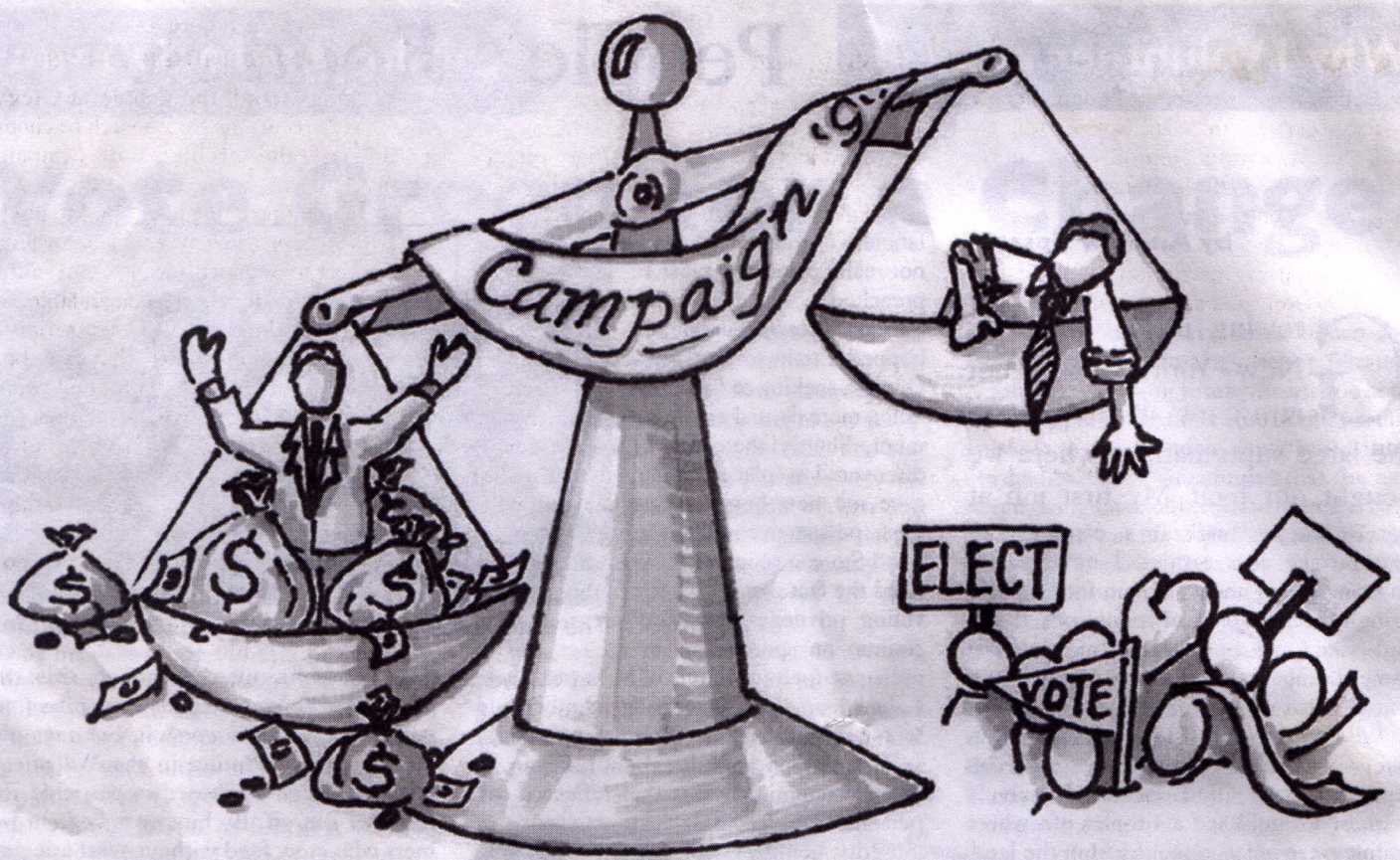


Theresa Johnson

Campaign Finance Reform

by Rick Hanson

Media coverage and public concern about democracy for sale has driven pundits, policy wonks, and public officials from the President on down to call for campaign finance reform. Oregonians should do the same.

In February, 1998, Ballot Measure 9, the campaign finance reform measure passed by voters in 1994 and in effect during the 1996 election cycle, was struck down by the Oregon Supreme Court decision in *VanNatta v. Keisling*. The contrast between the regulated elections of 1996 and the free-for-all elections of 1998 will surprise some and is sure to generate calls for reform of state law.

Whether it occurs in the 1999 Legislature or through the initiative process in 2000, reform that makes a difference and survives federal and state constitutional scrutiny will not be achieved easily. It is important that Oregonians who participate in this debate understand the legal and practical context for reform.

More Sunshine not Enough

Current Oregon law requires the disclosure of contributions to candidates running for public office. Reports of contributions and expenditures are filed with election officials and are available for public viewing and press scrutiny. The media often run stories on sources of funds.

However, disclosure influences campaign behavior only slightly; some candidates consider public perception before accepting a contribution from a controversial person or organization (e.g., a conservative Christian group or the owner of an adult bookstore). Disclosure may have more influence on the behavior of alert voters than on candidates. In 1994, 72 percent of Oregon voters, fearing dollars counted more than votes and that elected officials felt too beholden to big money campaign contributors, approved Ballot Measure 9. Around the same time many other states enacted laws similar to Measure 9.

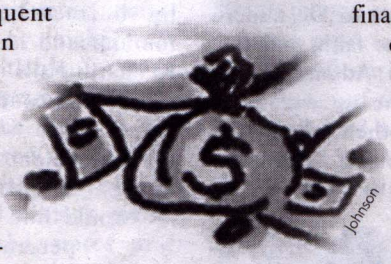
Effective Mandatory Restrictions Unconstitutional

Measure 9 effectively bridled the influence of money on Oregon elections. It included contribution limits of $100 for legislative candidates and $500 for statewide candidates. It prohibited corporate contributions, union contributions, and those made between candidate campaigns, known as "pass-throughs." Limits forced candidates to rely on a broad base of small donors.

The Oregon Supreme Court short-circuited this experiment when it ruled that contribution limits are illegal under free speech provisions of the Oregon Constitution. If Oregonians are to enact contribution limits, voters will first need to amend the Oregon Constitution to

restrict their freedom of speech.

Federal constitutional boundaries are not so clear cut. In 1976, Congress, in the wake of Watergate, limited contributions and spending in federal races. The U.S. Supreme Court later ruled, in *Buckley v. Valeo*, that a $1,000 contribution limit is an acceptable restriction of free speech. Later, in a subsequent challenge of state law in federal courts (1995, Missouri), contribution limits of $100, $200, and $300 were overturned. In spite of constitutional obstacles, the voters want to make significant changes.



Clearly, proponents of contribution limits face several challenges. State-level policymakers need to identify a contribution limit that federal courts will accept, but that also achieves reform. A contribution limit of $1,000 in a typical race for the Oregon legislature would have little effect because most candidates receive few contributions over $1,000. Few donors give contributions over $500. Healthy shifts in campaign finance activity will not occur under these restrictions.

Even if the Oregon Constitution were amended and a contribution limit established in state law, it would still have to withstand a challenge in federal court. Having survived such a test, contribution limits would still fail to solve two significant problems. First, under *Buckley*, wealthy candidates can contribute to their own campaigns without limit. Second, absent expenditure limits, campaigning becomes less about meeting and wooing voters and more about contacting potential donors–many who are not even able to vote for the candidate.

In the 1996 U.S. Senate race in Oregon, Representative Peter DeFazio, when confronted with the possibility of a wealthy opponent in the primary and the reality of spending hours every day on the phone asking people for money, decided that it was too high a price to pay for admission to the U.S. Senate. Representative Elizabeth Furse, after announcing her decision not to run for re-election in 1998, expressed relief that she could forgo fundraising and instead concentrate on representing her constituents.

While these are examples of federal races, candidates for statewide office in Oregon experience the same frustrations. Big spending drives the need for big contributions.

Voluntary Regulations are the Best Choice

In *Buckley v. Valeo*, the Court prohibited any mandatory limits on campaign expenditures. At the same time the court also ruled that requiring voluntary spending limits as a condition for receiving financing does not infringe on candidates' rights.

Such a voluntary system can succeed where alternatives fail because candidates can opt into or out of the system. Reformers could couple voluntary limits on expenditures with Oregon's already strong public disclosure laws and have a system that passes constitutional muster. In exchange for agreeing to a set of regulations on their campaign finance activity, candidates would receive public dollars equal to most or all of the voluntary expenditure limits.

> **"Disclosure may have more influence on the behavior of alert voters than on candidates."**

Public subsidies have been adopted in Maine, Vermont, Massachusetts and Arizona. They are being considered in many other states, including Missouri, Washington, Michigan and Oregon.

Some Activity Cannot Be Regulated (Or, What No System Solves)

No system of campaign finance regulation that restricts contributions to candidates can stop independent expenditures made by PACS, which are protected as free speech under the U.S. Constitution. However, a well-funded public-financing system could decrease the pressure to make independent expenditures. Unfortunately, reform at the state level cannot reduce the price of two significant items candidates purchase in a campaign: broadcast time on television and radio and direct mail. These will continue to drive up expenditures.

What the Future Holds

As things stand, the people of Oregon have three solutions from which to choose to address the problems of campaign finance.

1. Decide that the current public disclosure laws are sufficient and acknowledge that excessive contributions and outrageous spending levels are unavoidable.

2. Amend the Oregon Constitution to allow contribution limits that are both high enough to withstand a federal court's scrutiny and low enough to make a constructive difference. No reform effort should depend on amending the free speech provisions of the Oregon Constitution. There is also the danger that squeezing the supply of money to non-wealthy candidates will force them to become full-time fundraisers.

3. Invent a voluntary system of expenditure limits coupled with incentives that encourage candidates to participate (e.g., public funding). Oregonians who want to free candidates from the grips of private fundraising can support a system of voluntary reforms backed by public campaign financing.

No system can wipe away the inequities of campaigning for public office, so the choices Oregonians make will depend on their objectives. Voters can decide that basic public disclosure is adequate. If voters want to favor the wealthy and force candidates to scramble for many private contributions, option two is best.

An approach that limits expenditures and allows candidates to focus on the needs of all their constituents–not just those with deep pockets–would better serve Oregonians.

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