

February 11, 2019

**Oregon Progressive Party  
Position on Bill at 2019  
Session of Oregon Legislature:**



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**SB 368: Oppose**

Dear Committee:

The Oregon Progressive Party opposes this bill, which would empower county clerks and other election officers to disqualify county charter measures from the ballot on the basis of a separate-vote test. We oppose it for many reasons:

1. Separate-vote analysis is a complex legal inquiry that is beyond the capability of most, if not all, county clerks, who are typically not lawyers. Opinions of the Oregon Supreme Court applying the separate-vote test to proposed amendments to the Oregon Constitution typically occupy dozens of pages of complicated analysis. The last 4 such cases averaged over 3 dozen pages.
2. There is no separate-vote requirement for county charter amendments in the Oregon Constitution.
3. Purporting to authorize county clerks or other election officers to disqualify county charter measures on the basis of a separate-vote test would violate several provisions of the Oregon Constitution, including:
  1. Article III, §1, which prohibits interference by one branch of government into the other branches (separation of powers), which assures the governance system has checks and balances.
  2. Article I, § 8, which prohibits interference with freedom of speech, which includes petitioning and making issues the subject of widespread public attention.
  3. Article I, § 26, which prohibits interference with freedom of assembly and the right to petition government for redress.
  4. Article II, § 18(8), which prohibits the Legislature "in any way to limit the initiative and referendum (I&R) powers reserved by the people," thus protecting individual rights to participate in legislative functions secured by Article VI, § 10.
  5. The First Amendment to the U.S. Constitution, which protects freedom of speech and assembly.
  6. The Fourteenth Amendment to the U.S. Constitution, which requires due process of law. (SB 368 would allow county clerks to disqualify measures from the ballot on separate-vote grounds, without providing prior notice to anyone or conducting any sort of hearing or process; this would violate Due Process requirements.)

For documentation of these constitutional violations, the briefs recently filed in the Oregon Court of Appeals, which is reviewing the action of the Lane County Clerk to disqualify two county charter measures on separate-vote grounds, after sufficient signatures were collected and validated, are available here:

<https://spideroak.com/browse/share/Oregon/CELDF/public/LongII/>

This is the first time any county charter measure has ever been disqualified on separate-vote grounds, and I believe that it will be reversed in the courts.

My 29-page analysis of why SB 368 is unconstitutional is attached.

**Oregon Progressive Party**

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