The Oregon Progressive Party supports SB 888, which would require major party candidates for President and Vice-President to provide their latest federal tax returns to the Secretary of State, or to complete a statement of economic interest, to appear on the Oregon primary or general election ballots.

This would encourage candidates to provide information about their financial dealings that voters should be able to know and evaluate.

Similar bills requiring disclosure of tax returns have been filed in New York, California, Ohio, Rhode Island, New Jersey, Virginia, and Massachusetts.

Would SB 888 Have Any Effect?

Some might say that Oregon adopting this requirement would have no effect. If this law had been in place last year, Donald Trump would not have released his tax returns anyway, because he knew that it was close to impossible for him to win Oregon's electoral votes. But that may not be the case in future Presidential elections in Oregon.

> Some might say that SB 888 would be declared unconstitutional by the courts. We disagree with that prediction and explain why later in this testimony.

SB 888 alone could change the outcome of the general election for President, if the National Popular Vote (NPV) Compact is approved by sufficient states to control 271 electoral votes. HB 2797 would adopt the NPV Compact. It was heard at the House Rules Committee on March 14, 2017. Under the NPV Compact, SB 888's Oregon general election ballot exclusion would reduce the <u>national</u> popular vote total for the affected major candidate by about 1%, which could make the difference between winning or losing the Presidency.

Even without the NPV Compact, adoption of bills like SB 888 would likely have a large effect on the outcome of future Presidential elections. This idea would probably be copied by many other states--particularly states where Democratic presidential candidates usually win but where state legislatures are controlled by Republicans. The first attached map shows a pretty accurate rendition of the recent history of Blue v. Red v. toss-up states in Presidential races. The second attached map shows where Republicans control the state

legislatures. There are at least 10 states where the Presidential electorate is Blue or toss-up but the legislature is Red:

Florida	Iowa	Michigan
Minnesota	New Hampshire	North Carolina
Ohio	Pennsylvania	Virginia
Wisconsin		

And there would appear to be no reason why deep Red states would not also adopt laws similar to SB 888.

The laws in other states would be similar to SB 888 in that they would disqualify major national Presidential candidates from the state ballots for a stated reason, but the stated reason could:

> failure to maintain lifetime membership in the National Rifle Association

> failure to have run a successful business for a specified number of years

> current or past membership in a labor union

> under investigation for misuse of government email

The reason could be tailored by the state legislature to match the characteristics of the most prominent Presidential candidate disfavored by that legislature. The obvious result would be that the Democratic candidate for President would likely be kept off sufficient ballots in every election as to make winning impossible, because Republicans control 32 state legislatures (while Democrats control only 13).

SB 888 and similar laws would effectively nullify the NPV Compact, if it were to go into effect. Keeping Hillary Clinton off the Florida ballot would have cost her about 7% of her national popular vote total; off in Texas would have cost her another 6%; off in Ohio about 4%; off in Michigan about 3.5%; off in North Carolina about 3%; off in Wisconsin about 2%; and so on in states with Red legislatures. Yes, California could reduce Trump's popular vote total by about 7%; New York could reduce it by about 4.5%; and so on. But Red legislatures could reduce the popular vote of the Democratic candidate far more than Blue legislatures could reduce the popular vote of the Republican candidate, since Red legislatures control 32 states v. 13 states for Blue legislatures.

The obvious result would be that the Democratic candidate for President could be kept off sufficient ballots as to make winning impossible.

Would SB 888 and Similar Laws Survive Constitutional Challenge?

The U.S. Supreme Court has struck down state laws that attempt to create additional mandatory qualifications for candidates for Congress, as in ***Cook v. Gralike***, 531 U.S. 510, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001). But that decision was based on the Elections Clause in the U.S. Constitution (Article I, § 4), which applies only to congressional elections.

There are 3 reasons why the U.S. Supreme Court would likely uphold laws like SB 888:

1. Some believe that U.S. Supreme Court decisions reflect the political agendas or leanings of its justices. The Court is now evenly split between "liberals" and "conservatives," but the Court's membership is likely to trend to the right in the near future.

2. One tenet of conservatism is respect for "states rights," and SB 888 surely asserts that states have rights to control their ballots.

3. It has also been important to Republican-appointed justices to ensure that Democrats do not win the Presidency, as in ***Bush v. Gore*** (2000). Upholding laws similar to SB 888 would ensure that outcome.

On the other hand, an "outcome-oriented" observer of the U.S. Supreme Court might expect the Court to strike down SB 888 because of its obvious targeting of an attribute of last year's Republican candidate for President. Article II, § 1, of the U.S. Constitution states the qualifications for President:

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Just as Article II, § 1, sets forth the qualifications for President, Article IV sets forth the qualifications for members of Congress (age, inhabitance in state, and duration of U.S. citizenship). If the U.S. Constitution does not allow states to

add qualifications for persons to seek election to Congress (***Cook v. Gralike***, 2001), perhaps it also does not allow states to add qualifications for persons to seek election to the Presidency.

So one potential benefit of enacting SB 888 would be to get this matter before the U.S. Supreme Court as soon as possible and in the context of a state law that would probably most hamper future Republican candidacies, so that the Court would invalidate it and thus head off the 32 Red legislatures from implementing anti-Democratic candidate qualifications such as those I suggested above.

What Would be the Ultimate Consequence of Adopting SB 888 and Similar Laws?

Adoption of SB 888 and similar laws (unless invalidated by the U.S. Supreme Court) would effectively remove the choice of President from the voters. Instead, each state legislature would devise new disqualifications that would remove from its Presidential ballot the candidate disfavored by a majority of state legislators. The choice of President would devolve from voters (in the imperfect Electoral College system) to state legislatures.

There is nothing in the U.S. Constitution that requires that the President be elected, directly or indirectly, by voters.

For the foreseeable future, the result would be Republican wins in Presidential elections, because Republicans control 32 state legislatures, while the Democrats control 13. But this would perhaps also cause voter uproar and revolt, as they would realize that national elections were inherently undemocratic. This could lead to positive changes, such as the formation of a new nation consisting of California, Oregon, Washington, and Hawaii.