IN THE SUPREME COURT OF THE STATE OF OREGON

BRYN HAZELL, FRANCIS NELSON, TOM CIVILETTI, DAVID DELK, 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-Respondent's, Respondent's on Review, And CENTER TO PROTECT FREE SPEECH, INC., an Oregon nonprofit corporation; and FRED VANNATTA, Intervenors-Respondents, Cross-Appellants, Respondents on Review.	Marion County Circuit Court No. 06C22473 CA A137397 SC S059245

BRIEF ON THE MERITS OF RESPONDENTS ON REVIEW, KATE BROWN, SECRETARY OF STATE OF THE STATE OF OREGON, AND JOHN R KROGER, ATTORNEY GENERAL OF THE STATE OF OREGON

Review of the Decision of the Court of Appeals
on Appeal from a Judgment
of the Circuit Court for Marion County
Honorable MARY MERTEN JAMES, Judge

Opinion Filed: November 10, 2010

Before: Haselton, P.J., Armstrong, J. and Duncan, J.

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STATEMENT OF THE CASE

A. Introduction

At issue in this case is a piece of hibernating legislation—a campaign finance law adopted by the voters in 2006 that, by its terms, is inoperative and will remain inoperative until laws limiting political campaign contributions and expenditures (CC&Es) become constitutionally permissible. Prior to the 2006 election, this court had held in *Vannatta v. Keisling*, 324 Or 514, 537, 931 P2d 770 (1997), that laws placing limits on CC&Es were unconstitutional under Article I, section 8, of the Oregon Constitution. For that reason, proponents of campaign finance reform proposed a pair of ballot measures in 2006: The first, Measure 46, would have amended the constitution to allow laws limiting CC&Es, abrogating *Vannatta*. A companion measure, Measure 47, contained, among other things, various provisions limiting or prohibiting political campaign contributions and expenditures.

This case arises because of the results of the 2006 election: Measure 46 was defeated, but Measure 47 passed.

Anticipating the possibility of such a split decision, Measure 47's drafters included in the law a deferred-operation provision that would be triggered in the

event of Measure 46's failure. That provision calls for the measure to be codified but held inoperative-—to stay "on the books," dormant and thus insulated from a constitutional challenge—until this court disavows *Vannatta* or until the constitution is amended to allow limits on CC&Es. The provision, § (9)(f), provides:

> 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.

In the aftermath of the 2006 election, and the failure of the amendment proposed by Measure 46, the Secretary of State determined that Measure 47's deferred-operation provision had been triggered. As a result, the Secretary determined that the substantive provisions of the act were in abeyance.

B. Questions Presented and Proposed Rules of Law

FIRST QUESTION PRESENTED

Does the Oregon Constitution prohibit the legislature or the voters from enacting a contingent law, the operation of which is deferred until either (1) the constitution is amended or (2) this court abrogates one of its earlier decisions?

FIRST PROPOSED RULE OF LAW

As this court has long recognized, contingent laws of this kind are constitutionally permissible. Nothing about the particular contingencies here at issue—passage of a constitutional amendment or abrogation by the Oregon Supreme Court of an earlier decision—is unusual or constitutionally suspect. This court has specifically upheld the use of deferred-operation provisions that indefinitely suspended the operation of an otherwise unconstitutional law until the occurrence of an event that would make the law constitutional.

SECOND QUESTION PRESENTED

To determine whether § (9)(f) had been triggered, was the Secretary required to determine whether the specific limitations contained in Measure 47 were constitutional?

SECOND PROPOSED RULE OF LAW

To determine whether § (9)(f) had been triggered, the Secretary was not required to determine whether the specific limitations contained in Measure 47 were constitutional. Section (9)(f) was triggered if, on the measure's effective date, December 7, 2006, the "Oregon Constitution [did] not allow limitations on political campaign contributions or expenditures." The text, context, and history of Measure 47 demonstrate that the phrase "limitations on political campaign contributions or expenditures" refers not to the specific limitations contained in Measure 47 but rather to the category of limitations that this court

struck down in *Vannatta*. Because Measure 46 failed to pass, this court's categorical holding in *Vannatta* was undisturbed. The Secretary therefore correctly determined that § (9)(f) had been triggered.

THIRD QUESTION PRESENTED

Did the Secretary correctly determine that all of Measure 47's substantive provisions are presently inoperable? Or should the Secretary have considered the constitutionality of each of Measure 47's provisions and deferred the operation of only those which were unconstitutional under *Vannatta*?

THIRD PROPOSED RULE OF LAW

The Secretary correctly determined that all of the substantive provisions of Measure 47 are inoperative. By its terms, § (9)(f) requires that if the deferred-operation provision is triggered, operation of the entire act is to be deferred.

FOURTH QUESTION PRESENTED

If the Secretary correctly determined that Measure 47 is in abeyance, does this case present an opportunity for this court to consider whether to awaken it—*i.e.*, to revisit its holding in *Vannatta*?

FOURTH PROPOSED RULE OF LAW

This case does not present an opportunity for the court to revisit *Vannatta*. As this court has recognized, the purpose and effect of a deferred operation provision like § (9)(f) is to shield a statute from a constitutional challenge until the occurrence of a discrete event. A declaratory action in which a party asks this court to *cause* such an event to occur by revisiting and reversing an earlier case in the absence of any *need* to do so does not present a justiciable controversy. In all events, even assuming this court could use this case as an opportunity to revisit its decision in *Vannatta*, it would be imprudent to do so because it is not necessary reach that constitutional issue to decide this case. In addition, the voters relied on this court's pronouncements in *Vannatta* in determining whether to vote for Measure 47. Under those circumstances, it would frustrate the voters' reasonable expectations if this court were to revisit those decisions in the very case in which the court determines the intended meaning of Measure 47.

SUMMARY OF ARGUMENT

The voters acted within their legislative authority by including in Measure 47 a deferred-operation provision. The provision, § (9)(f), makes the measure into an unremarkable—and plainly constitutional—example of contingent legislation. This court has repeatedly said such contingent laws—including laws with deferred-operations provisions just like § (9)(f)—are

constitutionally permissible.

In asking this court to hold § (9)(f) unconstitutional, plaintiffs urge this court to adopt a new rule limiting the power of the legislature and the voters to enact contingent legislation. But the rule that plaintiffs propose finds no support in this court's case law and is, in fact, inconsistent with this court's prior decisions. In all events, plaintiffs' contention that § (9)(f) is unconstitutional because it makes the operation of Measure 47 contingent on "arbitrary," "private," or "obscure" events is not well-taken. Measure 47 remains dormant until one of two things happens: the constitution is amended to allow CC&E limitations, or this court abrogates its holding in *Vannatta*. Those contingencies are clear, and, under this court's case law, clearly permissible.

The Secretary correctly determined that § (9)(f) was triggered in this case, and correctly determined that Measure 47's substantive provisions are therefore in abeyance. The text, context, and legislative history of Measure 47 all demonstrate that the voters intended § (9)(f) to be triggered unless this court's decision in *Vannatta* had been abrogated—either by a constitutional amendment or by a decision from this court—prior to December 7, 2006. Because Measure 46 failed to pass, this court's categorical holding in *Vannatta* was undisturbed, and § (9)(f) was therefore triggered.

Plaintiffs urge this court to take this case as an opportunity to reconsider its decision in *Vannatta*, but this court should refuse to do so. The only issues

that this court needs to address to decide this case are whether § (9)(f) is constitutional and, if so, whether the Secretary correctly determined that the effect of that provision was to hold all of Measure 47 in abeyance. To revisit one of its earlier cases for no purpose other than to revive an otherwise dormant statute is not the role of this court. The court should not revisit its prior constitutional constructions unless it is absolutely necessary to resolve an existing controversy. In addition, revisiting *Vannatta* would be inappropriate in this particular case because the voters relied on that decision in understanding the effect of Measure 47 and in deciding whether to vote for it. This court expressly and unequivocally reaffirmed *Vannatta* just two months before the 2006 election. *See Meyer v. Bradbury*, 341 Or 288, 299, 142 P3d 1031 (2006). Under those circumstances, it would frustrate the voters' reasonable expectations if this court were to revisit *Vannatta* in the very case in which this court is asked to determine what the voters intended Measure 47 to mean.

ARGUMENT

A. Measure 47's deferred-operation clause is constitutional.

Plaintiffs contend that § (9)(f) is unconstitutional and therefore must be severed. For the reasons explained below, however, that argument is without merit. Section (9)(f) is an unremarkable, and plainly constitutional, example of contingent legislation.

1. The constitutionality of contingent legislation is a long-settled question.

Measure 47 is an example of what courts and legal scholars refer to as "contingent legislation." The term applies to laws that "become effective only on the happening of some future event that is not certain to occur (or is not certain to occur at a specific time)." Gary Lawson, *Delegation and Original Meaning*, 88 Va L Rev 327, 363-64 (2002). Contingent legislation is both widespread and commonplace—in Oregon and other jurisdictions—and its constitutionality under the state and federal constitutions has long been a settled point. *Id.* *See, e.g.*, *Marr v. Fisher*, 182 Or 383, 187 P2d 966 (1947) (holding contingent legislation permissible under the Oregon Constitution and explaining "it is well settled that [the legislature] may make a law to become operative on the happening of a certain contingency or future event"); *see also, e.g.*, *Brig Aurora v. United States*,11 US 382 (1813); *Marshall Field & Co. v. Clark*, 143 US 649, 694, 12 S Ct 495, 505 (1892).[1]

In the nineteenth century, contingent legislation was challenged under the federal constitution as invalid delegation of power. Opponents of the practice

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[1] *See also*, Lawson, *supra*, at, 363-64, 367, 387-89, 391 (2002) (reviewing the acceptance of contingent legislation by the federal courts); Steven F. Huefner, *The Supreme Court's Avoidance of the Nondelegation Doctrine in Clinton v. City of New York: More Than "A Dime's Worth of Difference,"* 49 Cath U L Rev 337, 342-46 (2000) (providing a historical look at the practice of contingent legislation).

argued that such laws impermissibly surrendered the legislative power to other branches of government by allowing those other branches to determine whether a particular contingency had come to pass and thus whether the law had thus become effective. But the United States Supreme Court rebuffed those challenges, explaining that the legislature is free to enact such legislation. *See, e.g., Brig Aurora*, 11 US at 388; *Field*, 143 US at 694. As the Court explained in *Field*:

> "To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.' The proper distinction, the court said, was this: 'The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must therefore be a subject of inquiry and determination outside of the halls of legislation.'"

Field, 143 US at 694.

Adopting similar reasoning, this court has long held that contingent legislation comports with the Oregon Constitution as well. Article I, section 21, of the Oregon Constitution provides that no law shall be passed, "the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution[.]" This court has explained that the purpose of section 21 "is to prevent unlawful delegation of legislative authority." In *Marr v. Fisher*,

182 Or 383, 388, 187 P2d 966 (1947). The court in *Marr* went on to explain, however, that although the legislature cannot delegate its power to make a law, "it is well settled that it may make a law to become operative on the happening of a certain contingency or future event." *Id*. at 388-89. The court explained that the legislature has the power to "prescribe that an act that is complete in and of itself shall become operative only on the happening of some specified contingency, contingencies, or succession of contingencies." *Id*. The dispositive question, as the court saw it, was whether "the Act was complete in the sense that the legislative assembly had exercised its discretion and judgment as to the expediency or inexpediency" of its provisions, and left open only the circumstances under which the act would go into operation. *Id*. at 389.

Marr is one of several cases in which this court has approved such contingent legislation. Others include *Fouts v. Hood River*, 46 Or 492, 499-500, 81 P 370 (1905) ("Local Option Act" that made prohibition of liquor sales subject to majority vote of locality was not unconstitutional because result of vote was only whether liquor licensing law would operate in that locality and not a vote on the law's substantive content); *Libby v. Olcott*, 66 Or 124, 131-32, 134 P 13 (1913) (statute authorizing an election to take place in the event a legislative act was referred to the ballot was not unconstitutional simply because it would not have any operative effect unless such a referral occurred); *State v. Rathie*, 101 Or.339, 199 P 169 (1921) (death penalty statute that would

"take effect as soon as and whenever" the Oregon Constitution will permit was permissible); *State v. Hecker*, 109 Or 520, 545-47, 221 P 808 (1923) (same). As these cases demonstrate, this court has recognized for a century that contingent legislation complies with the Oregon Constitution.

2. Measure 47 is exactly the sort of contingent legislation that this court has upheld.

Section (9)(f) is exactly the type of contingency provision that this court has held to be constitutionally permissible. In *Hecker*, for example, the defendant challenged legislation governing the method of execution of the death penalty. Specifically, the defendant argued that the legislation, which was contained in Oregon Laws 1920, chapter 20, was unconstitutional because, at the time it was enacted, the Oregon constitution barred the death penalty. 109 Or at 532.[2] The challenged legislation went into effect on April 17, 1920. *Id*. at 545. The constitution was not amended to allow the death penalty for first-degree murder, however, until May 1920, as the result of a special election. *Id*. at 537-38. Consequently, the defendant argued, chapter 20 was unconstitutional because, when it took effect in April, it conflicted with the constitutional prohibition of the death penalty. *Id*. at 542-43. However, the challenged legislation contained a section that provided as follows:

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[2] The Oregon Constitution had been amended in 1914 to abolish the death penalty. *Hecker*, 109 Or at 532-35.

> "This act shall take effect as soon as and whenever the constitutional provisions of section 36 of Article I of the constitution of the state of Oregon relating to the death penalty, and any amendment or amendments thereto, will permit."

Id. at 539, quoting Or Laws 1920, ch 20, § 4. Considering the meaning of that provision, the court concluded that, although the challenged act *became law* at a time when it conflicted with the constitution, it was "saved" by postponing its *operation* until such time as the constitutional conflict might be resolved:

> Was Chapter 20 in conflict with the constitutional amendment of 1914 which was in force on April 17, 1920? It is true that the Constitution at that time declared that "the death penalty shall not be inflicted upon any person under the laws of Oregon"; but it is also true that, *even though Chapter 20 became a law on April 17, 1920, it could not by force of its own terms operate until the then Constitution should be amended*. If the question of conflict is to be determined by the possibility of the statute running counter to the Constitution, then there was no conflict between Chapter 20 and the Constitution; *because the operation of Chapter 20 was by its own restraining language absolutely prevented from operating and hence from running counter to the then Constitution*. * * *. Chapter 20 was enacted for the sole purpose of prescribing a procedure which should be and could be available only upon the amendment of the Constitution. *The purpose was to make Chapter 20 operative contemporaneously with but not before the amendment of the Constitution. It is our view that Chapter 20 is constitutional*[.]

109 Or at 547 (emphasis added).

The reasoning in *Hecker* applies with equal force in this case. At the time that Measure 47 was presented to the voters, this court had held, in both *Vannatta* and *Meyer*, that limits on campaign contributions and expenditures were unconstitutional. Accordingly, the drafters of Measure 47 included §

(9)(f), which, as noted above, provided for the Act to "be codified" but not to "become effective" until such time as "the Oregon Constitution is found to allow, or is amended to allow, such limitations." The provision that the Act should be codified but not take effect until constitutionally permissible cannot reasonably be read as anything but a direct application of the method approved in *Hecker*: by its own terms, Measure 47 would *become law* on the date prescribed by the constitution—in this case, 30 days after the election pursuant to Article IV, section 1(4)(d), of the Oregon Constitution—but would not *operate* until such time as the limitations contained within the measure were constitutionally permissible. Just like the law at issue in *Hecker*, Measure 47 is also constitutional.

3. The "implicit limits" on contingent legislation that plaintiff urges this court to impose are not consistent with the caselaw of this court or any other court.

Plaintiffs concede that the Oregon constitution does not prohibit contingent legislation generally. (Horton Br 8). They contend however that the authority to enact contingent legislation is subject to certain "implicit limits." In particular, they assert that the Oregon Constitution forbids "arbitrarily fixing the operation of laws upon private or obscure future events." (Horton Br 9). Further, after surveying this court's case law they suggest that this court should adopt a rule limiting constitutionally permissible contingent statutes to two types: (1) those which are contingent upon "an election clearly related to the

question whether the dormant statute will operate," and (2) those which are contingent upon the "public actions of a deliberative body with the authority to activate the dormant law." (Horton Br 9). As explained below, plaintiffs' proposed rule is inconsistent with this court's earlier decisions. This court should decline to adopt it.

Plaintiffs cite no direct authority supporting their proposed rule limiting contingent legislation. Nor, in fact, do they identify which constitutional provision the proposed limits supposedly arise from. Instead, plaintiffs purport that their proposed rule is "implicit" in this court's decisions regarding the constitutionality of contingent legislation. (Horton Br 9).[3] But plaintiffs are mistaken. None of the Oregon cases approving contingent legislation has included an analysis that turned—explicitly or implicitly—on the *timing* or *nature* of the contingency that would trigger the legislation's operation. Rather, in each decision the court questioned only whether the challenged legislation fit within the legislature's prerogative to "provide in advance a rule of action to be observed in case certain conditions arise[.]" *Libby v. Olcott*, 66 Or at 132. In every case, this court concluded that it could.

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[3] Plaintiffs assert that the constitutional limits they propose are implicit in the court's case law. (Horton Br 9). They later suggest that implicit limits can be "found" in various provisions of Article IV, to the extent that those provisions presume that the voters must have "notice" of the effects of the

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But the problem with plaintiffs' proposed rule is not simply the absence of any explicit or implicit support for the rule in this court's case law. The larger problem with plaintiffs' proposed rule is that it is, in fact, flatly *inconsistent* with this court's case law, including this court's decisions in *Hecker* and *Rathie*.

As noted above, at issue in both *Hecker* and *Rathie* was the constitutionality of a statute that purported to hold its own operation in abeyance but that would become operative "as soon as and whenever the constitutional provisions of section 36 of Article I of the constitution of the state of Oregon relating to the death penalty, and any amendment or amendments thereto, will permit." 1920 Oregon Laws, ch. 20, § 4 (as quoted in *Hecker*, 109 Or at 539). That statute was not contingent upon "an election clearly related to the question whether the dormant statute will operate" or upon the "public actions of a deliberative body with the authority to activate the dormant law." By its terms, the statute at issue became operative "whenever" the constitution would permit. *In that respect, it is identical to Measure 47.* Thus to adopt the rule that plaintiffs propose, this court would have to overturn at least two of its earlier cases and chart a new course in an area that has been settled law in this

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laws that they are adopting. (Horton Br 23). Plaintiffs' notice argument, as discussed below, is both unripe and without merit.

state for the better part of a century. Plaintiffs provide no compelling reason for this court to overturn its earlier cases and adopt this rule. This court should decline to do so.[4]

There is no practical reason for adopting plaintiffs' rule either. On the contrary, the suggestion that contingent legislation be limited to laws that are contingent upon "an election clearly related to the question whether the dormant statute will operate" or the "public actions of a deliberative body with the authority to activate the dormant law" generally betrays a misunderstanding of the pervasive use of contingent legislation. State and federal law makers pass laws the operation of which is triggered by all manner of contingencies – from occurrence of natural disasters to shifts in foreign relations. *See* Lawson, *supra*, at 363-91; Huefner, *supra*, 342-46; *see also Marr*, 182 Or at 388-89. As discussed above, the authority of the legislative branch to do so, and to delegate to coordinate branches the task of determining whether a contingency has occurred, has been settled for decades. As the United States Supreme Court and

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[4] Plaintiffs make a similar mistake when they survey cases outside this jurisdiction. Plaintiffs erroneously suggest that contingent laws upheld in other jurisdictions have invariably been contingent on "specific and anticipated changes contingent upon the outcome of elections." As one such case, for example, plaintiffs cite *In re Opinions of the Justices* 149 So 776, 777 (Ala 1933). But the operation of the statute at issue in that case was not contingent on any "specific" election. The statute provided merely it "shall become effective when an amendment to the Constitution authorizing the tax herein provided for has been adopted."

this court have long recognized, law makers must have that flexibility, were the rule otherwise, the wheels of government would grind to a halt. *Field*, 143 US at 694; *Marr*, 182 Or at 389. This court should reject plaintiffs' invitation to constrain contingent legislation in the manner suggested.

In sum, plaintiffs' attempt to identify "implicit"constitutional limits on contingent legislation fails, because the rule they propose would constrain the legislative authority in a manner that is both impractical and flatly odds with this courts caselaw. That said, the power of the legislative branch to enact contingent legislation is not necessarily limitless. *Cf. Mistretta v. United States*, 488 U.S. 361, 372 (1989) (delegation to coordinate branches must contain some "intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform"). But the court does not need to determine what those limits are to decide this case. Whatever they may be, the contingencies at issue here, just like ones this court upheld in *Hecker* and *Rathie*, are constitutional.

4. Section (9)(f) does not "revive" otherwise unconstitutional limits on campaign contributions and expenditures.

Plaintiffs also argue that § (9)(f) is invalid because it would "revive" Measure 47 upon passage of *any* constitutional amendment that would allow CC&E limits. According to plaintiffs, to revive an unconstitutional law with a subsequent constitutional amendment, the amendment must specifically refer to

the law that is being revived. (Horton Br 29). In making this argument, the plaintiffs rely on this court's decisions in *Smith v. Cameron*, 123 Or 501, 262 P 946 (1928), and *People's Util. Dist., et al v. Wasco Co., et al*, 210 Or 1, 305 P2d 766 (1957) ("*Northern Wasco PUD*"). But that reliance is misplaced. The issue in those cases was whether a statute that had been held unconstitutional and struck down could be revived, ratified or validated by a subsequent constitutional amendment. In *Cameron*, the court held that the adoption of a constitutional amendment "did not revive or bring into life those sections of the statute [that had previously been declared unconstitutional]." 123 Or at 505. In *Northern Wasco PUD*, the court explained that a subsequent amendment can revive a statute that has been declared unconstitutional only if the amendment specifically refers to statute that the amendment is intended to revive.

Cameron and *Northern Wasco PUD* are inapposite. The statutes in those cases had been held unconstitutional and were thus struck down. As a result, they were void and no longer effective. In that circumstance, this court explained, the statutes could not be revived by subsequent amendments unless that subsequent amendment specifically referred to them.

Here, as in *Hecker*, Measure 47 contains a deferred-operation clause which makes it effective, but not operative. The purpose of that clause is to shield the law from constitutional challenge. Because it is not operative, it cannot conflict with the constitution and, therefore, is neither void nor invalid.

Hecker, 109 Or at 547. Accordingly, a subsequent amendment upon which its operation is contingent would not serve to retroactively validate it, because it is already valid. Neither *Cameron* nor *Northern Wasco PUD* is implicated.

Plaintiffs argue that there is "no meaningful distinction between reviving a law and making [a dormant law] operative." (Horton Br 30). That is incorrect. A law that has been declared invalid is no longer a law. To "revive" such a law is not simply to make it operative, but effectively to ratify its reenactment. To do so requires the specific intent of those passing the amendment. Conversely, as this court recognized in *Hecker*, a dormant law awaiting a contingent event to become operative is nonetheless fully enacted. A constitutional amendment anticipated by § (9)(f) would not *enact* Measure 47. Measure 47 has already *been* enacted; it is a complete expression of the people's intent and merely awaits the event that the people already have determined will trigger its operation.

5. In all events, plaintiffs argument fails because Measure 47 is not contingent on "arbitrary," "private," or "obscure" events.

For all the reasons stated above, this court should reject plaintiffs' proposed constitutional limits on contingent legislation. But even assuming that contingent legislation *were* subject to implicit constitutional limits of the sort suggested by plaintiffs, § (9)(f) still would be constitutional. Plaintiffs suggest that the constitution does not allow "arbitrarily fixing the operation of laws

upon private or obscure events." (Horton Br 9). But § (9)(f) is not "arbitrary" nor does it make operation of the law contingent on events that are "private" or "obscure."

In urging this court to rule that arbitrary contingencies are unconstitutional, plaintiffs suggest that "a law passed in 2009 about day care centers" could not permissibly remain dormant "until the Cubs win the World Series." (Horton Br 8). This court does not need to decide whether the state constitution would allow a law the operation of which was contingent on an arbitrary event like the outcome of a baseball game, because the contingency on which Measure 47 hinges is anything but arbitrary. Measure 47 remains dormant until one of two things happens: the constitution is amended to allow CC&E limitations, or this court abrogates its holding in *Vannatta*.[5] Neither of those two contingencies is "arbitrary"—both are directly and obviously related to the substance of the provisions of Measure 47.

Those contingencies that would reanimate Measure 47 are not "private" or "obscure" either. The passage of a constitutional amendment allowing for CC&Es is not going to occur in secret, nor would a decision of this court abrogating its precedent be hidden from public scrutiny. Far from private or

[5] Section (9)(f) provides that the act will awaken when the Oregon Constitution is "found to allow" the limitations on CC&E's that were struck

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obscure, both contingencies are quintessentially public events. In that regard, plaintiffs' repeated suggestion that Measure 47 might suddenly spring to life without sufficient "notice" is not well taken.

In a related vein, plaintiffs also suggest that Measure 47 is unconstitutional because it might eventually be forgotten by voters of future generations, who might then unwittingly revive it by adopting a constitutional amendment allowing CC&Es. That concern is, to say the least, speculative. It is also legally incorrect. Measure 47 is codified and enacted; it is the law, and citizens are presumed to know the law. *Bartz v. State of Oregon*, 314 Or 353, 359–60, 839 P2d 217 (1992). Furthermore, to the extent that plaintiffs' claim rests on a lack of "notice," it is not ripe. If a future generation of voters inadvertently awakens a long-dormant and forgotten Measure 47 and wishes to challenge the law's validity, such a notice argument might then be justiciable. But it is not the province this court to strike § (9)(f) based on speculation about that possibility.

In all events, the proper focus of this court in determining the constitutionality of Measure 47 is not on future generations that might have forgotten Measure 47, but on the intent of the voters who adopted it in 2006.

(…continued)
down in *Vannatta.* This is the only court that has the authority to overrule its construction of the Oregon Constitution in *Vannatta.*

Their intent was to make the law contingent on passage of a constitutional amendment or abrogation of *Vannatta*. Those contingencies are clear, and clearly permissible. The voters acted within their legislative authority in adopting § (9)(f).

6. Even assuming that one of the contingencies in § (9)(f) was constitutionally impermissible, the remedy would not be to sever all of § (9)(f).

Plaintiffs contend that § (9)(f) fails to state a valid contingency and it therefore "must be severed in its entirety." In order for that argument to prevail, however, plaintiffs must demonstrate that *both* contingencies identified in § (9)(f) that would trigger operation of the law—*i.e.*, adoption of a constitutional amendment allowing CC&E limitations or a decision by this court overturning *Vannatta*—are invalid.

For all of the reasons explained, both of those contingencies are constitutionally permissible. But even if this court were to conclude that *one* of those contingencies were invalid, then the proper remedy would be to sever the offending contingency but leave the other intact. ORS 174.040. *See also City of Portland v. Dollarhide*, 300 Or 490, 503–04, 714 P2d 220 (1986) (an unconstitutional part of a statute may be excised without destroying a separable

part).[6] For instance, if this court were to conclude that it was permissible to make Measure 47 operative contingent on the future adoption of a constitutional amendment, but impermissible to hinge operation on a future decision of this court, then the proper remedy would be to strike the words "is found to allow" from the provision and leave the remainder intact. In that circumstance, Measure 47 would remain in abeyance pending a constitutional amendment.[7]

B. The Secretary of State and Attorney General correctly interpreted and applied Measure 47's deferred-operation clause.

In the wake of the 2006 election—and in particular the defeat of Measure 46 and the adoption of Measure 47—the Secretary of State determined that the § (9)(f) of Measure 47 required that the measure be codified and held in abeyance. Plaintiffs maintain that in reaching the determination, the Secretary misconstrued § (9)(f). As explained below, plaintiffs are mistaken. The Secretary correctly interpreted and applied that section.

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[6] Section 11 of Measure 11 also specifically allows for unconstitutional portions of the statute to be severed. But § 11 is, like the rest of Measure 47, presently inoperable.

[7] In its letter opinion, the trial court declined to decide whether a measure's operative effect can be made to depend on a "judicial finding." The court noted that it was clear that under *Hecker* a measure could be made to depend on an amendment. The court thus reasoned that even if a judicial finding was an impermissible contingency, that portion could be severed.

1. The text, context and history of § (9)(f) demonstrate that it was triggered and required that Measure 47 be held in abeyance in its entirety.

In interpreting a statute enacted by the voters through initiative, this court's role is to discern the intent of the voters. *See Fremont Lumber Co. v. Energy Facility Siting Council*, 331 Or 566, 574 (2001). To determine that intent, the court looks at the text and context, taking into account the history of the measure to the extent that such history is illuminating. *State v. Gaines*, 346 Or 160, 171–72, 206 P3d 1042 (2009). Where the legislative history of a ballot measure is at issue, courts look to contemporaneous indicia of voter intent, such as voters' pamphlet information and newspaper articles and editorial comment. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 559 n 8, 871 P2d 106 (1994) (interpreting initiated constitutional amendment).

The text of § (9)(f) describes a condition, then mandates the consequences if that condition obtains. The condition triggering § (9)(f) is that "on the effective date of this Act, the Oregon Constitution does not allow [CC&E limits]." The mandated consequence if that condition obtains is that the "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." As discussed below, the triggering condition unambiguously existed, and the unambiguous consequence was that Measure 47, in its entirety, presently is not operative.

a. Section (9)(f) was triggered because Measure 46 failed and this court's decision in Vannatta was undisturbed.

By its terms, § (9)(f) was triggered if the following condition was met: "on the effective date of this Act, the Oregon Constitution does not allow limitations on political campaign contributions and expenditures." There is no dispute as to the effective date of the Act—the law became effective on December 7, 2006. Thus the only remaining issue is whether on that date, "limitations on political campaign contributions and expenditures" were constitutionally permissible. To answer that question it is necessary to determine what the voters understood the phrase "limitations on political campaign contributions and expenditures" to refer to.

The phrase "limitations on political campaign contributions and expenditures" is a broad and generically worded phrase and one that, in isolation, admits of some ambiguity. But the context and history Measure 47 removes any doubt as to its meaning. The text, context, and history of Measure 47 conclusively demonstrate that the voters understood and intended to the phrase "limitations on political campaign contributions and expenditures" to refer to the numeric limitations on CC&Es of the kind that this court held to be unconstitutional in *Vannatta* .

The context of § (9)(f) includes other provisions of the same measure. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993).

Section 1(r) of Measure 47 describes the enactment in 1994 of "contribution limits similar to those in this Act," and explains that those limits were struck down by the Oregon Supreme Court in 1997. Section 1(r) then provides, "This Act shall take effect at a time when the Oregon Constitution does allow the limitations contained in this Act." That language plainly presumes that the Oregon Supreme Court decisions invalidating other statutes that contained CC&E limits applied with equal force to the CC&E limits contained in Measure 47. In other words, section 1(r) and § (9)(f) of Measure 47, read together, assume that a change to the constitution, or a decision by this court overruling *Vannatta*, was the necessary precondition before Measure 47 would become operative. The context demonstrates that "limitations on political campaign contributions and expenditures" refers to the limitations struck down in *Vannatta*.

The organization of Measure 47 also confirms that "limitations on campaign contributions and expenditures" refers to the numeric caps on CC&E amounts that this court struck down in *Vannatta*. CC&E limits are addressed comprehensively in sections 3 through 6. Consistently throughout those sections, "limits" refers exclusively to limits on the *amounts* of CC&Es. Accordingly, it is clear from the text and context that § (9)(f)'s use of the word "limits" was a reference to the type of numeric CC&E caps this court had previously held to be unconstitutional in *Vannatta*.

The context of § (9)(f) also includes related ballot measures submitted to voters in the same election. *Ecumenical Ministries*, 318 Or at 559. The ballot measure most closely related to Measure 47 was Measure 46. Measure 46, if approved, would have amended the constitution to allow laws limiting or prohibiting contributions and expenditures, of any type or description, to influence the outcome of any election.[8] The fact that Measure 46 was submitted to the voters at the same time as Measure 47, with its language referring to the unconstitutionality of CC&E limits, strongly indicates an assumption on the part of the voters that, if Measure 46 did not pass, the limits proposed by Measure 47 would be unconstitutional. The certified ballot title of Measure 46, which is part of that measure's context (and, by extension, part of the context of Measure 47), makes that assumption explicit: "The Oregon Constitution currently bans laws that impose involuntary limits on, or otherwise prohibit, political campaign contributions or expenditures by any person or any

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[8] Measure 46 provided as follows:

> Be it enacted by the People of the State of Oregon, there is added an Article II, Section 24, of the Constitution of Oregon, as follows:
>
> Notwithstanding any other provision of this Constitution, the people through the initiative process, or the Legislative Assembly by a three-fourths vote of both Houses, may enact and amend laws to prohibit or limit contributions and expenditures, of any type or description, to influence the outcome of any election.

entity." (SER-2) That ballot title went on to inform voters that the result of a "No" vote would be to "retain[] current ban in Oregon Constitution on laws that limit or prohibit campaign contributions or expenditures by any person." (SER-2).

The relevant context also includes this court's precedents construing the state constitution to preclude any statutory CC&E limits. Here, the most relevant decision is obviously *Vannatta*. In that case, this court held that laws which limited how much a person or political committee could contribute to a candidate, banned certain contributions made by candidates or campaign committees, and, with certain exceptions, banned corporations, professional corporations, nonprofits, and labor organizations from making campaign contributions and prohibited campaigns from accepting such contributions, were unconstitutional. *Id.* at 537–41.

This court's decision in *Meyer*, which involved a pre-election challenge to Measure 47's companion, Measure 46, is also relevant. In that decision— which was published just two months before the 2006 election— this court reiterated that CC&E limits, including mandatory limits on expenditures, were impermissible. *See Meyer,* 341 Or at 299 (citing *Vannatta* and observing that, "[u]nder Oregon law, both campaign contributions and expenditures are forms of expression protected by [Article I, section 8], thus making legislatively imposed limitations on individual political campaign contributions and

expenditures impermissible").

In sum, the text and context of § (9)(f) demonstrate that the voters understood and intended the phrase "limitations on political campaign contributions and expenditures" to refer to the broad class of numerical limitations on CC&Es that this court held to be unconstitutional in *Vannatta*.

The history of the adoption of Measures 46 and 47 confirms that interpretation. The explanatory statement for Measure 46 informed voters, "At present Article I, section 8, of the Oregon Constitution, the free speech guarantee, does not allow laws that prohibit or impose limits on [CC&Es]." (SER-3).[9] The voters' pamphlet arguments uniformly delivered the same message. Plaintiff Horton and plaintiff Delk—a chief petitioner for Measure 46—explained in a voters' pamphlet argument supporting Measure 46, "In 1994, 72% of Oregonians voted for limitations on contributions to candidates[,]" but "[i]n 1997, the Oregon Supreme Court threw out that law[.]" (SER-4). Horton and Delk urged, "**Measure 46 is the solution!** It's just one sentence which permits limitations on campaign contributions. * * * **A constitutional amendment is required to allow limitations**." *Id*. (boldface in original). They concluded, "Measure 46 simply makes limitations on [CC&Es] constitutional." *Id*.

Another argument, filed in support of Measure 47, explained that "the Oregon Supreme Court in 1997 struck down [Measure 9], deciding that the *existing* Oregon Constitution does not allow *any* limits on political spending." Argument of Laura Etherton, *et al.*, in support of Measure 47 (emphasis in the original). (SER-6 to SER-7). Indeed, plaintiffs' counsel Meek himself explained in an article, supporting both Measure 46 and Measure 47, that Measure 46 "is needed, because the Oregon Supreme Court ruled in 1997 that the Oregon Constitution does not currently allow any limits on political contributions in any race for state or local public office." (SER-9).

The text, the context, and the legislative history show that the voters understood and intended the phrase "limitations on political campaign contributions and expenditures" to refer to limitations on CC & E's of the kind that were struck down in *Vannatta*. In other words, text, context, and legislative history shows that the voters intended § (9)(f) would be triggered unless this court's decision in *Vannatta* had been abrogated—either by a constitutional amendment or by a decision from this court—prior to December 6, 2007.

As it happened, this court's decision in *Vannatta* was not abrogated prior to December 6, 2007, because the voters rejected Measure 46. The Secretary

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(…continued)

[9] The explanatory statement was prepared by a unanimous committee that included plaintiff Hazell and plaintiffs' counsel Meek.

therefore correctly determined that § (9)(f) had been triggered.

b. Once triggered, § (9)(f) holds the entire act in abeyance.

By its terms, § (9)(f) provides that if CC&E limits are not permitted under the Oregon Constitution on Measure 47's effective date, the entire act is to be held inoperative. It thus provides, "*this Act* shall nevertheless be codified and shall become effective" when the Constitution is found or amended to allow such limits. Measure 47, § (9)(f) (emphasis added). As discussed above, that mandate was triggered in the present circumstances. Accordingly, by the plain terms of § (9)(f), no part of the Act is operative at this time. Instead, the Act is codified and remains dormant until the conditions for its operative effect, set forth in § (9)(f), are met.

2. Plaintiffs' arguments to the contrary are without merit.

a. The trigger in § (9)(f) does not depend on the constitutionality of Measure 47's provisions.

Plaintiffs dispute the contention that § (9)(f) was triggered in this case. According to plaintiffs, § (9)(f) is properly construed to place the act in abeyance only if the limitations specified in Measure 47 were unconstitutional. Based on that interpretation, plaintiffs argue that, in order to determine whether Measure 47 was properly placed in abeyance, this court is therefore required to examine each of the provisions in Measure 47 and determine whether it is constitutional. As explained below, however, plaintiffs misconstrue § (9)(f).

Plaintiffs argument rests on the premise that § (9)(f)'s reference to

"limitations on political campaign contributions and expenditures" refers to the limitations specified in Measure 47 itself. But that premise is at odds with the plain text of the statute.

The plain language of the triggering provision is broad and generic, applying the trigger if "the Oregon Constitution does not allow limitations on political campaign contributions and expenditures." Plaintiffs ask this court to read § (9)(f) much more narrowly. According to plaintiffs, it should be read to say that the trigger is applied "if the Oregon Constitution does not allow **the** limitations on political campaign contributions and expenditures **contained in this act**." This court should decline plaintiffs' invitation to insert words into the statute that are not there. ORS 174.010.

Even if this court were free to rewrite the statute in the manner that plaintiffs suggest, there is no basis for doing so. The context and history discussed above demonstrate that the voters deliberately intended and understood that § (9)(f) trigger to be broad and categorical, just as it was written. That is entirely consistent with the broad and categorical language in the ballot title, explanatory statement, and voters pamphlet: At every turn, the voters were reminded in categorical terms that this court had struck down CC&E limitations. And of course, Measure 46 was intended to categorically allow such limitations—it would have allowed laws to "prohibit or limit contributions and expenditures, of any type or description, to influence the

outcome of any election."

The voters were told that the status quo under *Vannatta* remained, that the Oregon Constitution does not allow CC&Es, and that Measure 46 would amend the constitution to allow them. The purpose of § (9)(f), as plaintiffs concede, was to get Measure 47 on the books in the event that Measure 46 failed. (Hazell Br 6). That is, the idea behind § (9)(f) was that it would be triggered in the event that Measure 46 failed, but would not be triggered if Measure 46 passed. That context explains why the § (9)(f) trigger was deliberately worded in broad, categorical terms: if Measure 46 failed, then the status quo remained and CC&Es remained categorically unconstitutional under *Vannatta*, but if Measure 46 passed, they were no longer categorically prohibited and § (9)(f) would not be triggered.

Notwithstanding the text of § (9)(f), plaintiffs argue that the context of that provision supports their contention that "limitations on political campaign contributions and expenditures" was intended to refer to the limitations specified in Measure 47 itself. In particular, plaintiffs rely on Section (1)(r). As noted above, that provision states

> "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."

Plaintiffs focus on the last sentence—"This Act shall take effect at a time when the Oregon Constitution does allow the limitations contained in this Act"—and argue that it demonstrates that the reference to "limitations on political campaign contributions and expenditures" in § (9)(f) was intended not to refer broadly to the class of limitations prohibited by *Vannatta*, but rather was intended to refer narrowly to the specific provisions in Measure 47.

Plaintiffs' reasoning is logically flawed. The sentence upon which plaintiff focus—"This Act shall take effect at a time when the Oregon Constitution does allow the limitations contained in this Act"—is in fact entirely consistent with the notion that § (9)(f) was intended to be understood as it is worded—in categorical terms. Section 1(r) simply reflects the drafters' presumption that *Vannatta*'s categorical "ban * * *on laws that limit or prohibit campaign contributions or expenditures" applied with equal force to the CC&E limits contained in Measure 47. It was precisely because of that presumption that the drafters also introduced Measure 46, in an attempt to clear a path for Measure 47. In light of that presumption, the statement that the Act "shall take effect at a time when the Oregon Constitution does allow the limitations contained in this Act" provides that Measure 47 was to take effect immediately if Measure 46 passed but would otherwise be placed in abeyance pending the abrogation of *Vannatta*.

For all of the above reasons, the constitutionality of the various

provisions Measure 47 are irrelevant to the threshold determination whether the § (9)(f) was triggered. The triggering circumstance intended by the voters was the fact that constitutional prohibitions set forth in *Vannatta* had not been abrogated.

Because plaintiffs do not appreciate this point, many of the arguments that they advance are simply beside the point. For instance, plaintiffs contend that the Court of Appeals erred by failing analyze the separate provisions of Measure 47 (Hazell Br 38); by failing to contrast the provisions of Measure 47 with those of the statute struck down in *Vannatta* (Hazell Br 47-49), by assuming that Measure 47 was unconstitutional under *Vannatta* (Hazell Br 50-56), and by failing consider whether some of Measure 47's provisions pass constitutional muster under this court's decision in *Vannatta v. Oregon Government Ethics Com'n*, 347 Or 449, 222 P3d 1077 (2009)(*Vannatta II*)(Hazell Br 39-42). All of those arguments are predicated on a false assumption.

In each case, plaintiffs assume that the trigger in § (9)(f) depends on the constitutionality of the provisions of Measure 47. But the voters intended that § (9)(f) would be triggered unless this court's decision in *Vannatta* had been abrogated—either by a constitutional amendment or by a decision from this court—prior to December 6, 2007. Thus, to determine whether § (9)(f) was triggered, the Secretary needed only to determine whether *Vannatta* had been

abrogated. The Secretary did not need to consider the constitutional validity of each of Measure 47's provisions.

Plaintiffs note, correctly, that the mere fact that the voters might have assumed that Measure 47 was unconstitutional on the date of its enactment does not make it so. (Hazell Br 24-25). Plaintiffs thus argue that it is still up to this court to determine whether in fact the voters were correct in that regard. But again, plaintiffs' argument proceeds from false premise. The trigger in § (9)(f) does not depend on the constitutionality of Measure 47. Instead, § (9)(f) is triggered in the event that *Vannatta* was not abrogated. The voters adopted that particular trigger because they presumed that all or some of Measure 47's provisions were unconstitutional under *Vannatta*. But the voters' motives for adopting the trigger that they did are irrelevant. The only question for this court is whether the trigger they adopted was pulled. And to decide that question, this court need only ask whether the Secretary erred in concluding that *Vannatta* had been abrogated on December 7, 2006. Because the answer to that question is "no," the Secretary correctly applied the statute.

b. The fact that some CC&E limitations were constitutionally permissible on the effective date of Measure 47 irrelevant.

Plaintiffs also note that even under *Vannatta* and *Meyer*, the Oregon Constitution allows some limitations on political campaign contributions and expenditures. Plaintiffs thus note that there are various reporting requirements

that are triggered by contributions or expenditures over particular amounts. (Hazell Br 28-31). They argue that because there are some limitations on CC&Es, § (9)(f) was not triggered. *Id.* In particular, they argue that § (9)(f) is triggered "only if the Oregon Constitution does not allow <u>any</u> 'limitations'" on CC&Es. "The fact that the Oregon Constitution does allow <u>some</u> limitations means that the § (9)(f) condition is not triggered at all." *Id.* at 30 (underline in original). That argument fails for either of two reasons.

First, the premise of plaintiffs' argument is that "limitations on political campaign contributions and expenditures" in § (9)(f) refers to any and all limitations. That premise is false.[10] For the reasons explained above, the text, context, and legislative history demonstrate that the "limitations" in § (9)(f) refers to the numeric caps that this court categorically declared unconstitutional in *Vannatta*—that is, to mandatory caps on monetary contributions and expenditures. In addition, it is clear from the context that "limitations" on CC&Es referred to in § (9)(f) did not include reporting requirements of the sort that plaintiffs identify. For instance, the preamble to Measure 47 distinguishes between CC&E limits and disclosure requirements, explaining that "[t]hese limits and disclosure requirements" are necessary to curb undue influence.

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[10] It is also inconsistent with plaintiffs' contention elsewhere in their brief that "limitations on political campaign contributions and expenditures" refers only to the limitations in Measure 47. (Hazell Br 18).

(Horton ER 11). Similarly, section (1)(a) of the measure provides that "prohibitions, limits, and reporting and disclosure requirements" are necessary to curb undue influence. (Horton ER 11). That text of section (1)(a), like that of the preamble, makes clear that Measure 47 distinguishes reporting and disclosure requirements from CC&E limits.

Second, the Hazell plaintiffs' contention that "limitations on political campaign contributions or expenditures" should be read so broadly as to refer to any and all provisions relating to contributions or expenditures, including reporting requirements, would render § (9)(f) meaningless. When the voters adopted Measure 47, the constitutionality of at least *some* provisions related to campaign contributions and expenditures, including reporting provisions, was (and is) undisputed. If the plaintiffs' broad reading of § (9)(f) were correct, the antecedent condition would never have been triggered and would serve no purpose and the provision would be a nullity. In construing the statute, this court must assume that the voters intended it to serve some purpose.

c. The fact that some provisions in Measure 47 might now be constitutional is irrelevant.

For the reasons explained above, the Secretary correctly determined that § (9)(f) was triggered, and correctly determined that the entire Act is thus in abeyance. There is nothing more that this court needs to decide. Plaintiffs, however, argue that even if the § (9)(f) condition has been met, and the law has

been properly placed in abeyance, this court still must determine whether each of Measure 47's limitations are constitutional. Plaintiffs misconstrue § (9)(f).

Once triggered, § (9)(f) provides that the entire act is held in abeyance until a subsequent condition is met, *viz.* "the Oregon Constitution is found to allow, or is amended to allow, such limitations." For the reasons already explained, "limitations" refers to the limitations that this court declared unconstitutional in *Vannatta*. Thus, Measure 47 is to remain in abeyance until those decisions are abrogated by a constitutional amendment or this court.

§ (9)(f) does not carve out exceptions to its application. It provides that if at the time of "this *Act['s]*" enactment the constitution prohibits CC&E limits, then "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." Not "those parts of this Act that are unconstitutional," but "this Act." Thus, it is clear from the text and context of Measure 47, generally, and § (9)(f), specifically, that *all* of Measure 47 would be placed in suspension so long as the Oregon Constitution barred CC&E limitations. Nothing in § (9)(f) or anywhere else contemplates that interim this court should examine each of Measure 47's provisions to determine its validity.

Because the entire measure is suspended and unenforceable, the question of the constitutionality of its individual provisions and, by extension, the severability of individual provisions is not ripe for review. Even if this court

were to rule that a particular provision in Measure 47 was constitutional, the Act would still be in abeyance. Thus, any ruling by this court would be merely advisory. For that reason, the trial court and Court of Appeals correctly chose not to consider the constitutionality of Measure 47's substantive provisions. *See Strunk v. Public Employees Retirement Board*, 338 Or 145, 154, 108 P3d 1058 (2005) (where statutory provisions not being enforced, challenge to validity of those provisions is not ripe); s*ee also Brown v. Oregon State Bar*, 293 Or 446, 449, 648 P2d 1289 (1982) (for a claim to be ripe, the controversy must involve present facts as opposed to a dispute that is based on future events of a hypothetical nature).

C. It is neither necessary nor appropriate for the court to revisit its decisions in *Vannatta* in deciding this case.

As discussed above, plaintiffs advance myriad arguments in an effort to animate the dormant provisions of Measure 47, but all of those arguments ultimately founder for the same reason: under this court's decision in *Vannatta* and *Meyer*, CC&Es are not constitutionally permissible. It is not surprising, therefore, that plaintiffs also argue that *Vannatta* was wrongly decided and urge this court to take this opportunity to overrule it. (Hazell Br 57; Horton Br 31-59). The court should decline that invitation.

The state agrees with plaintiffs that the constitutionality of CC&Es remains an important legal and political issue, and further agrees the *Vannatta*

and *Meyer* may not be, and perhaps should not be, this court's last words on the subject. The state also agrees that if this court were to overturn *Vannatta* and *Meyer*, the effect of such a ruling would be to make Measure 47 operative. As explained below, however, the state does not believe that *this* case presents an opportunity to revisit that issue.

1. Section (9)(f) precludes direct review of Measure 47.

The only issues that this court needs to decide to resolve this case are these: whether Measure 47's deferred operation clause, § (9)(f), is constitutionally permissible and, if it is, whether it was triggered in this case. For the reasons explained above, § (9)(f) is classic example of contingent legislation and is plainly constitutional. In addition, given the unambiguous state of the law at the time it was enacted, the Secretary correctly determined that it had been triggered. As a result, Measure 47 is now dormant in exactly the manner intended by the voters who enacted it. Having concluded that the statute is constitutional and is functioning just as the voters intended, there is nothing more that this court needs to decide.

Yet by inviting this court to revisit *Vannatta* now, plaintiffs are asking this court to decide something else. If this court was to accept that invitation, and was to abrogate *Vannatta*, then one of the contingencies in § (9)(f) would occur and the effect of this court's decision therefore would be to "awaken" Measure 47. In other words, plaintiffs ask this court to reach an issue that the

court does not need to reach because they hope that the court's decision will cause Measure 47's substantive provisions to become operative.

To revisit one of its earlier cases for no purpose other than potentially to revive an otherwise dormant statute is not the role of this court. Moreover, plaintiffs' invitation to engage in direct review of the constitutionality of Measure 47 is inconsistent with this court's case law. As this court recognized in *Hecker*, the effect of a deferred-operation provision like § (9)(f) is to shield a statute from a constitutional challenge until the occurrence of a discrete event. In addition, if this court were to conclude on direct review that Measure 47's provisions are unconstitutional, the effect of that declaration would be to make the measure void—rendering § (9)(f) a nullity. *Cameron*, 123 Or at 505. The risk of being struck down on direct review is exactly what the voters sought to avoid by including § (9)(f).

2. Even if this court could revisit *Vannatta* in deciding this case, it should not do so for prudential reasons.

Even assuming this case did present an opportunity for this court revisit *Vannatta*, the court should decline to do so. In deciding whether to reach a particular legal issue this court is guided by a number of prudential doctrines. In the state's view, two of those doctrines—avoidance and *stare decisis*—are applicable here, and both militate strongly against revisiting *Vannatta* in this case.

a. Under the avoidance doctrine, the court should not revisit the rule from *Vannatta* because it is not necessary to do so to decide this case.

The first prudential reason that this court should not now revisit *Vannatta* is that there is no need to do so. This court has repeatedly explained that it will avoid reaching constitutional questions unless it is necessary to do so. *See, e.g.*, *Leo v. Keisling*, 327 Or 556, 560, 964 P2d 1023 (1998); *Boytano v. Fritz*, 321 Or 498, 504, 901 P2d 835 (1995); *State ex rel Keisling v. Norblad*, 317 Or 615, 624, 860 P2d 241 (1993); *Zockert v. Fanning*, 310 Or 514, 520, 800 P2d 773 (1990). Indeed, this court will decide a case on subconstitutional grounds even if the parties only raised constitutional issues. *Zockert*, 310 Or at 520.

As noted above, the only issues that this court needs to decide to resolve this case are these: (1) whether Measure 47's deferred operation clause, § (9)(f) , is constitutionally permissible, and (2) if it is, whether it was triggered in this case. If that provision is constitutional and if the Secretary properly applied it, there is nothing more that this court needs to decide.

The circumstances of this case are very different than if the voters had enacted Measure 47 *without* a deferred operation clause. If Measure 47's proponents had wanted to *compel* this court to confront and overturn its precedent, the way to do that would have been to enact a fully operative statute that is at odds with that precedent. That is, the way to do that would have been

simply to propose Measure 47 without § (9)(f). The operative statute, if adopted, would have invited a court challenge, in the form of an action for declaratory and injunctive relief, and the courts would then have been required to decide what the law is. The fact that the statute's substantive provisions would have been operative would have made the court's decision regarding their constitutionality an imperative.

No such imperative exists here, because the proponents chose to take a different route by including a deferred-operation clause. The whole point of including a deferred-operation clause like § (9)(f) within a measure is to *insulate* the measure from such a constitutional challenge. *Hecker*, 109 Or at 547. In other words, the purpose of a deferred-operation clause is to preserve an otherwise unconstitutional statute by having it codified so that it may potentially become operative at a *later* time, when the constitutional landscape has changed. When a statute has been thus insulated and its constitutionally-suspect provisions held in abeyance, there is no longer any imperative for a court to opine on the constitutionality of those provisions. Without that imperative, the court would be rendering something akin to an advisory opinion if it were to go out of its way to reach this question. *See Kerr v. Bradbury*, 340 Or 241, 244, 131 P3d 737 (2006) (the judicial power under Article VII (Amended), section 1, does not extend to advisory opinions).

In sum, there is no compelling reason for the court to revisit *Vannatta*. It

does not need to do so to decide this case. There may come a time in the future when this court does need to confront the vitality of *Vannatta*, but it should wait for a time when the issue must be decided to resolve the case.

b. The doctrine of stare decisis also militates against revisiting *Vannatta* in this case because the voters relied on that decision when they enacted Measure 47.

The second reason that this court should not now revisit *Vannatta* is that the voters relied on that very decision when they enacted Measure 47. The Oregon Constitution is "the fundamental document of this state." For that reason, this court has emphasized the special importance of the principle of *stare decisis* in the area of constitutional interpretation, and in particular has emphasized the need for constitutional decisions to be "stable and reliable." *Stranahan v. Fred Meyer, Inc*., 331 Or 38, 53, 11 P3d 228 (2000). *See also State v. Ciancanelli*, 339 Or 282, 289–91, 321–22, 121 P3d 613 (2005) (applying *Stranahan*; rejecting effort to overturn 20–year–old precedent).

More recently, this court has explained that *stare decisis* is a prudential doctrine that promotes "stabilility and predictability" in the law because "individuals and institutions act in reliance on this court's decisions, and to frustrate reasonable expectations based on prior decisions creates the potential for uncertainty and unfairness." *Farmers Ins. Co. of Oregon v. Mowry*, 350 Or 686, 697-698, 261 P3d 1, 8 (2011) (internal citations and footnotes omitted). This court also emphasized that lower courts "depend on consistency in this

court's decisions in deciding the myriad cases that come before them." *Id.* For those reasons, this court will not depart from established precedent "simply because the personal policy preferences of the members of the court may differ from those of our predecessors who decided the earlier case." *Id.*

Stare decisis militiates strongly against revisiting *Vannatta* in this case, for two reasons. First, as explained in the previous section, the avoidance doctrine would dictate that the court not decide *any* constitutional question where it is unnecessary to do so. But that rule applies with even greater force when the issue is one that the court has already decided. Respect for the principle of *stare decisis* counsels against this court from revisiting its prior constitutional constructions unless it is absolutely necessary to resolve an existing controversy. Because it is not necessary to revisit *Vannatta* to decide this case, this court should decline to do so.

In addition, the unusual circumstances of this case implicate the principle of *stare decisis* in another, more fundamental way. Here, the voters who enacted Measure 47 did so with the clear understanding that CC&E limitations were unconstitutional. Indeed, all the voters who went to the polls to decide the fate of Measures 46 and 47 correctly understood that to be the law. This court's pronouncements in *Vannatta* and *Meyer* were thus an essential part of the voters' calculus in deciding to adopt Measure 47, and were an essential part of the voters' understanding about how § (9)(f) would function in the event that

Measure 46 failed. In other words, the voters relied on this court's decision in *Vannatta* in deciding whether to vote for this law.

Under those circumstances, it would "frustrate" the voters' "reasonable expectations" if this court were to revisit *Vannatta* in the very case in which the court is deciding the meaning and application of the measure that they enacted. This case requires to the court to determine what the voters intended Measure 47, and in particular of § (9)(f) , to mean. As a prudential matter, it makes no sense to revisit—in the same case—the very caselaw upon which the voters' understanding of the measure was based.

And the voters were not the only ones who relied on this court's decision in *Vannatta* and *Meyer*. The public officials charged with executing and interpreting the law—the Secretary and the Attorney General—also relied on this court's unambiguous pronouncement that CC&E limitations are not constitutionally permissible. In light of that clearly articulated law, the only legally permissible conclusion that the Secretary and the Attorney General could reach at the time was that the contingency had been triggered. They had no choice but to hold the act in abeyance according to its terms. By the same token, the trial court had no legally permissible option but to uphold the defendants' actions. Under those circumstances, *stare decisis*—and the underlying principle of stability and reliability—counsel against revisting *Vannatta* at this juncture.

For all the reasons stated above, prudence dictates that this court decide only whether § (9)(f) is constitutionally permissible and if so whether the Secretary and Attorney General construed and applied it correctly. There may be a case in the future the circumstances of which will require the court to revisit *Vannatta*. If and when the court does so, that decision may awaken Measure 47. But this is not that case. For now, Measure 47 must remain in hibernation.

CONCLUSION

This court should affirm the judgments of the trial court and the Court of Appeals.

Respectfully submitted,

Respectfully submitted,

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SUPPLEMENTAL EXCERPT OF RECORD

SUPPLEMENTAL EXCERPT OF RECORD

Pursuant to ORAP 5.50, respondent submits the following, as indexed below.

INDEX

Measure 46
Text of Measure

Be it enacted by the People of the State of Oregon, there is added an Article II, Section 24, of the Constitution of Oregon, as follows:

Notwithstanding any other provision of this Constitution, the people through the initiative process, or the Legislative Assembly by a three-fourths vote of both Houses, may enact and amend laws to prohibit or limit contributions and expenditures, of any type or description, to influence the outcome of any election.

Note: **Boldfaced** type indicates new language; [*brackets and italic*] type indicates deletions or comments.

Measure 46
Proposed by initiative petition to be voted on at the General Election, November 7, 2006.

Ballot Title

AMENDS CONSTITUTION: ALLOWS LAWS REGULATING ELECTION CONTRIBUTIONS, EXPENDITURES ADOPTED BY INITIATIVE OR 3/4 OF BOTH LEGISLATIVE HOUSES

RESULT OF "YES" VOTE: "Yes" vote amends Constitution to allow laws limiting or prohibiting election contributions and expenditures if adopted by initiative process of 3/4 of both legislative houses.

RESULT OF "NO" VOTE: "No" votes retains current ban in Oregon Constitution on laws that limit or prohibit political campaign contributions or expenditures by any person or any entity.

SUMMARY: Amends the Oregon Constitution. The Oregon Constitution currently bans laws that impose involuntary limits on, or otherwise prohibit, political campaign contributions or expenditures by any person or any entity. The measure amends the Oregon Constitution to allow laws, if they are enacted or amended through the ballot initiative process or by the Legislative Assembly by a three-fourths vote of both houses, that limit or prohibit campaign contributions and expenditures to influence the outcome of any election. The measure allows such limitations or prohibitions to apply to election contributions and expenditures of any type or description. Other provisions.

ESTIMATE OF FINANCIAL IMPACT: There is no financial effect on state or local government expenditures or revenues.

Measure 46
Explanatory Statement

Ballot Measure 46 amends the Oregon Constitution to allow laws to be passed or amended that would prohibit or limit contributions and expenditures of any kind to influence the outcome of any election. Under the measure, laws could be passed that prohibit or limit how much an individual or entity can give to a candidate for state or local (but not federal) office or other political campaign and how much an individual, entity, candidate or other political campaign can spend to influence the outcome of any state or local election.

At present Article 1, section 8, of the Oregon Constitution, the free speech guarantee, does not allow laws that prohibit or impose limits on political campaign contributions or expenditures in elections for state or local public office. Under this measure, the Oregon legislature or voters by initiative would have the authority to restrict or limit political campaign contributions and expenditures, subject to federal law.

Ballot Measure 46 requires a three-fourths (3/4) vote of both the Oregon Senate and the Oregon House of Representatives to amend previously enacted laws, or pass new laws, prohibiting or limiting political campaign contributions or expenditures. Ordinarily, a simple majority vote of both the Oregon Senate and Oregon House is required to amend existing laws or pass new laws. Under the measure, voters by a simple majority may adopt new laws or amend existing laws prohibiting or limiting political campaign contributions or expenditures.

The measure would not apply to elections for federal offices, which are President of the United States, United States Senator, and United States Representative. Federal law does not currently allow states to prohibit or limit contributions or expenditures for or against ballot measures. The measure does not affect the free speech guarantee under the First Amendment of the United States Constitution.

Committee Members: / Appointed by:
Bryn Hazell / Chief Petitioners
Dan Meek / Chief Petitioners
Tina Calos / Secretary of State
Andrea Meyer / Secretary of State
Fred Neal / Secretary of State

(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)

www.fairelections.net **info@fairelections.net**

(This information furnished by Tom Civiletti, Lloyd K. Marbet, Kenneth Lewis.)

Argument in Favor

Fair Elections Belong in our Constitution
Vote Yes on 46!

In 1994, 72% of Oregonians voted for limitations on contributions to candidates.

But in 2006, we have NO such limits.

Why not?

In 1997, the Oregon Supreme Court threw out that law claiming it violated the Oregon Constitution.

The result?

Corporate contributions to candidates have skyrocketed.
Running for office is now beyond the reach of ordinary citizens.
Our elected officials are perceived to represent **special interests** rather than ordinary people.

Measure 46 is the solution!

It's just one sentence which permits limitations on campaign contributions.

That's all!

A constitutional amendment is required to allow limitations.

We don't advocate amending the Constitution on a whim. But sometimes an amendment is necessary.

What is a constitution?

Our Constitution is a contract in which the people define how the government is formed and how it functions. Rules governing the election of our government officials ought to be included in the Constitution.

Measure 46 simply makes limitations on political contributions and expenditures constitutional.

It does **not** establish limits on political contributions.

It does **not** establish spending limits.

Bryn Hazell v. Bradbury Marion Case No. 06C-22473
Memo in Supp of Deft's MSJ & Opp to Pltf's MSJ
Exhibit 1 Page 18 of 23

It **does** give the people the right to pass those types of rules.

What role does the legislature have?

Measure 46 allows contribution limitations to be enacted either through the initiative process or by our representatives in Salem. If the legislature enacts or changes laws establishing limits, it must do so by a 75% majority vote rather than a simple majority.

This super-majority requirement is needed because in other states with limitations legislatures have changed laws in order to favor the wealthy over the rest of us. During the 2004 election, the Ohio legislature, with a simple majority, increased the ceiling on individual contributions from $2,500 to $10,000. This change favored wealthy citizens to the detriment of poor and middle-class citizens.

Vote Yes on Measures 46 & 47.

Joan Horton, David Delk, Co-chairs
Alliance for Democracy, Portland www.afd-pdx.org

(This information furnished by David Delk, Joan Horton; Alliance for Democracy, Portland.)

Argument in Favor

Citizens for the Public Good in Jackson County say
CAMPAIGN FINANCE REFORM IS GOOD FOR OREGON!

We believe the quality of life in our state is increasingly eroded by big money influencing politics. Our health care, education, safety, and environment—are all at stake.

Our political system has become corrupted by endless money spent on political campaigns, especially on attack ads and information meant to deliberately mislead the public. Especially galling are the out-of-state corporations—energy companies, pharmaceutical and chemical industry giants, HMO's, and insurance companies—that have literally spent millions of dollars on politics in Oregon. This has resulted in a state government that often caters to these and other deep-pocketed special interests, not to the needs of average citizens.

Unless campaign finance reform Measures 46 and 47 are passed in November, this problem will only worsen. Why? Because Oregon is one of only five states with NO limits or restrictions on campaign spending.

Measures 46 and 47 must both be passed, because they work together. They ensure:

- **A LEVEL PLAYING FIELD IN POLITICS.** Individual Oregonians will have the freedom to contribute to campaigns of their choice, but with fair limits on contributions. No donations will be allowed by corporations or labor unions.
- **OREGON'S POLITICAL ISSUES WILL BE DECIDED BY OREGONIANS.** With fair contribution limits in place, Big Money—including out-of-state--will not have an undue advantage over average citizens in our government.
- **CAMPAIGN SPENDING LIMITS WILL FOSTER DEMOCRACY,** and encourage more folks to run for office who are publicly-spirited and who don't pander to big donors.

We deserve a better government.
Measures 46 and 47 are a major step to having one.
JOIN US IN VOTING YES ON MEASURES 46 & 47!

Jackson County Citizens for the Public Good Steering Committee
Avis Adee
Robert Altaras
Gerald Cavanaugh
Michael Dawkins

Action Group, and others to:

Vote YES on Measure 47

(This information furnished by Ruth Duemler, Universal Healthcare for Oregon; Andrew Kaza.)

Argument in Favor

VOTE YES ON MEASURES 46 & 47!

The FACTS on CAMPAIGN CASH

- Under current campaign law, Oregon is one of only five states in the nation where any special interest can contribute any amount of money (literally any amount of money), to any state or local candidate.
- It now typically costs over $500,000 to win a contested seat in the State Senate and over $250,000 to win such a seat in the State House of Representatives.
- As reported by *The Oregonian* "Nine of the 10 most frequent visitors to legislative leaders [in 2005] represent large campaign donors."

The strength and genius of our system of government is the equation of "one person equals one vote". That core principle is now threatened by a government of, by and for a very small number of very large contributors. We believe it is time to make people and ideas more important than money in our politics. Let's pass Measures 46 & 47 and put a stop to the "pay to play" system we have now.

Join us in voting YES for Campaign Finance Reform.

YES on 46 & 47

www.fairelections.net

(This information furnished by Norman L. Riddle, Elizabeth A. Steffensen, David Sonnichsen.)

Bryn Hazell v. Bradbury Marion Case No. 06C-22473
Memo in Supp of Deft's MSJ & Opp to Pltf's MSJ
Exhibit 2 Page 26 of 45

Argument in Favor

WE PASSED CAMPAIGN FINANCE REFORM IN 1994

NOW LET'S MAKE IT STICK!

YES on 46 and 47

Oregonians in 1994 adopted a statewide initiative for strict limits on political campaign contributions, by a YES vote of over 72%. But the Oregon Supreme Court in 1997 struck down that statute, deciding that the existing Oregon Constitution does not allow any limits on political spending.

Now we can pass Measures 46 and 47 and make it stick!

Measure 46 is a one-sentence amendment to the Oregon Constitution to allow limits on political

contributions and spending. Measure 47 then provides a comprehensive system of campaign finance reform for all state and local public offices in Oregon and restores the limits we passed in 1994.

Measure 47 bans all corporations, labor unions, and other entities from making contributions in candidate campaigns for state or local offices. **It allows any individual (qualified United States voter only) to contribute up to $2,500 per year to any combination of the following:**

- "Candidate Committees":
- $500 in any statewide primary or general election race (governor, attorney general, secretary of state, treasurer, labor commissioner, superintendent of education, Oregon Supreme Court justice, or appeals court judge);
- $100 in any non-statewide primary or general election race (state legislature, county commission, city council, etc.);
- "Small Donor Committees" each receiving $50 or less from the person, per year;
- "Political Committees" each receiving $500 or less from the person, per year; and
- $2,000 to any political party, per year.

Political committees can use these funds to support or oppose candidates but may not directly contribute more than $2,000 to a statewide candidate or $400 to a non-statewide candidate. Small Donor Committees and political parties can use funds contributed within these strict limits to support or oppose candidates.

Measure 47 says that candidates should not receive big money from corporations and wealthy individuals but instead should seek smaller contributions from a broader base of supporters.

(This information furnished by Laura Etherton, Oregon State Public Interest Research Group; Eulia Quan Mishima, FairElections Oregon.)

Argument in Favor

Vote "YES" on Measures 46 and 47 and help level the playing field in Oregon politics.

Measures 46 and 47:

The Oregon Campaign Finance Reform Initiatives

Right now we are presented with a rare opportunity to clean up government by making a positive change in the way political campaigns are run in our state.

Under current campaign law, Oregon is one of only a handful of states where any special interest can contribute any amount of money, to any state or local candidate. The current system provides no way to curb the overwhelming influence of big money donors in politics. **The result—special interests get sweetheart deals at the public's expense.**

Enough is enough. It's time for Oregon to join states like Colorado and Montana that have already enacted successful and tough campaign finance reform initiatives.

Help level the playing field in Oregon politics.

Monday, September 25. 2006

The pro side on Measure 46 & 47.

by Dan Meek

[Editor's Note: Today's article is part of a pro/con series on select ballot measures to better inform and educate our blog audience.]

Campaign spending in Oregon is out of control.

Since 1996, total reported political spending in Oregon increased ten-fold, from $4.2 million to $42 million in 2002. Spending on legislative races then increased again in 2004.

Oregon is one of just five states with no limits on campaign contributions. Laws are so lax here that what Tom Delay was indicted for in Texas, channeling corporate money to state legislative races, is not only legal in Oregon but would hardly be noticed (since it was only $155,000). Corporations routinely contribute 100 times that much in an election cycle in Oregon. The 2002 race for Governor broke all records, with each major party candidate spending over $4 million and each serious primary contender spending over $1.5 million. The unions contributed over $1.2 million to Ted Kulongoski's campaign, while Loren Parks and the timber companies were generous with Kevin Mannix. This year, Ron Saxton's campaign for Governor plants to spend over $6 million, and Kulongoski will not be far behind. It now typically costs over $500,000 to win a contested race for State Senate and over $250,000 to win a contested seat in the Oregon House of Representatives. In legislative races over the past 3 cycles, the candidate spending the most money has won over 90% of the time, and the few exceptions are candidates who almost outspent their opponents and had the benefit of name recognition from service in the other body of the Legislature.

The money buys big favors for the donors. For example:

Enron/Portland General Electric got a $400 million annual rate increase in 2001 and since 1997 has charged Oregon ratepayers

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Dorchester
Economy

over $900 million for federal and state "income taxes" it never paid. Why? PGE gave over $500,000 to Oregon politicians.

The corporate share of Oregon income taxes has declined from 18% in the 1970s to only 4%. The corporate "kicker" will further cut corporate income taxes by 36% in 2005 and 61% next year, with half of the cuts going to 50 large corporations. Why? The big corporations provide most of the campaign cash for candidates of both major parties.

Video Poker outlets get $100 million per year over the reasonable level of commissions. Why? The Oregon Restaurant Association gave over $1.2 million to Oregon politicians since 2000.

Drug companies defeated bills to expand the Oregon Prescription Drug Purchasing Pool to save hundreds of millions of dollars for Oregonians (an average of 30%) by having the State negotiate lower prices. How? The drug and medical equipment companies gave over $3 million to Oregon politicians since 2000.

The Oregonian (June 4, 2006) says Oregon "has lowered its cigarette tax and all but surrendered in the battle to reduce tobacco use." The American Lung Association gave Oregon "F" in smoking prevention. Why? The tobacco companies gave over $600,000 to Oregon politicians since 2000.

Measure 46 is a simple, one sentence change to the Oregon Constitution to allow the people using the initiative process (or the Legislature by 3/4 votes of both houses) to adopt or amend limits on campaign contributions in Oregon. This is needed, because the Oregon Supreme Court ruled in 1997 that the Oregon Constitution does not currently allow any limits on political contributions in any race for state or local public office. The ACLU of Oregon challenged this measure as "more than one amendment" and even won a unanimous decision from the Oregon Court of Appeals in its favor in April 2006, after 18 months of litigation. But the Oregon Supreme Court in September 2006 by a 5-1 vote decided that Measure 46 is not complex and constitutes one single amendment.

Measure 47 would enact a comprehensive system of campaign finance reform for candidate elections that would ban corporate and union contributions and set reasonable limits on how much individuals can contribute to political campaigns. Individuals would be limited to contributing in any statewide race $500 before the primary and another $500 before the general election for that particular office. The limit on an individual's contribution to any non-statewide candidate would be $100 before the primary and again $100 before the general election. Newly created "small donor committees" could give unlimited contributions to candidates, but their money could only come from donations from individuals giving $50 or less per year to that committee.

Natural Resources
Portland Baseball
Unemployment
Education
Global Warming
Gov. Kulongoski
Health & Human Services
Individual Responsiblity
Initiative & Referendum
Leadership
Measure 37
Media
Samuel Alito
Social Security
State Budget
PERS
Taxpayer Awards
Terrorism
Iran
Iraq
Welcome

Go!

All categories

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ATOM 0.3 feed
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Instead of favoring whoever can give the most money with no limits, as the current system does, Measure 47 places emphasis on the ability to raise smaller contributions from larger numbers of people while eliminating the biggest source of campaign cash in Oregon: huge donations from corporations, wealthy individuals, and unions. With Measures 46 and 47, elections will favor those candidates that can successfully engage people with ideas rather than whoever is more successful at courting the big donors who use their money to unduly influence Oregon politics.

The regulation of campaign contributions as a way to reduce special interest influence in politics is nothing new. In 1994 a 72" "yes" vote enacted a campaign finance reform ballot initiative that set limits similar to those in Measure 47. A statewide poll in late 2005 showed support for contribution limits at 76% of registered voters polled, with 12% opposed and 11% undecided. Of those expressing an opinion, 85% favored limits on contributions. This level of support was about the same among Democrats and Republicans and in all of Oregon's five congressional districts.

Unfortunately, the will of Oregon voters was overturned in 1997, after campaign finance reform opponents argued that limits on campaign spending violated the free speech part of the Oregon Constitution (Article I, Section 8)--the same section that protects live sex shows and nude lap dances in bars, according to the Oregon Supreme Court in September 2005.

On the other hand, all of the state's major unions oppose both of these measures, including AFL-CIO, SEIU, OEA, and AFSCME. Also opposing are Planned Parenthood, NARAL, and other "lefty" organizations. Business groups are mixed. The Portland Business alliance is neutral on Measure 46 but opposes Measure 47, perceiving its limits to be too low. Of course, the 2007 Legislature can raise those limits, with 3/4 majorities. Since all members of the 2007 Legislature will have been elected under the current "Big Money" system, that is not out of the question.

Much more information is available at www.fairelections.net.

Posted by Dan Meek at 06:53 | Comments (9)

Comments

Display comments as (Linear | Threaded)

Any limits are a violation of individual liberty. I see campaign spending is a part of free speech. Also such limitations such as McCain-Feingold Act only serve the political class as a way of placing barriers in front of the competition. Instead of fighting corruption campaign finance reform will causes even more.

#1 Scat Cat Pdx on 2006-09-25 12:45 (Reply)

Total spending on political campaigns is a function of total government spending:

the more the government spends, the more valuable it is to purchase government influence.

Campaign finance reformers ignore this reality, because they want to have it both ways. They like high levels of gov't spending, but low levels of campaign spending.

But you can't do that without smothering free speech. Even if you try, money is like water and it will find a way to influence politics as long as politicians are able to command and spend a lot of money.

If we want to limit campaign spending, we have to limit government spending first.

#2 J.O. on 2006-09-25 13:59 (Reply)

I agree with Scat Cat. The rights of the individual must be respected above all else here. Money is our avenue to free speech and controlling that will control our speech.

If some want to take the influence of money out of politics then create a system that allows contributions to candidates with anonimity. It's hard to fulfill quid pro quo when you don't know where your money came from. The donors would still get to contribute to the causes they believe in but now know it will not buy influence and corrupt the elected leaders.

These misguided efforts we see now will not pass constitutional muster (Oregon constitution). If dancing naked is free speech then giving money to causes is certainly free speech.

#3 Steven Plunk on 2006-09-25 14:09 (Reply)

Sorry, Mr. Plunk, you are apparently unaware that BM46 is a proposed change to our state constitution. And J.O., you are wrong about the chicken/egg element of campaign spending and government spending. The lobbying part came first...why else would legislators vote for one pet cause over another?

As one of only five states with NO campaign spending restrictions whatsoever, Oregon is out of whack politically and ALL of its citizens are suffering as a result.

Want to get big labor money out of our political system? Vote YES on 46 & 47. Want to eliminate corporate "bribery" of our "citizen" legislators? Vote YES on 46 & 47. Want to make sure that the voice (and checkbook) of the little guy like you or me counts as much as big, out of state special interest groups? Vote YES on 46 & 47.

Money is NOT free speech. Free speech is the debate we're having here. However, because of big money, this is the kind of debate you won't see in our Governor's race or anywhere else in Oregon in 2006. The real issues are debated behind closed doors, where the moneyed interests are close at hand, ready to inject their influence.

#4 activist kaza (Link) on 2006-09-25 22:02 (Reply)

Kaza is right - Oregon campaigns are a joke - only unions and big business have the $ to bribe the candidates, and bribe they certainly do. Didn't Dan give you

enough examples?
By the way, nude lap dancing is NOT free speech in any way. The founding fathers were not thinking of actions when they discussed speech...they were thinking speech.
Oregon's liberal interpretations of such important freedoms hurt all of us. Ask a lap dancer sometime if you don't believe me....

#5 Jerry on 2006-09-26 06:20 (Reply)

I understand this is an attempt to change the Oregon constitution but I expect the courts to throw it out. It can happen if it conflicts with other guarantees already in the constitution.

I have to agree with Jerry that campaigns are a joke. But I don't see this as the proper fix.

As for the dancing, I didn't decide it was speech, the courts did. My point is if you are going to give nude dancing the constitutional protection of free speech then you certainly should give it to campaign contributions to people or causes you believe in.

We all agree the system is broken it just seems we see different ways to fix it.

#6 Steven Plunk on 2006-09-26 09:59 (Reply)

Separate process from result.

If the door to selection of a legislative branch representative or initiative campaign is closed then folks will turn toward the judicial branch.

See: http://www.google.com/search?q=naacp+patterson+alabama; where the court is considered an appropriate route to exercise free speech liberties.

I am not one that can believe that a demand for a remedy or special privilege can just go away. It is instead like a clown's party balloon that can be twisted into many shapes.

This is a Support Your Favorite Lawyer ploy. Imagine if the limits applied equally to all legal action that touch on any matter of "public interest," inclusive of the notion of the public actually paying lawyers that advocate for the public interest -- and particularly an arbitrary doubling of the public payment in the discretion of a judge under specific, arguably narrow, circumstances. The Oregon Supreme Court has stated that someone may not assert a free speech right as a means of demanding admission to the bar. (Perhaps they would need to reconsider, or alternatively cut back on legal fees that someone today voluntarily chooses to pay a legal advocate or that are paid by government to a lawyer.)

This is funny, like the clown. Separate result from process and mix it up again.

The measure of my grievance(s)/wishful thinking, were I to even win the lottery, are not subject to arbitrary limitation by picking some number out of a hat, like that of "tort reform" advocates to place a limit on the value of my life or the quality of my life.

#7 ron ledbury (Link) on 2006-09-26 11:03 (Reply)

It's amazing, given what we know of the correlation between the amount of money raised and election success, that some folks believe unlimited contributions are hunky-dory. If the front-end correlation weren't sufficient, its easy to identify the pay-offs for the big contributors.

Free speech is meant to strengthen democracy, not undermine it. Some speech is so damaging, that it is not protected. Yelling "fire"in a crowded theater is the classic example. Hijacking the electoral process to increase one's bottomline is even more damaging. It robs the public treasury, let's looters pick-pocket consumers, and deters policy in the interest of the voters.

Fair Elections Measures 46 & 47 would make Oregon government more responsive to the voters. That's in the interest of conservatives. It's in the interest of liberals. It's just not in the interest of kleptocrats.

Money is NOT speech.

#8 TOM CIVILETTI (Link) on 2006-09-30 05:11 (Reply)

Why don't the conservative commenters hear realize that Measures 46 & 47 would establish for Oregon candidate races essentially the same system that applies to elections to the U.S. Congress, except that the limits on individual contributions would be somewhat lower than the $2000 allowed in congressional races. And, Measure 47 would limit inidividual independent expenditures to $10,000 per year. It is the Republicans, not the Democrats, who are now seeking to amend McCain-Feingold to place limits on individual independent expenditures, because they fear repeats of 2004, when George Soros alone kicked $25 million to liberal "independent expenditure" groups.

#9 Dan Meek (Link) on 2006-09-30 14:10 (Reply)

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on November 23, 2011, I directed the original Respondents on Review, Brief on the Merits to be electronically filed with the Appellate Court Administrator, Appellate Records Section and served upon Daniel Meek, Linda Williams, and Eric Winters, by using the electronic filing system. I further certify that on November 23, 2011 I directed the Respondents on Review, Brief on the Merits to be served upon Gregory A. Chaimov, John DiLorenzo and James Nicita, by mailing two copies, with postage prepaid, in an envelope addressed to:

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 11,397 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

/s/ Michael A. Casper

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