

Oregon Flirts With Contribution Limits: Will They or Won't They?

September 2020

In less than a month, all registered Oregon voters will begin receiving their vote-by-mail ballots for the November 3 election. In addition to selecting their favored candidates, the voters will have to decide whether or not to support amending their state's constitution in order to implement limits on state or local campaign contributions, which currently do not exist. Oregon voters, over the years, have expressed an interest in such limits; however, thus far, they have rejected any constitutional amendments required for such limits to actually be implemented.

The initiative, Ballot Measure 107, would amend the state constitution by authorizing the Oregon State Legislature and local governments to: (1) set limits on campaign contributions and spending; (2) require the disclosure of political contributions and spending; and (3) require that political ads disclose who paid for them.

A "yes" vote would apply not only to laws or ordinances going forward, but also retroactively to those adopted through the initiative process or enacted by the state legislature or a local government since January 1, 2016, that have previously been ruled unconstitutional.

These rulings were the result of a complicated fallout from the last time such an initiative was presented to the Oregon electorate. In 2006, Oregon voters were asked to vote on Measures 46 and 47. Measure 46, which would have actually amended the state's constitution to allow laws limiting or prohibiting election contributions and expenditures, was rejected; however, Measure 47, which concerned the actual contribution limits, was approved by a vote of 53% to 47%. This created a scenario where the constitutionality of

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Measure 47, and any subsequent similar proposed expenditure limits without any approval to amend the constitution, was challenged in Oregon courts.

Up until this year, a 1997 ruling by the Oregon Supreme Court – striking down campaign contribution limits passed in 1994 as a violation of the state constitution's free speech provisions – guided the Oregon courts' decisions in preventing any such limits from actually being implemented without a change to the constitution. The landscape changed on April 23, 2020, when the Oregon Supreme Court changed course in reviewing the Portland metro-area contribution limit (Multnomah County Measure 26-184 (2016)) and ruled that the contribution limits adopted thereunder were indeed constitutional and remanded the case.

While some thought this ruling alone immediately revived the state-level contribution limits of the 2006 Measure 47, the Oregon Secretary of State and Attorney General made clear that this ruling did not, giving the green light to continued unlimited state-level contributions of this election cycle. Thus, it appears that it will take Measure 107 passing for any statewide contribution limits to actually become a reality.

Currently, the other states with no limits on political campaign contributions are Alabama, Nebraska, Utah, and Virginia.