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The Future of Money in Oregon Politics

Recommendations for Policymakers:
Equity, Accountability, Transparency and Access



Executive Summary

This report is intended to be a guide to the post-2020 landscape of campaign finance reform in Oregon. With many forms of campaign finance regulation newly legalized, our committee was charged with providing a set of criteria and recommendations to policymakers as they evaluate and make changes to how political campaigns are paid for in our state.

We approached this task with a set of values and goals in mind: any new campaign finance regulations should promote a political system that is more equitable and representative, fair and unbiased, small-d democratic, trusted, transparent, and accountable. Our committee makes the following recommendations to policymakers considering any new campaign finance regulation:

1. **BIPOC voices must be at the center of policy development.** Policymakers should engage advocates from Black, Indigenous, and People of Color communities early and throughout the policymaking process. This engagement is crucial to ensure that campaign finance regulations promote an equitable and representative political system and do not further disadvantage candidates and organizations of color.
2. **New regulations should be tailored so they don't become a barrier to entry for underrepresented voices.** Burdensome regulations and reporting requirements can have an outsized impact on small organizations and candidates with less institutional support. New regulations should be clear and simple, and should include opportunities for training, time to transition, and proportional penalties.
3. **Contribution limits should be data-driven and contextual.** There are serious potential harms to contribution limits that are too restrictive, including money flowing into independent expenditures and campaigns lacking the funds they need to engage voters. Policymakers should minimize these risks by setting contribution limits with data and context in mind, including the costs of common campaign expenses, the size of the electorate, and the media market where districts are located.
4. **Policymakers should consider how they can improve the reporting requirements already in place and make campaign finance information more accessible to ordinary people.** Due to U.S. Supreme Court precedent, policymakers' options are limited when it comes to independent expenditures and ballot measure campaigns. These limitations make transparency measures a more essential piece of the puzzle. Strong transparency and accountability measures are an important, though insufficient, complement to contribution limits and other regulations.
5. **Contribution limits aren't enough. Policymakers should consider some form of public financing and a range of policies to build the system we want.** Ultimately, building an equitable, fair, and representative political system will require going beyond contribution limits. Policymakers should give strong consideration to how policies like public financing or small donor committees could fit into the Oregon context, and should consider how they can enhance publicly available voter information and encourage longer-term investment in voter outreach.

Contents

Executive Summary	p. 2
Table of Contents	p. 3
Introduction	p. 4
Background Information	p. 6
History of campaign finance regulation in Oregon	
Current context	
Attempts at public financing	
Discussion	p. 10
Problems with the Current System	
Values and Goals	
Analysis and Recommendations	p. 13
Appendix A: Research Charge and Scope	p. 20
Appendix B: Key Terms	p. 21
Appendix C: Witness List	p. 22
Appendix D: Bibliography	p. 23
Appendix E: Citations	p. 26
Appendix F: Community Readers	p. 28

Introduction

For the better part of 45 years, the Oregon political world has operated under a rulebook that places almost no restrictions on political money. State courts have ruled campaign finance restrictions invalid under the state Constitution, making Oregon one of only five states that do not limit contributions in some way. As a result, money has flowed into our political races uninhibited, and Oregonians have experienced the effects of ballooning campaign costs, eye-popping contributions from special interests, and campaigns dominated by large donors.

But in 2020, two events dramatically expanded the options policymakers have available to address these problems. In April, the Oregon Supreme Court reversed its previous ruling, finding that contribution limits do not violate the Oregon Constitution because contributions are not protected speech. In November, Oregon voters gave campaign finance regulation a resounding endorsement: with nearly 80% of the vote, they passed Measure 107, a constitutional amendment that explicitly allows the Legislature and local governments to enact a wide variety of campaign finance limitations and policies.

As 2021 begins, policymakers now have both the popular mandate and the legal latitude to consider a range of regulations — essentially, anything that is legal under U.S. Supreme Court precedent can be done here. The question remains: what exactly should be done?

This report is intended to be a guide to the post-Measure 107 landscape of reform. The City Club of Portland's Campaign Finance Reform Committee, made up of six member volunteers, was charged with providing a set of criteria and recommendations for Oregon policymakers to consider as they craft new campaign finance regulations. We did not draft legislation or recommend any particular policy, but instead outlined general principles and suggested that policymakers give serious consideration to a few specific ideas. We approached this task with a set of values and goals in mind: any new campaign finance regulations should promote a political system that is more equitable and representative, fair and unbiased, small-d democratic, trusted, transparent, and accountable.

We found many causes for concern in how campaigns are currently funded in Oregon. Due to the lack of regulation, fundraising is dominated by large contributions, and competitive campaigns turn into “arms races” of large expenditures. All that money is not just a problem in itself: it acts as a barrier to candidates with fewer resources and connections, stymying Black, Indigenous, and People of Color (BIPOC) representation and power in particular. It also leads to fundraising dominance by large donors and powerful interests, distorting the political process and influencing the issues discussed in our deliberative bodies. And all of these problems lead ordinary Oregonians to feel as though politicians don’t work for them — and that without a big contribution, they don’t have a shot at being heard.

The acronym “BIPOC” is a widely-used term that stands for Black, Indigenous, and People of Color. The term puts at the forefront the unique impact that white supremacy has had on Black and Indigenous people, which shapes the experiences of and relationship to white supremacy for all people of color.

Given these values and concerns, we make the following recommendations to policymakers considering any new campaign finance regulation:

1. **BIPOC voices must be at the center of policy development.**
2. **New regulations should be tailored so they don't become a barrier to entry for underrepresented voices.**
3. **Contribution limits should be data-driven and contextual.**
4. **Policymakers should consider how they can improve the reporting requirements already in place and make campaign finance information more accessible to ordinary people.**
5. **Contribution limits aren't enough. Policymakers should consider some form of public financing and a range of policies to build the system we want.**

Methods

The committee was charged with developing a set of criteria and recommendations helpful to policymakers seeking to implement new campaign finance regulation at the state and local level. The report is not intended to draft specific legislation or recommend any particular policy, though the committee agreed that policymakers should give serious consideration to how several ideas could work in the Oregon context.

As part of that work, we were charged with applying an equity analysis to ensure that the criteria address disparities experienced by underrepresented communities in Oregon by three standards:

- With respect to leveling the financial playing field for candidates from diverse communities to achieve elected office.
- With respect to candidates' financial abilities to reach communities of people who might be often left out of electoral attention.
- With respect to either limiting or disclosing the influence of special interests on elected officials' policymaking.

The committee met over the course of eight weeks, from September 30, 2020, through November 30, 2020. We spoke to 17 witnesses representing a range of stakeholders, including campaign finance reformers, labor unions, business associations, BIPOC organizations, and policymakers. A full list of witnesses and the text of the charge is included in the Appendix.

Background Information

History of campaign finance regulation in Oregon

Campaign finance regulation has a long and turbulent history in Oregon. The state pioneered contribution limits and the state-funded voter pamphlet in the early 20th century, but it was not until the 1970s that reform reached a turning point at both the state and federal level. [01] Over the course of that decade, the Watergate scandal and soaring election costs spurred Congress to impose strict limits on campaign expenditures and establish the Federal Election Commission to enforce them.

The Oregon Legislature took a similar tack. In 1973, lawmakers passed a package of regulations that imposed a hard cap on campaign expenditures over the course of an election: 25 cents per voter in legislative districts and 15 cents per voter in statewide elections. [02] In a provision intended to prevent loopholes, the Legislature also essentially banned independent expenditures, requiring third parties to coordinate with the candidate and counting their spending against the campaign's total limit.

Both of these concepts were recommended in a 1973 City Club of Portland report on campaign finance. [03] The "large capital investments" required to run for office, the report concluded, could discourage qualified potential officeholders, require candidates to compromise their independence, and decrease trust among the electorate. Expenditure limits were viewed as more effective and easier to enforce than contribution limits.

Oregon's new limits did slow the flow of cash during the 1974 campaign, but they were fated to stand for only one election cycle. In 1975, the Oregon Supreme Court struck down the entire statute in *Deras v. Meyers*. In reasoning that would later be echoed in the federal landmark case *Buckley v. Valeo* (1976), the Oregon court concluded that expenditure limits amount to an impermissible limitation on speech. The Court acknowledged that the state has a legitimate interest in preventing corruption, but it questioned whether spending limits further that goal.

The ruling left Oregon with few limits on campaign fundraising and spending, and between 1972 and 1992, campaign spending grew at three times the rate of inflation. [04] In response, advocates proposed regulating campaign contributions, rather than expenditures. Measure 9, which passed with an overwhelming majority in 1994, limited contributions to legislative races and statewide races to \$100 and \$500, respectively, and banned corporate and union giving. [05]

Once again, these new limits did lead to a drop in campaign spending in 1996 — though contemporary news reports described a higher proportion of independent expenditures as a result of the new restrictions. [06] And once again, the new limits were fated to hold for only one election cycle, even though Measure 9 appeared to be valid under the framework established by *Deras* and *Buckley*. In *VanNatta v. Keisling* (1997), the Oregon

KEY TERMS

Contribution limits put a cap on the amount of money a campaign can receive from a single person or entity, usually over the course of an election cycle. For instance, in Washington state an individual cannot give more than \$1,000 per election to candidates for the state Legislature.

Expenditure limits put a cap on the amount of money a campaign can spend over the course of an election cycle. Expenditure limits have been disallowed under federal precedent since the 1970s.

An independent expenditure (IE) is spending that supports or opposes a candidate or measure on the ballot, but is made independent of the candidate, campaign, or political party. For instance, political organizations often pay for ads or mailers in a contested race without coordinating with the candidate they support. The options for limiting or regulating such expenditures are extremely limited due to U.S. Supreme Court precedent.

Citations and Links

Throughout this document citations are marked in this style: [01]

In cases where a link to the source document is available, that will be marked in this style: [01].

All citations are provided in Appendix E.

Supreme Court took free speech protections further than before, ruling that contributions, like expenditures, are a form of speech protected by Oregon's Constitution. The Court invalidated Measure 9, leaving Oregon once again with no limits on campaign contributions or spending.

The VanNatta decision limited Oregonians' options for regulating campaign finance for the next 23 years. Advocates made an attempt at undoing its effects in 2006 with another package of citizen initiatives, Measures 46 and 47, which would have imposed contribution limits and amended the Constitution to allow them. [07] But in the midst of opposition from both unions and business interests, voters delivered a contradictory result: the limits passed, but the Constitutional amendment failed, leaving in place the no-holds-barred post-VaNatta status quo.

Current context

The legal barriers to regulation have led to a campaign finance environment in Oregon that some have described as the "Wild, Wild West." Oregon is one of only five states that do not limit contributions to candidate campaigns in some way. Fundraising is dominated by large donors: in 2016, the largest 25 donors to state races outgave the total of all small-dollar donations by a ratio of 6.4 to one. [08] Oregon ranks first in the nation in the per-capita amount of corporate giving to state lawmakers. [09] And, as the multiple million-dollar state House races in the last few years attest, spending on candidate campaigns continues to grow.

Oregon is one of only five states that do not limit contributions to candidate campaigns in some way.

Oregon ballot measure campaigns have also seen galactic levels of fundraising in recent years. Oregon is not alone in lacking campaign finance limits on initiatives and referenda, as U.S. Supreme Court precedent has prevented states from limiting ballot measure campaign contributions since the early 1980s. [10] The 2014 campaign against labeling genetically modified foods set a fundraising record that was quickly eclipsed by the 2016 campaign against a new tax on businesses. [11a, b] In total, the fight over the 2016 tax measure raised over \$40 million; as is typical for ballot measures, fundraising was dominated by large contributions. [12a, b]

At the same time, Oregonians have watched the U.S. Supreme Court take an increasingly skeptical view of campaign finance regulations. In 2010, *Citizens United v. FEC* did away with limits on independent expenditures by corporations and other legal entities. As a result, federal elections saw an explosion of outside spending, as well as new strategies to funnel this money into candidate races: Super PACs can receive unlimited funding and make unlimited independent expenditures, and social welfare nonprofits can make independent expenditures without disclosing their donors. [13] To some extent, Oregon voters have seen these trends play out closer to home. Most notably, the 2018 gubernatorial election — already marked by multi-million dollar contributions and record-setting

KEY TERMS

A **political action committee (PAC)** is an organization that pools campaign contributions and makes expenditures to support or oppose candidates, ballot initiatives, or political parties. In Oregon, many labor unions, advocacy groups, and business associations have an associated PAC to do electoral work.

spending — featured negative advertisements paid for by a nonprofit whose donors were anonymous. [14]

All of these factors have put campaign finance reform squarely in the political spotlight once again. During the 2019 legislative session, the Oregon Legislature voted on a bipartisan basis to refer a constitutional amendment to the voters. [15] The measure, eventually known as Measure 107, would allow voters to decide whether to allow the Oregon Legislature and local governments to enact a wide variety of campaign finance regulations, thus circumventing the restrictions put in place by VanNatta. [16]

The combination of Measure 107 and Trojan have given policymakers both the popular mandate and the legal latitude to consider a range of regulations.

But before the vote could occur, the Oregon Supreme Court overturned its own precedent. In *Trojan v. Multnomah County* (2020), the Court ruled that contribution limits passed by Multnomah County voters in 2016 do not violate the Oregon Constitution because contributions are not protected speech — thereby overturning the reasoning in *VanNatta*. As a result, Portland and Multnomah County began enforcing contribution limits and strict disclosure requirements for candidates running in the 2020 general election.

Measure 107 passed with nearly 80% of the vote in the November 2020 election. Contrary to past attempts at reform at the ballot box, voters did not endorse a specific campaign finance regulation proposal, instead leaving the details to be hashed out by legislators and local officials. U.S. Supreme Court precedent still limits what can be done about independent expenditures, among other things. But the combination of Measure 107 and Trojan have given policymakers both the popular mandate and the legal latitude to consider a range of regulation schemes.

Public financing in Oregon

While much of the legal drama in Oregon has focused on campaign finance limits and caps, there have been a number of attempts to change how campaigns are paid for by funding them publicly. The U.S. Supreme Court has upheld programs that provide candidates with public dollars in exchange for limiting contributions and expenditures, though it has struck down schemes that require candidates to participate (*Buckley*) or punish non-participating candidates (*Arizona Free Enterprise v. Bennett*). [17] States and localities across the country have implemented programs that provide candidates with a set amount of funding or match small donations with public money. [18a, b]

In Oregon, voters have rejected ballot measures to establish public financing for state candidates twice, in 1976 and 2000. In 2005, the Portland City Council did enact a full public financing system for city-level races. Called Voter-Owned Elections, the program required participating candidates to collect a certain number of small dollar donations in order to qualify for a set amount of public funds intended to cover the entirety of their

KEY TERMS

In a **public financing system**, the government provides public dollars to qualifying candidates to use for the costs of campaigning. “Full” public financing systems provide participating candidates with funds to cover the total cost of their campaign, and candidates may not fundraise outside of that money. Other systems provide partial or matching funding in return for candidates agreeing to contribution and expenditure limits.

campaign costs. The program was in use for three election cycles, but after widely-publicized problems with fraud and nonviable candidates, and among the budget constraints of the Great Recession, voters chose not to renew it in 2010. ([19](#))

Despite that earlier failure at the ballot box, the City of Portland currently runs the only public financing system in the state. The City implemented a brand-new program, called Open and Accountable Elections (OAE), during the 2020 election. Unlike Voter-Owned Elections, OAE is not intended to cover all of candidates' costs with public funds. In simple terms, candidates who choose to participate must qualify by raising a certain number of small contributions and must agree to contribution and expenditure limits. In return, they are eligible for a six-fold match to every donation they receive up to \$50 — with the goal of making small-scale fundraising competitive with larger donations. ([20a, b](#))

Discussion

Problems with the Current System

Few of the witnesses the committee spoke to think Oregon's current campaign finance regulations are working well. Campaigns in Oregon are expensive, and they are dominated by large donors. Interest groups can and do spend and contribute freely in state, local, and ballot measure campaigns, and the resources they have available often eclipse contributions from ordinary Oregonians.

This state of affairs has serious repercussions for our political system as a whole. One major concern is whether money has an undue influence on our political system. While none of the experts and practitioners we spoke to believed that "money for votes"-style corruption is common in Oregon, the problems they described are more subtle and insidious.

Money can influence policy if large donors have more access to policymakers and sway what they work on, or if policymakers are unwilling to tackle controversial issues because of their relationship to contributors.

For instance, money can influence policy if large donors have more access to policymakers and sway what they work on, or if policymakers are unwilling to tackle controversial issues because of their relationship to contributors. Money can also influence who wins elections. Most simply, large contributions help candidates get over the finish line in close races. But some witnesses also suggested that dominant funders such as labor and business organizations can "select" candidates who share their values by funding them early in the process. These concerns are magnified in the case of ballot measure campaigns, which are often powered by large contributions from interest groups and can provide an avenue for out-of-state entities to influence Oregon policy.

Another area of concern is how money affects equity and diversity in government, given the lack of elected representation for Black, Indigenous, and People of Color (BIPOC) Oregonians. According to Census figures, BIPOC Oregonians made up 24.9% of the total state population in 2019. [21] Yet, out of ninety state legislators, only nine (10%) identified as a person of color that year. In many communities, representation on city councils, county commissions, and local school boards is even more skewed. While progress was made in the 2020 election, Oregon's elected bodies still fail to fully reflect the diversity of our state, even as BIPOC communities will continue to make up a larger portion of the electorate in coming years: according to the Coalition of Communities of Color's 2017 Racial Equity Report, more than one-third of K-12 students in Oregon are students of color. [22a, b]

For people from historically underrepresented communities, fundraising can be a major hurdle on the path to elected office. Witnesses made it clear that successful candidates in Oregon almost always have a personal “network” of donors willing to contribute to their campaign. Candidates whose networks don’t have money to spare are at a significant disadvantage, and these same candidates often lack the institutional support and the financial cushion necessary to take the leap into running for office. This dynamic is one of several systemic issues that lock BIPOC Oregonians out of school boards, city councils, and the Legislature.

The belief that politicians are bought by big money is pervasive and bipartisan; news stories about outsize contributions, skyrocketing political spending, and questionable relationships between elected officials and donors further the impression that government doesn’t work for ordinary people.

Lastly, Oregon’s current campaign finance system creates a perception problem. The belief that politicians are bought by big money is pervasive and bipartisan; news stories about outsize contributions, skyrocketing political spending, and questionable relationships between elected officials and donors further the impression that government doesn’t work for ordinary people. These factors also breed cynicism about the impact Oregonians can have on politics and policy in their community. Large donors appear to have influence over who is elected and what is prioritized in government in a way that is not possible for ordinary Oregonians. And the perception that large amounts of money are necessary to run for office discourages potential candidates and limits the picture of what an elected official looks like in the public imagination.

The committee also discussed whether campaigns are simply “too expensive.” We did hear from some witnesses that there are problems caused by the raw amount of money in the system, such as the “arms race” effect of increasingly professionalized advertisement. However, other witnesses embraced the notion of money as speech, believing that more spending translates to a more informed electorate. Overall, opinions were mixed about whether reducing the overall cost of campaigning is itself a worthwhile — or even possible — goal for Oregon policymakers, given the limitations imposed by Supreme Court precedent. We ultimately chose to focus on problems of influence, equity, and perception as the primary targets of reform.

Values and Goals

In discussing how policymakers should approach campaign finance reform, the committee identified a set of values and goals we consider to be important to any new regulations. In short, campaign finance policy should promote a political system that is more:

- **Equitable and representative.** Policies should break down barriers to running for office and increase access for qualified candidates — especially BIPOC (Black, Indigenous,

and People of Color) candidates and others who have historically been underrepresented within Oregon's elected bodies.

- **Fair and nonpartisan.** Policies should require everyone to play by the same rules. Rules, legal structures, and enforcement mechanisms should not preference some constituencies over others on the basis of their politics.
- **Small-d democratic.** Policies should foster increased public awareness and create opportunities for average Oregonians to participate meaningfully in elections and politics — especially for people who are typically passed over in electoral politics.
- **Trusted.** Policies should promote public trust in the system and confidence that politicians represent the interests of Oregonians. They should contribute to the belief that ordinary people can make an impact in politics, not just those who can afford to make large contributions.
- **Transparent.** Information about who is paying for campaigns should be broadly accessible to professionals and to the general public, and the campaign finance regulations themselves should be clear and understandable to ordinary people.
- **Accountable.** Policies should give both regulators and ordinary people the tools to hold candidates and other political actors accountable. They should minimize loopholes, exceptions, and unintended consequences that allow people with resources to duck the rules.

Analysis and Recommendations

The committee makes the following recommendations to policymakers considering new campaign finance regulations:

BIPOC voices must be at the center of policy development.

As policymakers craft potential policies, it is essential to engage advocates from Black, Indigenous, and People of Color (BIPOC) communities early and throughout the decision making process. This means that they should play a central role where decisions are being made so that they help define the details and shape priorities within any campaign finance reform system.

It should be acknowledged that capacity for BIPOC-led community organizations and advocates is stretched. Given the multiple crises our state faces, from the disproportionate impact of COVID-19 and recent wildfires on communities of color, to the racial justice uprisings in response to police brutality, Oregon's BIPOC community advocates are stepping up to support Oregonians in unprecedented ways. They have set up economic relief programs for their communities where none existed before, such as the Oregon Worker Relief Fund and the Oregon Cares Fund; are organizing to dismantle systemic racism through efforts like the Reimagine Oregon Project; and are supporting efforts to rebuild after the destruction of this summer's wildfires. [[§23a](#), [b](#) and [c](#)]

To that end, policymakers should prioritize long-term engagement of BIPOC community advocates on this particular issue and broader democracy reform priorities. Additionally, philanthropy and other funders should prioritize resources for BIPOC-led advocacy organizations to engage in democracy reform policy decision making processes to increase their capacity to participate.

New regulations should be tailored so they don't become a barrier to entry for underrepresented voices.

A common theme among business, union, and community advocates was a concern that new regulations would become a barrier to entry for candidates and advocacy organizations. Several of our witnesses cited examples from their own experience: for instance, a witness who had worked on a Portland City Council campaign described putting significant time and resources towards Portland's new Open and Accountable Elections program, saying that the campaign had dedicated a staff member to compliance with the program. More generally, the leader of a small grassroots organization described struggling with the administrative burden of paperwork, compliance, and changing regulations, given that her small staff juggle multiple roles. [24]

While some compliance costs are to be expected, policymakers should be cognizant that burdensome regulations and reporting requirements can have an outsized impact on small organizations and candidates with less institutional support. New regulations should:

- Have clear definitions of terms and guidelines to reduce confusion and prevent future disputes.
- Include a training or educational component to implementation so that people understand how to follow the rules.
- Include a reasonable transition time before implementation to allow for onboarding, learning, and building internal systems needed to comply. This is particularly important for small, grassroots, or volunteer-led organizations.
- Be simple in terms of administration. Too much complication benefits those who already have the resources, power, and knowledge to adjust to complex new regulations.
- Any penalties in cases of noncompliance should consider equity impacts and be proportionate to the severity of the violation. For example, fines could be levied as a percentage of the mistake that was made, rather than a blanket fine.

Contribution limits should be data-driven and contextual.

Contribution limits can be a straightforward strategy to moderate the undue influence of money in politics — they can check the dominance of large contributions and give small-dollar contributions more weight. But limits should be constructed carefully to avoid unintended consequences for candidates and elections.

One potential issue is overly restrictive limits “starving” campaigns of resources they need. By capping how much a candidate can bring in per donation, strict contribution limits increase the amount of time and effort necessary for campaigns to make their budget. Campaigns need money to contact, inform, and involve voters — as one witness pointed out, candidates aren’t just fighting to be heard against their political opponents, they are fighting to break through “ads for Tide” and other distractions. ^[25]

Campaigns need money to contact, inform, and involve voters — as one witness pointed out, candidates aren’t just fighting to be heard against their political opponents, they are fighting to break through “ads for Tide” and other distractions.

If campaign budgets are restricted, that is likely to have a disproportionate impact on two types of candidates. One is candidates mounting a challenge against an incumbent: incumbents often have a built-in name recognition advantage and more opportunities for earned media coverage, while their challengers rely more on fundraising and paid media to draw voters’ attention. Strict limits may also do more harm to candidates with less institutional support and backing, especially BIPOC candidates and people from under-represented communities. Some candidates can avoid spending money by leaning on

existing connections, resources, and a base of supporters who have the free hours to volunteer for their campaign. But viable candidates without access to these “soft” resources are more likely to need hard cash, and they are more likely to struggle with the burden of fundraising.

We also heard concerns that severely restricting campaigns’ budgets could discourage deeper investments in expanding the electorate. Voter outreach — especially to “hard-to-reach” and less-involved voters — is expensive and time-intensive. With limited resources available, campaigns may be incentivized to focus on people sure to vote in every election, who are generally older, white, and better-off. Campaigns can play a crucial role motivating and involving Oregonians who are not already dialed into the political system, but not if they lack the resources to do so.

Another potential consequence of overly restrictive contribution limits is an increased reliance on independent expenditures. Several witnesses suggested that if policymakers limit how much can be given directly to campaigns, potential donors will simply redirect their money into spending independent of candidates — spending that cannot be restrained under U.S. Supreme Court precedent. The witnesses we spoke to from both labor and business groups anticipate that strict contribution limits would not change their interest in influencing contested races, but would instead drive them to pay for their own television advertisements and mailers.

The Supreme Court has concluded that independent spending poses less of a corruption risk than contributions, given that there is no direct contact with the candidate. This may be true, but independent expenditures can still influence who wins elections, create distrust in the electorate, and drown out the contributions of small donors and ordinary people. In a world where independent expenditures dominate, candidates lose control over the message that is being put out in favor of their candidacy or against their opponent, and the public loses the ability to hold candidates accountable for what is being said.

The committee recommends that policymakers minimize these risks by taking data and context into account when setting contribution limits. At a minimum, policymakers should consider what campaigns are currently spending on common costs such as mailers, television advertisements, and staff to ensure that limits are not too low, and they should adjust limits for inflation. Several of the witnesses we spoke to emphasized that campaign costs can vary significantly depending on the media market, competitiveness of the race, size of the electorate, and other contextual factors. Policymakers should not rely solely on their personal experience of running for office, and should consider the wider context and likely consequences of the limits they set.

Policymakers should consider how they can improve the reporting requirements already in place and make campaign finance information more accessible to ordinary people.

While Measure 107 has opened the gates to many types of campaign finance regulations, policymakers are still restrained by U.S. Supreme Court precedent. Given these limitations, transparency measures are a crucial part of any system of regulations.

Even if policymakers craft contribution limits carefully, they should be prepared for new limits to result in redirection into independent spending in some races. Of the witnesses we spoke to, even campaign finance reform advocates acknowledged that likelihood, though they pointed to evidence from a recent academic study suggesting that independent spending is more related to partisan competition than regulation. [26] Either way, in the post-Citizens United world, policymakers have very limited tools for addressing independent spending by individuals or groups.

Ballot measure campaigns are another area where policymakers' options are limited. Since the 1980s, U.S. Supreme Court precedent has prevented state and local governments from regulating contributions and expenditures in initiative and referendum campaigns, under the reasoning that ballot measures cannot be corrupted or bribed in the way that a human candidate can. [27]

Even so, we find real reason for concern about ballot measure campaign finance in Oregon. Ballot measure campaigns represent an opportunity for wealthy interests and out-of-state actors to propose and push forward policy without the deliberative checks of a legislative process. Recent analyses of Oregon elections have found that ballot measure races, even more than candidate races, are dominated by large contributions. [28a, b] And ballot measures are frequently vehicles for attacks on minority rights, such as Measure 105 (2018) to repeal Oregon's sanctuary law or Measure 36 (2004) to prohibit same-sex marriage.

These legal limitations make transparency measures more essential in a fair and accountable campaign finance system. Transparency in campaign finance can allow regulators, journalists, and other insiders to open the books and see how money is flowing through campaigns. Oregon's current campaign finance tracking system, ORESTAR, fulfills this role to an extent by making every reported transaction available to anyone with an internet connection and the patience to navigate a mid-2000s interface. However, policymakers should consider measures that go beyond existing requirements, such as increasing transparency for nonprofit organizations and making it easier to understand how money moves between political action committees. [29]

Policymakers should also look for opportunities to increase transparency to ordinary Oregonians. Oregon law does not currently require campaigns and political action committees to identify themselves on their advertisements at all. [30] Requiring "paid for by" or "I'm X and I approve this message" disclosures can improve transparency and accountability.

Beyond simple disclosure, policymakers should consider labeling requirements that shed light on the sometimes-misleading world of independent expenditures. For instance, some labeling laws require advertisements to disclose not only the name of the political action committee that paid for them, but also that committee's primary contributors; the City of Portland's new law requires disclosure of the primary contributors' primary contributors as well. [31] These types of disclosure measures send signals to ordinary people who are the consumers of political advertisements, making it easier to understand what a campaign stands for and how it is funded.

The committee generally agrees with the assessment from some of our witnesses that transparency measures are not enough to promote a truly accountable system of campaign

finance. But in the absence of better options, transparency is an important complement to the other policy measures being considered.

Contribution limits aren't enough. Policymakers should consider some form of public financing and a range of policies to build the system we want.

Ultimately, the committee concluded that building an equitable, fair, and representative political system will require going beyond contribution limits. Simply limiting the amount of money flowing through the system is insufficient to achieve the goal of campaign finance reform: an electoral system where money isn't a barrier to viable candidates being elected, or to ordinary Oregonians making their voice and preferences heard.

The advocates and political actors we spoke to are almost universally skeptical that campaign finance limits alone can make a meaningful difference in who is elected in Oregon. Fundraising limits don't change the fact that candidates need institutional support and a network of donors in order to successfully run for office — resources BIPOC candidates are less likely to have. Witnesses pointed to larger structural aspects of our political system as more serious obstacles to representation. For instance, low pay rules out many Oregonians from serving: state legislators are paid about \$30,000 per year, and many local elected officials are volunteers. Many local positions represent at-large districts, meaning that candidates must have the capital and clout to campaign across an entire jurisdiction rather than a specific district. And nearly every jurisdiction in Oregon uses a first-past-the-post voting system, which awards the win to the candidate with the most votes, but can shut out minority coalitions entirely. [32]

Contribution limits also don't go far enough to engage ordinary Oregonians in the political process. The dominance of large contributions in our current system may contribute to cynicism and discourage participation. However, the committee was unconvinced that simply limiting large contributions would create a sea change in how Oregonians view their own ability to impact elections — especially if wealthy interests continue to flood the airwaves with independent expenditures.

Capping how much candidates can raise from any one source may incentivize them to spend more time on small donors and less on large donors. But it also may drive candidates to spend more time fundraising overall, rather than knocking on doors, engaging hard-to-reach constituencies, or getting out the vote. A vanishingly small percentage of Oregonians typically give money to political campaigns; discussions of "small donors" often define their level of giving at anything below \$250, a sum well beyond the budget of many Oregonians. [33] We also discussed the possibility, described elsewhere in this report, that limiting the amount of money available to campaigns would reduce the amount of attention they are able to pay to hard-to-reach and disadvantaged communities.

Because of these limitations and drawbacks, we recommend that policymakers go beyond contribution limits and transparency measures. While endorsing particular policies is beyond the scope of this report, we do suggest that policymakers consider how the following ideas could work in Oregon:

- **Public financing.** Providing public funds to candidates can effectively bolster those with fewer resources at their disposal, breaking down barriers to entry and making

Oregon's public bodies more representative. In addition, several of our witnesses emphasized that public financing can reduce candidates' reliance on large donations without denying the practical reality that campaigns cost money.

Some forms of public financing can also encourage wider participation in politics. Several models we studied increase buy-in among ordinary people by matching small contributions to participating candidates with public dollars. In New York City, the public financing program multiplies contributions six-fold, an idea that was recently adopted by the City of Portland. [34a, b] And in Seattle, each voter is given six "Democracy Vouchers," twenty-five-dollar vouchers they can contribute to candidates, who can then redeem them to use for campaign expenses. [35]

In considering public financing systems, policymakers should apply the same considerations of equity and accountability described throughout this report, including ensuring that rules and requirements do not disproportionately burden candidates with fewer resources. In addition, any public financing system should be designed with strong safeguards against fraud, as well as thoughtful requirements to ensure that public funds are awarded to viable candidates only. The City of Portland's experience with Voter-Owned Elections in the 2000s suggests that even small scandals can diminish the public's trust in a public financing system — and their willingness to spend tax dollars on such a system.

- **Small donor committees.** Small donor committees are specially designated political action committees intended to increase the impact of small-dollar contributions. They typically have stricter limits on the amount of money they can bring in, but in return can make larger contributions to candidates and measures. For instance, California's "small contributor committees" receive contributions of \$200 or less — far less than the state's individual contribution limit of \$4700 for legislative races — but they can use that money to contribute double what other committees can give to campaigns. [36] In conjunction with contribution limits, small donor committees can augment small donor power and encourage greater engagement.

In Oregon, small donor committees have been a feature of several recent campaign finance limit proposals. [37] The committee heard concerns from some advocates that small donor committees create loopholes that allow donors to get around restrictions on other types of giving, or that they can give an unfair advantage to labor unions, whose PACs typically take in small contributions from their members. If policymakers choose to include small donor committees in a new framework, these are considerations they should take into account.

- **Enhancing publicly available voter information.** Currently, Oregon's voter pamphlet plays an invaluable role in our elections: it is a relatively low-cost way for candidates to get out their message, and it gives voters access to information and arguments about candidates and ballot measures. Policymakers should consider how they can enhance this type of public platform, which can promote a more informed electorate and reduce candidates' reliance on fundraising. For instance, several of our witnesses recommended improving the voter pamphlet by producing it in more languages or

allowing candidates to include graphics and formatting. We also encourage policymakers to consider other creative ways to get election information in front of voters.

- **Encouraging longer-term investments.** Several of our witnesses identified a larger issue with campaign spending: money spent by campaigns on advertisements, mailers, and staff salaries are short-term investments that go away after election day. There is no doubt that philanthropy and other private funders have a role in building political capacity and investing in voter outreach. But policymakers should also consider how campaign finance regulations can encourage longer-term investment and electoral power in underrepresented communities.

For instance, BIPOC organizations in Oregon are increasingly using 501(c)(4) organizations to get involved in electoral politics. Unlike 501(c)(3)s, these “social welfare nonprofits” can participate in political activities, as long as politics is not their primary focus. The 501(c)(4) structure allows community groups to employ political staff year-round, building long-term relationships and connections within communities and with elected officials, while also spending money and making in-kind contributions during campaign season.

Policymakers should look for ways to encourage this type of infrastructure building, and should be careful that new regulations don’t impair the democracy-building work they do. Because spending by (c)4s is less transparent than political action committees, reformers have raised alarms about “dark money” from powerful interests flowing into Oregon; this trend has not been widespread in Oregon elections, but business interests did form a social welfare nonprofit that was active in the 2018 gubernatorial race. As policymakers aim to address this concern, it is critical that they include the BIPOC community organizations who use this tax structure in the conversation to ensure that new regulation does not hamstring their work.

501(c)(4) “social welfare”

organizations are nonprofits under federal tax code that have latitude to work in the political realm. 501(c)(4) organizations may advocate and work on candidate and ballot measure races, so long as they spend less than 50% of their budget on political work. Unlike PACs and other political committees, 501(c)(4)s are not required to disclose their donors.

Respectfully submitted,

Andrea Williams, co-chair

Jonathan Radmacher, co-chair

Kathy McLaughlin

Nathan Miley-Wills

Nate Ramsey

Zoe Klingmann, writer

Appendix A

Research Charge and Scope

Study Charge and Objectives: What criteria should the legislature and municipalities utilize in developing a system for regulating campaign finance regulation?

The objective of this report would be to provide a thoughtful and analytical set of criteria and metrics by which to judge any potential regulations of financial aspects of elections, including contributions, expenditures, and reporting.

This report will apply an equity analysis to ensure that the criteria and metrics address disparities experienced by underrepresented communities in Oregon by three standards:

- With respect to leveling the financial playing field for candidates from diverse communities to achieve elected office
- With respect to candidates' financial abilities to reach communities of people who might be often left out of electoral attention
- With respect to either limiting or disclosing the influence of special interests on elected officials' policymaking.

Scope and Limits on the Report: This report should aim to describe criteria and guidance, not to develop draft legislation.

What should a legislator — whether at the state or local level — consider, when determining whether or how to implement campaign finance restrictions and regulations? How should they evaluate the interests of people who do not have significant power?

The report should not be draft legislation. The various bodies that will engage such a debate will have a variety of resources at their disposal, and while this report will provide access to those resources, the report should not provide the kinds of detailed regulation set forth in the City Club's 1973 report.

Appendix B

Key Terms

The acronym “**BIPOC**” is a widely-used term that stands for Black, Indigenous, and People of Color. The term puts at the forefront the unique impact that white supremacy has had on Black and Indigenous people, which shapes the experiences of and relationship to white supremacy for all people of color.

Contribution limits put a cap on the amount of money a campaign can receive from a single person or entity, usually over the course of an election cycle. For instance, in Washington state an individual cannot give more than \$1,000 per election to candidates for the state Legislature.

Expenditure limits put a cap on the amount of money a campaign can spend over the course of an election cycle. Expenditure limits have been disallowed under federal precedent since the 1970s.

In a **public financing** system, the government provides public dollars to qualifying candidates to use for the costs of campaigning. “Full” public financing systems provide participating candidates with funds to cover the total cost of their campaign, and candidates may not fundraise outside of that money. Other systems provide partial or matching funding in return for candidates agreeing to contribution and expenditure limits.

An **independent expenditure** (IE) is spending that supports or opposes a candidate or measure on the ballot, but is made independent of the candidate, campaign, or political party. For instance, political organizations often pay for ads or mailers in a contested race without coordinating with the candidate they support. The options for limiting or regulating such expenditures are extremely limited due to U.S. Supreme Court precedent.

A **political action committee** (PAC) is an organization that pools campaign contributions and makes expenditures to support or oppose candidates, ballot initiatives, or political parties. In Oregon, many labor unions, advocacy groups, and business associations have an associated PAC to do electoral work.

501(c)(4) “social welfare” organizations are nonprofits under federal tax code that have latitude to work in the political realm. 501(c)(4) organizations may advocate and work on candidate and ballot measure races, so long as they spend less than 50% of their budget on political work. Unlike PACs and other political committees, 501(c)(4)s are not required to disclose their donors.

Appendix C

Witness List

Joe Baessler

Political Director, AFSCME Council 75

Jesse Beason

President & CEO, Northwest Health
Foundation

Gary Blackmer

Former Portland City Auditor; Former Audit
Supervisor, Oregon Secretary of State

Tony DeFalco

Executive Director, Verde

John DiLorenzo

Attorney at Law

Senator Jeff Golden

State Senator, District 3, Ashland

Joel Iboa

Coalition Manager, Causa Oregon

Jon Isaacs

Vice-President, Portland Business Alliance

Reyna Lopez

Executive Director, PCUN

Trent Lutz

Assistant Executive Director of Public
Affairs, Oregon Education Association

Jessica Maravilla

Policy Director, Causa Oregon

Sandra McDonough

President & CEO, Oregon Business Industry

Dan Meek

Attorney at Law, Election Law Activist

Sonny Mehta

Campaign Manager, Measure 107

James Ofsink

President of the Board, PDX Forward

Representative Khanh Pham

State Representative-Elect, District 46

Representative Andrea Salinas

State Representative, District 38

Appendix D

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- 15 That session, the Legislature also passed two bills to increase transparency that would go into effect upon Measure 107's passage [[HB 2983](#) and [HB 2716](#)], and discussed but did not pass a scheme of contribution limits [[HB 2714](#)].
- 16 The measure allows policymakers to limit campaign contributions, create stricter disclosure requirements, require donor disclosure on advertisements, and limit campaign expenditures. However, limits on expenditures will remain invalid under federal precedent.
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- 25 Interview with James Ofsink, October 10, 2020.
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- 27 *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981); NCSL, “Campaign Finance and the Supreme Court.”
- 28 Fisher and Cross, “Big Money in Oregon State Elections”; Maplight, “Money in the 2018 Oregon Elections.”
- 29 The Legislature did pass HB 2983 in 2019, which will require nonprofits who engage in electioneering, as defined, to disclose their major donors. The measure will go into effect for the next election cycle.
- 30 In 1998, voters passed a measure requiring advertisements to include a “paid for by” disclaimer. In 2001, that measure was repealed by lawmakers in response to the recently-decided *VanNatta v. Keisling*, which was thought by some to invalidate disclaimer laws (ORS 260.522). The state legislature did pass a disclosure requirement in 2019 (HB 2716), which will go into effect for the next election cycle.
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- 32 Eberhard, “Of 60 Oregon councils, school boards, all but two underrepresent people of color,” Sightline Institute.; See the City Club’s 2019 report on this topic: “New Government for Today’s Portland: Rethinking 100 Years of the Commission System.”
- 33 Fisher and Cross, “Big Money in Oregon State Elections.”
- 34 New York City’s Matching Funds program; Portland’s Open and Accountable Elections program

- 35 Seattle's Democracy Voucher Program
- 36 National Conference of State Legislatures, "State Limits on Contributions to Candidates: 2019-2020 Election Cycle," Updated June 2019.
- 37 HB 2714, which was proposed in the state Legislature in 2019, would have allowed SDCs to take contributions of up to \$250 and give unlimited amounts. A plan put forward by state Senator Jeff Golden would allow SDCs to take contributions up to \$250, but limit their giving to one candidate for one election cycle.

Appendix F

Community Readers

Community readers were given an opportunity to provide feedback related to clarity, accessibility and value of the report early in the editing process. We are grateful for their feedback in the development of this report.

Christopher Cobey

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