CAMPAIGN FINANCE REFORM IN OREGON: NO EASY ANSWERS

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I am here to offer a view of campaign finance reform in Oregon from the trenches. I come at this question from a few different angles. My first year after college, 1996, I managed an Oregon legislative campaign. This was the one election cycle in which Oregon operated under strict contribution limits of 100 dollars per donor. The state Supreme Court later overturned these limits.

I would never want to run another campaign under that system. As state house races go, this was a high-profile race and even then we could not raise enough money to fund a serious messaging campaign. The real messaging work was done and paid for by outside interests, entirely without the candidate's input because of the prohibition on coordinating. That is no way to run an election, and it is one reason why I will be supportive of Oregon Secretary of State Kate Brown's push for limits more reasonable than those that would be automatically triggered here in Oregon if the *Vannatta*[1] case is ever overturned.

During law school, I interned at the Federal Election Commission. After graduation I practiced political law, was a candidate in three election cycles, and for several sessions I served on the House committee, which I now chair, that deals with all election issues.

While I don't pretend to have the expertise of today's other speakers, I have spent a fair amount of time thinking about this issue. This experience leads me to be somewhat ambivalent about whether contribution limits in legislative races are a good thing.

I believe that in a world of unlimited independent expenditures, where even the identity of funders can be hidden, the wisdom of

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1. Vannatta v. Kiesling, 931 P.2d 770 (Or. 1997).

limits is very much questionable. One of the key objectives of any campaign finance systems should be accountability. This objective is better met by having money—even large sums of money—given to the candidate directly under a robust disclosure system like we have in Oregon. During the current legislative session we may consider legislation to improve the disclosure system around independent expenditures, which would obviously strengthen the system further.

I also believe one of the purported benefits of contribution limits, that of reducing undue influence over candidates, is somewhat exaggerated. Oregon is an illustrative case. To use my own "side" as an example, public employee unions spent several million dollars in the 2012 election cycle, almost exclusively on Democratic candidates. To those who believe that the unions therefore have undue influence, it is of little relevance how much of that money was spent in the form of direct contributions to candidates and how much was spent independently. In either case, the donor is on record supporting the favored candidate; everyone knows it.

For purposes of this discussion, we need not try to settle the question of whether undue influence exists. My point here is simply that if one believes that large-scale financial support gives a donor clout in the legislative process, it likely doesn't matter very much whether the spending was done through contribution or independent expenditure.

These are two credible arguments against contribution limits. The basic problem is that the money is always going to find its way into the system as long as the demand for it exists. The post-*Buckley* era shows this if nothing else. True reform, in my view, would therefore consist of reducing that demand rather than trying to squash the supply.

One route is through public financing, although I am generally pessimistic that this route would succeed. Another is to mandate that candidates be given some baseline amount of free time on television and radio. Unfortunately, it has been some time since the federal government showed much interest in placing such conditions on the private exercise of domain over the public airwaves.

If reducing the demand for campaign money is a chimera and we are stuck in a world of unrestricted spending, then we are left asking how best to manage the demand. To return our focus to the question of contribution limits, I would like to offer a few reasons why they may be worthwhile despite the strong points in opposition.

First, I believe that a contribution limit may be an end in itself. The public believes that too much money is spent on elections and that having limits will reduce the risk of undue influence. As I've already said, if money results in a perception of undue influence, it probably is not lessened if the money is spent via independent expenditure rather than a direct contribution. Nonetheless, if the public believes that undue influence is thereby lessened then limits may serve a valuable legitimizing purpose, even if they do not fully or precisely achieve the objective that the public hopes.

Second, while I maintain that money will always find a way into the system so long as politicians demand it, perhaps not all of the money that would be pushed out of the system through contribution limits would find its way back in through independent expenditures. This might be true for a couple of reasons. Take a campaign like my own. I did not face serious opposition in the 2012 election. As is often the case in "safe" districts, I did not run any commercials or send any direct mail. As such, I did little active fundraising. And yet, I raised more than $150,000, the vast majority of which was unsolicited. I contributed a large chunk of this money to my caucus PAC, I covered some basic expenses, and I held onto a lot of it.

For a candidate in a non-race like mine, a donor that can give me only a defined maximum instead of unlimited money probably isn't going to funnel other money into independent expenditures on my behalf. It isn't worth it. Will some of that money be redirected to other candidates? Perhaps.

Now consider competitive races. In those races, it is more likely that a major donor will make an independent expenditure in an amount that can't be contributed directly. But there are many donors for whom the transaction costs of arranging an independent expenditure will be too high to justify it. For example, if you have only a few thousand dollars, you would have to pool it with others to fund any kind of major messaging effort. Many donors won't do that and will therefore just spend less.

Finally, as a third argument in defense of limits, consider that some "campaign" contributions do not have anything to do with the campaign. In Oregon, we have many contributions that are not intended to communicate any message in connection with an election. For example, many contributions come after the election is over, in the December-January period before the legislative session begins and when fundraising is prohibited. During this time, newly elected legislators and leaders receive an endless stream of lobbyist fundraisers, and it's always interesting to see who shows up. It's a very different group from those who attended fundraisers before the election. There may be an expressive purpose associated with the money raised at these post-election fundraisers, but it's not "I hope you win." It is more akin to an apology for actively working against the elected legislator in the previous campaign. Nor does the money raised express support for the next election cycle, because some of the same lobbyists who attend these "make-up" events the new majority hosts will go into the next cycle trying to unseat that same majority. This is all widely understood.

I submit that little or nothing of expressive value would be lost if these types of post-election contributions simply disappeared. A system of contribution limits would probably discourage them because most donors would presumably spend their limited budgets trying to actually influence the outcome.

In conclusion, perhaps we need to distinguish between two purposes served by contribution limits: that of affecting how campaigns are conducted and that of affecting how officials behave after they are elected. Contribution limits perhaps cannot do much to improve the conduct of campaigns. I do think that they could operate to reduce the overall amount of money spent at the state level because not all of that money would be redirected into independent expenditures. Surely it is no accident that Oregon now has the second-most expensive legislative races in the United States and also is one of the few states without any contribution limits. But the reduction in overall spending would come at the cost of reduced candidate control over message.

Limiting contributions may better serve the other objective of affecting post-election behavior. If one believes that contributions to safe candidates sometimes serves more as rent-seeking than expressive purpose, it follows that there is merit in a system of limits that would reduce the flow of money to such candidates. In addition, under a system of limits, donors might not be as inclined to spend their limited budget during the time after the election and before the public's work begins.