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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

**MARK PORTER, and OUR
PRIMARY VOICE,**

Plaintiffs,

vs.

**TOBIAS READ, Secretary of State of
the State of Oregon; the STATE OF
OREGON,**

Defendants.

Case No.

COMPLAINT

Filing Fee: \$281 ORS 21.135(1)

**NOT SUBJECT TO MANDATORY
ARBITRATION**

1.

This action challenges the constitutionality of ORS 254.365 on the basis that the statute imposes an unconstitutional qualification on the right to vote in primary elections in Oregon under Article II, section 2(1), of the Oregon Constitution.

PARTIES

2.

Plaintiff Mark Porter is a resident of Clackamas County, Oregon, and he has resided in Oregon since 1988. Mr. Porter is 70 years of age. Mr. Porter has been continuously registered to vote in Oregon for the past 36 years. He is registered as a non-affiliated voter (NAV), which means he is not affiliated with a political party.

3.

Plaintiff Our Primary Voice is a domestic public benefit nonprofit corporation located in Oregon. Our Primary Voice supports voter empowerment and electoral reforms, including open primaries, through legal action, education, and grassroots advocacy.

1 4.

2 Defendant Tobias Read is the Secretary of State for the State of Oregon. As
3 Secretary of State, Defendant Read “is the chief elections officer of this state” and is
4 responsible “to obtain and maintain uniformity in the application, operation, and
5 interpretation of the election laws.” ORS 246.110. Defendant Read is sued in his official
6 capacity only.

7 5.

8 Defendant State of Oregon is a sovereign state in the United States of America
9 existing under the Constitution of Oregon.

10 **FACTUAL AND LEGAL BACKGROUND**

11 6.

12 Under Article II, section 2(1), of the Oregon Constitution, a citizen is “entitled to
13 vote in all elections” if the citizen meets the three qualifications listed in that section: age,
14 residency, and registration. The Oregon Constitution does not list any other qualifications
15 for a citizen to be entitled to vote in all elections. Article II, section 2(1), states in relevant
16 part:

17 (1) Every citizen of the United States is entitled to vote in
18 all elections not otherwise provided for by this Constitution
19 if such citizen:

20 (a) Is 18 years of age or older;

21 (b) Has resided in this state during the six months
22 immediately preceding the election, *** and

23 (c) Is registered not less than 20 calendar days
24 immediately preceding any election in the manner
provided by law.¹

25 ¹ The Oregon Constitution and Oregon’s statutes refer to voters as “electors.” As used
26 in this Complaint, the term “voter” is intended to be synonymous with “elector.”

1 7.

2 Oregon voters elect most of their elected government officials using a two-stage
3 process. The first is a primary election in May, and the second is a general election in
4 November. *See* ORS 249.016 *et seq.* Both the primary election and the general election
5 are “elections” under the Oregon Constitution and under Oregon’s statutes. *See, e.g.,* Art.
6 II, §14a (referring to “the primary and general biennial elections for State and county
7 officers”); ORS 254.016. As with general elections, Oregon’s primary elections are held
8 using public funds and organized and conducted through county elections offices.

9 8.

10 At the general election, a ballot lists the winners of the primary elections (one
11 candidate from each major party) and candidates nominated by minor political parties and
12 non-affiliated candidates who qualify. The candidate, or candidates, receiving the highest
13 number of votes in the general election is, or are, elected to office. *See* ORS 254.065. In
14 the modern era, the winner of every statewide general election was a major party
15 candidate. The last time a minor party or nonaffiliated candidate won a statewide election
16 was in 1930, when Julius Meier was elected governor in 1930 as a non-affiliated
17 candidate.

18 9.

19 By statute, Oregon’s primary elections are closed, meaning that Oregon’s primary
20 elections are closed to all voters not registered in a major party whose candidates are
21 running in that election. ORS 254.365(1) states:

22 (1) An elector is not qualified or permitted to vote at any
23 primary election for any candidate of a major political
24 party, and it is unlawful for the elector to offer to do so,
unless:

25 (a) The elector is registered as being affiliated with
26 one of the major political parties nominating or

electing its candidates for public office at the primary election; or

(b) The elector is registered as not being affiliated with any political party and wishes to vote in the primary election of a major political party that has provided under subsection (3) of this section for a primary election that admits electors not affiliated with any political party.

10.

Neither of the two major political parties in Oregon (the Republican Party and the Democratic Party) permits non-affiliated voters to participate in their party's primary elections.

11.

There are more non-affiliated registered voters in Oregon than there are voters registered with any single political party, including the state's Democratic and Republican parties. As of June 2025, the total number of registered voters in Oregon is 3,042,762. Of those, over 36%, are non-affiliated voters, and another 7% are affiliated with a minor party, for a combined total of over 43%.² Similarly, in most Oregon State Senate and House districts, the "nonaffiliated" bloc is larger than that of any political party. Given the number of nonaffiliated voters and those affiliated with a minor party, nearly half of Oregon's registered voters are, by statute, "not qualified or permitted" to vote in primary elections. In several counties, more than half of registered voters are not permitted to do so.

12.

At the same time, nearly half of the electoral districts in Oregon are effectively single-party districts, where party affiliation is so much greater for one of the two major

² All statistics in Paragraph 10 and 11 are drawn from the June 2025 voter registration records of the Secretary of State's Elections Division, *available at* <https://sos.oregon.gov/elections/Documents/registration/2025-June.pdf>.

1 parties than the other that the primary election effectively controls the choices for voters
2 and the outcome of the general election. For instance, in 14 of Oregon's 30 Senate
3 districts (together comprising just under half of Oregon's population), and in 27 of 60
4 House districts, the number of voters registered with one major party is more than *twice*
5 that of the other major party. Many federal congressional districts in Oregon are similarly
6 single-party districts. For instance, Plaintiff Porter's congressional district (District No. 3)
7 has not elected a Republican since 75 years ago, in 1955. In such districts, the candidate
8 who is elected to office is effectively determined by the primary election, not by the
9 general election. And in many such districts, the majority party's general election
10 candidate runs unopposed.

11 13.

12 ORS 254.365 permits only voters who are affiliated with a major party to
13 participate in primary elections. That statute's exclusion of non-affiliated voters from
14 participation in primary elections is contrary to the guarantee of Article II, section 2, that
15 "[e]very citizen" over 18 years of age who resides in Oregon and is timely registered is
16 "entitled to vote in all elections" in Oregon. By imposing an additional qualification on
17 citizens' right to vote, the statute is invalid both facially and as applied to Plaintiff Porter.

18 14.

19 The hallmark of democracy is the right of citizens to choose their government. A
20 just government derives its powers from the consent of the governed. Citizens can only
21 give their consent when they can vote for a candidate seeking to represent them. When
22 the State conducts closed elections in contravention of the Oregon Constitution and then
23 restricts the general election to candidates approved in the closed elections, the citizens'
24 consent is nullified and government is not representative of the governed.

1 15.

2 Political parties are free to conduct their own affairs. They may choose party
3 members, remove members, sponsor and endorse candidates, enforce party rules, and
4 generally enjoy all their First Amendment rights of speech and free association. But when
5 the State enforces political party rules, conducts party business, and financially supports
6 party activity that effectively decides elections and denies the participation of citizens in
7 those elections, the State violates its own constitution.

8 **FIRST CLAIM FOR RELIEF**
9 **[Declaratory Judgment – ORS 28.010 - .020]**

10 16.

11 Plaintiffs incorporate by reference paragraphs 1 - 14 above.

12 17.

13 A present and actual controversy exists between the parties because they disagree
14 as to whether Art. II, section 2, of the Oregon Constitution permits the closed primary
15 rule set forth in ORS 254.365. Plaintiffs contend that the statute imposes an
16 unconstitutional qualification on his right to vote for the officials who would represent
17 him in government. Defendant disagrees.

18 18.

19 Pursuant to ORS 28.010 and 28.020, plaintiffs are entitled to a declaration that
20 ORS 254.365 is unconstitutional under Article II, section 2, of the Oregon Constitution,
21 both facially and as applied to Plaintiff Porter's right to vote for the officials who would
22 represent him in government.

23 19.

24 Pursuant to ORS 28.110, all persons who have or claim a legal interest that would
25 be affected by the above declaration have been made parties to this action.
26

SECOND CLAIM FOR RELIEF
[Injunctive Relief]

20.

Plaintiffs incorporate by reference paragraphs 1 - 14 above.

21.

Plaintiffs are entitled to an injunction enjoining defendants from excluding any person who is qualified as an elector under Article II, section 2, of the Oregon Constitution from voting in primary elections for candidates for any office representing the elector.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against defendants as follows:

1. On Plaintiffs' First Claim for Relief, a declaration that ORS 254.365 is unconstitutional under Article II, section 2, of the Oregon Constitution and therefore invalid.

2. On Plaintiffs' Second Claim for Relief, an injunction enjoining defendants from excluding any person who is qualified as an elector under Article II, section 2, of the Oregon Constitution from voting in primary elections for any candidates for offices representing the elector.

DATED this 25th day of June, 2025.

HARRANG LONG P.C.

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