March 14, 2017

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Oregon Progressive Party Position on Bill at 2017 Session of Oregon Legislature:

HB 2927: Support

Dear Committee:

The Oregon Progressive Party (OPP) supports this bill, which would enact the Interstate Compact for Agreement Among the States to Elect the President by National Popular Vote (NPV).

The President of the United States should be chosen in an election in which every vote is equal. That is obviously not the case now. The ideal solution would be to amend the U.S. Constitution to abolish the Electoral College and choose the President by means of national popular vote. But the structure of the U.S. Senate (which parallels the Electoral College) makes that probably impossible. The NPV Compact appears to be the best available alternative.

A potential problem with the NPV needs to be addressed. In the past, some states have kept major party candidates off of their general election ballots, for whatever reason or excuse. Alabama excluded Harry Truman from its ballot in 1948 and Lyndon Johnson from its ballot in 1968. If any state were to do so, after implementation of the NPV Compact, the outcome of the national popular vote could be changed.

The NPV Compact (as set forth in HB 2927), Article III, is written to allow each state to determine the number of popular votes for each candidate within that state and within each of the other states as well:

> Prior to the time set by law for the meeting and voting by the presidential electors, **the chief election official of each member state shall determine the number of votes for each presidential slate in each State** of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a "national popular vote total" for each presidential slate.

If a state kept a major candidate off the ballot, there would apparently be no basis for any state election official to put more than zero in that candidate's column for that state. If Texas had kept Hillary Clinton off the 2016 ballot, she would not have received most or all of her 3.88 million votes there (depending on whether write-in votes for her would be tallied). That alone would have eliminated her national popular vote margin of 2.86 million votes.

I believe that the NPV Compact needs to be amended to add this:

> If a State fails to place all nationally-recognized major candidates for President on the general election ballot or fails to tally and report the votes cast for any such candidate, the national popular vote total, for the purposes of this Compact, shall exclude all votes from that State.

So, if Texas were to exclude Hillary Clinton from the ballot (or not count her votes), then also none of the votes in Texas for Donald Trump would be counted in determining the national popular vote winner. This would deter any state from excluding a major candidate from its ballot.

Excluding major candidates from the general election ballot is not impossible, as Alabama has demonstrated. Further, the Oregon Legislature is considering SB 888, which would exclude from the Oregon primary ballot and general election ballot any candidate for President or Vice-President who has not (1) publicly disclosed his or her income tax return for the most recent year or (2) filled out the statement of economic interest required of Oregon candidates under ORS 244.060. Under the NPV Compact, such an Oregon exclusion would reduce the national popular vote total for the affected major candidate by about 1%. And, if Oregon can impose that exclusion, why can't Texas exclude any candidate who is "under FBI investigation" or who fails to support the Second Amendment? In national power politics, the potential for skulduggery cannot be disregarded.

One silver lining is that state laws similar to SB 888 are likely to be found unconstitutional. The United States Supreme Court has struck down state laws that attempt to create additional mandatory qualifications for candidates for federal office, as in *Cook v. Gralike,* 531 U.S. 510, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001). If Alabama's exclusion of the Democratic Party candidates in 1948 and 1968 were the result of added mandatory qualifications, they would very likely not survive challenge in the courts.

Oregon Progressive Party

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