

March 23, 2017



411 S.W. 2nd Avenue
Suite 200
Portland, OR 97204
503-548-2797
info@progpatty.org

Oregon Progressive Party Position on Bill at 2017 Session of Oregon Legislature:

HB 2211: Oppose

Dear Committee:

The Oregon Progressive Party (OPP) opposes this bill, which is a near perfect verbatim restatement of Measure 90, which went down to defeat by a 68-32% vote in 2014.

Our reasons for opposing Measure 90 and this bill are stated in great depth at <http://saveoregonsdemocracy.org>. Here are a few of them. The term "HB 2211" can be inserted below in place of "Measure 90."

Measure 90 Would Keep Non-affiliated and Minor Party and Candidates Off the November Ballot

Measure 90 does not allow anyone to qualify for the general election ballot by submitting voter signatures (non-affiliated candidates).

With top two primaries in Washington and California, no minor party nor non-affiliated candidate has qualified for the November election for a statewide office. None.

In all 320 races in California under top two and 492 primary races in Washington under top two, no minor party candidate has made it to the general election, if at least 2 major party candidates ran in the primary election for that office. That includes all races for the legislatures. In other words, minor party candidates got on the general election ballot, only where there was just one major party candidate on the primary ballot.

The average for 10 previous years was 133 minor party candidates on general election ballot in California. Under top two:

Minor Party Candidates on the Ballot

Year Primary Election General Election

2012 21	3
2014 24	1

Minor parties have been the original champion of many causes, forcing the major parties to deal with them, including:

Issues that Minor Parties Pioneered

Issue	Minor Party Pioneer
Ending Slavery	Republican
Free Public Education	Progressive
Voting for Women	Progressive
Social Security	Progressive
Limiting Child Labor	Progressive
Regulating Monopolies	Progressive

Measure 90 Would Enable Party Identity Theft and Destroy the Meaning of Party Labels

Measure 90 would destroy the value of party labels on the ballot, which research shows is the centrally important piece of information for most voters.

Measure 90 would allow anyone to register as, say, a Democrat for one minute (on the 70th day before the primary election) and file as a candidate with "Registered: Democratic" next to his name on the primary ballot. That person might be a Nazi, a Communist, convicted child molester, or whatever. Any political party could have its identity stolen by complete strangers who suddenly take the party's name on the primary ballot.

Under current system, no candidate gets to use a party's name on the ballot, unless the party has nominated that person, with major parties required to use primary elections to choose their nominees.

Measure 90 does allow each surviving political party to state on the ballot its "endorsement" for each office. Measure 90 establishes no rules governing the parties' processes for making such endorsements and does not authorize any official to adopt rules. Assuming that voters will be persuaded by a candidate's party endorsements, Measure 90 effectively replaces the primary election with each major party's private, backroom endorsement process.

In Oregon, primary elections for all partisan offices (other than President) were first mandated in 1904 by a statewide ballot measure, considered an important progressive reform. Measure 90 would thus nullify that reform.

Party identity theft under Measure 90 would be particularly damaging to minor parties, which today run their own candidates in a few partisan contests, with no candidates in most contests (such as for the Oregon Legislature and the one-third of Oregon's county commissions that are elected on a partisan basis). Under Measure 90, the only way for a

minor party to counter the sudden appearance of a White Power candidate taking its name on the primary ballot will be to endorse a different candidate in the same race. In effect, this will force the minor party to endorse a Democrat or a Republican, whether or not that candidate supports the principles of the minor party. This will destroy the significance of the minor party's brand.

Measure 90 Would Enable Election of Persons Who Do Not Reflect the Views of the Electorate

A unique flaw of Measure 90 is that the ability for any candidate to win a nomination depends upon how many other candidates identified with the same party are running in the primary for the same office.

California's 31st Congressional District, for example, is heavily Democratic in registration and in its 50-year history has always sent a Democrat to Congress, almost always by an overwhelming margin. In 2012, the incumbent did not run. So 4 Democrats ran in the top two primary, along with 2 Republicans. The 4 Democrats split the Democratic vote, sending only the 2 Republicans to the general election. In 2014, this same District came within 0.4% of the vote of the same result of 2 Republicans in the general election in a majority Democratic district.

As one would expect more Democrats to be interested in running for office in a majority Democratic registration district (ditto for Republicans in a Republican district), Measure 90 offers the realistic prospect that several districts would elect candidates who adhere to the principles of the district's smaller party.

The statewide 2014 top two primary race for Controller in California came within 0.7% of the vote of forwarding two Republicans to the general election, as the Democratic vote was split among 3 "Democratic" candidates.

This same fundamental flaw can send two Democrats to the general election, sometimes based on political operatives recruiting "ringers" specifically to split the vote of the other party's adherents. See the description of Ro Khanna below.

Measure 90 Would Cause Party Leaders to Discourage Members From Running for Office

The result of that unique flaw (ability to win the top two primary depends upon how many other candidates sport the same party label in the primary) is that party leaders must affirmatively discourage qualified persons from running for office.

Study says state's top-two primary results in fewer candidates

The Olympia Report
July 27, 2012
by Jeff Rhodes

[This article describes a study by Gonzaga University professors John Beck and

Kevin Henrickson.]

"Thus, there is an incentive for the major party organizations to discourage 'too many' candidates from entering a primary contest for a particular office with that county's label," the report continues. [...]

The authors quote Democratic Party Chair Dwight Pelz in 2010 as admitting, "I as party chair, have to go and talk people into not participating, and I think that's really unfortunate."

The system forces party leaders to essentially pre-qualify candidates even before the primary election. In California, which switched to a top-two primary system in 2011, the Republican Party has responded by voting to adopt a pre-primary process through which one candidate is identified and the official party candidate on all party mailings and, more importantly, given access to party funding and other resources.

Rather than empowering the voters, as was the goal of the top-two primary, the system actually puts more power in the hands of party officials who no longer have the luxury of waiting for the voters to anoint their choice at the polls.

Measure 90 Would Make Primary Elections Subject to Manipulation by Ringers

Measure 90 would encourage use of "ringers," with party bosses recruiting candidates just to split the votes of the other parties. Republicans would recruit people to register and file as "Democratic" candidates merely to split the Democratic vote in the primary and thus allow Republicans to proceed to the general election. Likewise, Democrats would recruit phony "Republicans." Both of them would recruit phony "Independents" and "Greens" and "Libertarians," further increasing the party identity theft and voter confusion.

In California's Congressional District 17, reported *The Daily Caller* on March 28, 2014:

Democratic congressional candidate and former Obama administration official Ro Khanna recruited two Republican candidates to enter a primary race to split the vote and weaken his top Republican opponent, according to a lawsuit filed in Superior Court of California.

Khanna's campaign, the executive committee of which includes five Obama campaign veterans, recruited an Indian-American candidate [Vinesh Singh] with a similar name to Republican opponent Vanila Singh to confuse voters, according to the lawsuit filed by Alameda County Republican Central Committee member Jeffrey Wald and obtained by *The Daily Caller*.

Additionally, at least one Khanna supporter collecting signatures for a last-minute candidate said that the effort would help Khanna, according to the lawsuit. The DC has also learned that one of the last-minute candidates was recently employed by the law firm Khanna currently works for.

California Congressional District 33 in the 2014 top two primary saw 10 Democrats, 3

Republicans, and 5 others running. The winner (R) had only 22% of the vote.

In primary elections since 1979 in Louisiana, the only state where this system has operated for more than one election cycle, there have been 9, 9, 8, 12, 16, 11, 17, 12, and 10 candidates on the ballot for governor alone. Splitting the vote of the other parties is a winning strategy, in a top two primary.

Measure 90 Would in Particular Tend to Destroy the Democratic Party in Oregon

The top two primary in Oregon has particularly bad consequences for the DPO and its candidates.

It Will Create Far More Democrat v. Democrat Contests in the General Election

Obviously, a party would wish to avoid the large expenditure of time and money required to have two of its candidates run against each other in both the primary and general elections. Under Measure 90, this will happen far more often to Democratic candidates than to Republican ones.

The demographic fact is that Democrats in Oregon (and throughout the United States) are more tightly packed together in urban areas than are Republicans in suburban and rural areas. The result is that, even with non-gerrymandered districts, there are many more highly Democratic districts than there are highly Republican districts. Looking only at the balance between Democratic and Republican registrations:

- of the 30 districts for the Oregon Senate, 3 are over 80% Democratic, while no Republican district is over 65% Republican
- of the 60 districts for the Oregon House, 6 are over 80% Democratic, while no Republican district is over 69% Republican.

In a district where the major party registration balance is 80-20 Democratic, Measure 90 will likely advance 2 Democrats to the general election. There are 9 House or Senate districts in Oregon where Democrats have such a registration advantage but zero districts where Republicans have it.

This prediction is confirmed by the 2014 primary election results in California, which produced 28 races for the general election that will pit 2 candidates from the same major party. Of those, 20 will be Democrat v. Democrat races.

It Will Create Far More Instances Where Republicans Advance in a Majority Democratic District Than Vice-Versa

As noted above, the ability of a candidate to advance to the general election under Measure 90 will depend upon the number of other primary candidates for

the same office identified with the same party. Because the Republican Party is much more top-down, I would expect the Republicans to have greater success than the Democrats in discouraging candidates from running in primary elections who would split the votes of party adherents.

It Will Move Important Election Decisions to the Primary Election, Where Republican Turnout Is Higher

Historically, Republican turnout falls less in primary elections (v. general elections) than Democratic turnout falls in primary elections. Republicans are overall more educated than Democrats and more interested in politics.

Measure 90 will move very important voter decisions from the general election to the primary election, including the opportunity to eliminate all Democratic candidates from the general election for any particular office. This is another reason that the top two primary in California Congressional District 31 in 2012 (and almost in 2014) advanced 2 Republicans to the general election in a predominantly Democratic district: Republican turnout was much higher in the primary election than Democratic turnout.

Measure 90 Will Not Elect "Moderates"

Measure 90 backers claim it will elect "moderates." There is no reason in theory or practice why this would occur.

In a top two primary, Democrats vote for "Democrats," Republican voters vote for "Republicans," and the few others who turn out split their votes among the various candidates. Why that would forward "moderates" to the general election is a mystery. The opposite appears likely to occur, as "moderate" candidates flood the primary ballot and split up the moderate vote among them.

In Louisiana, the top two primary has advanced extremists to the general election. Avowed racist and Ku Klux Klan leader David Duke twice advanced to the statewide Louisiana general election. In 1991 he and former governor Edwin Edwards (accused of corruption) prevailed in a primary field of 12 candidates. Edwards' supporters distributed bumper stickers saying: "Vote the Crook: It's Important." Edwards won. He was then convicted of bribery and served a 10-year prison sentence. He is now running in Louisiana's 6th Congressional District and will likely again be on the November ballot.

Sixteen candidates ran for Governor in the 1995 primary. The top two, who received only 26% and 19% of the vote, were the two most extreme, because the moderate vote was split among the other 14 candidates.

Further, [a 2014 study by professors at Princeton and Georgetown](#) ranked the California and Washington legislatures #1 and #4 in most polarized among the 50 states. Oregon ranked #18.

California was by far the most polarized, after the election using the top two primary. Professor Boris Shor of Georgetown University stated:

One state that stands out is California. It is incredibly polarized. And its most recent primary and redistricting reforms look unlikely to reduce polarization.

The study measured "polarization" by examining how often members of both parties voted the same way on bills. If every Democrat voted the opposite of every Republican on every bill, that would count as 100% polarization.

[A 2013 study by professors at University of California at San Diego, Columbia, and Georgetown](#) concluded that California's top two primary did not increase the match between the ideologies of voters and of elected legislators:

We draw on the predictions of reforms and the logic of spatial voting to show how the Citizen's Redistricting Commission and the top-two primary might lead to a better fit between the state's voters and lawmakers. Then, by comparing levels of congruence and other trends in elections before (2010) and after (2012) the implementation of reform, we show that California's electoral experiments did not bring their hoped-for effects. If anything, legislators strayed further [on a scale of ideological positions] from their districts' average voter in 2012.

Measure 90 Will Not Increase Voter Turnout

Measure 90 backers claim it will increase voter turnout. But, under Top Two, California and Washington just suffered the lowest voter turnout primaries in their histories. [A 2014 study by the Public Policy Institute of California](#) concluded:

[I]n the general election, another key feature of the reform appears to have discouraged vote choice, as many voters skipped the contests on the ballot where two Republicans or two Democrats faced off against each other.

Measure 90 Would Not Increase "Competitiveness" Between the Major Parties in November Elections

Supporters of Measure 90 lament the fact that some races for the Oregon Legislature fail to offer both Democratic and Republican candidates on the November ballot.

But the situation in Washington under top two is worse. In 2012 in Oregon there were a total of 15 legislative races (out of a total of 76) with only one major party candidate on the November ballot. That is 19.7%. In Washington under top two, there were 34 legislative races (out of a total of 124) with only one major party candidate on the November ballot. That is 27.4%. The average among all states was 38.3%

In 2014 the number of Washington races with only one major party candidate on November ballot increased to 41. That is 33.1%, which is worse than Oregon, where the number of such races increased to 25 (32.9%). The average among all states was 43.2%

Measure 90 Would Destroy the Legal Basis for 4 of Oregon's 5 Minor Parties

Under an Oregon statutory provision that Measure 90 does not change, a minor party with fewer than 10,816 members (0.5% of all registered voters), must run a statewide candidate who earns at least 1% of the vote in order to maintain its status as a minor party. Otherwise, it is dissolved.

The 4 Oregon minor parties with fewer than 10,816 members now are the Constitution, Pacific Green, Progressive, and Working Families parties. The Libertarian Party is on the edge, with 18,945 members.

Measure 90 eliminates the basis for earning the 1% statewide vote, because there is no such thing as the "candidate of" a minor party under Measure 90. This was the conclusion of the Oregon Citizens' Review Committee, which voted 14-5 to oppose Measure 90, in part because:

"Measure 90 has several drafting errors. The most significant appears to eliminate minor parties. Because Measure 90 bars parties from nominating candidates, their legal status is in jeopardy."

Oregon Progressive Party

David Delk

Chair, Oregon Progressive Party
delk@progpatty.org

