

## MEMORANDUM

To: Oregon Business & Industry  
From: Gregory A. Chaimov  
Date: April 24, 2020  
Subject: 2006 Measure 47

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The information below provides a general overview of 2006 Measure 47. It is by no means a complete analysis of the measure. Compared to current law, Measure 47 imposes many more limitations on and requires many more actions of participants in campaigns. Assessing whether and, if so, how, to comply with Measure 47 will require an analysis of the specific circumstance with the text of Measure 47 (and probably of current law). Assumptions based on how current law operates are likely not to be valid.

### 1. General Problems with Measure 47

- Measure 47 imposes a regulatory scheme that appears to be in addition to the regulatory scheme in current law.

If the scheme in Measure 47 is in addition to the scheme in current law, a person may have different obligations and restrictions under Measure 47 than under current law and may have to take different actions to comply with both schemes.

For example, the definition of “contribution” in Measure 47 is broader than the definition of “contribution” in current law. Under current law, news stories and editorials are not contributions. Under Measure 47, news stories and editorials about a candidate can be contributions if the media outlet distributes the news story or editorial to voters who have not sought the communication.

Under current law, news stories and editorials are not regulated. Under Measure 47, dissemination of a news story or editorial to voters who have not sought the communication might be prohibited, and, if not prohibited, might be limited in dollar amount and likely would be required to be reported by the candidate in ORESTAR.

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- Provisions, including definitions, are unclear.
- In some circumstances, Measure 47 and current law conflict. For example, there are different reporting requirements for independent expenditures. There is no bright-line test for when one conflicting law controls over another. Factors include date of adoption and specificity of the law.

## 2. Specific Provisions of Measure 47

### A. Contributions

- Corporations and unions may not make contributions to candidates or political parties. (Constitutional under federal constitution; constitutionality unknown under Oregon Constitution)

Corporations and unions may establish political committees to which others contribute.

- Individuals limited to:
  - \$500 for any statewide non-federal race. (Constitutionality unknown.)
  - \$100 for any other non-federal race. (Likely unconstitutional for legislative races. Constitutionality unknown for local races.)
  - \$2,500 in a calendar year to all political committees and political parties. (Doubtful constitutionality.)
- Political committees limited to:
  - \$2,000 for any statewide non-federal race. (Constitutionality unknown.)
  - \$400 for any other non-federal race. (Constitutionality unknown.)
- Self-funded candidates limited to:
  - \$50,000 for any statewide non-federal race. (Unconstitutional.)
  - \$10,000 for any other non-federal race. (Unconstitutional.)
  - No loans to campaign. (Unconstitutional.)
- Small donor committees may make unlimited contributions collected at the rate of not more than \$50 per contributor. (Constitutional.)

### B. Expenditures

Political committees are restricted to spending funds obtained from lawful contributors in lawful amounts. (Probably constitutional for valid underlying contribution limits.)

### **C. Independent Expenditures**

As with contributions, the measure imposes limits on who may make independent expenditures and on the amounts of independent expenditures. (All are unconstitutional.)

### **D. Reporting**

- Independent expenditures:
  - Of \$200 or more must be reported according to the cycle for reporting contributions. (Constitutional.)
  - Of \$1,000 or more must be reported with five days. (Constitutional.)
  - If aggregate independent expenditures exceed \$2,000, communications must prominently disclose independent expender's five largest sources of funds. (Constitutionality unknown.)
- Contributors (note: this is an obligation for contributors, not recipients of contributions as under current law):
  - If contributing more than \$500 in an election cycle, must register with the Secretary of State. (Likely constitutional.)
  - Must be included in a database by the Secretary of State that permits a person to search for to whom the contributor has made contributions. (Constitutional, if registration constitutional.)
- Self-funded candidates must disclose on communications to voters the sums the candidate has contributed to the candidate's campaign. (Probably constitutional.)

### **E. Miscellaneous Provisions**

- Funds not expended by a committee at the end of an election cycle become the property of the State of Oregon. (Questionable constitutionality.)
- Courts may increase contribution limits by amounts needed to meet minimum constitutional requirements. (Questionable constitutionality.)
- Each violation is subject to a civil penalty of not less than five times or more than 20 times the unlawful contribution. (Constitutional.)
- Substantially expedited complaint process, including hearing by ALJ within 15 days of the Secretary of State's receipt of the complaint. This process appears remove the Secretary of role in vetting complaints for validity in the first instance. (Constitutional.)