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August 4, 2022
Sent Via Email Only

Jack Brown Jr., Chair
Constitution Party of Oregon
chair@constitutionpartyoregon.net

Re: Elections Division Case No. 22-046

Dear Jack Brown:

On June 10, 2022, you were informed that the Elections Division (“Division”) received a written complaint alleging possible violations of Oregon election law. Specifically, the complaint alleges that the Constitution Party of Oregon (“Party”) did not provide proper notice regarding nominating conventions and committee meetings.

Pursuant to ORS 260.345(3) the Division opened an investigation into the allegations in the complaint. The Division sent you investigatory inquiries requesting supporting documentation and responses to the questions set out in the letters. The investigation and this determination only involve questions of compliance with state law, not whether the party complied with its own bylaws. Although a party may choose its nomination process through bylaws, that process must comply with state law in order to successfully nominate candidates to the ballot.

Notice Requirements for Nominating Conventions and Committee Meetings

ORS 248.009(1) states in part that the process for nominating minor party candidates to the general election ballot

shall provide an equal opportunity to all registered members of the party within the electoral district to participate in the process of making nominations or selecting the delegates who will make the nominations.

It also states that

[t]he minor political party shall nominate candidates for public office only in accordance with the procedures set forth in its organizational documents.

ORS 248.009(3) states in part that

Not later than the 10th day before any nominating convention...notice shall be published at least once in not fewer than three newspapers of general circulation within the electoral

district for which the nomination will be made. The notice shall contain the time and place of the convention, and the office or offices for which nominations will be made.

The statute also provides alternative methods of providing notice when there are fewer than three newspapers of general circulation within the electoral district.

ORS 248.012 requires the party to notify members of committee meetings. It states that

The chairperson of a county central committee or state central committee shall notify by postal mail or electronic mail the entire membership of the committee not later than the sixth day before the date of an anticipated meeting. Except for the notice of an organizational meeting of a county central committee, failure to give timely notice of the time, date and place of a meeting shall invalidate the business of the meeting.

Further, ORS 249.705 states that a minor political party may only nominate one candidate for each partisan public office to be filled at the general election.

Constitution Party Structure as Outlined in Party Bylaws

The Party's bylaws state that the party is organized in part by Precinct Caucuses, County Central Committees, a State Central Committee and a Steering Committee.

As outlined in your response and in the party bylaws, individuals registered to vote as members of the Party have the right to participate in Precinct Caucuses. The bylaws state that the Precinct Caucuses will be held in each even numbered year on the last Saturday in March at a time and place selected by the party. The bylaws require notice of the precinct caucuses to be published in three newspapers in general circulation in the county not later than 10 days before the caucus meeting. If a county does not have three newspapers in general circulation, the bylaws allow the party to publish notice in one newspaper in general circulation if party members registered by January 31 are also notified by phone, mail, fax, email or in person. One of the responsibilities of the Precinct Caucuses is to elect precinct committee people.

The County Central Committees are made up of all precinct committee people of a county. County Central Committee members may elect delegates to the State Central Committee and nominate candidates for local partisan offices. The State Central committee is made up of delegates elected by the County Central Committees; it may nominate or endorse candidates for partisan office not already nominated by the County Central Committees, including statewide partisan offices.

Article VI of the Party bylaws states that the state Party chairman and county Party chairmen shall make up the Steering Committee which assumes the responsibilities of the State Central Committee, including nominating candidates for partisan office, unless there are three "organized counties" in at least three congressional districts. You confirmed that the Steering Committee is currently operating in lieu of the State Central Committee because only two counties are currently "organized" as defined in the Party's bylaws. The bylaws allow the Steering Committee to conduct Party business via email and provide instructions for making motions and responding to motions introduced by committee members.

Constitution Party Nominations for the 2022 General Election

The Steering Committee's minutes you submitted as part of your response indicate that the committee met to nominate candidates on May 21, 2022; June 1, 2022; and July 12, 2022. The minutes show that the following candidates were nominated:

May 21, 2022:

- Jo Rae Perkins for US Senate
- Michael Stettler for US Representative, District 2
- Jim Howard for US Representative, District 4
- Caleb Abel for State Representative, District 1
- Ed Renfroe for State Representative, District 2

June 1, 2022:

- Donice Smith for Governor

July 12, 2022:

- Kim Rice for State Senate, District 18
- Morgan Hinthorne for State Representative, District 44

On July 8, 2022 the Division received a Candidate Filing – Minor Political Party form (SEL 110) indicating that the Party nominated Paul Romero to the office of governor. This was the second filing received from the Party for a gubernatorial candidate. The form was signed by a party officer as required by ORS 249.720.

Party Notices in 2022

The Party did not provide any notice to its membership of the three meetings (May, June, and July) in which the nominations above occurred. The Steering Committee alone received specific notice of the meetings.

As described above, Party bylaws require the Party to provide notice to all Party members of biennial precinct caucuses. However, the Party did not provide any such notices in 2022. The Division infers that the last time the Party provided notice of its biennial precinct caucuses was in January 2020.

Analysis

ORS 248.009 requires a party to provide all registered party members within the electoral district an equal opportunity to make nominations or to select delegates who will make nominations. Further, the statute requires the party to provide specific notice of the place of the convention, the time of the convention, and the office(s) for which nominations will be made. This requirement makes clear that the intent of the statute is to provide notice specific to each nominating convention, and in a time frame within reasonable proximity to the election to allow all party members to participate meaningfully.

In this matter, the Party provided two kinds of notices: notice of the Steering Committee meetings at which the candidates received the Party's nomination, and notice (in 2020) that the membership could elect precinct committeepeople. Both notices were insufficient to meet the requirements of ORS 248.009.

Steering Committee Notice

Only members of the Steering Committee received notices of the meetings at which committee members voted to nominate candidates. The Division did not receive copies of those notices so is unable to comment on whether the content was sufficient to meet the requirements of ORS 248.009. However, Party representatives reported that notices went only to members of the Steering Committee. Therefore, they were insufficient to meet the statutory requirements that notice be published in three newspapers or that alternative notice be provided.

Notices to all Party Members

Responses from Party representatives appeared to contend that the Party met statutory requirements by following the requirement in its bylaws that all Party members receive notice of biennial precinct caucuses. The Party representatives appeared to be asserting that such notices inform Party members of the opportunity to elect delegates who will decide the Party's nominations.

Those notices were insufficient to meet the requirements of ORS 248.009, for several reasons:

- Notice's frequency / proximity to election. Providing notice on a biennial basis is insufficient if the notice is so far from the nominations that all party members cannot meaningfully participate. In this case, no notice had been provided for at least two years before the nominations were made.
- Notice of offices for nomination. The Party did not provide copies of the notice that was last sent in 2020. However, there is no evidence that the notice specified the offices that the Party would eventually nominate based on the Party members' choices, and the Party bylaws do not specify that such information be provided. If Party members are electing delegates who will make nominations, the offices must be specifically enumerated. To the extent that information was not provided in the notice, the notice was insufficient.
- Notice that delegates were being elected at all.
 - There is no evidence Party members were notified that, by electing precinct committeepeople, they were also electing delegates who could make nominations for the Party's nomination.
 - There is also no evidence Party members were notified those precinct committeepeople could elect delegates (the State Central Committee) who could make nominations for the Party's nomination or make a final vote on the Party's nomination.
 - Presumably, Party members would have to reference the bylaws to access this information. To the extent that this important information was not provided in the notice, the notice was insufficient.

There are additional difficulties with the practice of allowing the Steering Committee to make nominations in lieu of party members or their delegates. There is no evidence that the party members ever received notice, sufficient to comply with the requirements described above, that the Steering Committee could or would ultimately serve as delegates to decide the party's nomination. Nor was the party membership allowed to vote on whether the Steering Committee should serve as delegates for this specific task. The purpose of the notice statute is to allow party members to have a specific voice (either by attending the convention or electing delegates) in a

nomination for a specific office. The notice statute does not contemplate party members giving blanket authority to make nominations to party leadership in this manner.

Determination

The Party's process does not comply with state law, either as set forth in the bylaws or as implemented in this instance, because it does not provide proper notice of nominating conventions to Party members. It also conflicts by allowing the Steering Committee to make nominations without an equal opportunity for all Party members to participate in some way.

The Division identified several defects with the Party's nomination process:

- The Party confirmed that notice to Party members was not made this year. Even if notice had been made, it would have been insufficient if it did not
 - state the time and place where nominations would be made;
 - provide information about which nominations would be made; and
 - if the nominations are to be made by delegates, inform the Party members that they are being asked to elect delegates who will make specifically enumerated nominations.
- The notice generally occurs only every two years. This is insufficient to comply with ORS 248.009(1) if notice does not occur within a reasonable proximity to the nominating convention, such that Party members (and especially new Party members) can participate meaningfully. The last notice of any kind appears to have been in 2020. That was not sufficiently close to the time of nomination to allow meaningful participation by Party members.
- The process allowed the Steering Committee to nominate candidates instead of Party members or their knowingly selected delegates. This is insufficient to comply with ORS 248.009(1).

Effect on Candidate Filings

Because the Party did not comply with ORS 248.009(1) and (3) in any of its nominations this year, the Division is rejecting the candidate filings (SEL 110s) for all candidates nominated by the Constitution Party of Oregon for the 2022 general election.

The Party may still re-nominate candidates in time for the 2022 general election filing deadline. If the Party chooses to re-nominate candidates in accordance with state law, the party should do the following:

- Update its bylaws. The Party may only nominate candidates in accordance with its bylaws. ORS 248.009(1). Therefore, the Party should update its bylaws to comply with state law and file an updated copy of the bylaws with the Division within 30 days, as ORS 248.009(1) requires.
- Schedule another nominating convention or delegate selecting convention and provide notice required by ORS 248.009(3) not later than 10 days before the convention.
- By August 30, 2022 at 5:00 p.m., file SEL 110 forms for all candidates nominated by the Party.

Civil Penalty

ORS 260.995 provides, in relevant part, that after an investigation, the Secretary may impose a civil penalty of up to \$1,000.00 for each violation of any provision of the Oregon Revised Statutes, chapters 246 through 260 or any Oregon Administrative Rule adopted by the Secretary. The Secretary adopted Oregon Administrative Rule 165-013-0020 and Appendix B which states that civil penalties for violations of election law not already provided in Appendix B's penalty matrix will be imposed under ORS 260.995 in amounts similar to those listed in the matrix.

Based on the information obtained during the investigation, the Division determined that there is sufficient evidence to show that the Constitution Party of Oregon violated Oregon election law three times by not providing sufficient notice to all registered members of the Party. Notice should have been made at least 10 days ahead of three conventions at which candidates were nominated for the 2022 general election: on May 21, June 1, and July 12. The Party did not provide notice required by ORS 248.009(1) and (3).

The Secretary will be issuing a Notice of Proposed Civil Penalty of \$450 for failure to comply with the requirements of ORS 248.009(1) and (3): \$150 for each of the three conventions.

This concludes the Division's investigation into this matter. Please contact me at elections.sos@sos.oregon.gov if you have any questions about the content of this letter. You may appeal this decision in circuit court pursuant to ORS 246.910.

Sincerely,



Alma Whalen
Elections Program Manager

c: Roger Shipman, Secretary
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