

**IN THE SUPREME COURT OF THE STATE OF OREGON**

BRYN HAZELL, FRANCIS NELSON, TOM CIVILETTI,  
DAVID DELK, and GARY DUELL, JOAN HORTON, and KEN LEWIS,  
Plaintiffs-Appellants  
Cross-Respondents,  
Petitioners on Review,

v.

KATE BROWN, Secretary of State of the State of Oregon; and  
JOHN R. KROGER, Attorney General of the State of Oregon,  
Defendants-Respondents, Cross-Respondents,  
Respondents on Review,

and

CENTER TO PROTECT FREE SPEECH, INC., an Oregon nonprofit  
corporation, and FRED VANNATTA,  
Intervenors-Respondents, Cross-Appellants,  
Respondents on Review.

Court of Appeals A137397

Supreme Court S059245 (control) S059246

**ORAL ARGUMENT AIDS BY PETITIONERS ON REVIEW**

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## **EXCERPTS FROM MEASURE 47 (2006)**

### **Pertaining to Interpretation of Section (9)(f)**

#### Section (9)(f):

If, on the effective date of this Act, the Oregon Constitution does not allow limitations on political campaign contributions or expenditures, this Act shall nevertheless be codified and shall become effective at the time that the Oregon Constitution is found to allow, or is amended to allow, such limitations.

#### Section (1)(r):

In 1994, voters in Oregon approved a statutory ballot measure, Measure 9, establishing contribution limits similar to those in this Act, by an affirmative vote of 72 percent. The Oregon Supreme Court in 1997 found that those limits were not permitted under the Oregon Constitution. This Act shall take effect at a time when the Oregon Constitution does allow the limitations contained in this Act.

### **Pertaining to Severability**

#### Section (11):

The provisions of this Act shall supersede any provision of law with which they may conflict. For the purpose of determining constitutionality, every section, subsection, and subdivision thereof of this Act, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections, and subdivisions necessary to render this Act consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection, and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

## **Pertaining to Purpose of Measure 47**

### **Preamble:**

The purpose of this Act is to restore democracy in Oregon and reduce corruption and the appearance of corruption by limiting political campaign contributions and independent expenditures on candidate races and by increasing timely public disclosure of the sources of those contributions and expenditures. These limits and disclosure requirements are needed so that corporations, unions, and wealthy individuals do not exercise undue and disproportionate influence over the results of elections and upon the policies and decisions of candidates and public officeholders.

### **Section (1) Findings.**

The people, acting in their legislative capacity, find these facts:

\* \* \*

- (b) Because Oregon candidates are now forced to treat campaign fundraising as an “arms race” to be won at all costs, they have become unduly beholden to large contributors and the special interests able to contribute large amounts for their campaigns. Contributions to candidates in contests for statewide public office and for the Oregon Legislature have increased from \$4.2 million in 1996 to \$27.9 million in 2002. Less than 4% of the contributions were in amounts of \$50 or less, and 75% of the money came from only 1% of the contributors.
- (c) Large contributions distort the political process and impair democracy, with these adverse effects:
  - (1) Corrupting public officials and causing them to take actions that benefit large contributors at the expense of the public interest;
  - (2) Causing public officials to grant special access and accord undue influence to large contributors;
  - (3) Significantly impairing the opportunity for voters to hear from candidates who do not accept large contributions and for those candidates to communicate with voters; and
  - (4) Fostering the appearance of corruption and undermining the

public's faith in the integrity of elected officials and the political process.

\* \* \*

- (g) Contributions are given also to obtain access to and the favor of whichever candidate is elected. In 2002, almost 40% of money contributed to the legislative leadership political committees came from donors who contributed to both the Republican leadership committees and to the Democratic leadership committees. Nearly one-third of contributions to winning Oregon candidates after the close of the last reporting period in 2000 were first-time contributions from donors who had financially supported the losing candidate in the same race.
- (h) Contributions to and expenditures for candidate campaigns in excess of those allowed by this Act are considered to be large contributions and expenditures in Oregon.

\* \* \*

- (s) When the Measure 9 limits were in effect during the 1996 election cycle, candidates were able to amass sufficient funds to campaign effectively and have their voices rise to the level of public notice, using the contributions allowed by Measure 9. A more recent example shows that the contribution limits in this Act will allow effective campaigns. In 2004, Tom Potter won the election for Mayor of Portland, in a race involving over 350,000 registered voters, while limiting his campaign to contributions from individuals not exceeding \$25 per individual in the primary and \$100 per individual in the general election campaign. The reasonable limits in this Act will increase competition for public office, foster a greater robustness of political debate in Oregon, and alleviate the adverse effects noted above.
- (t) Limiting contributions will encourage candidates to spend more time in direct contact with voters in their districts and less time raising funds from large contributors, thus improving their understanding of public needs and policy solutions.

**EXCERPTS FROM VANNATTA V. KEISLING, 324 OR 514, 931 P2D 770  
(1997) ("VANNATTA I")**

324 Or at 518:

As we turn to the merits, we believe that it is appropriate to insert a general admonition concerning the scope of this opinion. This is a case involving challenges to the constitutionality of a statutory enactment. Those challenges are aimed at the specific wording of various provisions of the enactment. The challenges assert that the wording in question violates one or another principle found in the Oregon Constitution. So understood, the challenges are quite limited.

324 Or at 522:

In our view, a contribution is protected *as an expression by the contributor*, not because the contribution eventually may be used by a candidate to express a particular message. The money may never be used to promote a form of expression by the candidate; instead, it may (for example) be used to pay campaign staff or to meet other needs not tied to a particular message. However, the contribution, in and of itself, *is the contributor's expression of support for the candidate or cause*--an act of expression that is completed by the act of giving and that depends in no way on the ultimate use to which the contribution is put.

324 Or at 523-24:

We think that it takes little imagination to see how many political contributions constitute expression. We assume, for example, that no one would deny the right of a citizen to purchase individually a newspaper ad that urges others to support a particular candidate or cause. And, if the individual can persuade enough neighbors and friends to join in the effort, the resulting spending power may produce much larger ads or television or radio commercials. No one, we take it, would gainsay the right of the individual to amplify his or her voice through collective buying power--gaining adherents for one's views is the essential purpose of political advocacy. It then follows ineluctably that the contribution of the collective "pot" thus collected is expression, just as the individual's ad was.