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NEWSLETTER

Oregon Supreme Court Opens Door to Contribution Limits for State Elections

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The State of Oregon, whose campaign finance laws have long allowed unlimited political contributions, is now one giant step closer to having them. In an important opinion issued late last month, the Oregon Supreme Court overruled a decades-old decision that had interpreted the state constitution to bar such monetary limits. Now, state regulators and campaign finance lawyers are scrambling to determine the impact of the court's decision and are even asking whether contingent monetary limits adopted by voters in 2006 for state-level officials have already gone into effect.

The case began when Multnomah County officials adopted new campaign finance ordinances to implement a local ballot measure passed in 2016. Most importantly, the ordinances limited the amount of money that individual contributors and most PACs could give to county officials to $500. The new ordinances also limited and/or banned independent expenditures about candidates.

In finding that contribution limits – at least in the abstract – did not violate Oregon's Constitution, the Oregon Supreme Court overruled its own 1997 decision that had struck down limits on contributions and expenditures. The court reasoned that its prior decision was wrong in treating contributions as subject to the highest category of scrutiny under state law – i.e., those laws that are directed at the "substance of any 'opinion' or any 'subject' of communication." Instead, while acknowledging that contributions can often be used for expressive activity, the court noted that campaign contributions may be used to pay staff, or for officeholder expenses, that are removed from disseminating opinions directly. Accordingly, the court found that the contribution limits were subject to lesser scrutiny and, ultimately, that they were facially valid under the state constitution.

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In reaching this conclusion, the court noted – but ultimately discounted – the fact that voters had rejected a 2006 ballot measure that would have overturned the court's 1997 decision. A separate ballot measure actually adopted that year, however, did enact state-level contribution limits pending approval of the companion ballot measure – which did not happen – or the Supreme Court overruling its 1997 decision. Now, according to press reports, state officials and campaign finance lawyers are trying to determine whether the contingent, state-level limits have gone into effect given the Supreme Court's action. So far, it appears that the Secretary of State and Attorney General have concluded that the limits are not in effect, although their reasoning is unclear. One potential factor: The Oregon Supreme Court remanded the case back to the lower courts for a determination of whether the $500 limit is too low under U.S. Supreme Court precedent.

In a shorter passage at the end of its opinion, the Oregon Supreme Court determined that the expenditure limits were unconstitutional.

The case is styled *Multnomah County v. Mehrwein*.