

JEANNE P. ATKINS  
SECRETARY OF STATE



SECRETARY OF STATE  
136 STATE CAPITOL  
SALEM, OREGON 97310-0722

Phone 503-986-1500

March 16, 2016

Dan Meek, Co-Chair  
Independent Party of Oregon  
Delivered via Electronic Mail

Dear Mr. Meek,

This office has reviewed your request that we suspend the statutory requirements applicable to major parties for primary elections and allow the IPO to conduct its own “presidential preference primary election.” We have sought Department of Justice analysis, and attached their letter to the Elections Division. I conclude that such a suspension would be unlawful.

Oregon law does not allow the Secretary of State to place names of nominees who are specifically running for the nomination of one major party to be placed on the ballot of another party for which they have not filed. Therefore, those who have filed with the Secretary seeking specific nomination for Democratic and Republican candidacies, cannot also, at the discretion of the Secretary, appear on the Independent Party’s ballot.

To appear on a major party’s primary ballot a candidate for President must actually seek that party’s nomination, either by gathering signatures through the petition process or by campaigning for the party’s nomination to the point of becoming “generally advocated or ... recognized in the national news media” as seeking that party’s nomination. ORS 249.078(1)(a) and (b). None of the candidates listed in your letter meet either legal standard to appear on the IPO’s primary ballot for President. The voluntary nature of seeking a major party’s nomination is an important feature of Oregon law, because, as discussed in the Department of Justice’s analysis, the involuntary placement of a candidate on another major party’s primary ballot would have a potentially negative effect on a candidate who lost the primary race for one party’s nomination, even though they might have won another party’s nomination.

Your alternative proposal, that there be no nomination line for President on the IPO ballot, is likewise unlawful. This proposal would take away from IPO voters any opportunity to nominate candidates for President, and would likewise negatively impact nonaffiliated voters who choose to receive and vote an IPO ballot. This would violate both a statutory and constitutional right for electors in both party primaries and general elections. Likewise, elimination of the usual space for write-ins would be unlawful. The right to write in a candidate of their choice has long been held to be a right under our state constitution.

You are correct that the lack of named candidates, and therefore the number of write-in ballots that may be cast, will be increased this year, not just for President but throughout the IPO ballot. However, the right to insert an individual's write-in nomination for every electoral position cannot be eliminated simply because they choose to vote an IPO ballot as opposed to a Democratic or Republican ballot.

It is certainly within the power of the Legislature to change our statutes on the conduct of primary elections. You may wish in the future to pursue new ideas for balloting that could be implemented by parties that have no national primary process or do not wish to give over to primary elections the choice of primary candidates. But current law governing major party primaries is in effect and applies to the Independent Party of Oregon. The Secretary of State does not have the authority to violate clear statutory direction because a party would like to establish a new procedure.

Your request, and the submission of the revised by-laws of the IPO, has also raised a question in our office regarding the IPO's intentions regarding the outcome of your party's presidential primary, now and in the future. It appears from your by-laws that the IPO's State Council may be given "veto" power over the presidential candidate selected by voters in the IPO's presidential primary. The IPO's bylaws are not entirely clear on this point, so please notify our office immediately if that is the IPO's intent as such a provision reserving "veto" power in the IPO's State Council would appear to be inconsistent with state law.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne P. Atkins". The signature is written in dark ink and is positioned above the printed name and title.

Jeanne P. Atkins  
Oregon Secretary of State