

ADDITIONAL TESTIMONY ON HB 4124

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House Committee on Rules

February 11, 2020

Honest Elections Oregon, the Independent Party of Oregon, the Oregon Progressive Party, and the Alliance for Democracy still oppose HB 4124, which would deny the expressed wishes of Oregon voters statewide for limits on political campaign contributions, even if the Oregon Supreme Court rules that such limits are constitutional and valid.

This testimony supplements, and does not repeat, my testimony of February 4.

Delaying Effectiveness of Measure 47 of 2006

Rep. Dan Rayfield on February 4 submitted an informal opinion of LC Staff Attorney Christopher Allnatt that changing campaign contribution limits at any time other than the end of an election cycle would violate Equal Protection guarantee of the U.S. Constitution and the "equal privileges" guarantee of the Oregon Constitution, Article I, § 20. No court I could find has agreed with this as a legal conclusion, but I agree that changing the contribution limits in the midst of an election cycle provides an unfair advantage to any candidate who has amassed a campaign "war chest" before the limits are imposed or reduced.

That is why Measure 47 (2006) set its effective date as near to the end of the 2006 election cycle as allowed by the Oregon Constitution (30 days after the day of the general election) and requires that all candidate committees be zeroed-out within 60 days after the general election.

HB 4124, however, would set the earliest effective date of Measure 47 at July 1, 2021, which is not at the end of an election cycle under Oregon

campaign finance law. The end of such election cycle is the close of the day of the biennial general election. ORS 260.266(7)(d) states:

"Election cycle" means the period of time starting on the day after the date of a general election and ending on the date of the next general election.

The campaign finance "election cycle" is thus a full 2-year period. It does not begin with the candidate filing deadline (in September of odd-numbered years).¹

Thus, HB 4124 should be amended as follows:

SECTION 3. The provisions set forth in chapter 3, Oregon Laws 2007 (Ballot Measure 47 (2006)), become operative on the later of:

- (1) The date on which the Oregon Supreme Court issues a decision that renders chapter 3, Oregon Laws 2007, operative; or
- (2) **November 3, 2020** ~~July 1, 2021~~.

1. Under current campaign finance law any resident of Oregon at least 18 years of age can become a "candidate" for any office at any time merely by saying so. The definition of "candidate" at ORS 260.005(1) includes:

- > an "individual * * * whose name is expected to be or has been presented, with the individual's consent, for nomination or election to public office"; and
- > "an individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual's behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot."

Making Measure 47 effective as of November 3, 2020, would provide a level playing field for all candidates in the 2022 election cycle for another reason. Measure 47 requires that all candidate committees expend all of their funds within 60 days of the close of the biennial election cycle:

- (9)(c) Within sixty (60) days after the close of the election cycle for the office sought, the unexpended funds of a candidate committee at the close of the election cycle for the office sought shall revert to the State of Oregon to offset the cost of producing the Voters' Pamphlet, except for those funds reasonably necessary to pay the obligations of the committee and to terminate its operations. A candidate elected to the Oregon Legislature may deposit not more than ten thousand dollars (\$10,000) of the unexpended funds into the account maintained for legislative office expenses during the legislative session.

That creates the level playing field for the next election by requiring that campaign coffers stoked with contributions from the previous cycle are zeroed out within 60 days of the end of the election cycle.

If Measure 47 were made effective on any day after November 3, 2020, this zeroing-out provision would not apply until the start of the 2024 election cycle. Until then, established officeholders and incumbent candidates would have a large and unintended advantage over new candidates during the 2022 election cycle.

Also, it is quite likely that, even if the Oregon Supreme Court issues a decision in the Multnomah County validation case early in 2020, the Court would set the effective date for Measure 47 at November 3, 2020. The reactivation of Measure 47 is not an automatic result of a Court decision upholding the contribution limits in the Multnomah County Measure 26-184. The Oregon Supreme Court in *Hazell v. Brown* (2012) stated:

We have explained that Oregon voters intended Measure 47 to remain inoperative absent a constitutional amendment like Measure 46, or a controlling judicial construction of Article I, section 8, that effectively reverses *Vannatta I*. Measure 47 will

not, therefore, spring to life based on events that are arbitrary, difficult to describe, or unpredictable. * * *

Consequently, we conclude that section 9(f), properly read, requires Measure 47 to be codified and held in abeyance pending an appropriate constitutional amendment or judicial decision that will render it operative.

If the Court upholds Multnomah County Measure 26-184, I would expect the Court to ask the parties for memoranda on how to apply its decision to Measure 47. The Citizen Parties I represent would argue that the Court should make Measure 47 effective as of November 3, 2020, and I would expect that Multnomah County would agree.

Rep. Rayfield testified that the Secretary of State told him it would take several months to write rules to implement Measure 47. Measure 47 is a very detailed 8,083 words--about 20 pages of single-spaced 12-point text. It does not require the creation of rules for its implementation.

Change the Composition of the Task Force on Campaign Finance Reform

The HB 4124 Task Force would consist of 17 persons, all appointed by the Legislature. Of those 17, 11 would be selected to represent persons or entities with a vested interest in large contributions:

- 2 for the Senate
- 2 for the House
- 5 for political parties
- 1 for 501c4 organizations (this includes "dark money" groups)
- 1 for for-profit corporations

Thus, those with a vested interest in large contributions would have a clear majority of at least 11 on the 17-member Task Force. There is only one seat reserved for "organizations that focus on campaign finance reform," and even that seat could be filled with someone from an organization that focuses on opposing campaign finance reform.

The composition of the Task Force should be significantly changed so that advocates of campaign finance reform have at least some say. A similar task force was established by HB 2178 (2015). That task force had double the representation for advocates of reform than is now proposed in HB 4124. It produced 51 pages of report to the Legislature during 2016 but did not persuade the 2017 session to take reform actions.

Also, contribution limits do not apply to organizations that focus on voter registration without advocating for or against specific candidates, so their membership could be eliminated.

HB 4124 should be amended as follows:

SECTION 1. (2)(c) The two members of the Legislative Assembly appointed as cochairs of the task force under paragraphs (a) and (b) of this subsection shall jointly appoint:

- (A) ~~Four~~ Five members to represent the interests of political parties in Oregon, with ~~at least one~~ member representing each of the major political parties in Oregon.

- (B) One member to represent the interests of electors who are not affiliated with any political party.
- (C) One member to represent the interests of not-for-profit corporations that are tax exempt under section 501(c)(3) of the Internal Revenue Code. The member appointed under this subparagraph must be from a corporation that does not have an organizational affiliation with a not-for-profit corporation that is tax exempt under section 501(c)(4) of the Internal Revenue Code.
- (D) ~~Three~~ One members to represent the interests of organizations that focus on campaign finance reform.
- (E) One member to represent the interests of not-for-profit corporations that are tax exempt under section 501(c)(4) of the Internal Revenue Code.
- (F) One member to represent the interests of for-profit organizations.
- ~~(G) One member to represent the interests of nonprofit organizations that focus on voter registration.~~
- (H) Two members to represent the interests of underrepresented communities.

Make the Disclaimer Requirements in HB 2716 (2019) Apply to Candidate Committees

The 2019 Legislature enacted HB 2716, which requires that independent expenditure campaigns disclose in their advertisements the names of some of the largest contributors of over \$10,000 each to the campaign. While this is good, the requirement does not apply to candidate committees, which are responsible for spending over 90% of the funds in Oregon candidate elections.

The first several versions of HB 2716 did apply this requirement to candidate committees. That was removed from the bill in the House Rules Committee. This requirement should be restored for candidate committees, so that voters can readily see the major sources of large donations to candidates.

HB 2716 also erroneously allows local governments to veto this disclaimer requirement. That should be corrected.

HB 2716 (2019) is codified at ORS 260.266, which should be amended as follows:

ORS 260.266 Statement of persons who paid for communication in support of or in opposition to clearly identified candidate; requirements; rules.

- (1) Except as otherwise provided by a local provision **requiring greater disclosure**, a communication in support of or in opposition to a clearly identified candidate must state the name of the persons that paid for the communication.
- (2) For the purpose of complying with subsection (1) of this section:
 - (a) Except as provided in paragraph (b) of this subsection, a communication in support of or in opposition to a clearly identified candidate by a **candidate committee**, political committee, or petition committee must state:
 - (A) The name of the **candidate committee**, political committee or petition committee; and
 - (B) The names of the five persons that have made the largest aggregate contributions of \$10,000 or more to the committee in the election cycle in which the communication is made.
 - (b) A communication in support of or in opposition to a clearly identified candidate by an individual **or**, a for-profit business entity ~~or a candidate or the principal campaign committee of a candidate~~ must state the name of the individual **or**, for-profit business entity or candidate.