

Senate Committee On Rules  
Meeting on 2019-06-03  
Testimony regarding Senate Bill 226  
from Kyle Markley, Chairperson, Libertarian Party of Oregon

According to the posted agenda, SB 226 is being considered for a “gut and stuff” to transform it into an entirely different bill. This will be the bill’s first public hearing because poor timekeeping at the April 3 meeting kept it from being heard then. SB 226 is a legacy of the late Secretary Richardson, and it is disrespectful to destroy it with a gut and stuff. I here provide my testimony on the original bill.

Senate Bill 226 makes a large number of changes to the laws governing political parties and elections, with particular impact to minor political parties. I am testifying on behalf of Libertarian Party of Oregon and its approximately 20,000 members, offering our qualified support for this bill.

The most important thing this bill does is adapt the thresholds required for minor political parties to retain their status for ballot access. The Motor Voter law is resulting in hundreds of thousands more voter registrations, but only about 15% of those electors are choosing to affiliate with a political party. This has the effect of reducing the percentage of voters affiliated with political parties. The current thresholds of 5% (for major party status) and 0.5% (for minor party status) are more difficult to reach due to this influx of nonaffiliated electors, and this threatens the major party status of the Independent Party and the minor party status of the Pacific Green and Working Families Parties. We stand in solidarity with the other political parties in this state, and believe they should continue to enjoy ballot access based on the expressed preferences of their thousands of members. This bill makes a simple change, to calculate the party maintenance thresholds based on the number of electors affiliated with a political party, rather than the total number of electors. Make it so.

Also importantly, this bill equalizes the treatment of major and minor political parties with respect to nominating candidates to fill vacancies that arise in partisan offices. Oregon has a lot of law that treats major and minor parties differently, and often for no good reason. This bill helps to move all political parties toward equal treatment, which is both reasonable and appreciated.

The largest disparity in current law’s treatment of major and minor parties is that the state conducts primary elections for the benefit of major parties at taxpayer expense, but not for minor parties. Since 2012, the Libertarian Party of Oregon has conducted primary elections by mail at its own expense. This bill permits minor parties to opt-in, on a race-by-race basis, to the state-conducted primary election. That offers equal treatment for all political parties if they want it, which is a laudable goal.

As Libertarians, we believe that taxpayers should not be forced to pay for elections within private organizations, which political parties are. We would prefer that all political parties conduct their own primary elections at their own expense. However, we recognize the political difficulty in achieving that reform. There are more options between current law and what this bill would do:

1. The state could conduct the primary elections, but bill the political parties pro rata for the service.
2. The political parties could conduct their own primaries with a subsidy of (say) \$1 per affiliated elector.
3. Split the difference, billing the political parties for a portion of the cost of the primary elections.

(This is as good a time as any to mention that better voting methods, such as Instant Runoff or Score Then Automatic Runoff Voting, could eliminate the need to conduct a primary election at all.)

We have a few significant practical reservations about allowing the state to conduct our primary election:

1) Our party bylaws require our primary election to use Instant Runoff Voting, and this bill does not provide for that method. Importantly, the bill contains a provision for a minor party to “back out” of having the state

conduct the primary election for a particular office if more than two candidates file, which is the situation when alternative voting methods like IRV become important. We could not support this bill without this provision.

2) We understand that processing write-in votes is a significant cost that you are trying to reduce, but write-ins are very important to us. Under this bill, only offices with at least one candidate filed will be printed on the ballot. That implies that there will be no option for write-in candidates for races where no candidate files at all. A significant fraction of our nominees to the general election are write-in candidates who do not file in advance, despite this being as easy as sending us an e-mail. They would be even less likely to file with the state. It appears that for a race lacking any filed candidates, which is consequently not printed on the ballot, a minor party would be unable to nominate anyone for that office through today's procedures, either. That would effectively shut the party out of that race. **Please amend the "back out" provision (§2(3)(c)(a)) to also let us "back out" if zero candidates file**, so that we can take back that race in order to pursue write-ins. Even if races with no filed candidates were printed on the ballot, this bill's provision that write-in candidates are required to file in advance would still block our write-in candidates in practice. There appears to be no good substitute to doing these races ourselves.

3) Our party bylaws require us to give preferential treatment to candidates who are party members over non-member candidates seeking our fusion nomination. Although this bill permits candidates to file seeking fusion nominations, it is unclear whether our bylaws requirement for preferential treatment would be honored. **Please clarify this.** For write-in candidates, the bill specifically conflicts with our requirement in §42(2) by requiring all write-in candidates to face the same threshold.

4) The provisions related to selecting delegates to national political party conventions in Presidential election years are incompatible with our national affiliate's bylaws, so we could never use the state's primary for that particular race.

Although much of this testimony has been regarding problems we perceive in this bill or policy preferences not addressed by this bill, when taken as a whole the bill is a net improvement and a step in the right direction toward fair treatment for all political parties. We would like to thank the late Secretary Richardson and his staff for pursuing this bill and for proactively seeking out feedback from minor political parties on earlier drafts.

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