ADDITIONAL TESTIMONY ON HB 3166
Before the House Rules Committee
March 19, 2025

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This additional testimony responds to the written testimony filed by Preston Mann for Oregon Business & Industry.

Mr. Mann notes that HB 3166 limits party labels next to the names of candidates on the primary and general election ballots to candidates who have been officially endorsed by the party. This is different from the California and Washington systems, which allow "party label hijacking." There, any candidate can place the name of any party next to her name on both the primary and general election ballots, even if the person has utterly no connection to the party or its tenets. This erodes the meaning of party labels on the ballot. Even a neo-Nazi can claim to be a Democrat or Republican or Green, etc. It also allows opponents of a candidate to flood the zone with candidates bearing the same party label, thus splitting the votes of party adherents in the primary election.

Mr. Mann writes:

> • Party officers and leaders - who often hold more extreme views than rank-and-file party members - would wield significant influence over endorsement decisions.
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> • Political experts widely agree that the strongest predictor of voter behavior is party affiliation. Voters tend to support candidates from their registered party, meaning endorsements could carry disproportionate weight.

Under HB 3166, each party would determine its own process for making endorsements, but HB 3166 Section 23(3) requires:

> (3) In order to officially endorse candidates for voter choice office, a political party must adopt rules governing the endorsement. The rules shall be led with the Secretary of State. The rules must ensure the fair and open participation of all interested members of the party in making endorsement decisions and must be adopted not later than 180 days before any election to which the rules would apply.

Thus, party officers and leaders could not dictate endorsement decisions.

Mr. Mann continues:

> • It is extremely likely that voters would misinterpret a ballot that listed a candidate (or candidates) as "Endorsed by the Democratic Party of Oregon" to mean that the candidate(s) is the only Democrat in the race-even if multiple registered Democrats are running. Additionally, the current proposal does not allow a registered Democrat to identify as such on the ballot unless they receive the party's endorsement.

HB 3166 allows any political party to endorse as many candidates for any offices as it wishes. If a party endorses only one candidate in the race, that means that the party prefers that candidate over the others. The alternative is allowing any candidate to display the party label, even if not endorsed by the party, which causes vote splitting and the skulduggery identified in my original testimony.

Mr. Mann continues:

> • Further, it injects an element of undemocratic political strategy into our elections. For example, a party could decide that endorsing one candidate – even in a situation where multiple candidates would otherwise be worthy of their endorsement – is the best strategy for ensuring a member of their party qualifies for the November ballot.

Elections involve choices. The party would need to choose which candidate to support in order to avoid vote splitting. This difficulty would be solved with STAR voting or ranked choice voting in the general election.

Mr. Mann then notes the "Bob Ferguson" incident in Washington in 2024 (which I described in my oral testimony at the hearing):

> Absent additional protections, the top-two primary system proposed under the -2 amendment creates a risk of abuse. There are examples where similar systems have been directly exploited. In last year's primary for governor of Washington state, three registered Democrats filed for office under the name Bob Ferguson. Only one Bob Ferguson - who at the time was the sitting attorney general - appeared to be a serious candidate for the office, with the other two Bobs entering the race at the urging of a conservative activist as part of an apparent effort to dilute support for the "real" Bob Ferguson. There are many other examples - specifically in Washington State and California - where political gamesmanship has undermined the intent of the "top-two" primary system.

That is why HB 3166 does not allow any candidate to place a party label next to the candidate's name on the ballot, unless the party has actually endorsed the candidate. The "Bob Ferguson" problem stemmed from the fact that all 3 "Bob Fergusons" listed "Democratic Party" next to their names on the primary ballot. HB 3166 would not allow that. Presumably the Democratic Party of Washington would have endorsed the real Bob Ferguson (then serving as the state's Attorney General) and not the two fake ones. Thus, under HB 3166, only the real Bob Ferguson would have "Democratic Party" next to his name on the primary ballot, alleviating voter confusion.

We certainly agree with Mr. Mann that the Washington and California systems allow the undermining of democracy by political gamesmanship. That is why HB 3166 does not have the features in those systems that allow such abuse.

Mr. Mann then suggests merely opening the existing party primaries to NAVs. First, federal courts have consistently held that states violate the First Amendment, if they try to force open party primaries to NAVs. The U.S. District Court of Idaho struck down Idaho's open primary law in 2011. _Idaho Republican Party v. Ysursa_, 765 F Supp 2d 1266 (D Idaho 2011). The U.S. District Court of Utah struck down Utah's open primary law in 2015. _Utah Republican Party v. Herbert_, 144 F Supp 3d 1263 (D Utah 2015). The United States Supreme Court upheld the Washington blanket primary system, because it abolished party primaries entirely and did not purport to dictate the terms of primary elections to the parties.

Second, even if such a provision were upheld (very unlikely), it does not solve the problem. If means that each NAV would be locked into one party's primary. HB 3166, in contrast, allows each NAV to choose candidates endorsed by any party or no party. The NAV can choose the Democratic candidate for Governor and the Republican candidate for Attorney General, for example. Merely opening the party primaries would not accomplish that.