IN THE SUPREME COURT OF THE STATE OF OREGON

STATE EX REL MARY LEE NELSON, MICHAEL NELSON, JUDY HUFF, SAMUEL JOHNSON, and CHAD SULLIVAN, electors of Oregon, Plaintiffs-Relators, v. LAVONNE GRIFFIN-VALADE, Secretary of State of Oregon, Defendant.	SC S070658 **MANDAMUS PROCEEDING**

SECRETARY OF STATE'S SUPPLEMENTAL BRIEF

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SECRETARY OF STATE'S SUPPLEMENTAL BRIEF

A. The Secretary does not challenge relators' standing.

ORS 34.105(4) "confers standing to bring a mandamus action on persons who are 'beneficially interested.'" *State ex rel Kane v. Goldschmidt*, 308 Or 573, 579, 783 P2d 988 (1989). That requires "more than just an interest in common with the public generally." *Marteeny v. Brown*, 321 Or App 250, 275, 517 P3d 343, *rev den*, 370 Or 303 (2022). But the ultimate question is whether "the relator possesses a clear, legal right to the thing demanded." *State ex rel Kristof v. Fagan*, 369 Or 261, 279, 504 P3d 1163, 1173 (2022).

Here, relators' beneficial interest comes from ORS 246.910(1), which allows any person "adversely affected" by an act or failure to act by the Secretary of State to appeal to circuit court. This court has held that "[i]n effect, this means that any registered voter—and probably others, as well—can file an action." *Ellis v. Roberts*, 302 Or 6, 11, 725 P2d 886 (1986). In *Meyer v. Bradbury*, 341 Or 288, 142 P3d 1031 (2006), for example, this court allowed registered voters to challenge the decision to include a constitutional amendment that allegedly violated the "separate vote" requirement, agreeing with the Court of Appeals that a voter's interest in correct application of election law sufficed. *Id.* at 294; *Meyer v. Bradbury*, 205 Or App 297, 303–04, 134 P3d 1005 (2006), *rev'd on other grounds*, 341 Or 288.

Relators allege that they are registered voters. (Statement of Facts 8-9). Even if standing were limited to registered Republicans, the Secretary's records reflect that at least one—Mary Lee Nelson—is likely a registered Republican.[1] *Cf.* ORS 258.016 (in post-election contests, allowing "any elector entitled to vote" for a candidate to challenge the winning candidate's eligibility to hold office). The court could require relators to provide evidence of party registration if it concludes that that is necessary for standing.

To be sure, mandamus is a discretionary remedy. *State ex rel Ofsink v. Fagan*, 369 Or 340, 342, 505 P3d 973 (2022). Nothing prevents this court from requiring a more compelling interest before exercising that discretion.

B. Oregon law does not require the Secretary to determine a presidential preference primary candidate's qualification for office.

The Secretary previously briefed this question and will not repeat those arguments here. In short, the Secretary has the "sole discretion" to determine whether a major-party candidate should appear on the presidential preference primary ballot because "the candidate's candidacy is generally advocated or is recognized in national news media." ORS 249.078(1)(a). If the Secretary makes that determination, she need not address the candidate's qualifications.

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[1] The records reflect that a person with that name is registered Republican. The Secretary lacks verification that that person is the relator here.

This court asked about the legislative history of ORS 249.078. Oregon first adopted a presidential preference primary in a 1910 voter initiative. *McCamant v. Olcott*, 80 Or 246, 248, 156 P 1034 (1916). Originally, names would be printed on the ballot solely on the petition of candidates' "political supporters," without candidates themselves "signing any petition, signature or acceptance." *Id.* (quoting the 1910 law). A 1915 amendment allowed names to be printed either at candidates' request or upon the petition of 1,000 supporters. *Id.* at 250 (citing Or Laws 1915, ch 242, § 7). Neither version required any action by the candidates themselves nor any qualification procedure.

The law has been amended many times since.[2] The significant changes for purposes of this case were in 1957 and 1959. The 1957 statute, codified as *former* ORS 248.368, allowed candidates to appear if the Secretary "determines that the candidate has formally announced his candidacy to the public or has become a candidate for the nomination at the primary election in any other state and has not withdrawn therefrom." Or Laws 1957, ch 608, § 108. A legislative report explained that the change was part of an effort to "develop the presidential primary

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[2] The Oregon Revised Statutes history for ORS 249.078 begins with the 1979 overhaul of the election laws. Previous versions can be found in Or Laws 1929, ch 143, § 1; Or Laws 1957, ch 608, § 108; Or Laws 1959, ch 390, § 1; Or Laws 1961, ch 170, § 1; and Or Laws 1969, ch 101, § 1.

into a more realistic and significant expression of the preferences of the people of Oregon." (App-6). The legislature was concerned that "[a] candidate's freedom to enter the primary of one state and to withhold his name from the primary in another state produces a very unreliable picture of that candidate's nationwide support." (*Id.*). The solution was to include anyone who announced a public candidacy or ran elsewhere, again with no candidate request or qualification required. In 1959, concerned about unserious candidates who "want only the notoriety" of appearing on the ballot (App-8), the legislature adopted the current wording directing the Secretary to place candidates on the ballot if she determines that the candidacy is "generally advocated" or "recognized in national news media." Or Laws 1959, ch 390. Supporters intended to prevent candidates from "lying low" and avoiding the opportunity for Oregon voters to express a preference. (App-11).

That history does not directly state whether the Secretary can or must determine qualifications in a presidential preference primary. But it explains why Oregon law does not require a presidential candidate to submit a declaration of candidacy or otherwise attest to the candidate's qualification. Those requirements would allow candidates to strategically avoid competing in Oregon, an outcome that the legislature intended to foreclose. Although candidates do typically file forms with the Secretary, those forms are not legally required for ballot access.

That history also explains why ORS 254.165 applies to all candidate races in the state *except* the presidential preference primary. ORS 254.165(1) requires the filing official for the office—here, the Secretary—to remove the name of a candidate from the ballot if the official determines that the candidate has "died, *withdrawn*, or become disqualified, or that the candidate will not qualify in time for the office if elected." (Emphasis added). But allowing a presidential candidate to "withdraw[]" from the primary unilaterally would be inconsistent with ORS 249.078, which empowers the Secretary to include candidates who continue to run elsewhere even if they do not want to appear on the ballot here.

The Secretary is not aware of any legislative history suggesting that ORS 254.165 was intended to override the original purpose of ORS 249.078. The "died, withdrawn, or become disqualified" language was added to what is now ORS 254.165 in the 1979 overhaul of the election laws to clarify that "adjustment of names on ballot by county clerk is permitted." Or Laws 1979, ch 190, § 240; (App-20). But the statute conspicuously omitted the same phrase in a related section about presidential preference primary candidates. *Id.* § 235. Later amendments further clarified filing officers' authority to enforce ORS 254.165; none suggested that it applied to presidential preference primary candidates. Or Laws 1983, ch 514, § 12; Or Laws 1991, ch 719, § 28; (App-21–25 (explaining those changes)).

Respectfully submitted,

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APPENDIX

APPENDIX

Pursuant to ORAP 5.50, defendant submits the following, as indexed below.

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APP-1

Elections Division

Summary Report

of the

Legislative Interim Committee

on

Elections

Submitted to the Forty-ninth Legislative Assembly

in accordance with

Senate Joint Resolution No. 9, Oregon Laws, 1955

NOVEMBER, 1956

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APP-3

STATE OF OREGON

LEGISLATIVE INTERIM COMMITTEE ON ELECTIONS

311 STATE CAPITOL BUILDING, SALEM, OREGON

December 3, 1956

To Members of the 49th Legislative Assembly:

Senate Joint Resolution 9 adopted by the 48th Legislative Assembly provided for a study to be made of "The Oregon laws relating to elections and election procedures, including those provisions pertaining to corrupt practices and to the making and reporting of campaign expenditures." This Committee was appointed to conduct such a study.

Submitted herewith is the Summary Report of the findings and recommendations of the Committee. The Report has the unanimous approval of all of the members of the Committee and it is believed that the Report provides a sound basis on which to base a thorough revision of Oregon's Election Code.

The Committee has had the assistance of a great many people in public and private life in this state and elsewhere, and of both political parties. All have contributed to the development of a constructive program which is aimed at making the election process a more effective means of translating the ideals of self government into working reality.

Sincerely,

Pat Lonergan

Senator Pat Lonergan,
Chairman

APP-4

INTRODUCTION

It is the responsibility of the legislative body in a democratic system to preserve and extend popular government. The old bulwarks of popular control must be protected and new avenues for finding and putting into effect the will of the people should be explored. Oregon may be proud of the leadership it has provided the remainder of the country in developing methods of making our government more responsive to the people's will. However, we Oregonians cannot rest on our governmental laurels. Experience must be evaluated, practical defects identified and new ideas examined for their relevance to our needs.

The Forty-eighth Oregon Legislative Assembly created the Interim Committee on Elections and directed it to perform precisely this task of appraisal. The Committee was specifically enjoined to examine the provisions of Oregon's Election Code concerning corrupt practices, the making and reporting of campaign expenditures, and the participation of nonpolitical organizations and corporations in political campaigns.

At the outset, the Committee addressed its attention to such basic questions as these:

> Is the administration of elections so organized as to provide efficient procedures and to place responsibility squarely for the conduct of fair and honest elections?
>
> Should the political party organizations be encouraged to exercise greater influence in the nomination of candidates for office?
>
> Do the qualifications for voting tend to develop an intelligent and, at the same time, a broad electorate?
>
> Is the average voter able to choose intelligently from among the alternatives that face him? or can the state improve his campaign education and shorten and sharpen the ballot?
>
> Should registration and voting procedure encourage the citizen to vote as an individual or to seek his objectives by associating his vote with a political party?
>
> How can the laws be re-fashioned to afford better protection against corruption (financial and non-financial) and other evil influence in campaigns and elections?

In seeking answers to these questions the Committee studied the election laws of Oregon and compared them with those of other states, examined practices and procedures at the polls, and availed itself of the views of experts on this subject and of interested persons and groups in the state. The findings and recommendations of the Committee are presented in the following pages, in summary form. They are commended to the attention of the Legislative Assembly and of the people of Oregon.

APP-5

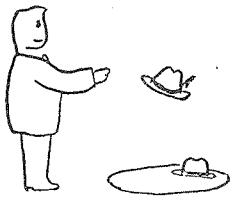
SUMMARY OF FINDINGS AND RECOMMENDATIONS

I Election Administration

Modern governments have found that their most vexing problems are questions of administration. Demands for government services cannot be satisfied unless the administrators of governmental activities possess authority to act. Yet, if the people are to retain control over their government, administrators must be held fully accountable for their stewardship of the public trust. In the final analysis, however, efficiency and economy of services, and attainment of the legislative objective itself, frequently require that administrators possess considerable leeway in their application of the law.

These principles apply to the administration of elections. While the Legislative Assembly should provide the ground rules to assure that elections will be fair, comprehensive and honest, it should not prescribe administrative detail. Election administrators should be held strictly responsible for the efficient and effective conduct of elections in conformity with basic objectives defined by the Legislative Assembly.

Consequently, the Committee proposes that responsibility for the uniform, impartial and efficient administration of elections be placed on the Secretary of State and, under his supervision, the County Clerks or Registrars of Elections. To accompany this responsibility, the Committee proposes that the Secretary of State be given power to issue the necessary administrative rules and regulations and to require the uniform application of them throughout the state. The Secretary of State should be held accountable to a Board of Election Commissioners for his regulations and administrative decisions and for the enforcement of the Election Code. Likewise, the County Clerk or Registrar of Elections should be answerable to the Secretary of State and the Board of Election Commissioners.



II Getting on the Ballot

If government is to be effective as well as popular, the people must have the opportunity to choose their governmental leaders from among the best qualified persons. It is also important to establish safeguards around the right of citizens to run for office. The law on this subject should broaden and equalize these opportunities and not restrict them unnecessarily.

Occasionally there are write-in votes which verge on the frivolous or insincere. Freedom to cast such votes does not broaden or equalize the opportunity to hold office. Instead, it debases the electoral process. To re-affirm the dignity of public office and to help preserve the true purpose of a formal nominating process, the Committee recommends that write-in votes not be counted, unless the write-in candidate or his agent has filed with the appropriate election official, before the opening of the polls, a document indicating his availability and establishing his eligibility for the office involved.

Much dissatisfaction has been expressed about the use and abuse of the presidential preference primary. The Legislative Assembly of Oregon certainly cannot correct the primary practices of other states, even should it wish to do so; but it can try to eradicate the abuses made possible by the shortcomings of the Oregon law. It can try also to develop the presidential primary into a more realistic and significant expression of the preferences of the people of Oregon.

An effort should be made to assure that our people are able to choose from among **all** of the prospective presidential nominees in the country. A candidate's freedom to enter the primary of one state and to withhold his name from the primary in another state produces a very unreliable picture of that candidate's nationwide support. Any person who has formally announced his candidacy for his party's presidential nomination or whose name has been entered in a primary election in another state should appear on the Oregon ballot. On the other hand, to enter in the primary the name of a person who is determined **not** to be a candidate anywhere is disconcerting and may even be a diversionary tactic of questionable ethics. It should not be permitted.

Furthermore, the comparative ineffectiveness of Oregon delegations to the national party conventions, resulting in part from our law requiring constancy to the primary victor, does the voters of Oregon a disservice. Our Convention delegations should have greater latitude whenever it becomes apparent that the choice of the party in Oregon has little chance of obtaining the presidential nomination. Also, since

the expression in one state of a popular preference for the vice-presidential nomination is not normally a factor in choosing the nominee, our legal provisions on the subject should be repealed. Our delegations should be left free to use their best judgment in choosing among those persons available for the vice-presidential nomination.

The Committee has found a widespread belief that the ballot which confronts the voter should be shortened and simplified wherever possible. Concurring, the Committee recommends that the prospective presidential electors be designated by the state central committees of the political parties and that their names be omitted from the general election ballot. The nomination of these electors by the party committees would remove this insignificant contest even from the primary ballot. Shortening the general election ballot by omitting the names of presidential electors would have the added merit of bringing the law more nearly into line with the practice of electing the president and vice-president virtually by popular vote.

APP-8

February 19, 1959

Senate

Committee on Elections and Privileges

Room 300

Time 8:30 a.m.

Those present were: Senator Grenfell, Senator Dimick, Senator Goode, Senator Ahrens, Vice-chairman, Senator Corbett, Chairman, Senator Overhulse (absent)

Also present: Mr. LeFor, Elections Div., Mr. Weldon, Registrar of Elections, and Mr. Beatty.

Senator Corbett announced that Senator Overhulse will take Senator Hopkins place in the committee, since Senator Hopkins has been assigned to another committee.

The meeting was called to order by Senator Alice Corbett, Chairman.

Senate Bill 280.

Senator Dimick stated that this bill will give the Sect. of State, the authority to weed out candidates, in the primary elections, for offices of President and Vice President of the United States. He thinks there are, occasionally, candidates who want only the notoriety which they will recieve by having their names or the ballots. Senator Gleason asked where the filing is done and thinks that the method of filing by petition or their own initiative is adequate. He feels that the Secretary of State, would be reluctant to not put every candidates name on the ballot. Senator Dimick feels that some discretion has to be put some place. Mr. Beatty explained SB 280. He added that he thought it unlikely that we will have a true preferntial primary in either party, and that we should try limiting it in some way. He felt that the Secretary of State should have the authority. Mr. Le For referred to page 2, line 8, where the words "determined in his discretion", are used. He said suppose a person is, by the news, given publicity but not advocated in 5 states. Mr. Beatty answered that he can't feel that it is any problem in adding up who is being endorsed. Senator Gleason objected strenuously to this bill. Mr. Weldon, representing county clerks, stated that too much is being left to the Secretary of State, it could result in collusion. He felt too that the present law should be amended to take care of the filing and withdrawal. Senator Corbett inquired if the committee was ready to vote on this bill. Senator Goode feels that the people should have consent of candidates before they are put on the ballot. Senator Dimick stated that this bill seeks to do away with an impossible situation, and that it would have been a good idea to have conferred with the chairmen of the Republican and Democratic parties. The people of Oregon should have an expression of opinion

from the State Chairmen. Senator Corbett announced that the committee will hold this bill for two weeks, and will ask Mr. Gunnar and Mr. Eppes to attend the meeting, to allow them to express their opinion on this matter.

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Senate Bill 320.

Mr. Le For stated that SB 320, relating to withdrawal of persons nominated under the Election Laws, and amending ORS 249.830, is strictly a clarification. He felt that the old section is outmoded. Senator Goode asked who, other than county clerks and notary republics, are authorized to act in this capacity. The answer was, judges. Senator Goode wanted to know, why add judges. Mr. Le For said because the proper authorities may not be available. A check was made on the current law and found that judges were included. Senator Goode said he could see no reason for theis bill. Senator Dimick moved to table it. Senator Goode seconded the motion. Motion carried.

Mr. Weldon, Registrar of Elections, explained that SB 321 is recommended by the county clerks. It provided eliminating the typing of 50,000 names. A stamp will be used to certify the signatures of registered electors. This would save roughly $2500, in cost. Senator Corbett asked about the provision taking off the name of the petitioner. Mr. Le For stated that the circulators name will still be on the petition. Senator Goode inquired about the practice of a circulator leaving petitions in business places, then later picking them up. Mr. Weldon said that this is done occasionally but it is not permissable. The circulator should get the signatures in his presence. Every signature is checked against the signature on registration cards. Mr. Beatty said that he feels the technique of the circulator standing on the street corner would be a means of screening out many signatures, and that the circulator should be under Oath to try to get valid signatures. Senator Goode moved to reamend. Senator Grenfell seconded the motion. The proposed amendment as follows: On page 2 of the printed bill, reinstate all of the deleted matter in lines 2,3,4,5,6 and 7. On page 2, line 15 of the printed bill, reinstate the bracketed "(3)" and delete "(2)". On page 2, line 21 of the printed bill, reinstate the bracketed "(4)" and delete "(3)". Senator Goode moved to pass as amended. Senator Ahrens seconded the motion. Senator Goode will carry.

Senate Bill 322.

Mr. Le For explained that this bill will eliminate the explanatory statements on ballots. They could have saved eleven million pages being printed last election. Senator Grenfell stated that this matter is not mandatory. Senator Goode moved to table SB 322. Senator Grenfell seconded the motion. Motion carried

Meeting adjourned.

Alice Corbett

March 12, 1959

Senate

Elections and Privileges

Room 300

Time 8:30 a.m.

The meeting was called to order by the Chairman, Alice Corbett.

Those present were: Senator Grenfell, Senator Ahrens, Vice Chairman
Senator Dimick, Senator Corbett, Chairman
Senator Gleason

Others present: Peter M. Gunnar, Shoup Voting Machines, John Beatty, Automatic Voting Machines, Jack Thompson, Elections Division, Adam LeFor, Elections Division, Dave Epps, Democratic Chairman.

Senate Bill 280.

Senator Dimick explained the proposed amendments submitted to the committee by Senator Dimick and Mr. Beatty.

Mr. Thompson stated that these amendments are in effect the amendments discussed by the Elections Division and the committee during the last meeting. He stated too, that the Elections Division had come up with additional language for the bill, and if there are objections to this, the Elections Division will be glad to help work on it further. Thermofax copies were placed before each committee member.

Senator Dimick said if the proposed amendments which he submitted were accepted, the candidates would be voted on whether they liked it or not. He felt that the people of Oregon should have that right.

Senator Gleason stated that this is a free-wheeling, enterprising state, and he felt that candidates should not be forced into coming into this state against their will, in the primary.

Senator Dimick stated that the candidates from the other states should be on the Oregon primary ballot. As speaking for the people of the State of Oregon, we should have the right to vote for our choice of candidate of the President of the United States.

Mr. Epps stated that he had given this very serious thought, and he felt that Senator Dimick was absolutely right. Oregon stands out in the nation as having something

different, where no candidate can prevent his name from being entered, as in the instance of Senator Stuart Symington, who would find it difficult to use his strategy of lying low.

Senator Grenfell stated that he agreed with the intent but felt the method could be different.

Mr. Epps felt that it should remain a contest every time.

Mr. Gunnar stated that they do not agree with this proposed amendment as it is. He felt that perhaps it should be generally advocated in the United States. The five states or more is a limitation.

Mr. Beatty stated that his view is strictly in favor of having a contest. He stated too that Senator Goode and Senator Dimick asked him to shift this from the responsibility of the Secretary of State. In doing this they added in part, "when the Chairman of the State Central Committee of that candidate's party shall have advosed the Secretary of State in writing that said candidate's candidacy is generally advocated in more than five states of the United States." As far as Mr. Beatty was concerned he thought the statement "general advocacy", was all right. He did not like the amendment submitted by the Elections Division.

Mr. Gunnar felt if a man does not want his name on the ballot, that there should be some indication from the candidate and that there should be some method of being able to state whether or not this candidate actually intends to run for the Presidency or Vice Presidency.

Senator Grenfell found himself agreeing at least in part with Mr. Gunnar. He asked Mr. Epps if he felt it fair to tie up the delegates by pledge for the voting. Mr. Epps thought the delegate should be pledged for the first ballot, but after that he felt it would be complete stupidity to keep him tied up by a pledge.

Mr. Gunnar agreed that after the first ballot vote the delegate should be released from his pledge.

Senator Dimick stated that the first alternative is to leave the law as it is. The second is to amend with the amendment that was submitted to the committee, and the third would be to go ahead and let the candidates hid out in the bushes, as they are doing now. He agreed that it would improve the bill if the term "generally advocated", were used.

Mr. Gunnar felt that the individual should have something to say about it. For instance, he may be a Chief Justice, and feels that he can do more for the people in the position he holds, and would not care to be forced into running.

Senator Corbett announced that Mr. Gunnar, Mr. Epps, Senator Dimick and Senator Grenfell would work on an amendment for this bill, and since SB 371 is tied to some extent to SB 280, the committee will hold this for further agenda.

Senate Bill 245.

Mr. Beatty stated that what this bill does is to make it possible for counties to purchase voting machines, by ordinance authorizing the issuance of bonds, to provide funds to aquire them. Issuance of such bonds must be preceded by approval of the Secretary of State. He stated that because of the problems of financing, they have not been tried enough for a fair chance. Since there are also counting machines now being tied, Mr. Beatty felt that the bill should be amended to take care of that in case they are used here in the future.

Senator Corbett asked what personnel would be used with the voting machines. Mr. Beatty said he was not certain. He thought perhaps Mr. Weldon would know.

Mr. Weldon stated that the machines would eliminate the night board, but the day board would be needed. Senator Corbett asked how great a saving this would create. Mr. Weldon said it would save about half on personnel.

Senator Gleason asked about the cost of storage and hauling of the machines. Mr. Weldon said it would be quite a lot. Senator Corbett asked how many machines would be needed to a precinct. Mr. Weldon answered that there would be about 278 voters to a machine, and each precinct would need two machines. When asked if the machines would speed up the voting, Mr. Beatty said that they would, and when the voting was over, everything would be completed. Mr. Weldon stated that the machines were discussed during a meeting of the County Clerks, and they had not objected to the use of the machines.

Senator Corbett asked if the committee was ready to take action on the bill.

March 12, 1959

Senator Gleason stated that the only action he would take would be to table the bill as he feels the machines are not efficient enough for the amount of cost involved. Senator Gleason moved to table the bill. The motion died for lack of a second motion.

Senator Corbett announced that since there is a difference of opinion, the committee will hold the bill until the next meeting.

Meeting adjourned. 9:35 a.m.

Chairman
Elections and Privileges

Arline Wingert, clerk

OREGON LEGISLATIVE ASSEMBLY

LEGISLATIVE COUNSEL COMMITTEE

FINAL REPORT

OF THE

ADVISORY COMMITTEE

ON

ELECTION LAW REVISION

DECEMBER 1978
SALEM, OREGON

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PROPOSED CHAPTER 8

CONDUCT OF ELECTIONS

electors for those offices shall [always] be printed in groups, and only the groups shall be rotated but not the names within the groups.

[Formerly 249.570]

250.161. Adjusting ballot when vacancy occurs. [In the event of a vacancy for any reason in a nomination of a candidate to be voted for at an election] If a candidate has died, withdrawn or become disqualified, the name of [such] the candidate shall not be printed on the ballots or ballot labels or, if [the ballots] they have already been printed, shall be erased or canceled before the ballots are [delivered] given to the electors [for voting]. The [names] name of [any candidates lawfully] a candidate nominated to fill [such vacancies] a vacancy in nomination or office shall be printed on the ballots or ballot labels or, if [the ballots] they have already been printed, the county clerk shall cause [such names] the name to appear on the ballots or ballot labels before [they] the ballots are [delivered] given to the electors [for voting].

REWRITTEN TO CLARIFY THAT ADJUSTMENT OF NAMES ON BALLOT BY COUNTY CLERK IS PERMITTED AT BOTH PRIMARY AND GENERAL ELECTION.

[1957 c.608 $131]

258.380. Posting of ballot title, financial estimate and explanation in lieu of printing on ballot card or ballot label. (1) [Notwithstanding any other provision of law,] At any election in which a [vote tally system] voting machine is used, in lieu of printing the complete ballot title, financial estimate [required by ORS

SEE COMMENTARY

411 MR. PHELPS explained that section 4 deals with the changes of party affiliation at the primary election. Presently the law prescribes that there is no change in affiliation possible from the 20th day before the primary election. This section of the bill would provide the present law to include in its application any elector who registers or reregisters under ORS 247.290 (1)(a), (b) or (d).

TAPE H-83-ELC-30: SIDE A

019 Section 5 is a request to amend ORS 248.010, providing "minor political parties" as well as major policitcal parties to have the exclusive right to use the whole party name or any part of it. MR. PHELPS stated that section 6 of the bill is a similiar kind of change as section 5.

037 GREG MCMURDO discussed section 7 of the bill. It provides that for an assembly of electors to occur, there must be the required minimum number of people there at the same time and place to make the nomination.

059 RAY PHELPS clarified section 8 of the bill; being that if both sides of a signature sheet are used for obtaining signatures, each side shall be verified by the circulator.

081 MR. MCMURDO notified the committee that section 9 did not accomplish what was intended and there would be amendments required. He requested the committee to add on line 34, page 4, of the bill, after "ORS 250.035", "and 250.039". In addition, he explained, that would require the same amendment to ORS 250.195, dealing with county measures, and the same amendment to 250.296. Therefore, it would add the reference to readability so the court would have authority to review a title for both conciseness, fairness and sufficiency and readibility.

116 RAY PHELPS told the committee that section 11 is an attempt to clarify in the statutes, that the provisions dealing with the definition of a ballot title, form and style of an initative and referendum petition, qualifications of the signers of petitions, and the readibility test for ballot title, are specifically applicable to initative and referendum measures at the county and city levels. He pointed out that there was

litigation last year where one of the circuit judges, although he did not make his decision on these basis, was almost tempted to indicate that when a city particularly prescribes a procedure for initative and referendum, that they could go to the point of designing the initative petition forms, which then would create all kinds of different forms, and or could create a different ballot title.

141 GREG MCMURDO continued with section 12. He explained this section was due to a case called, Allerate vs Paulus, where the Attorney General and particularly Solicitor General and he, were concerned about removing someone from the ballot and who made the determination whether or not they would be qualified for the office if elected. It was the Attorney General's opinion that no one had that authority, although some one ought to have that authority. The case of Mr. Allerate, dealt with residency, and it was abundantly clear that he would not meet the constitutional requirements of inhabitation. The Secretary of State won the case, mainly because Mr. Allerate's lawyer did not challenge the authority to remove him from the ballot. The Solicitor General has suggested language be added to ORS 254.165 to make sure that the Secretary of State does have the authority to remove a candidate from the ballot, with the Secretary of State's actions being subject to any legal challenge.

156 The committee discussed various examples subject to section 12 of HB 2318 and discussed possible amendments to the section.

263 RAY PHELPS told the committee that section 13 is a modification of the present procedure in preparing the poll book of each precinct. The deletion of language in lines 15 and 16, page 5, is due to the fact there is no separate number for separate kinds of ballots.

Section 14 is an attempt to clarify what is intended in lines 25 and 26, with the recommendation in line 27, MR. PHELPS stated. Line 27 recommends that the categories of expense be identified as part of the formula process, and the formula for apportionment be established and continued.

TAPE 72, SIDE B

018 **REP. ROBERTS:** In Section 28 you are talking about a candidate who dies before the election?

021 **PROFFITT:** If it is brought to the attention of the county clerk that a candidate on his ballot has died, he must notify the Secretary of State of that fact, we must then turn around and direct him to take the name off the ballot under present law.

029 **DAVIDSON:** Now we have to wait for the Secretary of State to confirm the candidate we told him is dead, is indeed dead.

032 **REP. BELL:** Do we need to put after Filing Officer "in the appropriate jurisdiction"?

036 **PROFFITT:** On page 11 of the amendments, the definition of Filing Officer is spelled out.

046 **REP. FORD:** Is it of no importance that it even be reported by the Filing Officer to the Secretary of State?

049 **DAVIDSON:** I do not think there is any reason to do that. The Secretary of State's office has no reason to care if a candidate in a local election, died.

055 **REP. FORD:** What if they appear in the voters' pamphlet?

056 **DAVIDSON:** That is an interesting point. It may be that we should require some kind of notification. Perhaps the Secretary of State could do that by rule or the bill could be amended to require that.

060 **CHAIR MARKHAM:** Doesn't the information to go in the voters' pamphlet go to the Secretary of State from you?

061 **DAVIDSON:** For those few local offices who are eligible to be in the state voters' pamphlet, the information goes directly from the candidate to the Secretary of State's office.

064 **REP. NOVICK:** Under this if someone is on the METRO ballot, they would still have to go through the Secretary of State's office?

066 **PROFFITT:** That is correct.

070 **REP. FORD:** I hate to add more amendments to this, but I would not want to see a candidate removed at the local level and the information not get to the Secretary of State's office.

078 **VICE CHAIR SOWA:** While we are adding amendments, we ought to clarify who is the Filing Officer for the Metropolitan Service District.

083 **DAVIDSON:** I believe that in the act creating the Metropolitan Service District, it specifies the Filing Office is the Secretary of State.

085 **VICE CHAIR SOWA:** On page 11, line 10 Metropolitan Service District should be added.

099 **PROFFITT:** On page 11, line 6, you might want to add language to the effect "the Filing Officer, other than the Secretary of State, shall notify the Secretary of State of any action taken under this section".

118 **REP. FORD:** Even though some of the other local candidates will not be in the voters' pamphlet, the Secretary of State should still have the notification.

126 **PROFFITT:** On page 11, line 12, delete the period and insert "Metropolitan Service District". -Resumes written testimony at Section 29.

153 **REP. FORD:** It was not until 1979 that local districts, counties and cities had to comply with the single issue per measure requirement.

168 **PROFFITT:** There is a provision in this that it can be appealed to the Circuit Court.

176 **DAVIDSON:** The reason that we suggested here that the appeal be to the Circuit Court is that it would be the first and the final appeal. What we have provided is an opportunity for a publication that determination has been made that this either does or does not meet constitutional requirements. As to appealing to the Secretary of State, the problem is that is an administrative review and that is appealable to the Circuit Court.

191 **REP. ROBERTS:** If someone challenges a ballot title on a statewide measure, I thought that went to the Supreme Court.

194 **DAVIDSON:** It does on a statewide measure.

210 **CHAIR MARKHAM:** Appoints a sub-committee composed of Rep. Roberts as chair, Rep. Novick and Rep. Ford as members, to work with the witnesses on the amendments.

Submitted by:

Carolyn Cobb
Assistant

Reviewed by:

Randall Jones
Administrator

EXHIBIT LOG:

A - Amendments to SB 187-A - Randall Jones - 2 pages
B - Amendments to SB 187-A - Randall Jones - 2 pages
C - Testimony on SB 187-A - Sue Proffitt - 3 pages
D - Testimony on SB 187-A - Dick Sohrt - 1 page

APP-25

HOUSE STATE AND FEDERAL AFFAIRS
Bill No. SB 187 Pages 3
Exhibit C Date 3/20/91
Presented By SUE PROFFITT

Senate Bill 187
TESTIMONY BEFORE THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
by the
Elections Division
Office of the Secretary of State
March 19, 1991

Mr. Chair, members of the committee, I am Sue Proffitt, of the Elections Division, Office of the Secretary of State. I would like to offer the following section by section analysis of amendments to SB 187.

Mr. Dick Sohrt, from State Printing Division is here to explain changes in language regarding the state voters pamphlet.

SECTION 26. RE: State Voters Pamphlet. Delete reference to "deliver to the State Printer" and insert "the Secretary of State shall prepare". As discussed in Section 25, this allows greater flexibility to work with outside printers to reduce costs and production time for earlier delivery of pamphlets to voters.

SECTION 27: ORS 254.145 Re: To clarify how names are printed on ballots. On line 14 add EXCEPT AS PROVIDED IN ORS 254.125, 254.135 AND THIS SECTION, NO INFORMATION ABOUT THE CANDIDATE, INCLUDING ANY TITLE OR DESIGNATION, OTHER THAN THE CANDIDATE'S NAME, SHALL APPEAR ON THE BALLOT.

254.125--"Incumbent" for judicial positions
254.135 In case of same or similar surnames, the location of their place of residence shall be printed opposite their names to distinguish one from another.

SECTION 28: ORS 254.165 Changes from Secretary of State to "Filing Officer" for person who may determine that a candidate has died, withdrawn, become disqualified or will not be qualified at time of election and may remove that name from the ballot. Current language requires the County Clerk to notify the Secretary of State of the occurrence, then the Secretary of State directs the clerk to remove the name from the ballot.

This section also adds definitions of filing officers.

SECTION 29: ORS 255.145 Speaks to the SINGLE SUBJECT determination provision for a special district measure. SECTION 21 of this amendment spoke about SINGLE SUBJECT for a County measure and SECTION 22 referred to a City measure.

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on January 9, 2024, I directed the original Secretary of State's Supplemental Brief to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Daniel Meek, attorneys for relators, James Buchal, attorney for Landmark amicus curiae Foundation, and Nadia Dahab, attorney for amicus curiae Constitutional Accountability Center, by using the court's electronic filing system.

I further certify that on January 9, 2024, I directed the Secretary of State's Supplemental Brief to be served upon Jason Llewellyn Kafoury, attorney for relators, and Tyler D. Smith, attorney for adverse parties Donald J. Trump; Donald J. Trump for President 2024 Inc., by mailing a copy with postage prepaid, in an envelope, addressed to:

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(1)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(1)(b) and (2) the word-count of this brief (as described in ORAP 5.05(1)(a)) is 1,182 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(3)(b).

/s/ Benjamin Gutman

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