, and the
18 charter and ordinance require employers to allow political contributions through payroll
19 deductions if they offer any other payroll deductions, there is nothing inconsistent between the
20 state statute on the one hand, and the County’s charter and ordinance on the other. The two can
21 operate concurrently, and this provision is lawful.

22 **IV. Conclusion**

23 The record in this case is well made. Perhaps with the passage of time and the
24 occurrence of one election cycle under the requirements imposed by Multnomah County’s
25 charter and ordinance provisions, a further factual record can be provided for this or some future

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1 case that can further illuminate the speech and governance issues implicated by the ongoing
2 effort to regulate the conduct of elections with respect to contributions and expenditures.

3 But as the Oregon Supreme Court clearly stated in *Meyer vs. Bradbury* 341 Or 288, 299
4 (2006), with citation to *Vannatta I*:

5 “Since the inception of the Oregon Constitution, Article I, Section 8 strictly has
6 prohibited any legislation ‘restraining the free expression of opinion or restricting the
7 right to speak right or print freely on any subject whatever[.]’ Under Oregon law, both
8 campaign contributions and expenditures are forms of expression protected by that
9 constitutional provision, thus making legislatively imposed limitations on individual
10 political campaign contributions and expenditures impermissible.”

11 Such is the state of Oregon's Article I, Section 8 precedents with respect to the regulation of
12 campaign contributions and expenditures, and, in this case, compelled disclosures.

13 Guided by the existing precedents cited and discussed above, the court orders as follows:

14 1) Multnomah County Ordinance 1243, section 5.201(A) and (B), relating to
15 contributions in Multnomah County Candidate Elections, is struck down as a violation of Article
16 I, Section 8 of the Oregon Constitution;

17 2) Multnomah County Ordinance 1243, section 5.202(A) and (C), relating to limitations
18 on expenditures in Multnomah County Candidate Elections, is struck down as a violation of
19 Article I, Section 8 of the Oregon Constitution;

20 3) Multnomah County Ordinance 1243, section 5.203, relating to disclosure of
21 contributions and expenditures for communications, is struck down as a violation of Article I,
22 Section 8 of the Oregon Constitution;

1 4) Multnomah County Ordinance 1243 section 5.202(B) is lawful and permissible under
2 state and federal law; and

3 5) Multnomah County Ordinance 1243 section 5.201(C) is lawful and permissible under
4 state and federal law.

It is so ordered.

3/6/18
Date


Eric J. Bloch
Circuit Court Judge

Measure 26-200: Portland Campaign Finance Reform—Yes

Given the chance, the smart, likeable nerds campaigning for Measure 26-200 will happily bury you in spreadsheets, lists, graphs, and statistics. (That's what they spent most of the *Mercury's* endorsement interview doing, anyway. These guys *really* like their numbers.) As with just about everything regarding campaign finance reform, Measure 26-200 can seem complicated.

Yet not only is campaign finance reform incredibly important (as Ann Ravel, the former chair of the Federal Election Commission, puts it, "Whether it be education or tax reform or foreign policy, campaign finance is at the heart of all the policy decisions that are being made"), but once you get past all those spreadsheets? Measure 26-200 actually *isn't* that complicated.

The boiled-down version: This measure would limit the amount that individuals and political action committees (PACs) can donate to those running for office in Portland. The cap would be \$500—a far cry from Oregon's current system, which puts no limit on how much individuals or PACs can donate. That drastically favors well-connected candidates favored by well-moneyed individuals. (Look no further than Nike co-founder Phil Knight, who, directly and indirectly has given roughly \$3.5 million to Republican gubernatorial candidate Knute Buehler.) Measure 26-200 would also require that committees running political ads on behalf of candidates prominently and clearly identify their top donors. Currently, those donors—be they individuals, businesses, or special-interest groups—can hide behind the names of PACs, which are often misleadingly or euphemistically named in order to confuse voters.

Measure 26-200 is similar to [a measure Seattle voters passed in 2015](#), and it's identical to a county charter amendment that Multnomah County voters approved in 2016, only to see [a county judge declare it unconstitutional](#). While that amendment is stuck in legal limbo, it's just part of a greater push to bring campaign finance reform to Oregon—a push that now involves Measure 26-200.

And by all indications, campaign finance reform is something Portlanders want: Not only did the 2016 measure pass with a whopping 89 percent of the vote, but the vast majority of Americans favor transparency in campaign financing.

The US Supreme Court's disastrous 2010 ruling on *Citizens United v. FEC* all but guaranteed that dark money will continue to be used to manipulate elections across the country. We can't fix everywhere else—but we *can* make sure that in Portland, campaign donations are limited, disclosed, and regulated in a way that lets everyone know who stands to benefit in each election. That's information every voter needs. Vote yes on 26-200.

STATE INTEGRITY 2015

Published — November 9, 2015

Updated — November 20, 2015 at 5:37 pm ET

OREGON GETS F GRADE IN 2015 STATE INTEGRITY INVESTIGATION

Land of ethics, manners hurt by rare scandal

Lee van der Voo

The State Integrity Investigation (<https://www.publicintegrity.org/accountability/state-integrity-investigation/state-integrity-2015>) is a comprehensive assessment of state government accountability and transparency done in partnership with Global Integrity. (<https://www.globalintegrity.org/>)

Oregon

GRADE: **F**₍₅₉₎ RANK: **42**ND

Assessing the systems in place to deter corruption in state government

Click on each category for more detail

[OUR METHODOLOGY](#)

Public Access to Information	GRADE: F ₍₃₈₎	RANK: 34 th
Political Financing	GRADE: F ₍₃₇₎	RANK: 49 th
Electoral Oversight	GRADE: C ₍₇₄₎	RANK: 11 th
Executive Accountability	GRADE: F ₍₅₅₎	RANK: 38 th
Legislative Accountability	GRADE: D ₋₍₆₁₎	RANK: 31 st
Judicial Accountability	GRADE: F ₍₅₅₎	RANK: 32 nd
State Budget Processes	GRADE: B ₍₈₄₎	RANK: 13 th
State Civil Service Management	GRADE: D ₍₆₆₎	RANK: 12 th
Procurement	GRADE: F ₍₅₅₎	RANK: 45 th
Internal Auditing	GRADE: C ₊₍₇₇₎	RANK: 36 th
Lobbying Disclosure	GRADE: F ₍₅₈₎	RANK: 30 th
Ethics Enforcement Agencies	GRADE: F ₍₅₆₎	RANK: 28 th
State Pension Fund Management	GRADE: F ₍₄₉₎	RANK: 43 rd

Updates and Corrections

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State Integrity Investigation

Explore the full interactive to learn more about other states.

Credit: Yue Qiu, Chris Zubak-Skees and Erik Lincoln, Center for Public Integrity with Global Integrity

November 10, 2015: *This story has been corrected*

(<http://www.publicintegrity.org/2015/11/09/18502/oregon-gets-f-grade-2015-state-integrity-investigation#correction>) .

One day before Oregon’s usual Valentine’s Day statehood celebration this year, the Capitol was awash with reporters chasing a rare story on the abuse of access to power rather than the frosted sheet cake being handed out by the Oregon Wheat Growers League to mark the state’s 156th birthday.

In a state where ethical behavior is assumed rather than regulated, former Gov. John Kitzhaber offered his resignation in a pre-recorded speech heard in his reception room, while de facto-governor Kate Brown prepared for duty in the secretary of state’s office a floor below.

Kitzhaber was being investigated following **media reports** (http://www.wweek.com/portland/article-23203-first_lady_inc.html) that his fiancé, a consultant, **was selling access to the governor’s office and using state resources for personal gain** (http://www.nytimes.com/2015/02/14/us/kitzhaber-resigns-as-governor-of-oregon.html?_r=0) , and that he **blurred the line between his job as governor and his re-election campaign** (http://www.wweek.com/portland/article-24134-kitzhabers_secret_weapon.html) .

For many in the state, Kitzhaber’s resignation is a thing of the past. But the scandal that ensnared the former governor highlighted a wobbly legal framework in Oregon’s government, where good behavior is taken for granted rather than enforced.

That framework explains why Oregon fared poorly in this year’s **State Integrity Investigation** (<https://www.publicintegrity.org/accountability/state-integrity-investigation/state-integrity-2015>) , earning an overall score of 59 – an F grade – and **ranked 42nd among the 50 states** (<https://www.publicintegrity.org/2015/11/03/18822/how-does-your-state-rank-integrity>) in the data-driven assessment of state government accountability and transparency by the Center for Public Integrity and Global Integrity.

“It’s not like Chicago or something,” said Dan Lucas, a researcher, policy advocate and chief editor of the blog Oregon Catalyst. Noting four of the last seven Illinois governors went to jail, he said, “We don’t have that level of corruption.”

But Oregon’s relative lack of scandal may be a function more of good manners rather than of law. As Lucas and others note, and this year’s failing grade suggests, lines are easily blurred in Oregon government, and ethical lapses and partisan abuses of power – while often not criminal – have been smoothed over by both political maneuvering and etiquette.

Kitzhaber’s resignation caused Oregon to receive an F in the category of executive accountability. The debacle also ensnared the Oregon Government Ethics Commission, and highlighted why Oregon is one of the worst performing states with regard to access to information (F).

Oregon’s overall failing grade represented a substantial dip from **the C- the state received from the last State Integrity Investigation scorecard in 2012**

(<https://www.publicintegrity.org/2012/03/19/18212/oregon-gets-c-grade-2012-state-integrity-investigation>) , but the grades and scores are not directly comparable due to changes made to improve

and update the questions and methodology—like eliminating the category for redistricting, a process that generally occurs only once every 10 years.



Ethics Commission missteps

Oregon’s ethics commission didn’t move quickly to investigate complaints regarding Kitzhaber, and more importantly, his fiancé Cylvia Hayes. At the time, officials said they struggled with whether she was covered by state ethics law.

But the law is clear – Hayes, as a member of Kitzhaber’s household, was subject to the rules. Yet – until ethics reform passed the legislature afterwards – the ethics commission was unprotected from political interference by the governor’s office. The governor either appointed its directors, or gave names to the Democratic-controlled legislature for nomination by party leaders, one possible explanation why the commission didn’t act. Even after reforms, Oregon’s ethics commission still lacks budget protections and the staffing and technical support to see its mission through.

The commission’s lack of rigor hurt most every other category of this assessment.

As the keeper of records designed to collect robust information about the state’s elected officials and civil servants, the commission never audits the asset-disclosure forms it collects, the State Integrity Investigation revealed. Enforcement has been so lax that political leaders have been able to fudge on specifics in their disclosure forms or simply fail to provide significant information. The forms aren’t available online so that members of the public can check. And the State Integrity probe discovered that people who examine the forms universally report that the quality of information is substandard.

Holes in public records law

Decl. of Sheffield
Exhibit 8, Page 4 of 6

Such issues underscore why Oregon remains one of the worst performing states regarding access to information (an F grade), ranking tied for 34th even in a category where only six states earned a passing grade. The state has no open data laws or independent agency charged with overseeing citizen access to government. Oregon's Public Records Law is also full of exemptions – at least 480 – and lacks firm deadlines for delivery of public records. The Kitzhaber debacle underscored the consequences when public information doesn't flow freely or in a timely way; substantive deadlines might have allowed voters a closer look at Kitzhaber's issues before he was re-elected, only to resign a month after his swearing-in.

Oregon's lawmakers (D- in legislative accountability), like the ethics commission, operate without legal safeguards against unethical conduct. The state legislature still does not have laws prohibiting nepotism and cronyism in hiring, for example – a situation intended to allow rural legislators to support a family in the state capital of Salem but that leaves the government vulnerable to abuse. And low pay combines with a lack of campaign finance law to eliminate a buffer between Oregon legislators and special interests in the private sector.

As a result, legislators can grow accustomed to practices that cut corners. They may fudge the lines between their part-time legislative duties and their other jobs, angle for work in places where they shouldn't or find themselves enormously dependent on campaign contributors as state races get more expensive.

"The problem in our legislature regarding integrity is not about the ethics stuff. Or going to jail. These are intellectual integrity issues..." said Phil Keisling, Director of the Center for Public Service of the Hatfield School of Government at Portland State University.

Few requirements for judges, courts

The judicial branch is also plagued by potential for conflict and a lack of legal safeguards; the category grade for judicial accountability is F. While, again, Oregon judges don't seem to have overt corruption issues – judges weren't sanctioned for bad behavior at any point during the study period – staffing shortages prevented many state-level judges from offering full opinions on their rulings. And Oregon lacks laws to force its judges to explain their decisions to the public. The state also lacks judicial performance evaluations, and is behind other states in making court data publicly available. Unless a complaint is filed, the Oregon Commission on Judicial Fitness lacks the power to investigate problems, and even then, those records are sealed unless they lead to discipline.

There were some bright spots: the state's budgeting process earned a B and the secretary of state's audits division a C+. Both were sufficiently staffed, transparent, and had the authority to act with independence, suffering only from the same lack of legal safeguards that brought state scores down overall.

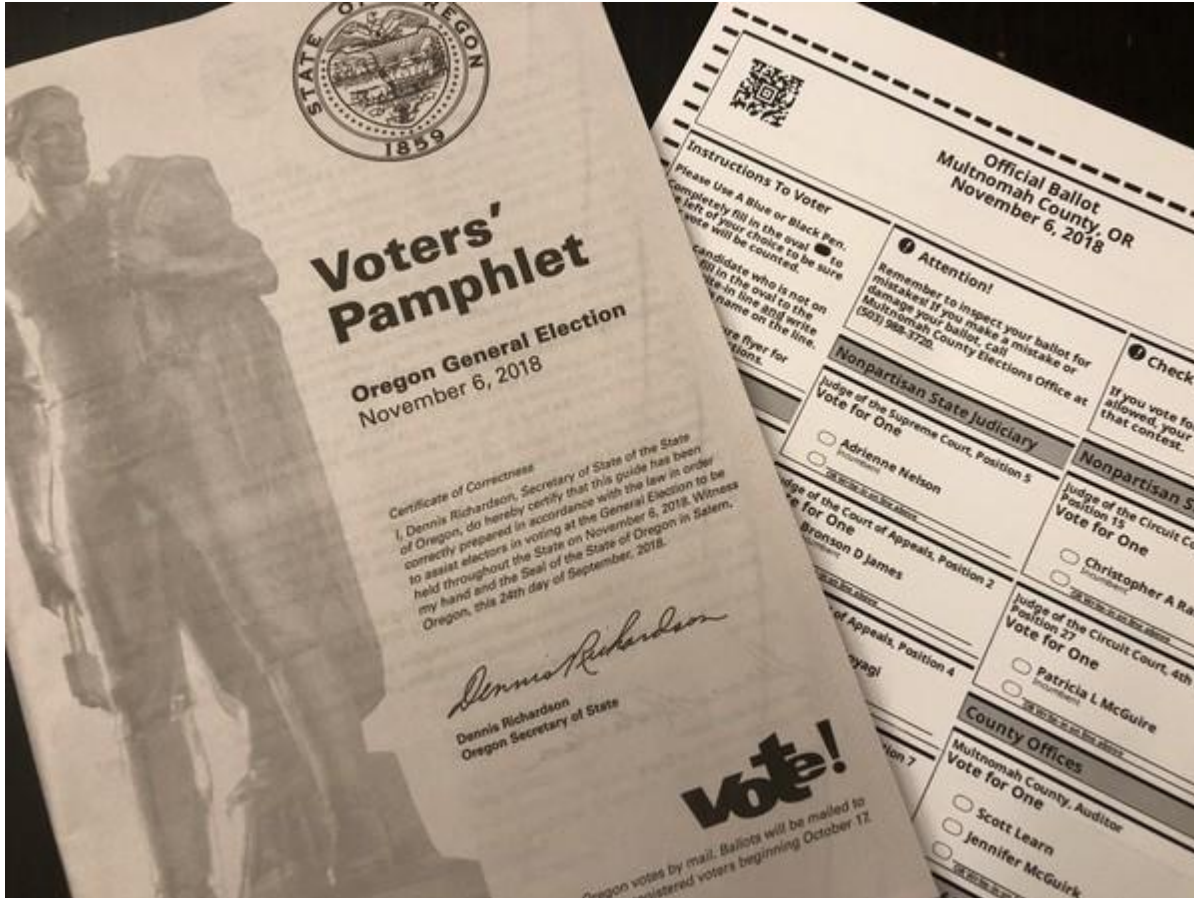
And while Oregon's civil service system scored only a 66 – a D grade – that ranked the state 12th, the highest of all its category rankings. Government workers aren't always protected from political interference in Oregon, but the civil service system in the Beaver State does seem to be better than most.

Correction, November 10, 2015, 4:15 p.m.: *An earlier version of this story incorrectly reported that the ethics commission lacks the authority to independently investigate bad behavior.*

Correction, November 20, 2015, 6:00 p.m.: *Due to a data error, this article incorrectly stated the article's score and rank, and the category grade for state budget processes. The article has been corrected.*

Editorial endorsement: Vote 'yes' on Portland campaign finance reform

Posted Oct 20, 2018



(Oregonian/OregonLive file photo)

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By **The Oregonian Editorial Board**

Measure 26-200, which seeks to impose limits on campaign contributions in Portland city elections, is all about the long

game.

The measure would bar companies and unions from donating to candidates, limit individual or political committee donations to \$500 for candidates and levy other restrictions on spending. And yet those key parts of the proposal aren't even constitutional under Oregon Supreme Court and U.S. Supreme Court decisions. A similar measure passed by Multnomah County voters has already been partially invalidated by a Multnomah County court and is [on appeal](#).

But the measure is part of a larger strategy unfolding on multiple fronts. The proponents hope that legal challenges eventually lead to the Oregon Supreme Court overturning the decades-old ruling that bars limits on campaign contributions. They aim to put a constitutional amendment on the 2020 ballot to specifically allow for contribution limits. And they hope that approval of the measure will persuade candidates to voluntarily

abide by campaign limits. Portland voters should support the effort and vote "yes" for the measure.

As it is now, wealthy individuals, labor unions and corporations are the driving forces behind state, county and local elections, drowning out the smaller contributions from average Oregonians. But proponents argue that a vote for the measure will help show public support for campaign finance reform, perhaps persuading some candidates to adopt the limits in their own campaigns. In addition, the measure includes disclosure provisions that don't face the same legal hurdles as the campaign limits. The proposal requires candidates to list their five largest contributors of donations exceeding \$500 on political ads, a step toward greater transparency in a process that has too little of it.

The measure, which would amend the city charter, isn't perfect. It gives the responsibility of administering the program to the

City Auditor's office. It would likely be a better fit in the office developing the city's publicly-funded elections program. But it plants the flag of campaign finance as an issue that voters want to see in Oregon. That's a message that both political parties should hear.

- Helen Jung for The Oregonian/OregonLive Editorial Board

Oregonian editorials

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Members of the board meet regularly to determine our institutional stance on issues of the day. We publish editorials when we believe our unique perspective can lend clarity and influence an upcoming decision of great public interest.

Editorials are opinion pieces and therefore different from news articles. However, editorials are reported and written by either Laura Gunderson or Helen Jung.

To respond to this editorial, post your comment below, submit an OpEd or a letter to the editor.

City of Portland Measure 26-200

Limits campaign contributions in city races

Yes

Oregon's campaign finance system is broken.

The candidate with the most money wins Oregon legislative races 92 percent of the time, one study showed. And only a tiny fraction of Oregonians ever contribute to political races. That means a handful of people—plus labor unions and corporations—with a whole lot of money effectively decide who will represent you in government.

Oregon is one of just a half-dozen states that have no caps on campaign contributions.

This measure won't tame that Wild West. Instead, think of it as a sheriff in one frontier town. It will cap donations in Portland city races. (Supporters of this measure plan to go to the ballot in 2020 for statewide spending caps.)

Measure 26-200 would cap individual contributions in city races at \$500 and forbid corporate donations while allowing PACs that are funded by a group of small donors. A candidate's own contribution to the campaign would be capped at \$5,000.

We agree with all of these ideas. We're not sure they'll stand up in court. A similar measure passed overwhelmingly in 2016 by voters in Multnomah County was ruled unconstitutional by a circuit judge. The backers have appealed.

We don't know how that case will turn out. But as we argued in 2016, the idea is a good one and worth pressing the courts to reconsider.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF NAOMI SHEFFIELD
IN SUPPORT OF PETITIONER CITY OF PORTLAND'S MOTION FOR SUMMARY
JUDGMENT on the following parties by the method indicated:

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- Electronic service - UTCR 21.100 (1)(a)
- Mail in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service.
- Hand delivery
- Courtesy copied delivered by emails listed above.

DATED April 19, 2019.

Respectfully submitted,

/s/ Naomi Sheffield
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