

## WHY PETITION 150 WILL BE INEFFECTIVE

Unfortunately, Petition 150 would be completely ineffective in limiting corporate or union money going to elect or defeat candidates.

First, it authorizes only limits on funds contributed directly to candidates or political committees. It does not authorize any limits on independent expenditures. Thus, any corporation that wishes to support Cindy Smith for office remains perfectly free to use infinite funds to promote Cindy Smith in TV ads, radio ads, newspapers, and all other media. They do not even have to identify themselves in any of the ads, because the Oregon Legislature repealed the political "tagline" requirement just a few years back. Even if independent spenders did need to identify themselves, they could use a nice name, like the "Better Government Committee." The result will be essentially identical to making contributions directly to Cindy Smith's campaign, and big money will continue to dominate elections in Oregon.

The U.S. Supreme Court in 1990 upheld Michigan's ban on independent expenditures by corporations to support or oppose candidates (*Austin v. Michigan Chamber of Commerce*). In 2005, the Court reiterated that position in upholding the McCain-Feingold limits on the federal level and extended it to unions. The Court stated: "Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law." 124 S. Ct. at 694. That also means that states can do the same, under the First Amendment.

Yet, Petition 150 does not attempt to allow limits on independent expenditures. Petition 8, on the other hand, authorizes the Legislature and the people using the initiative process to limit independent expenditures, because it authorizes limits on "contributions and expenditures, of any type or description, to influence the outcome of any election."

Second, a major problem with Petition 150 is that it leaves large gaps in defining entities that can be limited. It allows only restrictions on "a corporation or labor organization" or "an individual." What about entities that are not corporations or labor organizations, such as unincorporated groups or associations? Petition 150 would not allow any limits on such organizations (including, for example, sole proprietorships, partnerships, limited partnerships, associations, joint ventures, clubs, groups), as long as those entities have money.

Third, Petition 150 expressly does not limit use of a candidate's personal wealth. If its other limits were in any way effective, the result would be reserving important public offices for those wealthy enough to personally fund their own campaigns. Note that limits on use of personal wealth are already law in Alaska, Colorado, Delaware, District of Columbia, Hawaii, Michigan, Nevada, Tennessee, and West Virginia (according to the Federal Election Commission's survey of

state laws). Washington also has a limit but it kicks in only during the last 21 days of the campaign.

Fourth, Petition 150 uses many terms that it does not define. This will allow the Legislature to define those terms as it likes. Since the Legislature in power whenever this amendment would take effect would consist of those elected under the current system of big money and no limits, those officeholders will almost certainly want to avoid limits (just like the Massachusetts legislature in 2003 repealed that state's campaign finance reform law on a voice vote). If they wished to continue to receive direct contributions from corporations and unions (in addition to benefiting from their unlimited independent expenditures), they could simply pass a statute allowing entities that are not "political committees" to expend funds supporting or opposing candidates. Call those entities "democracy cooperatives," and the limits in Petition 150 do not apply (because Petition 150 allows only limits on contributions to a candidate or a "political committee," without defining that term).

We prefer a constitutional amendment that would be effective in limiting big money in Oregon politics. That is Petition 8, which reads:

"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."