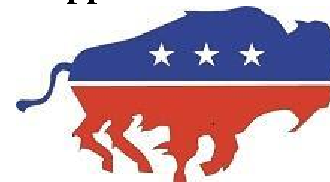
Progressive Party of Oregon and Fair Elections Oregon Oppose SB 270A



June 10, 2011

Dear Representatives:

The House Rules Committee has scheduled a work session on SB 270A for this afternoon, June 10. We ask that you contact the members of the Committee with your opposition to SB 270A.

As reported by Willamette Week (Ta-Ta Transparency: Elections bill Would Create a Gaping Loophole, April 6, 2011), SB 270A would create a huge loophole in campaign finance reporting by allowing any committee or individual or other entity to disregard the reporting requirements for entire months at a time and face only a fine limited to $5,000 for each entire month of violations. Under the current system, each transaction not timely reported carries a potential fine limited to 1/2 of 1% of the amount of the transaction per day of lateness, with an overall cap of 10% of the amount of the transaction.

Individual donors (persons and entities) in statewide races now often contribute in excess of $100,000 (and sometimes even in excess of $1 million); see the 2010 reports of the candidates for governor (Democratic and Republican). It is important not to allow any candidate or committee to avoid reporting the source of its contributions for an entire month, merely by paying one fine of $5,000 or any other number that is small in relation to the benefit of non-disclosure.

For example, say a ballot measure campaign received a $1 million in contributions during a calendar month from persons or entities of great notoriety, such as George Soros or Loren Parks or U.S. subsidiaries of the large corporations owned by the People's Liberation Army of China.[1] A campaign might consider it worthwhile to pay one $5,000 penalty to avoid disclosing these transactions. Note that under SB 270A the fine could never exceed $5,000, even if the identity of <u>all</u> contributors during any given month are <u>never</u> disclosed.

> 1. Federal law does not regulate campaign contributions in state or local races by U.S. subsidiaries of foreign corporations. Chinese government-owned corporations have made significant contributions to U.S. political campaigns. See *Special Report of the Select Committee on Intelligence of the United States Senate, January 6, 1999 To December 15, 2000* (August 3, 2001), Senate Report 107-51.

I testified against this bill on March 28, 2011 (Testimony of Daniel Meek on SB 270A). Its proponent, Kevin Neely, claims it is needed so that a very large fine cannot be assessed against a Treasurer who accidentally fails to report a single very large contribution, say $1 million.

Why SB 270A is Not Needed

First, Mr. Neely's scenario is not realistic. It includes the assumption that the treasurer does not know about the transaction until many days or weeks after it occurs, because somehow someone other than the treasurer received it and the treasurer did not know about it. One wonders where the money went, in that scenario. The treasurer should be cognizant of money deposited in the campaign's bank account. In the current system the reporting requirement does not trigger, until the treasurer or the committee's bank account actually receives the money. The 2010 Oregon Campaign Finance Manual (p. 28) states:

> Contributions collected by an entity other than a committee, including connected organizations such as unions, associations or online contribution services, are considered received by the committee once the contributions are in the physical custody of the committee or are deposited in the committee's campaign account, whichever is sooner. Each contribution must be transferred to the committee within seven business days of its collection by the other entity.

If the contribution is in the physical custody of the committee or deposited in the committee's campaign account, it is reasonable that the treasurer would be responsible for reporting the contribution within the applicable deadline (30 days or 7 days after the date of receiving the contribution).

Second, Mr. Neely's scenario is already handled well by the current system. The fine for non-reporting or late reporting of a transaction is 1/2 of 1% of the amount of the transaction for each day it is late, capped at 10% of the transaction. See 2010 Oregon Campaign Finance Manual, p. 69. This system provides a graduated penalty, so that mere mistakes that are quickly corrected do not incur large fines. But it does sometimes provide for fines that exceed $5,000, because it is very important to obtain compliance with the reporting requirements for very large contributions. And, of course, the current system does not have a limit on the fines that can be assessed upon a committee due to its failures to comply with the reporting requirements for an entire month (or any other period).

Third, the fines used to be much higher, as a percentage of the amount of the violation. Prior to the 2010 cycle:

> The penalty for a late transaction is 1/2% of the amount of the late transaction multiplied by the number of business days the transaction is filed late, if the transaction is filed no later than 30 calendar days after it was due. Beginning on the 31st calendar day after the transaction was due the penalty increases to 1% of the amount of the late transaction multiplied by the number of business days the transaction is filed late. * * *
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> The maximum penalty for any late transaction is the amount of the transaction, not to exceed $10,000.

2008 Campaign Finance Manual, p. 74. That means that the maximum penalty was 100% of any transaction of $10,000 or below and $10,000 on any violation in excess of $10,000.

Why SB 270A is Not a Rational Solution to the Alleged Problem

If the problem is the inadvertent failure to report a large contribution, the solution would be at most a cap on the fine for failing to report a single transaction, not an aggregate limit on the fines against any committee to cover all of its unreported transactions for an entire calendar month. Thus, even if Mr. Neely's scenario were realistic, it does not warrant SB 270A. Further, the cap on the fine for any single transaction already exists -- 1/2 of 1% per day up to 10% of the amount of the transaction.

While an absolute cap per transaction would be a far better solution than the absolute cap per month included in SB 270A, the existing percentage cap is a superior penalty. An absolute cap per transaction of $10,000 would still allow unscrupulous treasurers to avoid reporting very large transactions that voters should know about, as in the Soros-Parks-PLA hypothetical above.

Rational Solution for the Alleged Problem

First, nothing prevents the innocent treasurer from suing the person who caused the fine to be levied in order to recover from that person the amount of the fine paid by the treasurer. Second, if the Neely scenario does happen, the solution is to impose the fine on the person who caused the violation, not on the innocent treasurer.

The law currently imposes liability for fines upon the treasurer and the candidate (for a candidate committee), without regard to their personal knowledge or behavior. With few exceptions (use of campaign funds to pay the candidate for his or her professional services), fines can be paid from the campaign fund. ORS 260.407(2)(b)(B). The imposition of liability on the treasurer and candidate is a means to ensure that the fines are paid, and campaign money is the source most likely to be available. Imposition of liability upon someone else is more likely to result in unpaid fines.

In any event, adding a new section to ORS Chapter 260 would directly solve the problem alleged by Mr. Neely. Current law, ORS 260.037(3), provides:

> The candidate, in addition to the treasurer, is personally responsible for the performance of the duties referred to in subsection (2) of this section. Any default or violation by the treasurer shall be conclusively considered a default or violation by the candidate. Any default or violation by the person designated by the candidate or treasurer under ORS 260.039, 260.042 or 260.057 is conclusively considered a default or violation by the candidate or treasurer.

An appropriate response to the problem alleged by Mr. Neely would be adding this section to ORS Chapter 260:

> All penalties for violations of the requirements for reporting contributions and expenditures under this chapter shall be the responsibility of the person or entity causing the violation to occur. For violations by a committee, the treasurer and the candidate shall be responsible, unless it is shown that the violation could not reasonably have been avoided by the treasurer or by the candidate.

We urge rejection of the $5,000 monthly cap provision of SB 270A.

You might ask how this bill got through the Senate. I did not notice it then and did not testify against it then.

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