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Oregon Progressive Party Position on Bills at 2019 Session of Oregon Legislature:

SB 944A: Support but suggest more specific definition of "risk limiting audit"

Dear Committee:

Note: We filed this additional testimony on April 10, 2019 (4:23 pm) with the Senate Rules Committee, but it was not accepted for the record because the hearing had ended earlier that day. This illustrates the regrettable rule that public testimony is not accepted, after the minute that the hearing is concluded.

The Oregon Progressive Party previously expressed opposition to this bill, which permits county clerks to decide whether to conduct hand count of ballots, as specified under existing law, or instead doing "risk-limiting audits" following each primary, general or special election. We now support the bill but believe that "risk limiting audit" could be better defined.

SB 944A provides no meaningful definition of "risk-limiting audit." SB 944A states:

- (b) "Risk" means the probability that a risk-limiting audit would fail to detect an incorrect election outcome.
- (c) "Risk limit" means the largest acceptable risk.
- (d) "Risk-limiting audit" means a set of procedures to ensure that the risk does not exceed the risk limit.

Under those definitions, each county clerk could conduct virtually any sort of audit, with or without hand counting of any specified quantity or percentage of ballots. The audit must "Be based on direct visual human examination of elector-marked ballots," but no quantity or percentage of ballots is specified. Nor is the level of acceptable risk specified in SB 944A. Instead, the county clerk apparently gets to choose the level of acceptable risk, within rules to be adopted by the Secretary of

State "in consultation with county clerks" and others.

"Risk-limiting audits" may be a good idea. SB 944A or later legislation should specify a maximum allowable level for risk of incorrect result and not leave that decision up to one or more county clerks or the Secretary of State. The legislation also needs a comprehensible definition of "risk-limiting audit." Only Rhode Island, Colorado, and Virginia currently have laws requiring risk-limiting audits in future elections. (Washington requires testing of such audits in a few races.) Here is the definition adopted by the legislature of Rhode Island:

(3) "Risk-limiting audit" means a manual tally employing a statistical method that ensures a large, predetermined minimum chance of requiring a full manual tally whenever a full manual tally would show an electoral outcome that differs from the outcome reported by the vote tabulating system for the audited contest. A risk-limiting audit shall begin with a hand tally of the votes in one or more audit units and shall continue to hand tally votes in additional audit units until there is strong statistical evidence that the electoral outcome is correct. In the event that counting additional audit units does not provide strong statistical evidence that the electoral outcome is correct, the audit shall continue until there has been a full manual tally to determine the correct electoral outcome of the audited contest.

The definition of "risk-limiting audit" in the Colorado statute is vague and in the Virginia statute is nonexistent (the word "risk-limiting" was inserted into the statute without explanation). We suggest adopting the Rhode Island definition.

Oregon Progressive Party

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