May 18, 2021

Oregon Progressive Party
Independent Party of Oregon

Position on Bills at 2021 Session of Oregon Legislature:

Dear Committee: **SB 865: Oppose**

The Independent Party of Oregon and Oregon Progressive Party oppose this bill, which would ban anyone who is an officer of the state central committee of a major political party from serving in the Oregon Legislature or statewide office. It also authorizes a fine of $250 for each day that a person violates the ban.

First, it is important to understand that this ban (and penalty) applies only if the legislator is "an officer of a state central committee as described in ORS 248.072." Thus, it does not apply to officers of minor parties. Nor does it apply to officers of major parties which have exercised their option under ORS 248.007 to opt out of the "state central committee" structure (ORS 248.012 - 248.315).

This bill appears to demonize those officers of major political parties, conclusively determining them to be unqualified to serve in important public offices. We are not aware of any factual justification for this conclusion about party leaders in Oregon. According to news media, the motivation for this bill is that some Republicans want to rid themselves of Rep. Dallas Heard (newly-elected chair of the Oregon Republican Party) and Sen. Dennis Linthicum (newly-elected treasurer of the Oregon Republican Party), and they see this bill as a way to either get them out of the Legislature or out of party leadership.

Research has found only one other jurisdiction with such a law: New York City. It appears that all other cities and states in the United States have functioned without such a ban. And it appears that such a ban may be found unconstitutional, as an intrusion into the First Amendment rights of party members.

> However,a State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any more than it can tell a party that its proposed communication to party members is unwise. *Tashjian, supra,* at 224, 107 S.Ct., at 554.

> In sum, a State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair. Because California has made no such showing here, the challenged laws cannot be upheld.
>
> III
>
> For the reasons stated above, we hold that the challenged California election laws burden the First Amendment rights of political parties and their members without serving a compelling state interest.

Eu v. San Francisco Cty. Democratic Cent. Comm., 489 US 214, 232–33, 109 S Ct 1013, 1025, 103 L Ed 2d 271 (1989).

More recently, the Washington Supreme Court struck down a statute that required party "legislative district chairs" to be elected by precinct committee officers.

> Restrictions that limit a political party's discretion in how to organize itself, conduct its affairs, and select its leaders burden the party's right to free association. *Eu,* 489 U.S at 230, 109 S.Ct. 1013. If a state election law burdens the rights of political parties and their members, it can survive constitutional scrutiny under the First and Fourteenth Amendments only if it advances a compelling state interest and is narrowly tailored to serve that interest. *Id.* at 222, 109 S.Ct. 1013.

Pilloud v. King Cty. Republican Cent. Comm., 189 Wash 2d 599, 603–04, 404 P3d 500, 502 (2017).

> Laws that regulate a party's internal governance but do not implicate compelling state interests are unconstitutional under the First Amendment. *See, e.g., id.* at 232, 109 S.Ct. 1013 (**"[T]he State has not shown that its regulation of internal party governance is necessary to the integrity of the electoral process."**); *Democratic Party of U.S. v. Wisconsin ex rel. La Follette,* 450 U.S. 107, 126, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981) (holding that the system of selecting delegates imposed by Wisconsin's open primary laws unconstitutionally infringed on the democrats' freedom of association); *Cousins,* 419 U.S. at 491, 95 S.Ct. 541 (holding the state did not have a compelling reason for exercising control over the Illinois democratic party's delegate selection process).

Pilloud v. King Cty. Republican Cent. Comm., 189 Wash 2d 599, 604, 404 P3d 500, 502 (2017).

Oregon Progressive Party

Daniel Meek
authorized legal representative
dan@meek.net
503-293-9021