



March 11, 2019

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

### SB 861: Support

Dear Committee:

The Oregon Progressive Party (OPP) supports this bill, which requires that election authorities provide voters with postage-free business reply envelopes to return their completed ballots.

We testified in favor of this idea in 2009, 2016, and 2017. Below is some of my testimony from 2009 and some from 2017. I hope that I will not have to repeat it year after year.

As I stated in 2009:

Legal research shows that Oregon's vote-by-mail system is vulnerable to challenge as not complying with the U.S. Constitution. The United States Supreme Court cases striking down state poll taxes as unconstitutional involved poll taxes equal to \$1.50 per voter, which is not appreciably different from Oregon's effective poll tax of 44 cents or 61 cents, depending on the weight of the ballots in the return envelope. As the Court stated in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966):

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. . . .

We say the same whether the citizen, otherwise qualified to vote, has \$1.50 in his pocket or nothing at all, pays the fee or fails to pay it. The principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system

which excludes those unable to pay a fee to vote or who fail to pay.

Note the stringent standard: A voter cannot be required to pay any tax or fee whatsoever in order to vote. The State cannot discriminate against a voter, even if he has "nothing at all" in his pocket.

And as I stated in 2017:

Note also that the prohibition applies, even if the fee is not paid to the elections authorities. In the *Harper* case, for example, the fee was assessed and collected by the property taxation agencies.

The United States Supreme Court has adhered to the principle that the U.S. Constitution does not allow the opportunity to vote to be conditioned upon the payment of a fee "unrelated to voter qualifications." The Court in 2008 stated:

In *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), the Court held that Virginia could not condition the right to vote in a state election on the payment of a poll tax of \$1.50. We rejected the dissenters' argument that the interest in promoting civic responsibility by weeding out those voters who did not care enough about public affairs to pay a small sum for the privilege of voting provided a rational basis for the tax. See *id.*, at 685, 86 S.Ct. 1079 (opinion of Harlan, J.). Applying a stricter standard, we concluded that a State "violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Id.*, at 666, 86 S.Ct. 1079 (opinion of the Court).

***Crawford v. Marion Cty. Election Bd.***, 553 US 181, 189, 128 S Ct 1610, 1615–16, 170 L Ed 2d 574 (2008).

It is true that an Oregon voter need not pay postage on the return ballot in order to vote. A voter can drop off the ballot in receptacles placed by county officials. But those receptacles can be few and far between. Last year there were 6 ballot drop sites in the 10,226 square miles of Harney County, but 4 of them were in Burns and one in next door Hines. The only other one was in Crane, 26 miles from Burns--in a county that is 86 x 142 miles in size. Curry County had 3 sites, located at 25-mile intervals on the Pacific coast, and none inland. I chose these 2 counties at random.

The Court has struck down fees on voting, even when the voter can avoid the fee by doing something else. In *Harman v. Forssenius*, 380

US 528 (1965), the Court invalidated a Virginia fee, even though a voter could avoid it by filing a "certificate of residence" prior to the election.

The Fiscal Impact Statement for a similar bill, SB 1586 (2016), concluded that the cost would be about \$1.84 million per biennium. It is widely reported that the vote-by-mail system saves Oregon governments \$3 million per biennium. Multnomah County has reported that vote-by-mail saves 73 cents/vote over the previous system. Voting is the most central function of a democracy. It is worth the cost to ensure that no one is prevented from voting for the lack of a stamp (or the lack of transportation or ability to take several hours of driving time to the nearest drop box).

If this bill is not passed, the Oregon Legislature should at an absolute minimum direct the Secretary of State and county election officials to pay the U.S. Postal Service, when it delivers ballots with insufficient postage. Delivering those "insufficient postage ballots" has been the policy of the USPS, but that could change. My understanding is that some counties have been paying the postage deficiencies to USPS, but others have not. Tim Scott of the Multnomah County Elections Office recently told me that the cost of paying postage deficiencies statewide would be utterly minimal--on the order of a few hundred dollars for a statewide election. The Legislature should direct the Secretary of State and counties to pay all postage deficiencies on ballots so that their continued delivery is not put in jeopardy.

## **Oregon Progressive Party**

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