

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

In the Matter of Validation Proceeding To Determine the Regularity and  
Legality of Multnomah County Home Rule Charter Section 11.60 and  
Implementing Ordinance No. 1243 Regulating Campaign Finance and  
Disclosure.

MULTNOMAH COUNTY,  
Petitioner-Appellant,

and

ELIZABETH TROJAN, MOSES ROSS, JUAN CARLOS ORDONEZ,  
DAVID DELK, JAMES OFSINK, RON BUEL, SETH ALAN WOOLLEY,  
and JIM ROBISON,  
Intervenors-Appellants,

and

JASON KAFOURY, Intervenor,

v.

ALAN MEHRWEIN, PORTLAND BUSINESS ALLIANCE,  
PORTLAND METROPOLITAN ASSOCIATION OF REALTORS, and  
ASSOCIATED OREGON INDUSTRIES,  
Intervenors-Respondents

Multnomah County Circuit Court No. 17CV18006  
Court of Appeals No. A168205  
Supreme Court No. S066445

### **AMICUS BRIEF OF LEAGUE OF WOMEN VOTERS OF OREGON AND LEAGUE OF WOMEN VOTERS OF PORTLAND**

On Certified Appeal from a Judgment of the Multnomah County Circuit Court,  
the Honorable Eric J. Bloch, Judge.

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The League of Women Voters of Oregon and League of Women Voters of Portland file this brief *amici curiae*, aligned with the Intervenor-Appellants in support of the validity of all provisions of Multnomah County Measure 26-184 (2016).

The League of Women Voters of Oregon is a 501(c)(3) nonprofit organization. Its mission: Encourage informed and active participation in government in order to build better communities statewide.

The League of Women Voters of Portland is a 501(c)(4) nonprofit organization. Its mission: Encourage informed and active participation in government in order to build better communities in Multnomah County.

Neither organization has a private interest but instead seeks to present a position as to the correct rule of law.

Measure 26-184 is a valid exercise of the initiative power to establish reasonable limits on contributions and expenditures in elections for Multnomah County public office and to require that advertisements pertaining to candidates in those elections disclose their major funders.

## **I. THE LIMITS ON CAMPAIGN CONTRIBUTIONS SHOULD BE UPHOLD.**

Oregon has had no enforced limits on campaign contributions since 1997. The result is that spending on candidate elections since then has skyrocketed--by a factor of 10 for contests for the Legislature and by a factor of 20 for

gubernatorial races. Oregon legislative candidates receive more money (per capita) from corporations than candidates in any other state.

The OREGONIAN series *Polluted by Money* (attached) includes carefully researched data and statements from past and present elected officials; it presents persuasive evidence that legislators often voted on the side of the industries that gave them large contributions, even after hearing appeals from citizens who had been harmed by the pollution those industries caused. One of the articles states, "Legislators have acknowledged the outsized influence of money on the laws they write."

In 2016 the voters of Multnomah County amended their charter to limit campaign contributions to \$500 per person per candidate in any Multnomah County candidate election. The vote was 89% "yes." In 2018 the voters of the City of Portland adopted a very similar charter amendment (87% "yes" vote) applicable to all elections to city office.

2018 also saw the contribution of \$3.425 million by retired Nike chairman, Phil Knight, to the campaign of Knute Buehler for Governor. This was the third largest campaign contribution in American history by a person who was not the candidate or the candidate's spouse. It was the largest contribution to a candidate campaign in Oregon by a factor of 5. Even so, Knute Buehler's \$19.9 million campaign total was bested by his opponent, Kate Brown, who raised and spent \$20.6 million and also received huge contributions.

Candidate races for Multnomah County office are also subject to the money arms race. Deborah Kafoury's 2016 campaign for County Chair saw the spending of \$466,000 and the receipt of many contributions as large as \$10,000 from corporations and political committees, no doubt thought necessary to defeat Jim Francesconi's spending of \$330,000 and equal reliance on large contributors.

Measure 26-184:

- > Limits candidate to receiving contributions of \$500 or less from any individual or political committee and zero from corporations and other entities.
- > Allows Small Donor Committees (SDCs), which accept contributions only from individuals in amounts of \$100 or less per person per year, to contribute or spend those funds in candidate races.

These are reasonable and constitutional limits, similar to (or even higher than) those recently upheld by the Ninth Circuit Court of Appeals, with the United States Supreme Court declining review. In *Lair v. Motl*, 873 F3d 1170 (9th Cir 2017), *cert den sub nom Lair v. Mangan*, 139 S Ct 916, 202 L Ed 2d 644 (2019), the Ninth Circuit validated Montana's statute, which limits a candidate for city or county office to receiving \$340 per election cycle from any individual or political committee. The corresponding limit in Measure 26-184 is \$500.

In *Thompson v. Hebdon*, 909 F3d 1027, 1036-37 (9th Cir 2018), the Ninth Circuit upheld Alaska's contribution limits, concluding:

[W]e must uphold the dollar amount unless it is "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." *Shrink Mo.*, 528 U.S. at 397, 120 S.Ct. 897. \* \* \*

Moreover, although the \$500 limit is on the low-end of the range of limits adopted by various states, it is not an outlier. At least four other states (Colorado, Kansas, Maine, and Montana) have the same or lower limit for state house candidates, as do at least five comparably sized cities (Austin, Portland, San Francisco, Santa Cruz, and Seattle). We recently upheld a comparable limit. *Lair III*, 873 F3d at 1174 tbls. 2 & 3.

Today, 45 states have limits on contributions to candidate campaigns.<sup>1</sup> Of those states, 37 have "free speech" clauses in their state constitutions that are effectively identical to Oregon's clause, because each of them declares that every person has the right "to speak, write, or print freely on any subject." Some of them use the word "publish" instead of "print," but they are otherwise the same as Oregon's Article I, § 8.

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1. National Conference of State Legislatures, State Limits on Contributions to Candidates 2017-2018 Election Cycle (June 27, 2017) (Trojan ER-15-28). [http://www.ncsl.org/Portals/1/Documents/Elections/Contribution\\_Limits\\_to\\_Candidates\\_2017-2018\\_16465.pdf](http://www.ncsl.org/Portals/1/Documents/Elections/Contribution_Limits_to_Candidates_2017-2018_16465.pdf).

Alaska	Iowa	New Mexico
Arizona	Kansas	New York
Arkansas	Kentucky	North Dakota
California	Maine	Ohio
Colorado	Maryland	Oklahoma
Connecticut	Michigan	Pennsylvania
Delaware	Minnesota	South Dakota
Georgia	Missouri	Tennessee
Florida	Montana	Texas
Idaho	Nebraska	Virginia
Illinois	Nevada	Washington
Indiana	New Jersey	Wisconsin
		Wyoming

No court in any of those states has interpreted the state's "free speech" clause to preclude limits on campaign contributions, except the Oregon Supreme Court in *Vannatta v. Keisling*, 324 Or 514, 931 P2d 770 (1997), which this Court should reconsider.

## **II. THE REQUIREMENT THAT ADVERTISEMENTS REGARDING CANDIDATE ELECTIONS IDENTIFY THEIR LARGEST FUNDERS SHOULD BE UPHELD.**

Several states require that political advertisements identify their largest funders. These "tagline" or "disclaimer" requirements have been in place in California, Washington, Minnesota, Maine, and other states for several years.

From 1908 to 2001, Oregon law required that political advertisements at least identify who placed them. That state law was repealed by the Oregon Legislature in 2001, leaving Oregon as the only state that allows purely anonymous political advertising.

Measure 26-184 placed this language into the Multnomah County Charter:

Each Communication to voters related to a Multnomah County Candidate Election shall prominently disclose the Individuals and Entities that are the five largest true original sources of the Contributions and/or Independent Expenditures used to fund the Communication.

The Multnomah County Commission has scheduled for July 18, 2019, the adoption of an ordinance to implement this charter provision. We understand that the language of the ordinance will be similar to the tagline language placed into the City of Portland Charter by means of Measure 26-200 (2018). The validity of that language, under both the United States and Oregon Constitutions, was upheld by Multnomah County Circuit Court in *the Matter of: Validation Proceeding to Determine the Legality of City of Portland Charter Chapter 3, Article 3 and Portland City Code Chapter 2.10 Regulating Campaign Finance and Disclosure* (No. 19CV06544), June 10, 2019). The Court concluded that the tagline provisions qualified for the same historical exception to Article I, § 8, as applied in *State v. Moyer*, 348 Or 220, 229, 230 P3d 7 (2009). Its validity under the United States Constitution was found established by *Citizens United v. Federal Election Comm’n*, 558 US 310, 130 SCt 876 (2010).

In any event, the existing requirement in Measure 26-184 that political advertisements identify their largest funders is valid under both the Oregon Constitution and United States Constitution, for the reasons stated in the Opening Brief of Intervenor-Appellants Moses Ross, Juan Carlos Ordonez,

James Ofsink, Seth Alan Woolley, and Jim Robison. Such a requirement is fully within the historical exception to Article I, § 8, identified in *State v. Moyer, supra*. The reasoning of the Attorney General's 1999 memorandum, relied upon by the Circuit Court, would require invalidating dozens of Oregon statutes, including those requiring that political campaign contributions be reported to government officials ("ORESTAR").

The tagline requirement also passes muster under the United States Constitution, according to the opinions of the United States Supreme Court in *Citizens United* and numerous federal circuit court decisions, including *Yamada v. Snipes*, 786 F3d 1182 (9th Cir), *cert denied*, 136 SCt 569 (2015) (Hawaii's disclaimer requirements); *Vermont Right to Life Comm., Inc. v. Sorrell*, 758 F3d 118 (2d Cir 2014), *cert denied*, 135 SCt 949 (2015) (Vermont's attribution and disclosure requirements); *Nat'l Org. for Marriage v. McKee*, 649 F3d 34 (1st Cir 2011) (Maine); *Human Life of Washington Inc. v. Brumsickle*, 624 F3d 990 (9th Cir 2010), *cert denied*, 562 US 1217, 131 SCt 1477 (2011) (Washington); *Majors v. Abell*, 361 F3d 349 (7th Cir 2004) (Indiana law requiring that ads regarding candidates disclose their funders). California, Hawaii, Maine, Vermont, Massachusetts, Colorado, Minnesota, and Virginia have "disclaimer" laws requiring that political ads involving candidate races identify their actual top significant funders. None of those statutes has been found unconstitutional.

### III. CONCLUSION.

All of the provisions of Measure 26-184 are consistent with the Oregon Constitution and U.S. Constitution. We urge the Oregon Supreme Court to uphold all provisions of Measure 26-184.

Dated: July 18, 2019

Respectfully Submitted,

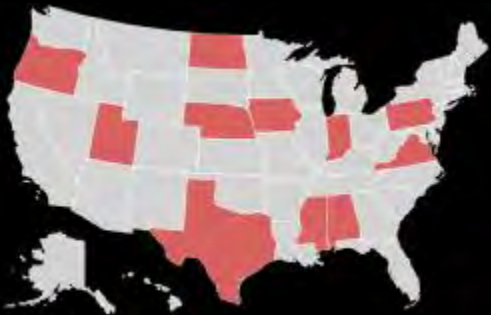
*/s/ Adam Kiel*

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Oregon is one of **11 states** that allow people to give as much as they want to political candidates.



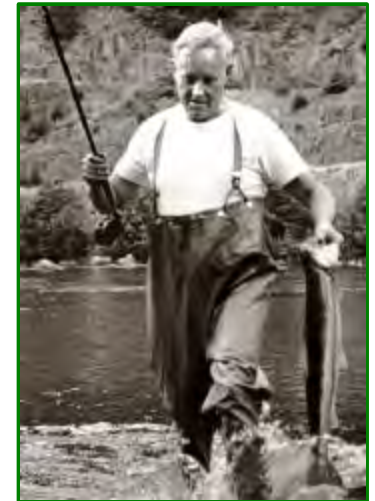
Swipe or tap



Skip intro

*“Oregon is the key state in the domino structure of North America. If we fall, pollution marches on.”*

— OREGON GOV. TOM MCCALL, SPEAKING  
ON THE FIRST EARTH DAY, 1970



## Part One of Four

Feb. 22, 2019

Story by **ROB DAVIS**

Photography by **BETH NAKAMURA**

Video by **TERESA MAHONEY**

Data analysis by **STEVE SUO**

The Oregonian/OregonLive

**Oregon once aimed** to be the greenest state in America.

Its leaders adopted the nation’s first bottle deposit. They controlled urban sprawl. They declared ocean beaches public property.

But in the last four years, Oregon’s most powerful industries have killed, weakened or stalled efforts to deal with climate change, wolf recovery, disappearing bird habitat, cancer-causing diesel exhaust, dwindling groundwater, industrial air pollution, oil spill planning and weed killers sprayed from helicopters.

What changed Oregon?

Money. Lots and lots of money.

The Oregonian/OregonLive spent 18 months examining how and why Oregon has fallen behind on so many important environmental fronts. The newsroom’s investigation found a startling answer, one that may surprise many Oregonians.

Oregon's failure to regulate campaign cash has made it one of the biggest money states in American politics. The flood of money created an easy regulatory climate where industry gets what it wants, again and again.

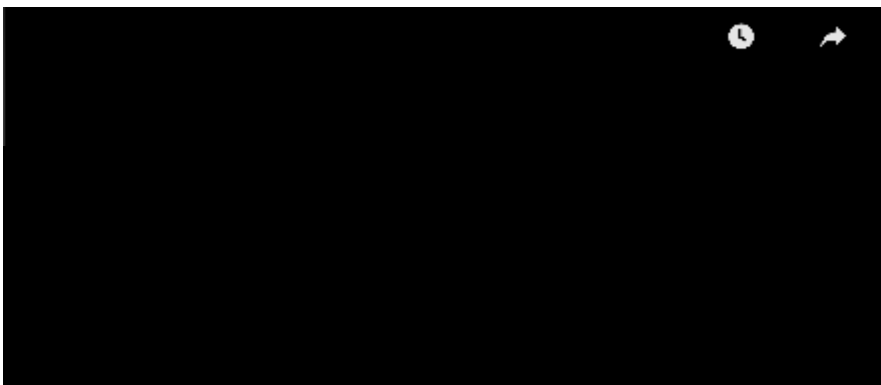
"The state is a laughingstock," says Dave Einolf, a Portland environmental compliance consultant who works with large, multinational corporations. "It has no enforcement. My clients don't care about Oregon. They're not afraid of Oregon. It's just a shame."

No one has given more money to state lawmakers in Oregon than Corporate America. Companies and industry groups contributed \$43 million to winning candidates in elections from 2008 to 2016, nearly half the money legislators raised. Organized labor, single-issue groups and individual donors didn't come close.

Campaign money helped Oregon politicians do more than win election. It paid for luxury hotel rooms in Canadian chateaus, weekly visits to the local sports bar and a variety of wearable Apple accessories. It bought roses for senators' desks, candy for Capitol offices and framed art to hang on the walls.

It paid for Salem lodging and meals that taxpayers already cover for legislative sessions, boosting lawmakers' income.

It even bought one departing lawmaker a year of Amazon Prime.



The Oregonian/OregonLive interviewed 200 lawmakers, residents, regulators, lobbyists and donors while comparing environmental laws and enforcement among West Coast states. The newsroom gathered responses from nearly 500 Oregonians about how they perceive pollution and the institutions responsible for protecting their air and water. Reporters obtained tens of thousands of pages of records from legislators and regulatory agencies.

The newsroom also conducted a groundbreaking national comparison of \$4 billion in state campaign finances, drawing on a massive database compiled by the National Institute on Money in Politics and a decade of spending reports candidates filed with Oregon's Secretary of State.

#### **Among the findings:**

- Oregon has betrayed its environmental legacy. It almost sold an 82,500-acre state forest full of old growth trees to a logging outfit that donated \$37,000 to key decision makers including Gov. Kate Brown. Oregon trails almost the entire country in oversight of water polluters. On a long list of environmental protections, Oregon is dead last among West Coast states.
- Lawmakers repeatedly bullied Oregon environmental agencies into submission when corporate campaign donors felt threatened. One lobbyist crushed a clean air initiative with a single phone call. Agencies that resist pay a price.
- Legislators have acknowledged the outsized influence of money on the laws they write. In a 2002 survey sent to every legislator nationwide, Oregon House and Senate members ranked among the highest in the country for

their perception of how strongly money dictated policy, behind notoriously corrupt states like Alabama and Louisiana.

- The law lets Oregon legislators spend campaign money in ways that are prohibited elsewhere. The newsroom found an estimated \$2.2 million in purchases and reimbursements that would be illegal in other states.
- The state’s campaign watchdog is timid. The Oregon State Elections Division does not use its subpoena power to investigate questionable spending. It just sends letters. More than once, the division dropped an investigation because no one wrote back.
- The Legislature’s failures are driving people to move, across town and out of state. The Oregonian/OregonLive interviewed two dozen residents who said they packed up their belongings because of pollution. Another 160 told the newsroom they considered moving or would if they could afford it.

“The system is broken,” said Phil Keisling, a former secretary of state who fought a losing battle to curb campaign contributions in the 1990s. “The need for campaign finance reform in Oregon has never been greater. We’ve lost 20 years we can’t get back.”

An influential corporation might give as little as a few thousand dollars per lawmaker. But taken together, legislators receive millions from industries with a shared interest in weak environmental regulation.

**SEARCH THE DATA:** See how much money each current legislator has raised and where they got it from. [↗](#)

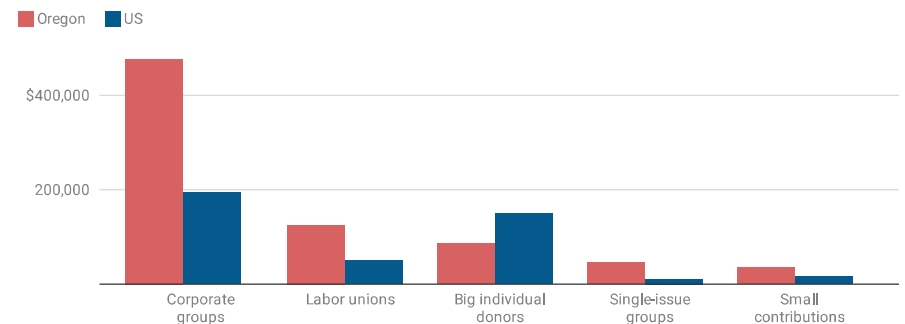
Lawmakers from both parties said money had no impact on their votes, citing examples where they went against donors. Four legislators said Oregon’s

campaign finance system works by showing voters who’s giving money and letting them judge whether it matters.

“It’s ridiculous, the amount of money, but it’s people’s right to do it,” said former Rep. Gene Whisnant, R-Sunriver, who raised 79 percent of his cash from corporations and industry groups. “I don’t know how you stop it.”

## Sources of money

The amount given per lawmaker in elections from 2008 through 2016.




[Get the data](#)

Legislators have made some environmental progress, setting ambitious goals for green energy use and for phasing out coal. Last year, they caught up with a dozen other states that control toxic air pollution from factories. A bill to ratchet down greenhouse gas emissions may pass in 2019.

But electric utilities wrote the green energy bill. They included a major loophole that could leave coal in the mix for years longer than advertised. The final version of the toxic air legislation increased acceptable cancer risks, thanks to industry-crafted amendments.

“What it becomes to us, the lowly citizen, is that this is a cahoots kind of thing,” said Roger Pettit, who unwittingly bought a home downwind of a Superfund site in The Dalles. The 46-year-old sold it and moved last year after residents failed to get the state to eliminate the factory’s polluting stench.

Today, the air from Eugene to Portland is getting smoggier. The tree canopy is shrinking in urban areas statewide. The amount of old growth in Oregon's coastal forests is dwindling. Bass, carp and other resident fish are unfit for human consumption in a widening stretch of the Willamette River.

**DATA POINT:** Three-quarters of the money in winning Connecticut legislative campaigns came from taxpayer subsidies. In Oregon, corporate interests contributed half of what lawmakers raised. [#PollutedByMoney](#) 

Christine Psyk, a retired U.S. Environmental Protection Agency official who oversaw the Pacific Northwest, said Oregon regulators and lawmakers exhibited a clear pattern with polluting businesses.

“Oregon has been extremely deferential to industry and bends over backwards if they have any complaints,” Psyk said.

“For a state that likes to present itself as this great environmental state,” she said, “you’re not doing that great.”

Connecticut largely replaced corporate money with public funding a decade ago. Democratic state Sen. Matt Lesser said it immediately allowed lawmakers to pass legislation that industry had stalled for years, because “the Legislature no longer cared about the particular interests of one random, generous group of political contributors.”

In Oregon, lawmakers don’t feel so liberated.

Betty Komp, a retired Democratic representative, recalled one lobbying group, Doctors for Healthy Communities, summoning lawmakers into a room and announcing the group’s agenda for the next session.

“They would say, ‘We would really like your support,’ and then hand you a check,” Komp said. “That’s pretty blatant.”

Portland attorney Dan Meek said he became an advocate for campaign finance restrictions after winning a case proving illegal billing by Portland General Electric, owned at the time by Enron, the corrupt Texas energy giant. PGE and Enron went to the Legislature, which passed a law to invalidate Meek’s ratepayer victory.

“If government is under the control of Enron, PGE and the like, there’s nothing you can do about it without changing the campaign finance system,” Meek said.

“Without it,” he said, “virtually nothing else matters.”



A century ago, Oregon became a pioneer in campaign finance reform. It limited campaign contributions and enacted the nation’s first public campaign subsidy, allowing candidates to publish statements for free in a pamphlet distributed to voters.

Nearly 50 years ago, legendary Gov. Tom McCall’s environmental agenda landed Oregon on the cover of National Geographic. He began cleaning up the polluted Willamette River before the Clean Water Act existed. He created a state environmental agency before Congress started the EPA.



Index cards Gov. Tom McCall used in his 1970 Earth Day speech.

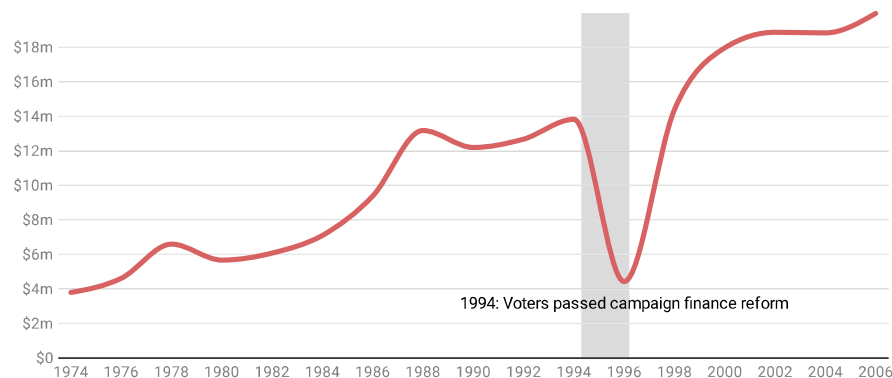
McCall, a Republican, overcame the same corporate lobbying groups that rack up wins today.

“Oregon has wanted industry only when that industry was willing to want what Oregon is,” McCall once said. The state lived by an 11th commandment, he said: “Thou shall not pollute.”

Polls have shown the sentiment remains. Protecting Oregon’s environment should take priority even at the risk of slowing economic growth, a majority of respondents told DHM Research, a nonpartisan firm, in 2013.

But it was McCall who signed a new campaign law that allowed his industry adversaries to gain clout.

## Oregon campaign costs, 1974-2006



In 2006 dollars

[Get the data](#)

In 1973, with Watergate-inspired political reforms underway nationwide, Oregon lawmakers voted to limit how much candidates could spend in an election, instead of how much they could raise.

Two years later, the Oregon Supreme Court said the spending limits violated Oregon’s constitutional free speech protections. That left the state with no controls.

Voters tried to bring back contribution limits in 1994, and the court struck down that law change for the same reason.

Even if campaign contributions create temptations for politicians, Supreme Court Justice W. Michael “Mick” Gillette wrote in his opinion, most “will put aside personal advantage and vote honestly and in the public interest.”

Keisling, the former secretary of state, was one of the leading figures backing the 1994 reform effort. He still seethes when he recalls Gillette’s words about the role of money.

“If you’re in the system, you know it has an effect,” Keisling said. “The most common effect isn’t what you do. It’s the bills you never submit, much less never

fight for. It creates a culture of timidity.”

After so many losses in the state Supreme Court, reformers went back to the ballot in 2006, hoping to change the state constitution to allow contribution limits. Liberal groups including the American Civil Liberties Union of Oregon, Planned Parenthood and the state’s powerful teachers union urged defeat, saying the measure would limit their voice. Down it went, by a 20-point margin.

Oregon candidates spent ever-increasing amounts to stay ahead of opponents. By 2016, the cost of a winning Oregon House race hit \$243,555, the price of two in Washington, six in Minnesota or 244 in New Hampshire.

All that money bought results.



Phil Keisling, former Oregon Secretary of State.

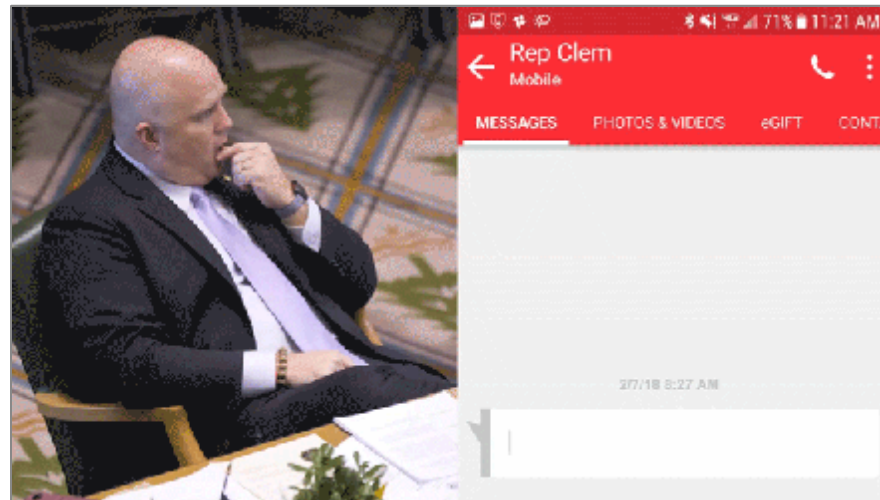


Scientists link timber harvests in Oregon’s coastal forests to the decline of the marbled murrelet. (Photos: Jamie Francis, left, Gwen Baluss, right)

The blowback was intense last year when Oregon wildlife commissioners approved new endangered species protections for the marbled murrelet, a rare seabird that nests in coastal old growth forest. Changes meant new restrictions on logging in state forests, and the timber industry didn’t want them.

Two days before the commission voted, a text message popped up on Curt Melcher’s phone: “Can you give me a call?”

Melcher, director of the Department of Fish and Wildlife, phoned immediately. The text came from Rep. Brian Clem, D-Salem, who’s taken \$34,000 from timber interests since 2008. A six-minute conversation followed. Melcher recalled Clem making clear he didn’t want to see more protection for the murrelet.



Democratic Rep. Brian Clem

“He’s definitely always had an interest in timber-related issues,” Melcher later said. “It’s not entirely a surprise when he calls.”

After commissioners decided to protect the bird, the timber industry’s allies in the Legislature went on the attack.

Clem hauled wildlife officials in for a hearing. If Oregon’s endangered species act hinders logging, he intimated, maybe the law needs to be changed.

Rep. Brad Witt, D-Clatskanie, suggested the state shouldn’t bother protecting the bird since “it appears no matter what we do, this species is on its way to extinction.” He’s taken \$50,000 in timber money since 2006.

No one on the committee spoke in favor of listing the species as endangered. Seven of its nine members received timber money in their careers, a total haul of \$210,000.

Wildlife commissioners reversed their decision in less than four months, keeping Oregon the only West Coast state not to designate the murrelet as endangered.



Clear cutting near the Siletz River in the Oregon Coast Range, Sept. 8, 2018.

Clem told The Oregonian/OregonLive that timber money is not what made him an advocate for the industry. He said he saw what restrictions on logging in federal forests did to the economy of his hometown, Coos Bay, in the 1990s. “I

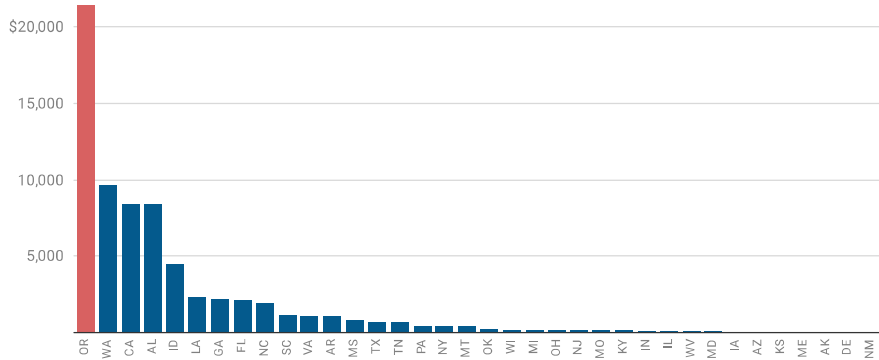
said my piece at the hearing,” Clem said. “I was a little shocked they changed their vote.”

In a decade, only 33 state lawmakers in the country raised as much from the timber industry as Clem. Nineteen of them were from Oregon. Per capita, per lawmaker and in sheer dollars, timber interests gave more to winning candidates in Oregon than anywhere in the nation.

“We support legislators interested in a balanced, science-over-politics, holistic approach to sound environmental protections,” said a spokeswoman for the Oregon Forest & Industries Council, a major lobbying group.

**Timber contributions**

Contributions per state legislator in elections 2008 through 2017



[Get the data](#)

The consequences of Oregon’s logging practices are clear. State and federal scientists have blamed major population declines in species including the coastal Coho salmon, northern spotted owl and marbled murrelet on timber harvesting and state policies governing it.

The Oregon Department of Forestry found 242 plants and animals listed or at risk of listing under the Endangered Species Act as of 2012. The trend was getting worse. Then the state agency, whose mission includes promoting the timber

industry, stopped publishing the numbers and deleted past reports from its website.

Oregon’s failures on the environment extend well beyond the demise of forest creatures.

Among West Coast states, Oregon alone requires no comprehensive review of environmental risks before approving major construction projects. Washington rejected a proposed terminal to unload oil trains on Vancouver’s waterfront as too dangerous after four years of analysis and public input. Oregon took 22 days to approve a similar operation and didn’t tell the public.

Oregon has also repeatedly killed legislation requiring railroads pay for oil spill planning, as Washington and California do.

That seemed likely to change after a Union Pacific oil train derailed and erupted into flames in the Columbia Gorge in 2016, sending oil into the Columbia River during peak spring chinook migration. Dozens of people in the small town of Mosier had to flee their homes.

West Coast states compared

Data point	Washington	California	Oregon
Campaign donation limits?	Yes	Yes	No
Corporate \$ per capita	\$5.26	\$4.55	\$10.90
Biggest campaign fines? **	\$18 million	\$1 million	\$116,000
% of electricity from coal*	13%	4%	28%
Carbon-free energy by?***	2045	2045	No target
Volume of diesel pollution considered safe, in nanograms/cubic meter	3.3	3.3	100
Major water polluters with expired permits, 2017	52%	15%	84%
Air polluters facing enforcement actions, 2016	129	425	12
Penalties against air polluters, 2016	\$704,400	\$8.2 million	\$27,600
% of air polluters inspected, 2016	61%	56%	45%
Wolves on state endangered species list?	Yes	Yes	No
Environmental impact analysis required for governmental decisions?	Yes	Yes	No
Marbled murrelet listed as	Yes	Yes	No

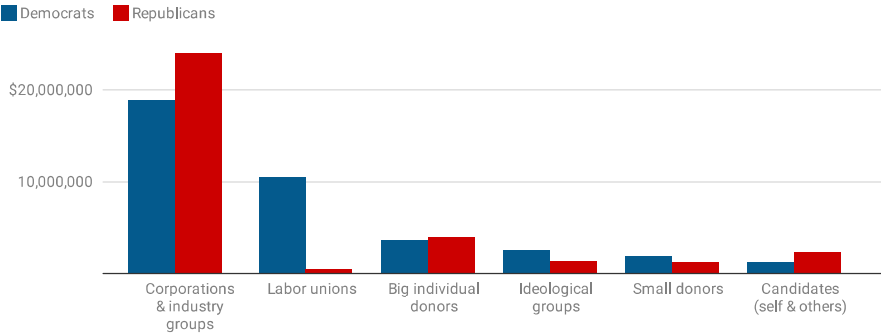
A few months after the tanker cars overturned, Union Pacific wrote a check for \$5,000 to then-Rep. Mark Johnson, R-Hood River. When oil spill legislation came up in 2017, Johnson introduced an amendment Union Pacific wanted: To keep any spill plan secret.

Johnson said he wasn’t motivated by Union Pacific’s donation.

“It just happens that people appreciate effective legislators,” he said in an interview. “I introduced legislation for a variety of people who happened to support me, but I don’t do it because of that.”

Money sources by party

Total contributions to winners in Oregon legislative races from 2008 through 2016.



[Get the data](#)

When asked whether Union Pacific’s \$5,000 donation was specifically to secure Johnson’s support, a company spokesman said the railroad has a long history of supporting candidates from both political parties and “works with elected officials who understand the economic necessity of Oregon’s transportation infrastructure.”

The 2017 legislation died. An oil spill safety bill is up for debate this year for the fifth time.



Like industry, environmental activists take advantage of Oregon’s wide-open campaign finance laws. But activists can’t match the financial firepower of corporations.

The Oregon League of Conservation Voters has contributed \$623,000 to winning legislative campaigns over a decade. That is the most of any green group nationwide, The Oregonian/OregonLive’s analysis found.

It amounts to 1 percent of what industry gave.

“It’s like trying to play Monopoly when the other guy owns all the properties,” said Doug Moore, the league’s executive director. “It’s not just that we’re up against one industry. We’re fighting Corporate America head on, and they can invest as much in this state as they want.”

The disparity matters.

Sen. Elizabeth Steiner Hayward, a Northwest Portland Democrat, gets a lifetime “A” grade from the conservation group for her voting record. The family medicine doctor at Oregon Health & Science University says on her campaign website she is “committed to making Oregon the healthiest state in the nation.” The conservation league has donated \$1,250 to her campaigns.



Sen. Elizabeth Steiner Hayward, a physician, represents areas heavily affected by diesel pollution.

The Oregon chapter of the Associated General Contractors, a powerful national group financed by construction companies, has given Steiner Hayward far more:

Industry contributions

Per lawmaker, Oregon is one of the highest-ranking states for contributions from a wide array of industries.

Industry	Per lawmaker	Per ▲	Oregon rank
Finance, Insurance & Real Estate	\$68,572		9
Energy production & distribution	\$34,695		6
Construction	\$28,748		7
Communications & Electronics	\$24,465		6
Nursing homes	\$22,133		2
Timber	\$21,416		1
Beer, wine & liquor	\$18,689		5
Restaurants & lodging	\$18,424		2
Drug-makers	\$17,120		3
Business associations	\$15,277		4
Soft drinks	\$13,112		1
Farming	\$12,778		6
Grocers	\$12,530		1
Tobacco	\$9,189		4
Hospitals	\$8,653		9
Food processors	\$3,600		3
Public utilities	\$2,500		6

\$11,500. The association, which poured more than \$1 million into winning state legislative races in the past decade, was one of the biggest donors to her uncontested re-election campaign last year.

“We’ve worked with her on a variety of issues, and my members like the fact that she does her homework and studies the impact of legislation,” said John Rakowitz, a lobbyist for the contractors.

In 2017, the Legislature considered a bill to clean up dirty diesel engines, a major source of cancer-causing pollution in Oregon’s air. It would have forced construction contractors to slowly modernize their fleets.

The contractors were opposed. So was Steiner Hayward. She was one of three Democrats against it, and the only one from Portland, which has the state’s worst diesel soot.

In an interview, Steiner Hayward said she supports getting rid of polluting diesel engines “while not having an adverse impact on industries that don’t need that adverse impact.”

She called it “ludicrous and insulting” to think construction money prompted her opposition to the diesel bill.

“It’s just categorically not true,” she said.

Steiner Hayward said despite Oregon's lack of contribution limits, the state "has some of the most progressive environmental laws in the nation." Asked for an example, Steiner Hayward said she couldn't immediately think of one.

Mary Peveto, president of Neighbors for Clean Air, a Portland nonprofit, said Steiner Hayward once sat in her living room to hear her concerns about air pollution. But Peveto, who lives in Steiner Hayward's district, said her senator wouldn't meet when the diesel cleanup bill faltered.

"I have been ridiculously busy," the senator told Peveto in a Facebook message. Steiner Hayward said she'd talk to her staff so they could find time.

After the initiative died, the construction association sent a newsletter to its members bragging about its successes in Salem, despite Democratic control of both chambers. Thanks to its lobbyist's connections, the group claimed it could get meetings with key lawmakers "in mere minutes."

Peveto didn't hear back from Steiner Hayward.



Betty Komp's 12 years as an Oregon state representative left her with no doubt that corporate money buys power in Salem.



Former Democratic Rep. Betty Komp

The Democrat, a former school administrator who represented Woodburn, said corporate lobbyists from Pac/West Communications would visit her before an upcoming legislative session. "We're going to come to you a time or two, and we'd like your support," she recalled them telling her.

What mattered to them, she said, was "what they thought I should be saying in our leadership meetings about whether a bill should be moving forward."

"It wasn't just about voting on a bill," she said, "but the bill's pathway."


The minute a legislative session ended and House rules permitted fundraising to resume, Democratic legislative leaders made sure she was on the money trail.

**DATA POINT:** Industry gave Oregon lawmakers \$43 million in a decade of fundraising, dwarfing donations from ideological groups (\$4 million), individuals (\$8 million), organized labor (\$11 million) or political parties (\$12 million).

**#PollutedByMoney** 

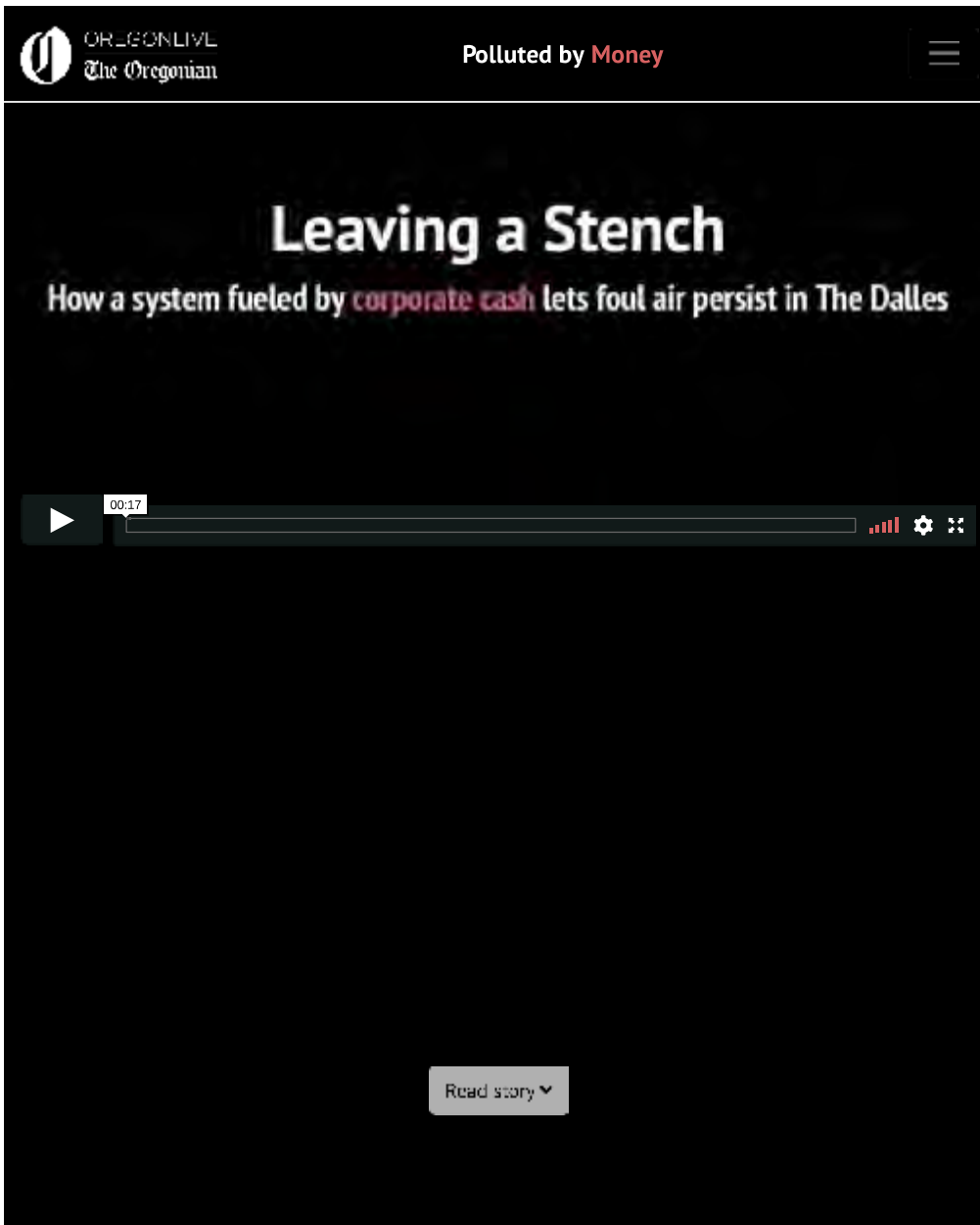
"The pressure to start fundraising when the gavel drops on the last day is ridiculous," Komp said. "It's: 'When are you going to hold your first fundraiser, Betty?' There's someone talking to you about it all the time."

While campaigning, Komp said she spent 90 minutes on the phone each night delivering her fundraising pitch to potential donors. She tracked her prospects with notes in a three-ring binder: Who she talked to. What they'd given. When she should try again.

**LEARN:** Read about where we got the data for this series and how we analyzed it. 

Komp said she always felt uncomfortable dialing for dollars. But she didn't mind asking lobbyists, "because I know the lobby has money to donate, and it's their job to discern where it goes."

When traveling to national conferences, Komp recalled how surprised lawmakers from other states looked when she told them how much it cost to win a campaign in Oregon.



*“Oregon is an inspiration to people elsewhere who believe they have no voice in government.”*

— OREGON GOV. TOM MCCALL, SPEECH TO THE LEGISLATURE, 1973

## Part Two of Four

March 1, 2019

Story by **ROB DAVIS**

Photography by **BETH NAKAMURA**

The Oregonian/OregonLive

**THE DALLES** — To experience Oregon’s deference to powerful polluting industries, visit this Columbia River town 90 minutes east of Portland.

Then breathe deep.

The sickening smell of mothballs can burn the inside of your nose, even on what people here consider a good day.

Residents say when the worst fumes hit, the smell is so overpowering they can’t sit on their decks, let their kids play outside, mow their lawns, garden, sleep with the windows open or welcome out-of-town friends.

“There are times it’s nauseating – you just can’t stand it,” said Roger Pettit, 46, who lived a half-mile downwind until he moved last spring. “I gotta tell you, if I was diagnosed with cancer, I would immediately think it was because I lived here.”

In 2016, a few town residents decided they’d had enough. The ensuing battle to stop the stench shows what a political system fueled by corporate cash means for ordinary Oregonians.

No one donates more to Oregon lawmakers than business groups, an investigation by The Oregonian/OregonLive found. They give more per resident

than anywhere else in the country. The money explains why Oregon has fallen behind on a long list of environmental protections.

Environmental regulators are under the steady watch of lawmakers who take hundreds of thousands of dollars from Corporate America. Industry gets a direct line to decision makers, while people who complain about pollution get shut out.

For nearly a century, The Dalles has been a dumping ground for one of Oregon's most environmentally destructive businesses — a railroad tie plant that contaminated the Columbia River, created a Superfund site and put the city's drinking water at risk.

But residents say what makes life miserable is the noxious air pollution created by the current owner, AmeriTies, and its use of creosote.

Creosote is a thick, black liquid derived from coal. It is used as a preservative to help wooden railroad ties withstand insects and weather. One of its primary constituents is naphthalene, which the U.S. Environmental Protection Agency classifies as a possible human carcinogen. It gives mothballs their distinct smell.



The noxious pollutant drove at least 20 adults and children to move out of their homes, The Oregonian/OregonLive found.

Retired pharmaceutical company manager Norman Bennett blames the pollution for his 2008 lung cancer diagnosis. He started complaining in 2002 about the mothball smell that crept up Dry Hollow Road and sneaked in his doors and windows. Finally, he gave up. Bennett took an estimated \$30,000 loss selling his home in 2011 to escape upwind. The non-smoker, now 92, said he knew he could not wait for state authorities.

"I got so tired of it," Bennett said. "I knew they would never do anything about it."

Oregon's Department of Environmental Quality has allowed the stench to persist through decades of complaints, even after policymakers empowered the agency to declare persistent odors a public nuisance and penalize companies that continue creating them.

Jeff Thompson, the plant's manager, said in a statement that his company "has worked diligently with the Oregon Department of Environmental Quality to address odor concerns."

"We remain committed to being both a good employer and neighbor," he wrote.

AmeriTies has powerful friends on its side. Union Pacific Railroad is the company's main customer. It owns the property where the AmeriTies plant is located and is financially responsible for the Superfund cleanup there. Over a decade, the railroad gave \$144,000 to Oregon lawmakers, including then-Rep. John Huffman, a Republican representing The Dalles.



Rep. John Huffman, R-The Dalles, at left, speaking with Rep. Chris Gorsek, D-Troutdale, in 2014. (Photo: Michael Lloyd/staff)

In the 2016 fight over AmeriTies, records show, Huffman pushed the state to protect the company and its 50 jobs. Agency officials listened.

They asked the company for voluntary steps to reduce odors. They could have included the public in negotiations about a solution. They didn't. After a deal was signed, Huffman said letting the public comment on it would amount to little more than a "bitch session."

The agency's own attorney later said the state's failure to involve residents in the process could be the basis for a lawsuit.

Six days after the deal was signed, the railroad handed Huffman a \$1,000 campaign donation.

Town residents who had never donated to a political campaign were left to beg for help.



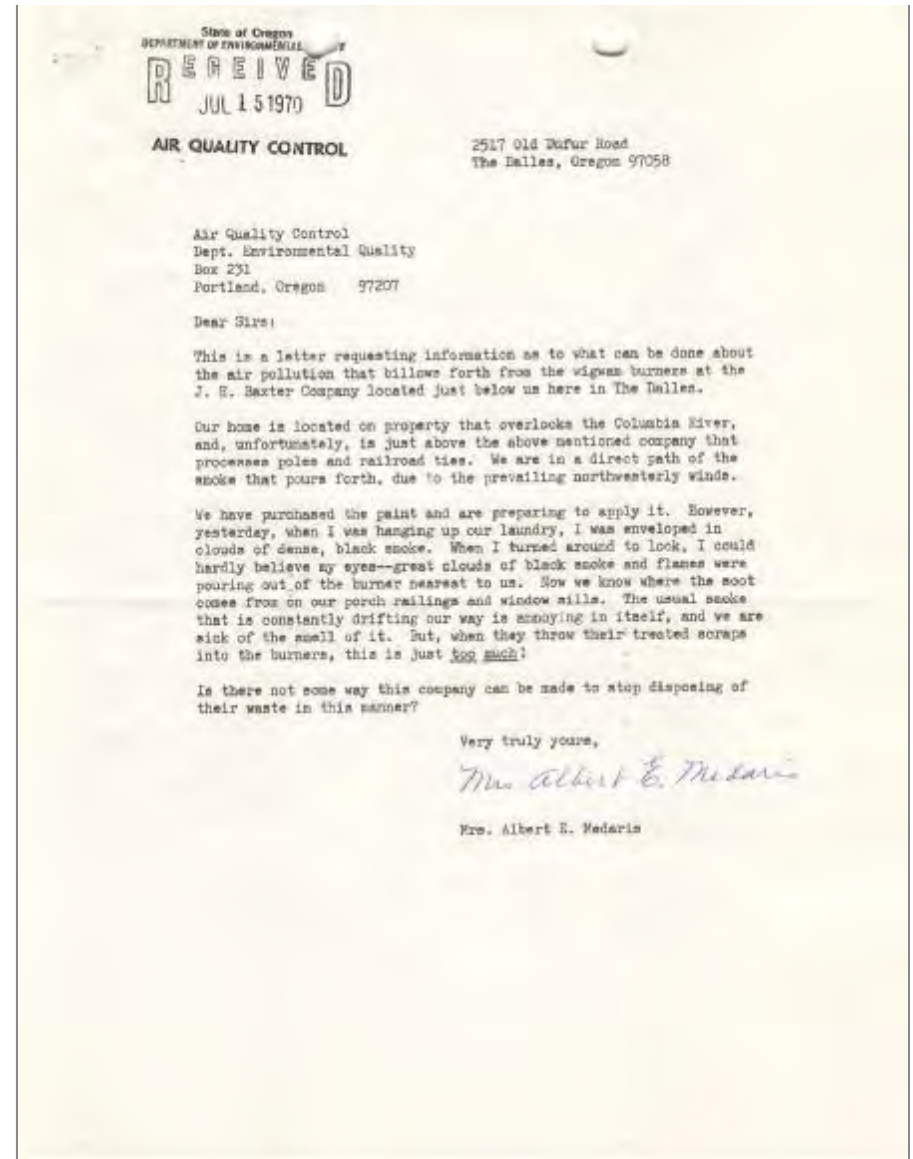
The first complaint arrived typewritten on delicate onion skin paper one summer day in 1970.

The Department of Environmental Quality was barely a year old, created as part of the environmental awakening led by Republican Gov. Tom McCall. Oregon was leading the country. The U.S. EPA wouldn't exist for another five months.

A woman who identified herself as Mrs. Albert E. Medaris complained that tie plant workers were burning treated wood scraps. At the time, state cleanup documents show, the facility used chemicals now known to contain highly toxic dioxins.

The smell was bad, she wrote, but the plumes of smoke were unbearable.

"Yesterday, when I was hanging up our laundry, I was enveloped in clouds of dense, black smoke," Mrs. Medaris wrote. "I could hardly believe my eyes. Now we know where the soot comes from on our porch railings and window sills."



The Department of Environmental Quality took its first complaint about the rail tie plant in 1970.

Residents have complained more than 1,350 times in the decades since.

**1982:** "Black soot over entire neighborhood."

**1995:** “Fumes burned the inside of our noses” and caused bloody sores.

**2010:** Fumes sucked into The Dalles Middle School’s ventilation system; firefighters called.

**2014:** “Incredible” stench. “Absolutely sickening.”

At least one state environmental worker was appalled. In 2013, a Department of Environmental Quality employee filed a formal complaint with his own agency after driving by the AmeriTies plant.

“I rolled down the window and my eyes began to water,” wrote Larry Brown, an environmental health specialist. “I feel sorry for those having to live 24/7 in the area. This type of nuisance condition should not have to be tolerated.”

But environmental degradation has long been tolerated in The Dalles, a town of 15,000.

Finishing The Dalles Dam in 1957 submerged ancient Celilo Falls, where tribes harvested salmon and traded with one another for millennia. After the rail tie plant opened in 1922, workers stored chemical preservatives in unlined pits, so thoroughly soaking the soil that the cleanup is still underway after nearly three decades.



The AmeriTies plant, summer 2018.

Frank Messina, a Department of Environmental Quality permit writer who has overseen the plant since the early 1990s, created a form letter to answer complaints. The letter was slapped together so casually it is missing punctuation in places.

“Documenting of complaints is a very important factor for DEQ,” it says. “So please document your complaints. Please share this with other people in your community. Thank you”

One after another, residents have tried to get regulators and the plant to act. The plant’s operators often visited people who complained. When they smelled the air, they repeatedly told regulators, they couldn’t smell anything unusual.

**2001:** “Only the cat box and the flowers in the backyard.”

**2010:** “Only the surrounding trees, bushes and flowers.”

**2011:** “Only the odors of wood stoves.”

The cycle so often ended with residents getting fed up and moving.

In 2015, it was Rachel Najjar's turn.



Najjar and her husband were oblivious to the rail tie plant's legacy when they moved to The Dalles from Beaverton for work in 2015, buying a three-bedroom tan rancher in a neighborhood perched above a wide blue bend in the Columbia River.

Najjar, then seven months pregnant with her third child, said her two young girls grew violently ill on days they visited the city's riverfront park. She said they cried about stomach pain, vomited, drank glasses of water and laid down for long naps.

"I know my kids," Najjar said. "That is not them. And it kept happening."

The park sits north of the rail tie plant. Decades earlier, Superfund cleanup workers in full-body coveralls excavated tons of contaminated soil from the area. Viscous black liquid lurked in the grassy barrens back in the 1950s, said Mike Kennedy, who went to work at the rail tie plant after high school. Kids called it the Black Lagoon.

"You step on what you think is going to be grass and you'd sink up to your knee," Kennedy said. "You know you're going to be in trouble 'cause that's not going to come out of your clothes. And it smelled awful."



Rachel Najjar, at home in Hood River. The family left The Dalles in 2016.

Najjar started noticing horrible odors in her neighborhood. She assembled a slideshow of every itchy rash, every oozing sore on her arms, her eyes, her children's legs, backs and arms.



Workers in 1992 removed tons of soil contaminated by the rail tie plant at what is now the city's Riverfront Park.

Toxicologists say it is impossible to determine whether illnesses residents reported over the years were caused by exposure to the plant's pollution. However, scientists have connected direct contact with creosote to cancers and skin and respiratory irritations. Breathing naphthalene, which escapes into the air when wood is treated with creosote, has been linked to lung irritation and respiratory cancers based on studies of lab animals.

Susanna Wegner, a toxicologist for the Oregon Health Authority, said the smell in The Dalles is powerful enough to cause headaches, nausea, dizziness and other physical symptoms.

"We know that there are strong odors there, and some of the health effects people are experiencing may be caused by the odors," Wegner said.

Najjar asked other parents: Do your kids have health problems like mine? She found Kris Cronkright, who had moved to The Dalles so her husband could be closer to his job at Google's data center. Cronkright was also concerned about what AmeriTies' pollution might be doing to her young son.

In early 2016, the Department of Environmental Quality's director stepped down amid an outcry over toxic air pollution in Portland. Najjar and Cronkright saw an opening. They stirred up media attention. That April, the two women faced a television camera and described the stench.

"Once you smell it, it's just like you're right there, because it's so strong," Najjar told KGW. "You can't escape it."

The TV story seemed to have the desired effect. Najjar soon received a phone call from the Department of Environmental Quality. Najjar remembers the woman on the phone saying she wanted to apologize for what her family had been through.



While Najjar and her neighbors were organizing, Linda Hayes-Gorman was on the verge of a delicate deal with AmeriTies to do something about the odor. The veteran environmental administrator had to contend with two powerful lawmakers during the negotiations.

"It's a highly politically charged situation," she wrote in one email to a colleague. "1 representative and 1 senator are watching."

She was referring to Huffman and then-Sen. Ted Ferrioli, a Republican whose sprawling district stretched to The Dalles. He was included with Huffman in correspondence about AmeriTies.



Linda Hayes-Gorman (Photo: Herald and News)

The department in 2014 had adopted a plan to deal with chronic smells in places like The Dalles, finally putting teeth in rules created more than a decade earlier. The state had the power to fine companies whose odors were foul, frequent and harmful.

The endless stream of complaints made AmeriTies the first test of the state's blueprint.

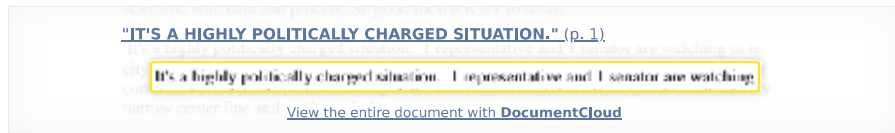
Environmental regulators already had evidence of pollution from 2011 and 2012 testing around the plant. One eight-hour sample in a nearby neighborhood found naphthalene at a level 400 times the amount the state considers safe, if sustained over a lifetime.



A Department of Environmental Quality photo of rail ties releasing vapors at the plant in The Dalles.

In 2015, the state sent inspectors to smell the air for themselves. They concluded the stench was unpleasant nearly a month of each year. One hot, dry afternoon in early August 2015, for example, they rated the odor near the plant a 10 on a 0-12 scale — "highly offensive." Najjar and her family moved in six blocks away a month later.

Hayes-Gorman, the official in charge of air quality across eastern Oregon, moved cautiously.



AmeriTies representatives, at their first meeting with Hayes-Gorman's team, made it known that the plant would smell no matter what they did, according to a state official's notes. So, they asked: What's the end game? How much do we have to spend?

In a recent interview, Ferrioli said he helped convince the company that it needed to do something about the odor problem or it risked being shut down. But Ferrioli said he also instructed the Department of Environmental Quality about how it should approach talks with AmeriTies.

"My admonition to the agency was, 'Please try to do everything you can with a consultative approach. Because if it's a regulatory approach, there's a potential loss of jobs,'" Ferrioli said.



Former Republican Sen. Ted Ferrioli. (Photo: Stephanie Yao Long/staff)

The company requested a legal process that would limit input from residents as much as possible, the meeting notes say. The Department of Environmental Quality agreed.

The process dragged on for months. When an agency official in Portland objected to the slow pace and secrecy, Hayes-Gorman fired off an email to one of his superiors. AmeriTies was "one of the few places to earn full wage in town," she wrote. Any solution that was too costly might lead Union Pacific to move rail tie production elsewhere.

The message was in tune with Huffman's pro-jobs platform and his donor base. He took \$445,000 from corporations and industry groups over a decade, compared with \$56,000 from residents of The Dalles and small unnamed sources.

**SEARCH THE DATA:** See how much current legislators have raised and from what source. [↗](#)

At the time of the AmeriTies negotiations, Huffman sat on the Legislature's most powerful committee, Joint Ways & Means, which controls the Department of Environmental Quality's \$300 million budget.

Huffman enjoyed sweeping access to Hayes-Gorman and other state officials as they negotiated with AmeriTies, emails and calendar entries show.

Huffman had Hayes-Gorman draft a response to a constituent who complained about the plant. He lunched with Messina, the state official overseeing the plant, and another air quality manager the day they negotiated final deal points with the company.

The secret agreement with AmeriTies was almost finished when Huffman heard about Rachel Najjar and her fellow activists. Huffman emailed Hayes-Gorman, worried that "a few very vocal people" were trying to make trouble.

He wasn't about to let the deal with AmeriTies be upended.




Najjar realized she'd found someone in charge when the Department of Environmental Quality's call came. It was Linda Hayes-Gorman. Najjar started asking questions.

Her husband is from Liberia, she explained. She worried her children were suffering from hemolytic anemia, a problem with red blood cells that can be

caused by naphthalene. People of African descent are particularly at-risk.

In the days that followed, Hayes-Gorman asked local health officials whether they'd pay for tests Najjar wanted for her family. They wouldn't.

**DATA POINT:** Oregon is one of only five states without any limits on the amount of money given to political campaigns. [#PollutedByMoney](#) 

Hayes-Gorman also offered advice that struck Najjar as strange. Maybe you should buy face masks for your children, she said.

Hayes-Gorman declined to answer questions about the phone call. She told her superiors the face mask comment was a mistake.

After a while, Najjar recalled, Hayes-Gorman said she had to go. She was having lunch with a state representative named John Huffman.

"He's really a great guy," Najjar remembered Hayes-Gorman saying. "You should really contact him."

Najjar didn't understand. Why was a person with the power to force change at AmeriTies telling her to buy face masks and call her state representative?



Unseen to Najjar, Huffman worked to minimize the impact of her TV appearance.

**"A FEW VERY VOCAL PEOPLE"** (p. 1)  
I am concerned ( no evidence, just a feeling that I hope is only last night's pizza...hat!) that a few very vocal people may be attempting to escalate the noise/concern level on AmeriTies. As we  
[View the entire document with DocumentCloud](#)

He contacted Gov. Kate Brown's staff, saying the pollution Najjar and others complained about did force people indoors — but only two or three days a year.

Yes, he said, he believed Najjar's kids got sick. But he told advisors to the governor, who oversees the Department of Environmental Quality, that he didn't want the children's experience to "skew reality."

"Two episodes should be monitored, but not given the weight of a couple dozen folks getting sick at the same time," he wrote in an email.

The same week Najjar and Hayes-Gorman spoke, Oregon signed the deal with AmeriTies. Hayes-Gorman scheduled a community meeting to unveil it. With activists from Portland expected, Huffman persuaded The Dalles police chief to send an officer.

Najjar asked Hayes-Gorman if residents could speak. When Hayes-Gorman raised the idea with Huffman, he wasn't happy.



A historical view of the rail tie plant, which has passed through multiple owners in the last century. (Photo: Oregon DEQ)

“I have never said this will be a forum for people to make position or political statements and have a bitch session,” Huffman told Hayes-Gorman by email. “Lay out the plan and answer questions, that’s all that was ever promised.”

Huffman suggested giving the residents a total of five minutes, early on. “Get it out of the way,” he said.

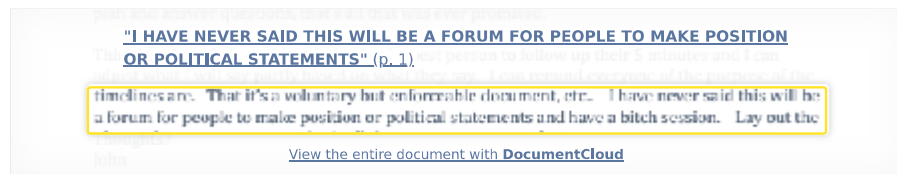
When Najjar continued pressing for public involvement, Hayes-Gorman looped Huffman into the email exchange. The state lawmaker had a curt message for Najjar.

“I’m not sure what impression you are under,” he told her. The meeting was to brief residents, not gather their comments.

It was Najjar’s first contact with the man Hayes-Gorman had suggested would be helpful. Najjar seized the moment.

“Our beautiful community is suffering and we need your help,” Najjar told Huffman by email. “My children’s lives are at risk. Please be a voice for us.”

Huffman’s response was pointed. He said the state had followed a process “to make sure state/government agencies don’t bully citizens or businesses” and to protect AmeriTies workers “that have a voice, none of which are showing health concerns.”



He ended by accusing her group of complaining about the smell on days the wind blew away from their homes.

“Tell your associates that false reporting does not help,” he wrote.




When the night of the meeting arrived, the audience was angry. Not everyone realized the state had already inked its agreement with AmeriTies.

Najjar and another activist gave brief statements when their five minutes arrived. Others in the crowd shouted at state officials, outraged that they’d been excluded from negotiations.

The state had given away a lot.

An early draft said AmeriTies would have to explore additional controls if “unpleasant” odors continued. The final deal included only “highly offensive” odors. The early draft said AmeriTies would face penalties of \$250 a day for violating the agreement. The final version deleted the reference to fines.

**DATA POINT:** Per resident, corporate interests gave more to winning Oregon legislative races than in any other state. [#PollutedByMoney](#) 

In the end, AmeriTies pledged to take 10 steps toward pollution control. Seven were things the company was already doing. Two required the company to simply study new controls. Just one, switching to a new creosote formulation, had a strict mandate — and the deadline was more than a year out.

The department’s director at the time, Pete Shepherd, opened the meeting by telling the crowd — the people his agency had left out — that he knew “the importance of listening to people speak from their heart in the place where they live,” according to The Dalles Chronicle.

When Huffman began his remarks, the Chronicle reported, an unidentified resident blurted a question.

“Don’t you take money from the railroads?”



Good things happened afterward for the people who helped shape the state’s deal with AmeriTies.

Hayes-Gorman, the environmental official, was rewarded with praise from Huffman in an email to Gov. Brown’s office. “She has been awesome!” Huffman said. “Very responsive!”

The department’s top lobbyist in Salem lauded her work, too, telling Hayes-Gorman that “your efforts and outreach have helped our relationship with Rep. Huffman.”

Hayes-Gorman said her interactions with Huffman weren’t unusual and that she felt no pressure. “We were informing him and keeping him apprised,” she said. “He would not have been involved in any of the negotiation points.”

Ferrioli, who took \$4,500 from Union Pacific during his career, said his intervention “didn’t have daggone to do with who owned the property or who’s the beneficiary.” It was meant to resolve complaints about the smell and save jobs at AmeriTies.

Union Pacific didn’t address specific questions about the AmeriTies deal. It said in a statement that the company “works with elected officials who understand the economic necessity of Oregon’s transportation infrastructure.”

The day the deal was finalized, Huffman told Hayes-Gorman he was meeting Union Pacific officials in a week.

His campaign recorded a \$1,000 contribution from the company six days later.

It was the biggest of six donations that Union Pacific gave him over the years.

Huffman’s Union Pacific money went into the same campaign account that paid \$41,850 to his wife, Korina, for bookkeeping and other campaign work over a decade. He directed another \$18,250 from the campaign account to his property

management company, Huffman Investments, for campaign office rent and storage during his time in the Legislature.

Huffman told The Oregonian/OregonLive the Union Pacific donation had nothing to do with his involvement in the deal, even though he acknowledged the timing made it look like it did.

“The optics don’t look great. You’d have to be silly to not see the optics of it, but there’s no connection. There’s just no connection,” Huffman said.

“Does it look odd?” he said. “Yeah, it does. Did I influence any of the outcomes? No.”



The true test of the AmeriTies agreement was whether or not the air smelled better.

Two months after the agreement was signed, new data showed concerning levels of naphthalene in the air. AmeriTies agreed to speed up its deadline for switching chemicals,

Industry contributions

Per lawmaker, Oregon is one of the highest-ranking states for contributions from a wide array of industries.

Industry	Per lawmaker	Oregon rank
Finance, Insurance & Real Estate	\$68,572	9
Energy production & distribution	\$34,695	6
Construction	\$28,748	7
Communications & Electronics	\$24,465	6
Nursing homes	\$22,133	2
Timber	\$21,416	1
Beer, wine & liquor	\$18,689	5
Restaurants & lodging	\$18,424	2
Drug-makers	\$17,120	3
Business associations	\$15,277	4
Soft drinks	\$13,112	1
Farming	\$12,778	6
Grocers	\$12,530	1
Tobacco	\$9,189	4
Hospitals	\$8,653	9
Food processors	\$3,600	3
Railroads	\$3,581	6
Trucking	\$2,962	5
Waste management	\$2,781	5
Chemicals	\$2,349	5
Fish processors	\$1,612	1
Health care products	\$1,128	4

[Get the data](#)

moving to a different creosote formulation in late 2016 and diluting it with seed oil.

Testing in 2017 found average daily naphthalene levels down by about half from a year earlier. But the level closest to the plant was still 38 times higher than what the state considers safe to breathe over a lifetime.



Creosote storage tanks at the AmeriTies plant. (Jesse Burkhardt/The Dalles Chronicle)

Plant records provided to the state also show AmeriTies made rail ties on fewer days when testing occurred in 2017, in part because the facility stopped production for 12 days straight.

Thompson, the plant manager, said the company's demand was lower in 2017, giving the plant more time to close for annual preventative maintenance.

Two former employees said it was unusual for the plant to close for so long in summer. One said the plant never stopped summertime production that long during his 38-year career there — not even during a worker strike.

An attorney with the Oregon Department of Justice told environmental regulators residents could file a lawsuit arguing the state hadn't allowed public engagement in the deal. But the deadline to sue was nearly past by the time the attorney, Paul Garrahan, provided his confidential advice.

The environmental agency didn't tell the public about its appeal rights. No one sued.

Townpeople did sue AmeriTies, claiming its smell devalued their property. In a May 2018 settlement, the company agreed to spend an additional \$250,000 on pollution controls. The plaintiffs' lawyers were paid \$500,000.

Residents were promised a combined sum of \$750,000, divided among every household that opted in.



A plant worker wearing a respirator loads fresh wood in the pressurized cylinder where it is infused with creosote. Former plant employee Mike Kennedy, right, said workers in the 1960s just held their breath. Kennedy has undergone cancer treatment at Oregon Health & Science University. (Photo, left, courtesy Dalles Chronicle)

Unhappy about the deal and worried about their children, Najjar and Cronkright gave up on The Dalles and now live in Hood River.

Mike Kennedy, the former rail plant worker, lived on the bluff above the plant for decades. He moved, too.

Kennedy, 74, was diagnosed in 2010 with a rare form of bile duct cancer he suspects was caused by chemical exposure at the plant. Back in the 1960s, Kennedy held his breath amid fumes so thick he could see them. When his skin burned, he slathered himself in calamine lotion. Today, workers wear protective gear and respirators.

After his diagnosis, he said doctors gave him 18 months to live. Kennedy eventually decided to sell his home, but it sat on the market for years. The smell, would-be buyers said. Before he moved, he sent a complaint to the Department of Environmental Quality. Into the AmeriTies files it went.

Kennedy got a form letter back.

It was missing punctuation.



Some of the more than 1,300 complaints filed against AmeriTies.



Dry gorge winds swirled one sweltering spring evening last year as health officials gathered in a dimly lit community auditorium in The Dalles to present their latest study. They concluded the plant's pollution could cause physical health problems and contributed to a slight increase in cancer risk for town residents, but not enough to constitute a public health hazard.

The officials said more work needed to be done. More sampling. More negotiations. More studies.

As the bureaucrats prepared for the meeting, a tow-headed boy, no older than 12, stood high on his dirt bike, riding along the bluff above the rail tie plant. Under the late-day sun, the boy popped wheelies and coasted on the downhill. His hair fluttered in the wind.

The air around him smelled, unmistakably, like mothballs.

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**Next:** A regulator tamed by threats and fear

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*“Our eventual aim is to divert all wastes from the river. And I’m convinced it can be done. Maybe not tomorrow. But we’re moving in on the problem.”*

— L.B. DAY, GOV. TOM MCCALL'S DIRECTOR OF ENVIRONMENTAL QUALITY, 1972

### Part Three of Four

March 8, 2019

Story by **ROB DAVIS**

Photography by **BETH NAKAMURA**

The Oregonian/OregonLive

#### **The threat was explicit.**

Kevin Downing's job in Oregon government was to reduce cancer-causing pollution from diesel engines, and the state was interested in following

California's lead by requiring cleaner trucks. Texas was doing it. So were New Jersey, Connecticut and Georgia — a dozen states altogether.

Downing said when he pushed the idea, his boss at the Department of Environmental Quality told him to make a phone call.

The initiative would lead to less smog in Oregon, but truckers disliked it because the new engines got worse mileage. Oregon Trucking Associations Inc., and its chief lobbyist, Bob Russell, boasted online about a “direct line of communication” with state agencies.

“Call Bob Russell and see what he thinks,” Downing recalled being told by Andy Ginsburg, then Oregon's top air quality official.

Downing did, and he said Russell delivered a warning.

“The message that Bob told me to convey back to my managers was that if we were to proceed on this, he'd go after the agency's budget,” Downing said.



Kevin Downing, recently retired clean diesel coordinator for the Department of Environmental Quality.

Russell said he didn’t recall making a threat against the department’s budget.

“It’s not my style to do that kind of stuff,” he said.

But Oregon backed off on cleaner trucks.




The message Downing took from that phone call in 2001 reveals one way Oregon’s corporate polluters get their way: by ensuring that Oregon’s environmental regulators pay a steep price for one wrong move.


An expansive review of internal documents and dozens of interviews with current and former environmental regulators, lobbyists, advocates and lawmakers reveals that pressure tactics have instilled a deep culture of deference at the Department of Environmental Quality.

## Contributions by legislator

Here’s a breakdown of campaign contributions to each current Oregon legislator for election cycles from 2010 to 2018. Click on a button to see more info about a legislator. Type a name in the search bar to find a legislator.

Search:

Legislator	Total	Corporations & industry groups
 Sen. Fred Girod	\$388,672	89%
 Sen. Herman Baertschiger	\$264,356	80%
 Rep. Mike McLane	\$2,592,084	80%
 Rep. Duane Stark	\$255,634	79%
 Rep. Carl Wilson	\$362,952	77%
 Rep. Sherrie Sprenger	\$365,736	75%
 Sen. Brian Boquist	\$580,253	75%
		

 Sen. Jackie Winters	\$1,475,761	73%
 Sen. Mark Hass	\$562,622	73%
 Sen. Lee Beyer	\$728,989	72%

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The pressure works because environmental officials know industry lobbyists can back up any threat. Business lobbyists have secured access to lawmakers by giving them vast quantities of cash under Oregon’s unusually wide-open campaign finance laws.

Corporate interests give more to the average lawmaker in Oregon than almost anywhere else in the nation. Over a decade, industry groups donated \$43 million to winning candidates for the 90-seat Legislature. No other set of donors came close, according to The Oregonian/OregonLive’s analysis of data from the National Institute on Money in Politics.

The trucking association funneled \$250,000 to winning Oregon campaigns during the period, including leading Democrats — Gov. Kate Brown, Senate President Peter Courtney and House Speaker Tina Kotek.

The industry as a whole gave 74 percent more money per legislative seat in Oregon than in Washington, which, unlike Oregon, limits campaign contributions. Oregon is one of just five states that set no caps on political donations whatsoever.

Budget threats cast long shadows. Department officials have been pushed around so often that overt ultimatums have seldom been needed. For years, the agency’s No. 1 internal performance measure has been providing “good” or “excellent” customer service to the industries it regulates.

“DEQ was at the mercy of industry in order to get budgets for even basic things,” said Jules Bailey, a former state representative who led the House Energy and

Environment Committee from 2012 to 2014. Because of the money corporations pour into state elections, “industry can make a credible threat that they have influence over their budget. It gives industry enormous negotiating power.”

Brown has installed new leadership at the department: a new director, oversight board and senior staff. They are seeking to change the atmosphere, pushing for greater funding and a shift in priorities toward human health during the 2019 legislative session.



Trucks on Interstate 5 in Portland during rush hour.

“DEQ is not intimidated into silence,” said Richard Whitman, who was hired as director in 2017. “We have asked for the resources needed to assure Oregonians that their health and our environment are being appropriately protected.”

It is not yet evident their point of view will prevail with state lawmakers.

Craig Johnston, a Lewis & Clark Law School professor and former U.S. Environmental Protection Agency enforcement attorney, interviewed to be the Department of Environmental Quality’s leader in 2016.

He met with a half-dozen legislators and talked to people within the agency. He said he was surprised to hear that nearly every time the department levies even

minor fines against companies, their state representatives complain.



**DEQ’S COSTLY CLOCKS:** In 2016 the cash-strapped agency found enough money to buy 19 internet-synchronized \$300 clocks. [🔗](#)

“People think this is ecotopia,” he said. “But the political climate in Oregon is just that it doesn’t take environmental mandates very seriously.”

Johnston was clear with lawmakers and decision makers: If hired, he would change that.

He wasn’t picked.

Downing said his experience with the trucking lobbyist had a chilling effect for years. It changed his thinking about why bosses shot down his ideas. He said he became resigned to it.

“Environmental groups, even when they oppose an action, never threaten to cut an agency’s budget because it goes against their interest,” Downing said. “A business advocacy group can use this with little cost to them. People don’t realize, when they’re urging the department to become more aggressive, how profound that vulnerability is.”

Ginsburg, Downing’s former boss, eventually left the agency. He said he didn’t recall a threat from the trucking association. But he said the information would have been one factor in deciding if it was worth the effort to seek legislative approval.

“It wouldn’t have caused management to say, ‘Industry doesn’t like it, we won’t do it,’” Ginsburg said. “But we would say, ‘Do we have the votes? What else would we not take on to do it?’ We would’ve considered all those other questions and made a strategic call.”



Budgetary threats are a time-honored tactic for lawmakers who want to shield an industry from Oregon's environmental agencies.

Back in the 1980s, when the Oregon Water Resources Department proposed cutbacks on agricultural irrigation in the Umatilla Basin to address falling water tables, it provoked a reaction. Mike Thorne, a Pendleton senator who ran the Ways and Means Committee, stalled the water department's budget.

Thorne told The Oregonian/OregonLive in 2016 that he saw agency leaders rushing to regulate without considering the options.

"I wasn't trying to be punitive," the former Democratic senator said. "I just expected a level of performance that I didn't see."

In 2001, the Republican-controlled Legislature was angry with the Oregon Department of Fish and Wildlife, which members perceived as anti-development and allied with progressive federal agencies. Legislators forced the agency to move its main office from Portland to Salem. State workers wound up with two-hour commutes or uprooted their families to move.

Pressure brings agencies in line, and the Department of Environmental Quality is no exception.

"DEQ's budget is often held hostage on account of industry concerns," said Jackie Dingfelder, a former Democratic lawmaker who led the state Senate's environment committee from 2009 to 2013. "I saw that session after session after session, with both Republicans and Democrats.

"I would have Democrats come to me and say, 'What is DEQ doing?'" Dingfelder recalled. "I'd say, 'They're doing their job.'"

That's exactly what happened in 2017. Department officials that spring announced plans to test the air near Entek, a battery parts manufacturer in

Lebanon, for the cancer-causing solvent trichloroethylene. Computer modeling showed concentrations that concerned the department.

Entek co-founder James Young and CEO Larry Keith have personally contributed \$113,000 to lawmakers in elections since 2010.

Entek and its founders also donated \$95,000 in the past decade to Oregon Business & Industry and its predecessor, Associated Oregon Industries, a powerful lobbying group that gave lawmakers \$877,000.



When it rains during swimming season, the sewage treatment plant in the growing city of Molalla has dumped treated waste from its over-burdened storage ponds into the Molalla River. The Department of Environmental Quality took years to negotiate improvements. The deadline to build a new treatment plant? 2023. Victoria Ferguson, 21, said of the Molalla: "It's where my parents swam when they were teenagers, and where they took us to swim as kids, and where we still swim now with our friends as young adults. I would like my future children to be able to enjoy that river."

Eight people funded by the business group and Entek's founders were in a position to voice the company's displeasure with the state's testing plan. All sat on the Legislature's most powerful committee, Joint Ways and Means, which controls the budget of the Department of Environmental Quality. They attacked the agency at a hearing that May.

The department's decision — to tell Entek's employees and neighbors they might be breathing harmful pollution — “will go down as one of the most shocking displays of public perception miscalculation that I have seen in my career,” said then-House Minority Leader Mike McLane, an attorney from Powell Butte.



Rep. Mike McLane, R-Powell Butte (Photo: Stephanie Yao Long/Staff)

His campaign had accepted a \$50,000 contribution seven months earlier from a political action committee funded by \$320,000 from Entek's founders.

Seven of the lawmakers voted to stall the state's application for a \$649,000 federal grant — free money — to study diesel pollution around Portland's rail and freight hubs. Some

of them also helped kill \$1 million for a clean air initiative proposed by Brown.

Sen. Fred Girod, R-Stayton, a dentist whose district includes Entek, said he was so angry he'd never vote for “a damn dime” for the state's environmental agency until it cleaned up its act.

Sen. Betsy Johnson, a Democrat from rural Scappoose and one of the eight, didn't hide why the money was being blocked.

“The way you guys went after Entek, I simply cannot support a grant application that advances your agency's work on this issue,” she said. “It was Entek this time. Who knows who it's going to be the next time?”

The message seemed to have an effect. The Department of Environmental Quality first delayed deploying air monitors outside Entek for a few months, then for more than a year. Whitman said the agency will put a monitor in Lebanon in 2019.

Meanwhile, before the current legislative session, Courtney, the Senate president, handed Johnson a promotion. She now shares control of the Ways and Means Committee, giving her sweeping authority over the Department of Environmental Quality budget.



The Legislature has overseen a protracted reduction of the agency's workforce. The department shrank by 20 percent between 2001 and 2015, even as the state's population rapidly grew.

The decline in staff has left the agency without the ability to do basic work.



A blue heron on the Willamette River in Eugene. Testing of the river in 2008 and 2009 found high concentrations of carcinogenic chemicals in northern pikeminnow, a resident fish that eats other fish. But the agency didn't find the source. It collected samples again in 2016 but hasn't analyzed the results. (Photo: Terry Richard/staff)

In Eugene, Willamette River testing in 2008 and 2009 found high concentrations of carcinogenic chemicals in northern pikeminnow, a resident fish that eats other fish. But the agency hasn't figured out the source, baffling environmental groups that advocate for a cleaner river. The department collected samples again in 2016. It still hasn't analyzed the results.

"Why on earth would you want a problem like that to persist and make it so this agency literally doesn't have the bandwidth to get out there and investigate?" asked Travis Williams, executive director of Willamette Riverkeeper. "Then we wonder why people aren't turning up to swim."

Greg Pettit, the agency's retired laboratory manager, said he once asked for approval to test samples of water after a fish kill.

"Literally I was told: 'We have more work on our plate than we can handle. Why would we want to go out and look for new problems?'" Pettit said.

Current and former employees said the budget assault established a clear mindset inside the agency: Don't be aggressive. Prioritize education, not enforcement.

Marianne Fitzgerald, who worked at the agency from 1977 to 2008, said the prime engineer of that approach was former director Stephanie Hallock. Fitzgerald said Hallock made clear the agency would only work on projects the Legislature specifically funded.

"That attitude fostered a culture of protecting budget resources over protecting the environment," Fitzgerald said.

Hallock disputed Fitzgerald's characterization of how she ran the agency as its director from 2000 to 2008. She pointed to a different issue, the department's reliance on money from permit fees paid by polluters, as a problem that "cries out fox in the henhouse."

"It puts the employees in the constant tension of having to be responsive to people who are paying for their services," Hallock said.



Polluted water from Douglas County's Reedsport landfill, where medical waste, lead batteries and arsenic-treated wood were left to decompose, seeped into Scholfield Creek (lower right). The Department of Environmental Quality allowed the landfill to coast on an expired permit for more than a decade, during which it exceeded its pollution limit. The county started pumping the waste to a sewage treatment plant in 2017. (Photo: Alex Derr, 2014)

Compared to its counterparts in other West Coast states, the agency has set less ambitious goals and enforced environmental laws less aggressively.

Oregon's health target for reducing diesel pollution is one-thirtieth as stringent as in Washington or California. And Oregon is not even close to meeting its goal. Diesel pollution contributes to what the U.S. Environmental Protection Agency estimates are as many as 460 premature deaths a year in Oregon.

Oregon is also less likely to inspect air polluters than regulators in California or Washington, federal data show. In 2016, the department fined major air polluters \$27,600 to Washington's \$700,000. It brought 12 enforcement cases to Washington's 129.

Dave Einolf, a Portland consultant who advises businesses about environmental compliance, said the state's fines — even for repeatedly ignoring the law — are so paltry that it's cheaper for companies to pay them than it is to comply in the first place. It's just a cost of doing business in Oregon.

The Department of Environmental Quality is so lacking in expertise, Einolf said, that "they do not have a proper basis for enforcement, let alone the technical ability to adequately enforce."



Lawmakers can still influence policymaking inside the Department of Environmental Quality with just a few words.

On Valentine's Day last year, a pesticide lobbyist dashed off a vague email on her iPhone to Johnson, the Democratic senator from Scappoose. Katie Fast, executive director of a pesticide trade group called Oregonians for Food and Shelter, wanted a meeting "regarding a DEQ issue."

At the time, the department was considering a new permit that would have required more reporting about pesticides sprayed in or near waterways across Oregon. The agency said it would improve water quality statewide.

Nine days later, Johnson drafted a letter to Democratic leaders on behalf of Oregon's Coastal Caucus, a bipartisan group of coastal lawmakers.



Sen. Betsy Johnson, D-Scappoose

Johnson's letter included a 57-word change to the Department of Environmental Quality's budget, specifying that any money for the new effort had to come from an existing program — whose funding the Legislature had killed years before.

Records show that the wording of the amendment came, verbatim, from three major contributors to Coastal Caucus members in the last decade: the Oregon Farm Bureau (a combined \$13,000 in donations); the Oregon Forest & Industries Council (\$44,000) and Oregonians for Food and Shelter (\$17,000).

“We have never made a political contribution contingent on any particular action, issue or outcome. Ever,” representatives for Oregonians for Food and Shelter and the Farm Bureau said in a joint statement.

Lawmakers active on the pesticide issue in 2018 represent rural districts and “care about and engage in our state’s natural resource policies. As they should,” the groups said.

The amendment wasn’t adopted. But it didn’t matter.

Inside the department, work on the new reporting requirements ground to a halt.

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**Next:** Campaign perks and a watershed in peril

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The watershed that provides drinking water to Rockaway Beach was almost entirely logged in the past 15 years. Residents said they struggled to be heard by a local lawmaker who took thousands from timber companies. (Images: Google Earth Engine)

*“There is no longer anything sentimental about trying to save a tree or protect an old swimming hole.”*

— OREGON GOV. TOM MCCALL, EARTH DAY, 1970

## Part Four of Four

March 15, 2019

Story by **ROB DAVIS**

Photography by **BETH NAKAMURA**

The Oregonian/OregonLive

**After announcing she would retire** from Oregon’s Legislature early last year, Rep. Deborah Boone freely spent her remaining campaign money — on herself.

The Cannon Beach Democrat wasn’t on the ballot. She had no need for yard signs. But she had \$13,000. Some legislators transfer all their leftover money to

other candidates or causes. Boone spent her account dry.

She bought tangible goods: A \$2,799 Apple computer, \$2,000 in Volvo repairs and a \$700 set of tires.

She double dipped, using campaign cash to pay bills that taxpayers also reimbursed. There was the \$170 dinner during the legislative session, the multi-day \$595 hotel stay in Salem, the gasoline and cell phone expenses after the session ended. Charging her campaign let her pocket some of the \$10,000 in expense allowances the Legislature provided during her last year in office.

“You know, it’s legal, it’s perfectly legal to do,” Boone told The Oregonian/OregonLive. “I’m not saying I should’ve done it or whatever.”

The failure to limit campaign donations has turned Oregon into one of the biggest money states in American politics, an investigation by The Oregonian/OregonLive found. Corporate interests donate more money per resident in Oregon than in any other state. All that giving worked. Oregon now trails its West Coast neighbors on a long list of environmental protections.

To understand how the vast sums of corporate money can influence lawmakers, it helps to see how they

## Campaign spending

Since 2008, members of the Legislature have spent an estimated \$2.2 million in campaign funds on items prohibited in at least one other state.

Category	Amount
Family member on payroll	\$469,000
Family member’s mileage	\$7,000
Fines for election violations	\$79,000
Membership dues for civic groups	\$71,000
Car maintenance	\$23,000
Dry cleaning	\$1,000
Out-of-state travel	\$611,000
Legislative office costs	\$392,000
Gifts and gatherings during session	\$88,000
Lodging during session	\$164,000
Meals during session	\$22,000
Mileage during session	\$206,000
Fuel and parking during session	\$23,000
Airfare in-state during session	\$4,000

Chart: Analysis of Oregon State Elections Division data

can spend the donations. The money buys more than consultants and mailers.

Oregon allows lawmakers to spend campaign money on perks they'd otherwise have to pay for personally or justify on legislative expense reports. And, by permitting double dips, the state has created a conduit between the nation's largest companies and legislators' bank accounts.

The result: Lawmakers owe donors for far more than their legislative seats.

The newsroom combed through 114,000 transactions and \$83 million in campaign spending by state lawmakers over the last decade. The review found hundreds of cases of double dips that benefited lawmakers' pocketbooks and other questionable spending that enhanced their lifestyles.

The analysis also uncovered \$2.2 million in spending that would have been illegal in at least one other state, including salaries to family members, capitol office furnishings, international luxury travel and fines for campaign finance violations.

"This is embarrassing for the whole Legislature," said Robert Stern, a good government advocate and attorney who helped write California's campaign finance controls. "It undermines the whole campaign finance system when you're taking campaign money and using it for personal purposes. It appears almost like legalized bribery."

Lawmakers justified the expenses as essential to winning voter support, legislating or making their jobs pay a sustainable wage. Lawmakers are paid \$24,000 a year. They collect another \$22,000 in per diems during a long legislative session.



Rep. Paul Evans, D-Monmouth, used \$5,000 in campaign money to pay for 105 visits to pubs and sports bars in his district. The Arena Sports Bar in Independence was a frequent destination. Some of the payments happened during legislative sessions, when taxpayers paid his living expenses. (Photos: Teresa Mahoney/staff, left; Denis C. Theriault/staff, right)

"I understand how someone unfamiliar with the schedule of a citizen legislator might be confused by the scale and scope of the meetings I have held over the last five years," said Rep. Paul Evans, D-Monmouth, who used \$5,000 in campaign money to pay for 105 visits to pubs and sports bars in his district.

The dates of the payments included times when taxpayers were already reimbursing his meal costs.

In an email, Evans said of his sports bar trips that he tries "to optimize available times during the week and/or weekends when people can meet" and that meetings over a meal "promote a constructive work environment."

He declined to say whether he purchased alcohol.



Campaign cash saturates life in the state Capitol.

You'll see it everywhere when you walk in, past the inscription beseeching the state's citizenry to eschew vice and be righteous purveyors of justice.

It's the bouquets on the floor of the House of Representatives and flowers on Senate desks. It's the candy, coffee and water in Rep. Brian Clem's office. It's the ink and office supplies in Rep. Greg Smith's office. It's the souvenirs Rep. Sherrie Sprenger gives to children who visit her office. It's flags and framed bills and commemorative pins and mugs and socks and end-of-session parties and all the hundreds of gifts that lawmakers give one another.

Search the data: See how much current legislators have raised and from what source. [🔍](#)

Campaign money also bankrolls items that lawmakers can take home.

Clem, D-Salem, bought a \$399 Apple Watch in September, his latest campaign-funded accessory from the California company. He's also purchased Apple's wireless headphones, an iPad, an iPhone and a second Apple Watch. (One was for an aide, he explained.)

"That's all stuff I use here in the Capitol," Clem said. His watch helps him keep track of meetings in Salem, he said.

Clem said he needed wireless headphones because "when I'm driving and talking about legislative business, I can't do it illegally." He declined to explain why the wired headphones that come with every iPhone were insufficient for the task.



Rep. Caddy McKeown, D-Coos Bay, spent \$690.24 in campaign funds in November 2013 for a stay at the Fairmont Banff Springs hotel during a conference. Unlike some states, Oregon allows campaign money to pay for travel related to being a legislator. (Photo: Jon Sullivan, left; Stephanie Yao Long/staff, right)

Eleven days before she resigned to lead the Oregon Home Builders Association, Rep. Jodi Hack, R-Salem, used \$99 in campaign cash to pay her Amazon Prime membership. Hack said she was representing her constituents and doing outreach until her last day in office. Amazon was where she bought thank-you notes before she left, she said.

In 2016, Gail Whitsett, a former Republican representative from Klamath Falls, spent \$817.94 at a Salem Best Buy on a computer and printer for what she called "official use." She left office three weeks later.

In an email, Whitsett said she keeps the computer in a room at her home that she describes as her campaign committee office.

It has been two years since she quit the Legislature.



Oregon's permissive campaign finance laws and their weak enforcement give lawmakers wide latitude in how they spend donors' money.

Although Oregon says candidates can't spend the money for personal use, legislators get a huge loophole. Campaign money can pay expenses connected with a lawmaker's official duties.

Lawmakers can pick their excuse. Perhaps they needed a lavish dinner, posh resort stay, car wash or even dry cleaning because they hold office. Or because they'll run for office again. Either way, they can pay the bills with campaign money.

Other states make it harder.

Pennsylvania, Kentucky, Maryland and Connecticut prohibit campaigns from covering the costs of holding office: no conference travel, no mileage to and from the state capital, no furniture for Capitol offices.

"At least in Kentucky, the Legislature has decided that they want their official duties paid for officially, not through their campaigns," said Emily Dennis, general counsel for the Kentucky Registry of Election Finance.

Other states prohibit a variety of other expenses that Oregon allows. In Louisiana, it's illegal to pay a family member's salary with campaign money. In New Jersey, a campaign account can't pay a legislative aide's salary. New Mexico explicitly says campaign money can't be used for living expenses during sessions.

Oregon lawmakers say voters can keep them honest by monitoring expenditure reports posted online.

Oregon's system leaves legislators to decide "what they're willing to have printed on the front page of the paper about them," said John Huffman, a Republican who represented The Dalles for a decade. "That's the judgment call they make."

But the money is not all out in the open. Legislative candidates paid more than \$3 million in staffing costs without naming the person who did the work. Only the payroll vendor was listed.

Lawmakers also listed \$1.3 million in miscellaneous expenses of \$100 or less, the legal threshold for reporting how they spent the money.

When Oregonians call attention to questionable spending, regulators don't always investigate.

Oregon law says any election complaint must be signed by a registered voter. Records show since 2014, the Oregon State Elections Division has tossed two complaints because they were filed anonymously.

When regulators do open a case, they don't always follow through. The elections division, overseen by the Secretary of State, does not use its authority to subpoena records. Instead, compliance specialists write letters asking candidates for information. More than once, they dropped an investigation because no one wrote back.

In California or Washington, a single newspaper story revealing shady spending can prompt regulators to start digging. Eric Jorgensen, deputy director of Oregon's elections division, said his office takes a different approach.

"Do we have to be reading every story trying to find things?" Jorgensen said.

He said the late Secretary of State Dennis Richardson and other election officials told the staff "we should be complaint-driven, so we're not out there as a gotcha organization."

A particularly blatant form of spending for personal gain, the double dip, gets the elections division's blessing. A 2005 legislative effort to bar the practice failed.

The Legislature pays each lawmaker \$149 a day in per diems for food and lodging when they're in session. It happens automatically, even if they live in Salem. Legislators living outside the capital can also turn some or all of the money into extra income by charging hotels and meals to their campaigns.

In the last decade, legislators' campaigns paid \$186,000 for lodging and meals while the Legislature met.



Twenty-three lawmakers used at least \$500 in campaign money to pay rooms in Salem, a double reimbursement for living costs paid for by taxpayers. (Photos: Oregon Legislature)

Senate Majority Leader Ginny Burdick, D-Portland, Sen. Arnie Roblan, D-Coos Bay, former Rep. Bill Garrard, R-Klamath Falls, and former Rep. Sal Esquivel, R-Medford, all spent more than \$10,000 in campaign cash on lodging during sessions in the last 10 years.

Another 19 current and former lawmakers spent at least \$500 on lodging while the Legislature met: House Speaker Tina Kotek, former House Majority Leader Val Hoyle, current House Majority Leader Jennifer Williamson, Sens. Bill Hansell, Chuck Riley, Chuck Thomsen, Dallas Heard, Dennis Linthicum, Jeff Kruse, Shemia Fagan, Tim Knopp and Reps. David Brock Smith, Duane Stark, Greg Smith, Jessica Vega Pederson, Judith Stiegler, Matt Wand and Mike Schaufler.

And Deborah Boone.

"It's why people can do away with their full-time jobs and just become legislators," said Jim Myron, a former policy adviser to Gov. Ted Kulongoski and now a lobbyist for Willamette Riverkeeper. "They're living very fine on their campaign contributions and puny salary."



Former Rep. Deborah Boone, D-Cannon Beach, used more than \$1,000 in campaign funds to pay for dry cleaning, mainly at The Cleanery in Salem. (Photos: Teresa Mahoney/staff, left; The Daily Astorian, right)

The Oregonian/OregonLive spent 18 months examining how and why Oregon has fallen behind on so many important environmental fronts.

The answer? Money.

Oregon is one of just five states with no limits on campaign donations. No one has given more to state lawmakers in Oregon than Corporate America. Companies and industry groups contributed \$43 million to winning candidates in elections from 2008 to 2016, nearly half the money legislators raised.

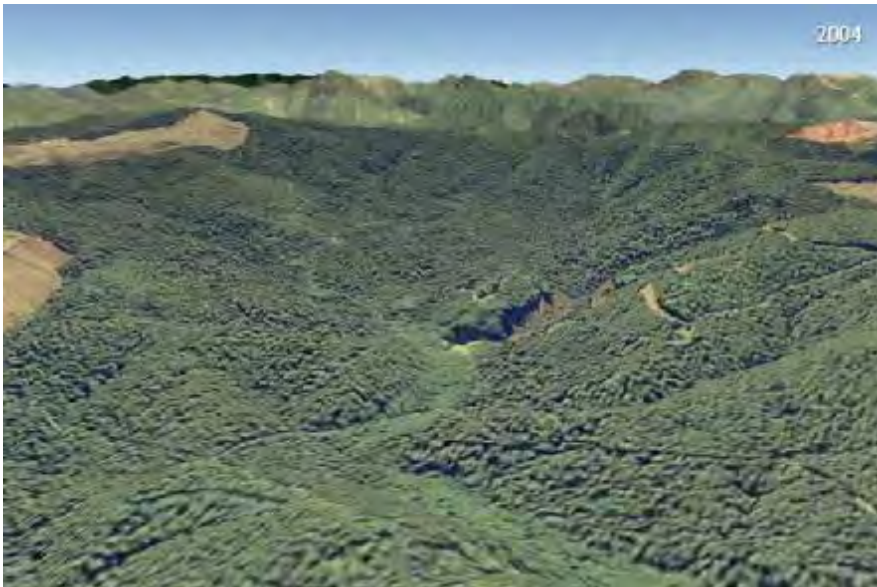
Corporate donations promoted an easy regulatory climate where industry gets what it wants, while people threatened by pollution struggle to be heard.

Few lawmakers spent campaign cash like Boone. She used it to pay more than \$1,000 in dry cleaning bills. She spent it on car washes, wiper blades, snow tires, picture frames and a holiday wreath.

But her fundraising was typical: 60 percent from corporations, just 4 percent from individuals and small, unnamed donors.

When residents in Boone's district turned to her for help in 2013, they were confronted with a reality that is all too common in Oregon.

They hadn't given a dime.



The first image is a Google Earth rendering of the Jetty Creek watershed in 2004, the second a 2013 photo showing the extent of logging in the area. The stream, which supplies drinking water to Rockaway Beach, turned muddy after the area was logged. (Photos: Google Earth, Don Best Photography)

Nancy Webster first noticed something was wrong when the brown patches began appearing on the forested hills above the coastal town of Rockaway Beach, one clearcut after the other. Then came the helicopters, spraying weed killers. Webster could smell the chemicals at her home, a half-mile away.

The most striking change was in Jetty Creek, which collects rainfall from the hills that had been logged. The creek provides drinking water to the town of 1,350 people. It was so full of mud, Webster said, it looked like chocolate milk.

Timber companies own the entire 1,300-acre watershed and cut almost all of it over the past 15 years.

City notices began showing up in the mail. They warned that chlorine, which the city uses as a disinfectant, had reacted with the muddy water to create high levels of a cancer-causing byproduct.

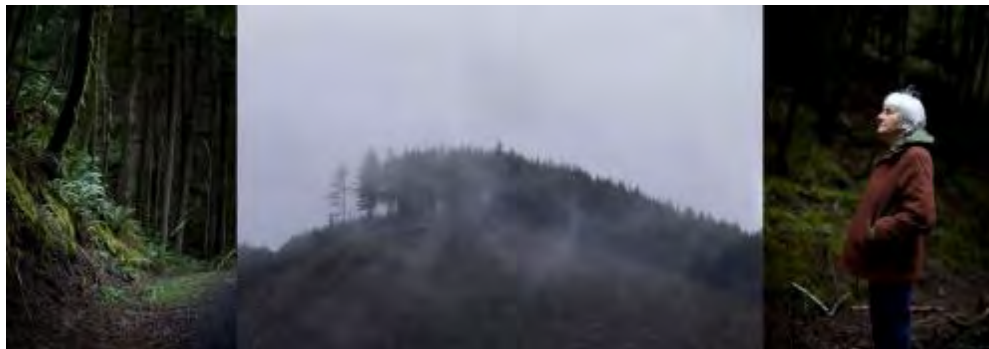
State tests of creek water also found traces of a potent herbicide, sulfometuron methyl, that had been sprayed to control weeds so replanted trees could grow.

One company that logged the Jetty Creek watershed said workers installed sediment traps to catch runoff and avoided spraying near the town's drinking water plant. Another said it left wider buffers along streams than the law requires.

But Webster and other residents said it wasn't enough. They wanted safe drinking water, and they hoped Boone would help.

Webster recalled driving to Salem for a citizen lobbying day and running into Boone on the Capitol steps. She told the veteran lawmaker what was happening.

"It felt like she was not interested at all," Webster said. "All she wanted to do was talk about the winery she visits in her rounds of the district."



Nancy Webster on a tour of the Jetty Creek watershed in 2018. Logging roads and barren hillsides can create silty runoff in streams.

Rockaway Beach was not an isolated case. Mud from hillside clearcuts and logging roads threatens drinking water up and down the Oregon coast. Compared to Washington, Oregon lets loggers cut down trees and spray chemicals far closer to streams.

In 2015, two lawmakers introduced a bill to tighten spray practices in response to concerns Webster and dozens of coastal residents had raised. Both legislators were from the Portland area.

Boone said she listened to Rockaway Beach residents and sent an aide to meet with them. But she didn't sign on to the spraying bill, which died.

"The best thing I could know to do is call people in the company and discuss it with them and ask them to meet with people and get to some consensus," Boone said. "I can't make them act."

In her career, timber interests gave Boone \$26,000. The donors included a company that logged Jetty Creek. The timber industry gave more in Oregon in a decade than any other state in the country.

Boone said the companies that logged the watershed were constituents just as much as the townspeople who came to her for help.

"It's a tough thing to have to decide between," Boone said. "So I tried not to decide between."

Webster didn't know Boone had taken most of her money from corporations. She didn't know how Boone spent the money. Told about the car washes, the dry cleaning, the snow tires, the thousands of dollars in double dips, Webster sighed.

"Somehow," she said, "I didn't think it was that bad."

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Length of Opening Brief on Merits

I certify that (1) the foregoing Amicus Brief complies with the word limitations of ORAP 5.05(1)(b)(i)(A) and (2) the word count of this Amicus Brief for elements of text described in ORAP 5.05(1)(a) is 1,441 words as determined by the word-counting function of Wordperfect 5.1.

Type Size

I certify that the size of the type in this Amicus Brief is not smaller than 14 point for both the text and footnotes, as required by ORAP 5.05(2)(d)(ii).

Dated: July 18, 2019

*/s/ Adam Kiel*

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Adam Kiel

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that I FILED this date by Efile the original of the foregoing AMICUS BRIEF OF LEAGUE OF WOMEN VOTERS OF OREGON AND LEAGUE OF WOMEN VOTERS OF PORTLAND by Efile this date on the State Court Administrator and served it by Efile this date upon:

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