



STATE OF OREGON
Legislative Counsel Committee

November 9, 2006

To: Marjorie Taylor, Administrator, Public Commission on the Oregon Legislature
From: Ted W. Reutlinger, Senior Deputy Legislative Counsel *TR*
Subject: LC 1586—Prohibited Political Contributions

You asked for a bill draft similar to LC 186 prepared for the Oregon Law Commission Government Ethics Work Group. LC 1586 is based on LC 186.

LC 1586 prohibits a candidate or principal campaign committee of a candidate for public office from making contributions to any other candidate or political committee. As was discussed several times in meetings of the government ethics work group, I believe this prohibition raises constitutional issues under section 8, Article I of the Oregon Constitution.

In *VanNatta v. Keisling*, 324 Or. 514, 931 P.2d 770 (1997), the Oregon Supreme Court struck down statutory limits and prohibitions on political contributions. Among the provisions invalidated was a law that prohibited a candidate or the principal campaign committee of a candidate from making a contribution to another candidate or political committee. (See section 4, chapter 1, Oregon Laws 1995, codified as ORS 260.168 (repealed in 1999)).

In *VanNatta*, the court concluded that “many—probably most—” contributions to political campaigns and candidates are a form of expression under section 8, Article I. 324 Or. at 522. The court said that political contributions are:

protected as an expression by the contributor . . . the contribution, in and of itself, is the contributor's expression of support for the candidate or cause—an act of expression that is completed by the act of giving and that depends in no way on the ultimate use to which the contribution is put. 324 Or. at 522. (Emphasis in original.)

The court also concluded “that both campaign contributions and expenditures are forms of expression for the purposes of Article I, section 8.” 324 Or. at 524.

A prohibition on contributions from one candidate or political committee to another candidate or other political committee may be unconstitutional because:

- It prohibits political contributions;
- Political contributions are expression protected by section 8, Article I;
- The contribution prohibition is focused on the content of speech per se and not on some forbidden effect that may be regulated; and

- The resulting restriction of expression is not saved by any historical exception or incompatibility exception.

The contribution prohibition might be defended by arguing that the prohibition is more focused than the law invalidated in 1997, that it is aimed at a specific harm that may be regulated, that it is not overbroad and that it is necessary to protect the integrity of the elections and legislative processes. Further, it might be argued that contributions made from candidate principal campaign committees to other candidates or political committees may be regulated differently from contributions made to individuals or other persons directly to candidates. A court might view amounts contributed to a candidate as not "belonging" to the candidate but instead as intended to support the nomination or election of the candidate. In fact, in *VanNatta*, the court said "the right to spend money to encourage some candidate or cause does not necessarily extend to spending other people's money on a political message without their consent. . . ." 324 Or. at 524.

Encl.