TESTIMONY ON SB 224A

Daniel Meek
Co-Chair, Independent Party of Oregon

House Committee on Rules

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The Independent Party of Oregon (IPO) opposes Section 30 of SB 224A, which was added by the Senate Rules Committee at the last minute, without a public hearing and without consulting anyone from IPO. Section 30 would have no effect on any entity other than IPO.

Section 30 would change for this 2020 cycle the voter registration threshold for qualification of a political party as a "major party." That threshold is currently 5% of all registered voters as of August 2019. Section 30 would change that to 5% of all registered voters as of July 1, 2015, before implementation of the new automatic voter registration system. This is a large difference. Under current law, IPO has 4.5% of all registered voters now and would not qualify as a major party for the 2020 cycle. That is fine with us.

But under the much smaller denominator specified by Section 30, IPO would have 5.8% of all registered voters and would be compelled to operate as major party for the 2020 cycle. We do not wish to do that, because the Legislature has not addressed the critical problems in Oregon statutes that impair the speech, association, and voting rights of IPO and its members, as long as IPO is a major party.

Other, deleted parts of the original SB 224, introduced on behalf of Secretary of State Dennis Richardson, would have solved these critical problems. We were fine with SB 224, as long as it contained those solutions. But they were removed by the Senate Rules Committee, again with no public hearing and no consultation with IPO.

Existing statutes make it impossible for IPO to function as an effective major party. As noted in one of many of our pieces distributed to the Legislature over the past 4 years:

Current statutes impose requirements on major party primaries that will be harmful to IPO in its formative years as a major party. These laws:

1. **Restrict candidates in a major party primary to persons who have been members of the party for 180 days prior to the filing deadline (250 days before the primary election) (ORS 249.046).**

2. **Allow anyone, including non-members of IPO, to win the major party primary by write-in, while providing a huge advantage to the Democratic and Republican candidates for the same seat: a laudatory statement in every Voters' Pamphlet that no other write-in candidate is allowed. (ORS 254.365).**

While these laws may be reasonable for large major parties with long-term members, they are crippling to a new major party.

THE PROBLEMS

1. THE 250-DAY PARTY MEMBERSHIP REQUIREMENT DECIMATES THE POPULATION OF POTENTIAL IPO CANDIDATES IN THE PRIMARY ELECTION.

This severely impair the functioning of IPO by disqualifying many persons who wish to run in the IPO primary election. In 2016, of the 75 seats in the Legislature up for election, only 12 IPO members were allowed to file as candidates for those seats in the primary election. We received numerous inquiries from potential primary candidates after September 10, 2015, but Oregon statutes banned anyone from filing for the 2016 IPO primary election who had not been an IPO member continuously since September 10, 2015. So we had to tell those potential candidates to forget about running. The same thing occurred in the 2018 cycle.

IPO members have joined a new party. They are not likely to be career politicians or to have planned to run for office 14 months in advance of the general election, which is what current law requires. The 250-day requirement impairs the constitutional rights of IPO members and IPO itself to select candidates in the primary election.

When a minor party, IPO rules made all IPO members were automatically eligible to run in the IPO primary, while a caucus (elected by the party

membership) vetted each non-IPO member seeking the run in the IPO primary and allowed those whose policies and practices were consistent with the IPO platform. That was crucial to preventing insider candidates who may not support the party or its agenda from using the cross-nomination process as a means of restricting competition on the November ballot.

2. THE "ANYONE CAN WIN BY WRITE-IN" LAW ALLOWS THE OTHER MAJOR PARTY CANDIDATES TO UNFAIRLY CAPTURE THE IPO NOMINATIONS.

ORS 254.365 allows anyone, including non-members of IPO, to win the major party primary by write-in. For example, every single IPO nomination for the Oregon Senate has been won by the Republican or Democratic candidate for that same seat.

The Democratic and Republican candidates were able to be so successful in the IPO primary, because only they were allowed to have their own laudatory statements and attractive photos in the Voters' Pamphlet for the primary election. IPO members could see that the ballot lines for the legislative races were blank on the IPO primary ballot, leaving only space for a write-in:

> "Whom should I write in? Well, I have here this Voters' Pamphlet that describes the wonderful attributes of the Democratic and Republican candidates for this seat, so I will write in one of them."

No other write-in candidate was allowed to have a single word in the Voters' Pamphlet, thus giving the Democratic and Republican candidates an insurmountable advantage and violating the constitutional rights of IPO members and IPO itself.

The current write-in law is often used as an anti-competitive tactic by some candidates of the two large major parties who have no interest in supporting IPO or its platform; they just want to limit competition on the November ballot and burnish their appearance on the ballot with the word "Independent" next to their names. This system denies IPO the right to establish reasonable standards by which its candidates are qualified and denies many Oregon voters an honest choice on the November ballot.

Even if the Democratic and Republican candidates did not seek the IPO nominations, the blanks caused by the 250-day membership requirement

will be filled by persons receiving as few as 2 write-in votes, which further destroys the ability of IPO to maintain party cohesion.

THE SOLUTIONS

The best solution would have been for the Legislature to adopt SB 224 as introduced. That is not happening.

The second best solution is to remove Section 30 from SB 244A.

The worst solution is to adopt SB 224A with Section 30 intact. If that occurs, IPO will pursue litigation to assert the constitutional rights of IPO members and IPO itself to representation on the primary ballot uncontaminated by (1) burdensome membership duration requirements and (2) unfair interference from candidates of the other parties. The Office of Secretary of State has agreed with us that the current Oregon statutes violate the constitutional rights of IPO and its members. The most recent relevant case is ***State v. Alaska Democratic Party***, 426 P3d 901 (Alaska 2018), which stated:

> The Alaska Democratic Party amended its bylaws to allow registered independent voters to run as candidates in its primary elections without having to become Democratic Party members, seeking to expand its field of candidates and thereby nominate general election candidates more acceptable to Alaska voters. But the Division of Elections refused to allow independent voter candidates on the Democratic Party primary election ballot, taking the position that Alaska election law--specifically the "party affiliation rule"--prevented anyone not registered as a Democrat from being a candidate in the Democratic Party's primary elections. The Democratic Party sued for declaratory and injunctive relief preventing enforcement of the party affiliation rule, and the superior court ruled in its favor. The State appealed. Because the Alaska Constitution's free association guarantee protects a political party's choice to open its primary elections to independent voter candidates, and because in this specific context the State has no countervailing need to enforce the party affiliation rule, we affirm the superior court's decision.

State v. Alaska Democratic Party, 426 P3d at 904.

> We begin our analysis with the uncontroversial premise that political parties have a constitutional right to choose their general election nominees. This right is reflected throughout United States Supreme Court decisions interpreting the First Amendment, which we consider in our interpretation of the Alaska Constitution; the Court has struck down laws requiring binding open presidential preference primaries, laws requiring closed primaries, laws preventing a party from endorsing primary candidates, and laws requiring a blanket primary. Even in cases that sustained challenged laws, the existence of this right has not been questioned.

State v. Alaska Democratic Party, 426 P3d at 907.

> The United States Supreme Court suggested that such a right existed in ***Tashjian v. Republican Party of Connecticut*** (1986), when it observed:
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> > Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals.

State v. Alaska Democratic Party, 426 P3d at 908.