

# TESTIMONY ON SB 1526-1 (2022) CAMPAIGN CONTRIBUTION LIMITS

**Daniel Meek**

for Honest Elections Oregon, Oregon Progressive Party,  
and Independent Party of Oregon

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SB 1526-1 was posted at 9:45 a.m. today, several hours after I submitted my testimony on SB 1526. Here is my testimony about the amendment. **Under each heading, the initial passage in bold shows the effect of the amendment.**

In sum, SB 1526-1 fixes problems 2, 3, 4, 8, 9, 10, 12, and 14. It does not fix problems 1, 5, 6, 7, 11, or 13.

This testimony does not address the portion of SB 1526 that creates a system of public funding of campaigns.

- 1. SB 1526 would not enact a law, would require voter approval, and would not become operational until November 6, 2024.**

**This remains true with SB 1526-1.**

Its Section 52 states:

This 2022 Act shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.

SB 1526 is effectively a referral, not a bill. It would require voter approval to go into effect. It states its "operational" date as November 6, 2024. So, even if voters approve it, it would not be in effect during either the 2022 or 2024 election cycles.

- 2. SB 1526 has no actual contribution limits.**

**SB 1526-1 fixes this problem.** Analysis of those limits will take a bit of time.

**3. SB 1526 imposes no limits on giving campaign contributions, just on receiving them.**

**SB 1526-1 fixes this problem.**

Unlike other bills with contribution limits, SB 1526 imposes such limits only on the recipients of contributions and not the donors. Contribution limits should not only bar receiving funds above certain limits, but also bar giving funds above those limits. While some people may give above the limits by accident, others do so on purpose and try to evade the law.

**4. SB 1526 allows local governments to veto contribution limits applicable to local elections.**

**SB 1526-1 fixes this problem.**

Section 3(b) of SB 1526 states:

(b) Except as otherwise provided by a local provision or paragraph (c) of this subsection, the limits on aggregate contributions that may be accepted by a candidate or the principal campaign committee of a candidate for the office of state Representative under this section also apply to a candidate or the principal campaign committee of a candidate for any elected office that is not a state office.

So, while SB 1526 would set contribution limits for local candidates of some sort (currently blank), any local government could veto those limits.

**5. SB 1526 authorizes corporations to contribute to membership organizations and small donor committees.**

**SB 1526-1 fixes this problem.**

SB 1526 does not limit "membership organizations" to members who are human beings. It is composed of "individual members," and the limits refer to "each individual member's membership dues," etc., but SB 1526 does not define "individual" as a human being. A corporation or union could be an "individual member" of "Corporations for Good Government."

SB 1526's limits on inflow to membership organizations and outflow from membership organization consist of blanks.

SB 1526 apparently would allow corporations to give money to membership organizations and would then allow the membership organizations to give the money to small donor committees, which in turn could give unlimited amounts to candidates under Section 3(c).

**6. SB 1526 allows effectively unlimited contributions by membership organizations.**

**SB 1526-1 does not fix this problem. It does not limit "members" to human beings.**

SB 1526 retains the extremely broad definition of "membership organization." It includes any 501(c) organization not formed or operated for commercial enterprise. It must have "members," but anyone who volunteers any amount of money or time is a "member." Thus, one could create a membership organization with many members by posting a message on social media, with the volunteer activity consisting of signing up for an email list.

Further, many multiple thousands of entities would already qualify as "membership organizations" having hundreds of thousands or millions of members. It also appears that SB 1526 allows corporations to be "members," as explained above.

SB 1526 allows any membership organization to contribute to Small Donor Committees (SDC) "an amount that does not exceed \$\_\_\_\_\_."

**7. SB 1526 does not provide for effective enforcement.**

**SB 1526-1 does not fix this problem. It provides a slightly more significant enforcement role for those who file election law complaints with the Secretary of State, but it does not allow them to appeal dismissals of complaints by the Secretary of State, to obtain contested case hearings on complaints, become parties in administrative contested case processes, or appeal the results of such proceeding. The better alternative is the enforcement processes in SB 1561-1.**

SB 1526 authorizes only the Secretary of State and sometimes the Attorney General to enforce its provisions. Campaign finance regulation that depends entirely on partisan elected officials enforcing them can create an appearance or reality of bias or selective enforcement. Citizen enforcement mechanisms are needed, such as those in the 2016 Multnomah County Measure 26-184 and the 2018 Portland Measure 26-200.

SB 1526 also has inadequate maximum penalties of only 150% of the unlawful contribution.

SB 1526 also allows any violator to avoid all penalty by merely giving an unlawful contribution back to its donor within 10 business days of receiving it or giving it to a 501(c)(3) organization. Many such organizations have 501(c)(4) affiliates, which are allowed to make contributions and expenditures on candidates and measures. SB 1526 would allow unlawful contributions in unlimited amounts to be funnelled to 501(c)(3)s, which could use them to offset overhead, personnel and other costs of affiliated 501(c)(4)s involved in political campaigns.

**8. SB 1526 does not ban earmarking of contributions.**

**SB 1526-1 fixes this problem.**

The identity of contributors to a campaign can be cloaked by running the funds through other committees first. SB 1526 should add restrictions on PAC-to-PAC transfers that can be used for cloaking.

For example, HB 3343 (2021) included in its Section 6(8):

(a) The principal campaign committee of a candidate may not make a contribution to any other political committee if the contribution was in any way directed or instructed by an individual or entity that made a contribution to the principal campaign committee.

(b) A violation of paragraph (a) of this subsection shall result in the forfeiture of all amounts contributed, in addition to any other penalties that may be assessed by law.

**9. SB 1526 does not impose any limits on money carried over to the next election cycle.**

**SB 1526-1 fixes this problem.**

The creation of war chests heavily advantages incumbents, as challengers will have to raise all of their funds under the contribution limits that were not applicable when the incumbents raised their war chests.

**10. SB 1526 does not close the campaign contribution loophole in Oregon's bribery statute.**

**SB 1526-1 fixes this problem.**

Bribing public officials with campaign contributions in Oregon is legal, because "pecuniary benefit" in the bribery statute is defined to exclude campaign contributions. ORS 162.005(1) should be amended to read:

(1) "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain, ~~but does not include a political campaign contribution reported in accordance with ORS chapter 260.~~

**11. SB 1526 does not provide free space in the Voters' Pamphlet for candidates who agree to cap expenditures or contributions.**

**SB 1526-1 does not fix this problem.**

The following candidates should get should earn free space in the Voters Pamphlet:

- > A candidate pledged to spend less than a certain amount (50 cents per eligible voter in a campaign for Governor, 25 cents/voter in a campaign for other statewide office, and \$1/voter for all other campaigns)
- > A candidate pledged to abide by contribution limits that are half of those allowed by law.

Here is language to accomplish that:

Any candidate for public office who agrees that the candidate's principal campaign committee shall expend less than fifty cents per eligible voter in the contest shall be titled to file a statement for the voters' pamphlet under ORS 251.095 or ORS 251.335 without payment of a fee. If expenditures by the candidate's principal campaign committee exceed that amount, the committee shall remit to the proper filing officer the fee that would otherwise be required.

**12. SB 1526 has no provisions for corporations or unions to form "separate, segregated political committees."**

**SB 1526-1 fixes this problem.**

Under current United States Supreme Court doctrine, laws that generally ban contributions from corporate or union treasuries must allow those entities to form "separate, segregated political committees" which can receive contributions (albeit

limited) from officers, employees, and members. Such a provision can be borrowed from Initiative Petitions 43, 44, 45, 46, or 47.

**13. SB 1526 needs stronger anti-proliferation provisions.**

**SB 1526-1 does not fix this problem.**

The provisions in SB 1526 to prevent the proliferation of political committees, with the effect of multiplying the contribution limits, are weak. SB 1561-1, with the assistance of national experts, contains far stronger provisions, which SB 1526 should incorporate.

**14. SB 1526 has no legislative findings that would bolster the constitutional validity of the Act.**

**SB 1526-1 fixes this problem.**

The determination of validity under the U.S. Constitution involves issues of fact. If the statute at issue does not have legislative findings, then the defenders of the law in court may face difficult evidentiary issues.

Legislative findings in statutes are accorded near complete deference by state and federal courts.

Excellent and applicable legislative findings appear in Initiative Petitions 43, 44, and 45 (2022).