

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MARK PORTER and OUR PRIMARY VOICE,
Plaintiffs-Appellants

v.

TOBIAS READ, Secretary of State of the State of Oregon and THE STATE OF
OREGON,
Defendants-Respondents

Marion County Circuit Court
25CV38061

A190160

APPELLANTS' OPENING BRIEF AND EXCERPT OF RECORD

Appeal from the General Judgment of the Circuit Court for Marion County
Honorable Natasha A. Zimmerman, Judge

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I. STATEMENT OF THE CASE

A. Nature of the Action and Relief Sought

Plaintiffs Mark Porter and Our Primary Voice sued to secure the constitutional right of all Oregon voters to participate in all publicly-funded elections for the public officers who will represent them. They sought a declaration that ORS 254.365, which excludes voters from voting in primary elections for certain offices if they do not belong to a major political party, is unconstitutional under Article II, section 2, of the Oregon Constitution. Plaintiffs also sought injunctive relief enjoining enforcement of ORS 254.365 to exclude any person qualified to vote under Article II, section 2, from voting in any election for candidates for any office representing the voter.¹

B. Nature of the Judgment and Basis of Appellate Jurisdiction

The trial court entered a general judgment on February 20, 2026, declaring ORS 254.365 constitutional on its face and as applied to Plaintiff Porter. The judgment is subject to appeal pursuant to ORS 19.205.

¹ Many Oregon laws in this context use the term “elector.” For clarity, this brief chiefly uses the term “voter,” which we intend to be synonymous with “elector.”

C. Entry of Judgment and Notice of Appeal

The trial court's general judgment was entered on February 20, 2026. Plaintiffs timely filed a notice of appeal from the judgment on March 2, 2026.

D. Question Presented on Appeal

May the legislature exclude constitutionally qualified voters from voting in Oregon's primary elections for candidates for public office, notwithstanding the guarantee in Article II, section 2, of the Oregon Constitution that "every" qualified citizen is "entitled to vote in all elections"?

E. Summary of Argument

Under Article II, section 2(1), of the Oregon Constitution, every citizen is "entitled to vote in all elections" if the citizen meets the three qualifications stated in that section: age, residency, and registration. The Constitution lists no other qualifications for a citizen to be entitled to vote, and the legislature may not impose additional qualifications.

For elected officials in Oregon, the process of election typically occurs in two stages. The first is a primary election in May, and the second is a general election in November. Both are "elections" under the Oregon Constitution and under Oregon's statutes. Both elections

are publicly funded and administered by state officials in a largely identical format.

But by statute, Oregon's primary elections are effectively closed to voters who are not affiliated with one of the two major parties.

Under ORS 254.365(1), at "any primary election for any candidate of a major political party," a person qualified to vote under Article II, section 2, is "not qualified or permitted to vote" in the election if the voter is not "registered as being affiliated with one of the major political parties"—unless a major party permits the participation of non-affiliated voters. No major political party in Oregon does so.

That statutory policy excludes more than 37% of registered Oregon voters from participating in primary elections on the basis that they are not publicly affiliated with any party. Indeed, there are more non-affiliated registered voters in Oregon than there are voters registered with any single political party. Many thousands more are barred from voting in primary elections because they are affiliated with a minor party.

At the same time, the primary election is often the determinative election in choosing Oregon's elected officials. Nearly half of Oregon's electoral districts are effectively "single party"

districts, where the majority party enjoys a greater than two-to-one advantage over the minority party among registered voters. In such districts, the candidate who is elected to office is effectively determined by the primary election, not by the general election. The United States Supreme Court has observed: “As a practical matter, the ultimate choice of the mass of voters is predetermined when the nominations [by the major political parties] have been made.” *Morse v. Republican Party of Va.*, 517 US 186, 205–206, 116 S Ct 1186, 134 L Ed 2d 347 (1996).

The result is that many constitutionally qualified voters in Oregon cannot participate in the process of determining who will be elected to represent them in public office unless they choose to formally and publicly affiliate as a member of either the Democratic or Republican Parties. Meanwhile, the number of voters who are unwilling to affiliate with a major political party has risen steadily for decades and is now at an all-time high of nearly four in ten Oregonians.

This state’s exclusion of non-affiliated voters from participation in primary elections is unconstitutional. It is contrary to the guarantee of Article II, section 2, that “[e]very citizen” over 18 years

of age who resides in Oregon and is timely registered is “entitled to vote in all elections” in Oregon. By imposing an additional qualification on citizens’ right to vote, ORS 254.365 is invalid both facially and as applied to plaintiff Mark Porter, a non-affiliated registered Oregon voter.

The trial court erred by concluding that primary elections are not elections subject to Article II, section 2; that the Oregon Supreme Court’s decision in a 125-year-old case about a different type of election controls; and that ORS 254.365 can be upheld by applying an inapplicable First Amendment balancing test. Article II, section 2, guarantees every citizen the right to vote in “all elections,” and it does not permit the exclusion of voters who are not affiliated with one of the two major parties. The trial court’s judgment should be reversed.

F. Statement of Facts

1. The Plaintiffs

Plaintiff Mark Porter is a resident of Clackamas County, Oregon, and he has resided in Oregon since 1988. *See* Defendants’ Answer at ¶2. At the time this action was commenced, he was 70 years old and had been continuously registered to vote in Oregon for the past 36 years. *Id.* He is registered as a non-affiliated voter

(“NAV”), which means he is not affiliated with a political party. *Id.* Plaintiff Our Primary Voice is a domestic public benefit nonprofit corporation with which Mr. Porter is affiliated. *Id.* ¶3. Our Primary Voice supports voter empowerment and electoral reforms, including open primaries, through legal action, education, and grassroots advocacy.

2. Primary Elections in Oregon: Early Primary Laws

Oregon’s earliest “primary elections” were established by the Morgan and Lockwood Acts in 1901. *See* 1901 Or. Laws. p. 317-328 (Lockwood Act). Under that system, a “voluntary political association or party” would effectively borrow the machinery of county elections offices to invite its own party members to vote for the party’s “delegates to their party conventions.” *Id.* at §1-3. In turn, the party convention delegates would meet at the party’s convention to decide whom the party would support.

The 1901 laws did not create a system by which the voting public chose nominees to appear on the general election ballot as they do now. To the contrary, the process of selecting convention delegates remained internal to the party, and accordingly, participation was limited to party members. Notably, if anyone

challenged the party loyalty of another person who intended to cast a vote for a party delegate, the Lockwood Act required the person to “swear or affirm that he voted for a majority of the candidates of such party or association at the last election, or intends to do so at the next election.” 1901 Or. Laws p.317, at §14.

3. Oregon’s Current Primary System

The current system of direct primary elections is substantively different than the party delegate elections that were in place in 1901. Under modern primary laws, voters no longer choose delegates to a party convention, but instead directly choose the individuals who will advance to the general election for public office. That is, the state has “change[d] the mode of choice from a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom, as a second step, the [public official] is to be chosen at the election.” *U.S. v. Classic*, 313 US 299, 316-17, 61 S Ct 1031, 85 L Ed 1368 (1941) (discussing state primaries to nominate candidates for Congress).

In Oregon voters elect many public officials using the same two-stage process. For offices deemed “partisan,” the first stage is the primary election, during which voters select major political party

candidates for public office to advance to the general election. The second is the general election, at which the winner is chosen from among the major party, minor party, and independent candidates. *See* ORS 254.056(2) *et seq*; ORS 249.016 *et seq*.

The procedures for voting in the primary election are very similar to—and in many respects are identical to—those in the general election. The chief elections officer maintains the “register of candidates” whom the voters can vote for at the primary election, much as for general election candidates (ORS 254.076); prepares the “official primary election ballot” listing the candidates, just as with the general election ballot (ORS 254.115); distributes primary ballots to every registered voter by mail under the same statute that governs distribution of general election ballots (ORS 254.470); tallies the ballots under the same provisions that govern general elections (ORS 254.485 *et seq*), and so on. And at both stages, the selection of winners is the same: “When one person is to be nominated for or elected to an office, the person receiving the highest number of votes shall be nominated or elected.” ORS 254.065.

Although Oregon’s primary structure has changed substantially since the Morgan and Lockwood Acts in 1901—from a

process in which party members voted for convention delegates to a process in which the public directly selects who will stand election for public office—Oregon’s primary system remains one in which only party members may participate. By statute, the state prohibits non-affiliated voters from voting in the primary election of either of the two major political parties (unless that party has chosen to “admit[] electors not affiliated with any political party”). ORS 254.365(1) states:

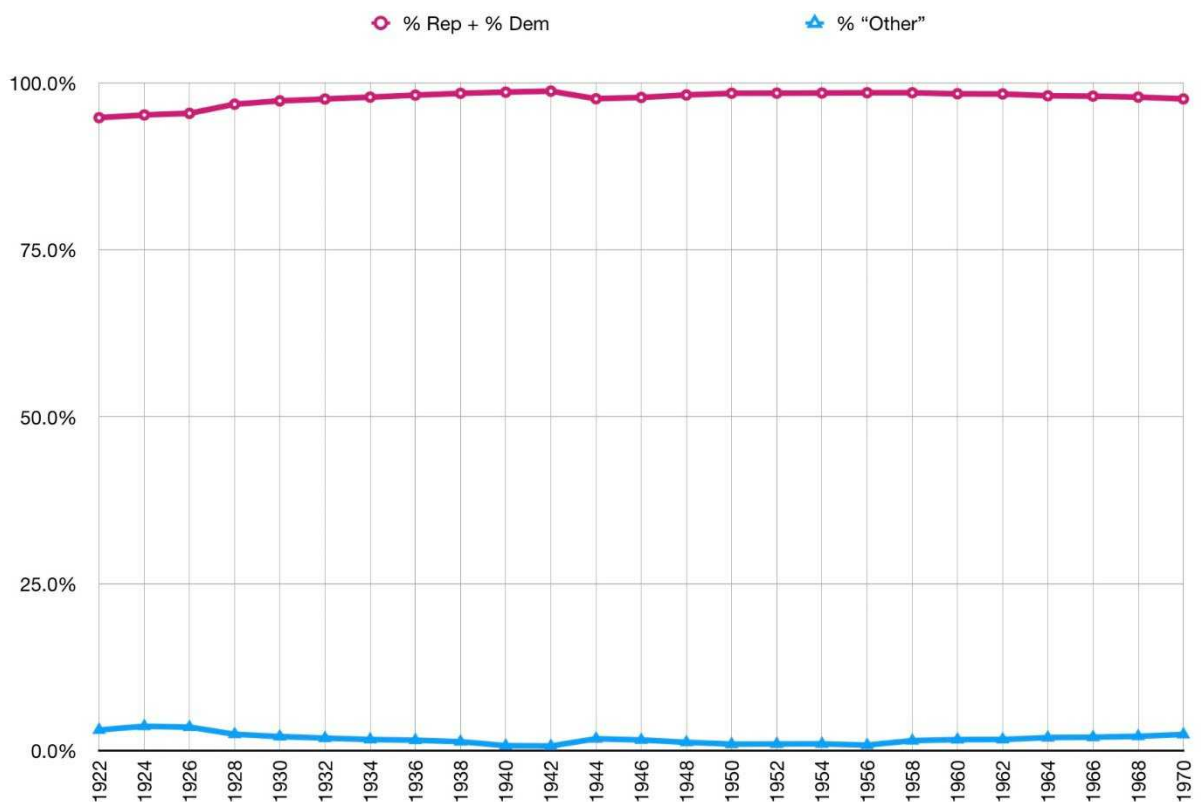
An elector is not qualified or permitted to vote at any primary election for any candidate of a major political party, and it is unlawful for the elector to offer to do so, unless:

- (a) The elector is registered as being affiliated with one of the major political parties 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.

Neither of the two major political parties in Oregon has filed party rules allowing non-affiliated voters to participate under ORS 254.365. Non-affiliated voters in Oregon are, by law, “not qualified or permitted to vote” at a primary election.

4. Party Affiliation in Oregon

Today, a plurality of Oregon's voters are not affiliated with any political party. But for much of Oregon's history, just the opposite was true. From 1922 to 1970, an average of 97.7% of registered voters in Oregon were affiliated with either the Democratic or Republican parties. *See Declaration of Aaron Landau in Support of Plaintiff's Motion for Summary Judgment (Oct 13, 2025) ("Landau Decl."), at Table 1.*²

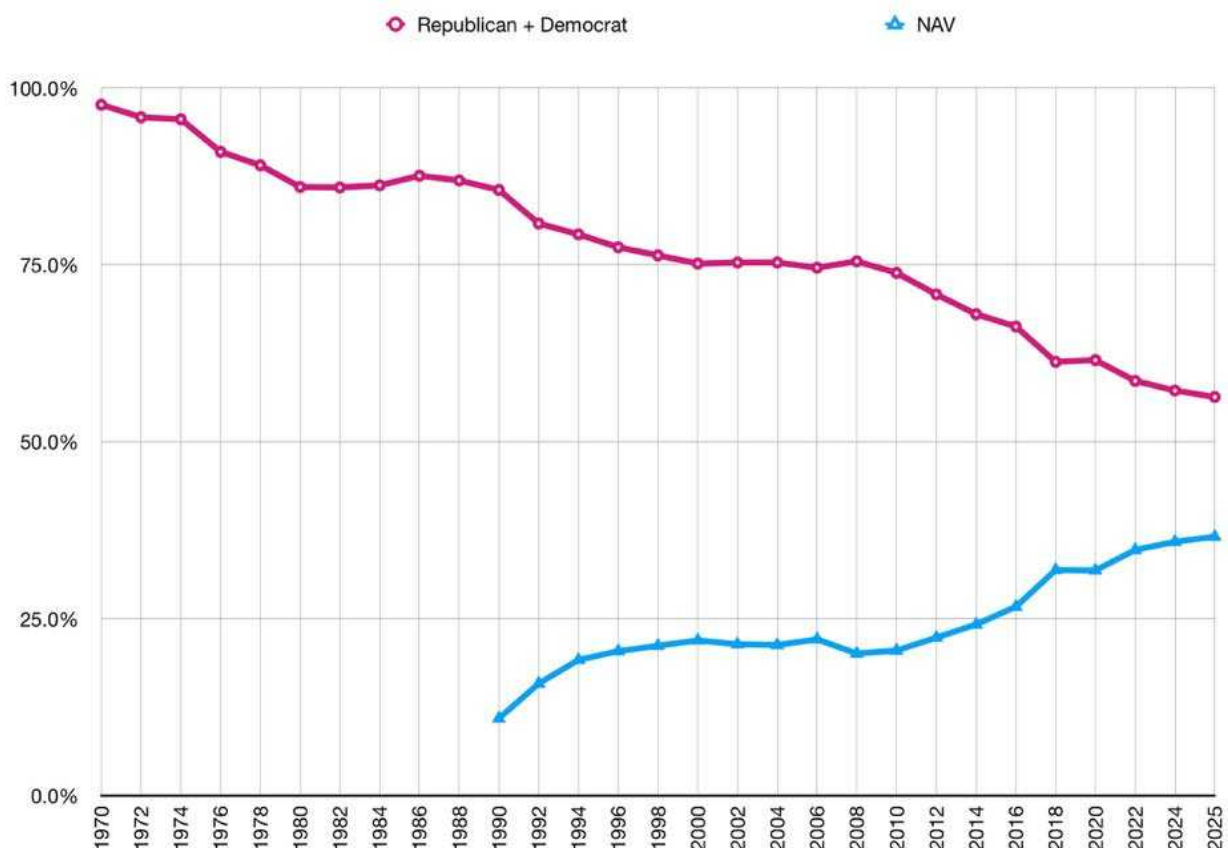


² The above chart appears at Landau Decl., p.5. As described in that declaration, the underlying party affiliation data concerning election years from 1922-2000 is drawn from the Oregon Blue Book. All data from later elections is drawn from the most current voter registration records of the Secretary of State's Elections Division, *available at* <https://sos.oregon.gov/elections/Pages/electionsstatistics.aspx>.

During that same period, “non-affiliated” voters were almost non-existent. In fact, for almost all of the 20th century, Oregon’s Blue Book did not report non-affiliated voters at all; until 1990, the state grouped non-affiliated voters and those who affiliated with particularly small parties in a single category called “Other.” *Id.* Even grouped together, that “Other” category was vanishingly small—in many years comprising as few as 0.7% of registered voters. *Id.* For most of this state’s history, nearly every voter was a Democrat or a Republican.

The modern era tells a very different story. Starting in the early 1970s, affiliation with both major parties began a steady decline that continues today. While in 1970 the two major parties accounted for nearly 100% of Oregon’s registered voters, that figure decreased to only 85% just over a decade later. *Id.* By the late 1990s, that figure had further decreased to 75%. *Id.* By the mid-2010s, it had declined to around 65%. *Id.* And today, another decade later, the combined figure has fallen to 55%. *Id.* Nearly every year for more than half a century, fewer voters have been affiliated with a major party than the year before. *Id.*

Meanwhile, the number of non-affiliated voters has steadily grown, increasing from low single-digits in the 1970s to approximately 37% as of the 2025 trial court proceedings. *Id.* As of that same time, approximately 1.16 million registered Oregon voters were non-affiliated – significantly more than those affiliated with any single political party. *Id.* For as long as Oregon has reported non-affiliated voters as a distinct category (beginning in 1990), their growth has mirrored the major parties' decline.³



³ The above chart and its underlying data appear at Landau Decl., at Table 1 (data) and p.6 (chart).

That statewide change is reflected in individual districts as well. As of the 2025 trial court proceedings, non-affiliated registered voters outnumbered those registered with any political party in most Oregon State Senate and House districts. *See* Oregon Secretary of State Elections Division, Oct. 2025 Voter Registration, at 5-7.⁴ Combined with the number affiliated with a minor party, that means nearly half of Oregon’s voters—more than 44%—are, under ORS 254.365, not permitted to vote in primary elections. *Id.* And in at least five of Oregon’s legislative districts, the number is *more than half*—meaning primaries in those districts are closed to the majority of registered voters. *Id.*

At the same time, the primary is often the determinative step in electing public officials. In nearly half of Oregon’s electoral districts (including 14 of Oregon’s 30 Senate districts, comprising nearly half of the state’s population) the number of voters registered with one major party is more than *twice* that of the other major

⁴ The above reflects data as of the 2025 proceedings, *available at* <https://sos.oregon.gov/elections/Documents/registration/2025-october.pdf>. And the same holds true today. *See* Oregon Secretary of State Elections Division, June 2026 Voter Registration, *available at* <https://sos.oregon.gov/elections/Documents/registration/2026-june.pdf>.

party, such that the majority party's candidate is overwhelmingly likely to be elected. *Id.* (Indeed, in all 14 of those Senate districts, the majority party has won every general election for at least the last 20 years, and many for much longer than that.) In those same 14 districts, an average of 43% of registered voters are not affiliated with one of the two major parties, and therefore are prevented from participating in the primary election under ORS 254.365. *Id.*

5. The Trial Court Litigation

In June 2025, plaintiffs filed a complaint seeking declaratory and injunctive relief. Plaintiffs' first claim sought a declaration that ORS 254.365 is unconstitutional under Article II, section 2, of the Oregon Constitution, both facially and as applied to Mr. Porter's right to vote for the officials who would represent him in government. *See* Complaint at 6. Plaintiffs' second claim sought injunctive relief enjoining defendants from excluding any person who is qualified as a voter under Article II, section 2, of the Oregon Constitution from voting in primary elections for candidates for any office representing the voter. *Id.* at 7.

The parties filed cross-motions for summary judgment. The trial court denied plaintiffs' motion, and granted defendants', explaining its ruling in three parts.

First, the trial court voiced the view that a primary election in Oregon does not constitute an "election" under the Oregon Constitution:

"I'm going to start by saying it isn't clear to me that the party-affiliated portion of the primary elections truly fits the definition of elections as contemplated by Article II, section 2 of the Oregon Constitution, because it is not a vote for the candidate from a party, but a vote to select the candidate within a party. Therefore, I wouldn't find that ORS 254.365 violates Article II, section 2, either facially or as applied.

"However, defense appears to have conceded the issue that this is an election as contemplated in Article II, section 2. So I went forward with the analysis accepting that concession by the defense."

ER 55.

Second, the trial court stated that, even if a primary election is an "election" under Oregon's Constitution, the Supreme Court's decision in *Ladd v. Holmes*, 40 Or 167, 66 P 714 (1901), compels the conclusion that excluding non-affiliated voters does not violate Article II, section 2. As the court stated, "I agree that there are differences in the election process from that process in 1901.

However, I do find that the constitutional analysis of *Ladd v. Holmes* is controlling.” ER 56. “And so I would find again, under *Ladd v. Holmes*, that the current statutory framework does not violate Article II, section 2.” *Id.*

Third—and seemingly in the alternative to the court’s conclusion that *Ladd v. Holmes* means ORS 254.365 does not violate Article II, section 2—the court concluded that, in any event, the statute imposes only a “minor” restriction on the right to participate in elections, and is therefore not in violation of Article II, section 2. ER 58. In reaching that conclusion, the court engaged in what it called a “balancing” test drawn from U.S. Supreme Court case law applying the First Amendment. ER 56-58.

On those bases, the court denied plaintiffs’ motion for summary judgment and granted defendants’ cross-motion. *Id.*

II. FIRST ASSIGNMENT OF ERROR: The trial court erred in granting summary judgment for defendants on the basis that ORS 254.365 does not violate Article II, section 2, of the Oregon Constitution.

A. Preservation

The sole question at issue on appeal—whether ORS 254.365 violates Article II, section 2—was the subject of the parties’ cross-motions for summary judgment. The specific arguments plaintiffs

now raise on appeal were also raised in their trial briefing. *See* Plaintiffs’ Motion for Summary Judgment (October 13, 2025), at 19 (“[P]rimary elections, as described at ORS chapter 249 and chapter 254, are ‘elections’ for purposes of the constitutional guarantee of the right to vote in ‘all elections’”); and 20 (“For several reasons, the court’s decision in *Ladd* does not compel the conclusion that Article II, section 2, of the Oregon Constitution permits the legislature to exclude nonaffiliated voters from participating in direct primary elections today.”). They were also raised at the parties’ hearing on the matter. *See* ER 4-17 (arguments regarding Article II, section 2); 34 (“The resort to other jurisdictions’ decisions,” including those in the federal context, “is just singularly unhelpful to the Court here in deciding how to interpret the Oregon Constitution”).

B. Standard of Review

This court “review[s] the trial court’s ruling regarding the constitutionality of a statute for an error of law.” *State v. Betnar*, 214 Or App 416, 419, 166 P3d 554 (2007).

C. Argument

Primary elections in Oregon are “elections” for purposes of the right to vote in “all elections” under Article II, section 2, of the Oregon Constitution. That provision establishes the sole criteria for

who may vote in Oregon’s elections, and those criteria say nothing about requiring voters to affiliate with a major political party. The legislature does not have the power to impose such extra-constitutional conditions on the right to vote in Oregon. By doing so, ORS 254.365 is unconstitutional.

The trial court’s contrary conclusion was incorrect. First, the trial court was wrong to conclude that a primary election is not an “election” for purposes of Article II, section 2. Indeed, both parties agreed that primary elections in Oregon *are* “elections” for purposes of Article II, section 2.

The trial court also was incorrect to conclude that the Supreme Court’s 1901 decision in *Ladd v. Holmes* compels the conclusion that ORS 254.365 does not violate Article II, section 2. The kind of direct primary elections Oregon holds today were not at issue in that case, and the *Ladd* court’s primary reasoning—that we should not want Democrats sabotaging Republican party primaries, and vice-versa—is not at issue here, either. This case concerns only those who are unaffiliated with *either* of the major parties.

Lastly, the trial court’s resort to a “balancing” test has no place in the analysis. The test applied by the trial court governs certain

First and Fourteenth Amendment challenges, which are not at issue in this case. Oregon’s appellate courts have never applied any such approach to voting rights under Article II, section 2.

1. A direct primary election in Oregon is an “election” for purposes of Article II, section 2, of the Oregon Constitution.

The trial court’s conclusion that a direct primary election in Oregon is not an “election” for purposes of Article II, section 2, was incorrect. Today’s direct primary elections under ORS chapters 249 and 254 are “elections” for purposes of the constitutional guarantee of the right to vote “in all elections” in Oregon.

Article II of the Oregon Constitution refers to both general and primary elections as “elections.” *See* Art. II, §14a (referring to municipalities’ “nominating and regular elections,” and referring to “the primary and general biennial elections for State and county officers”); *see also* Art. XVII, §2 (referring to the “regular state-wide primary election”). So do Oregon’s election laws. *E.g.*, ORS 254.016 (“Any primary election, general election or special election held in this state shall be conducted under the provisions of this chapter unless specifically provided otherwise in the statute laws of this state.”). Appropriately, defendants “conceded the issue that [a

primary] is an election as contemplated in Article II, section 2.” ER-55.

Likewise, the Supreme Court in *Loe v. Britting*, 132 Or 572, 579, 287 P 74 (1930) explained that even the primary elections at issue in *Ladd v. Holmes* in 1901 were considered “elections” as that term is used in Article II, section 2 – and with that principle it expressly agreed. The court explained that, in *Ladd*, the court “held that primary elections held within the City of Portland under an act known as the Morgan and Lockwood Act, a law which is not now in force, came within the effect of section 2, article 2, defining who shall constitute a legal voter.” *Id.* at 581. “The effect of the decision in *Ladd v. Holmes* was that where an election is authorized by law and is such a one as is not elsewhere provided for by the Constitution itself,” then “the qualifications of the voters entitled to vote thereat are defined by section 2 of article 2 of the Constitution. With that principle we are in thorough accord.” *Id.* Given that even the internal party process of the Morgan and Lockwood Act primaries constituted “elections” for purposes of Article II, section 2, certainly today’s direct primaries are, as well.

The trial court’s contrary conclusion—that direct primary elections are not “elections” for purposes of the constitutional right to participate in “all elections” – was unsupported in Oregon law.

2. Because a primary election in Oregon is an “election” for purposes of the Oregon Constitution, the legislature may not prohibit constitutionally qualified voters from participating in primary elections.

The Supreme Court in *Loe* established that, where an election is authorized by law and is not one “otherwise provided for by this Constitution” (that is, as long as the election is not one for which the Constitution itself provides a different qualification or limitation), Article II, section 2, establishes the exclusive qualifications for Oregonians to participate in that election. *Loe*, 132 Or at 579-580 (“There is no other definition of a legal voter contained in the Constitution except that contained in [Article II, section 2]”). Thus, a statute that purports to impose different qualifications on the exercise of that right is “unconstitutional and void[.]” *Id.* at 580. See also *White v. County Commissioners of Multnomah County*, 13 Or 317, 327, 10 P 484 (1886) (Article II, section 2, “provides fully the qualifications for voters”).

Following the reasoning of *Loe*, determining whether a statute violates Article II, section 2, of the Oregon Constitution implicates a three-step analysis:

- First, is the election at issue an “election” as that term is used in Article II, section 2?
- Second, is the election one “otherwise provided for” in the Constitution, such that different qualifications or limitations apply?
- Third, if the election is not “otherwise provided for” in the Constitution, does the law in question impose limits on the right to participate that Article II, section 2, does not contain?

If the answer to the third question is yes—that is, if the law imposes limits on the right to participate that Article II, section 2, does not itself contain—then the law is unconstitutional.

That is the case here. First, primary elections, as described at ORS chapter 249 and chapter 254, are “elections” for purposes of the constitutional guarantee of the right to vote in “all elections,” as discussed above.

Second, primary elections are not elections “otherwise provided for” elsewhere in the Oregon Constitution, as no other provision imposes any qualification on the right to vote at primary elections.⁵

⁵ For an example of an election “otherwise provided for” in the Oregon Constitution, see *Harris v. Burr*, 32 Or 348, 52 P17 (1898). In

And third, the statute at issue here purports to impose a qualification to vote that Article II, section 2, does not contain. ORS 254.365(1) provides that one who is not affiliated with a major party “is not qualified or permitted to vote at any primary election for any candidate of a major political party, and it is unlawful for the elector to offer to do so,” unless one of the major political parties has provided “for a primary election that admits voters not affiliated with any political party.” There is no such limitation, express or implicit, in Article II, section 2.

The exclusion of voters from primary elections based on party affiliation is contrary to the guarantee that “[e]very citizen” over 18 years of age who resides in Oregon and is timely registered is “entitled to vote in all elections” unless otherwise provided for in the Oregon Constitution. Because no such limitation appears in Article II, section 2, of the Oregon Constitution, ORS 254.365(1) is facially unconstitutional and unconstitutional as applied to Plaintiff Porter.

Harris, the Supreme Court concluded that Article II, section 2, did not fix the qualifications of voters at school district elections because such elections were “otherwise provided for” under Article VIII, section 3. *Harris*, 32 Or at 366-67.

3. *Ladd* is not controlling in this case, and the trial court was incorrect to conclude otherwise.

The trial court concluded that the 1901 decision in *Ladd v. Holmes* compels the conclusion that ORS 254.365 is constitutional. ER 56. The trial court was incorrect because *Ladd* did not concern the kinds of primary elections at issue here. Additionally, *Ladd* was decided on the basis of policy concerns that do not apply to plaintiffs' claims.

At issue in *Ladd* was Oregon's first "primary" law, enacted in 1901 – the Lockwood Act discussed at Section B(1) above. As further discussed above, the Act permitted "any voluntary political association or party" to use the machinery of county elections to invite its own party members to determine who within the party would be selected as "delegates to their party conventions." 1901 Or Laws p.317, at §1-3. Plaintiffs in *Ladd* challenged the law as contrary to Article II, section 2, among other bases.

The court first stated that it was "hardly a matter of serious controversy" that the statute at issue authorized primary elections, and it noted that the elections used public funds and county staff. *Ladd*, 40 Or at 179. On that basis, it answered the first two of the three determinative questions: "With all this, [1] there is certainly an

election authorized by law, and [2] such a one as is not elsewhere provided for by the constitution.” *Id.*

As to the third and final issue—whether limiting participation in that election to party members is a limitation that Article II, section 2, permits—the court took a curious approach. The court cited nothing in the text of Article II, section 2, that permitted doing so, but it nevertheless found that the section *did* permit such a limitation, apparently based on two conclusions.

First, the court concluded that Article II, section 2, of the Oregon Constitution already contains an *implicit* limitation – namely, that the voters of one county cannot vote for the officials of another county:

“It is not true that every citizen accorded the elective franchise under the constitution is entitled to vote at all elections. A citizen of one county is not entitled to vote at an election held in another county for local officers, and a citizen of one precinct is not entitled to vote in another, nor of one city or town in another; so that the right of all electors to vote does not extend to all elections authorized by law, but is dependent largely upon the place of residence, and the nature of the election to be held.”

Id. at 180.

Thus, the court seems to have concluded that Article II, section 2, is subject to implicit limitations like residence—and, therefore, that it need not find a *textual* basis in section 2 for limiting participation in elections to those registered with a particular party, as long as the court is satisfied that such a limitation is *implicitly* contained in it.

Having apparently concluded that additional limitations on the right to vote can be implied, the court then concluded it would be appropriate to permit the limitations imposed by the Lockwood Act. It explained briefly that the “electors of one party” have no “inherent right, within or without the constitution, to vote at some other party primary or election,” and in fact could “have no desire” to do so “unless prompted by sinister or evil motives”; “hence no right or privilege of which they can complain has been intrenched upon or violated.” *Id.* On that basis, the court concluded: “We see no objection to the legislature providing for party elections, and limiting the electoral privilege to party members. The exclusion of other party members from participating in such elections is not an infringement or denial of a constitutional right or privilege.” *Id.*

The court in *Ladd* was mistaken to the extent it based its reasoning on the idea that voting in one’s own county was an *implied* voter qualification. The reason a resident of one county cannot vote for another county’s officials is because another provision of the Oregon Constitution says so explicitly. See Or. Const., Art. II, §17 (“All qualified electors shall vote in the election precinct in the County where they may reside, for County Officers, and in any County in the State for State Officers, or in any County of a Congressional District in which such electors may reside, for Members of Congress.”). The two provisions work in tandem: Article II, section 2, of the Oregon Constitution “provides fully the qualifications for voters” and thereby describes *who* may vote, while “section 17, art. 2, of that instrument, provides *where* they shall vote.” *White*, 13 Or at 327 (italics added). See also *Van Winkle v. Crabtree*, 34 Or 462, 478-79, 55 P 831 (1899) (explaining that Article II, section 17, means that if a voter “was not a resident” where he or she voted,” then the voter “had no right to vote for county officers” there).

Plaintiffs know this court cannot overrule *Ladd*, but that decision can and should be distinguished. For two distinct reasons,

the court's decision in *Ladd* does not compel the conclusion that Article II, section 2, of the Oregon Constitution permits the legislature to exclude constitutionally qualified voters from participating in direct primary elections today.⁶

The first and clearest reason is that *Ladd* did not concern direct primary elections for public officers. Rather, the vote was held for the purpose of choosing a party's own delegates to attend that party's convention. Such delegates are not candidates or nominees for office; their function is wholly internal to the party.

That is not the case with modern primary elections. Under Oregon's current laws, the people for whom electors cast votes are not vying for internal party convention delegate positions. Instead, they are the candidates who seek to hold public office representing the constituents of their district. And that choice of candidates is made not by internal party delegates, but is instead made directly by the voters in their exercise of the right to vote.

In modern direct primaries, the election itself is a state action, not a private one; it is as much a public function as the conducting of

⁶ In the event this matter proceeds to the Oregon Supreme Court, plaintiffs do intend to argue that *Ladd* was incorrectly decided.

the general election. The primary is “an integral part of the entire election process, the initial stage in a two-stage process by which the people choose their public officers.” *Storer v. Brown*, 415 US 724, 735, 94 S Ct 1274, 39 L Ed 2d 714 (1974). As Justice Stevens observed in *California Democratic Party v. Jones*, today’s direct primaries are no longer merely “internal party affairs” as they once were, but are now “integral parts of the election process by which the people select their government***.” 530 US 567, 595, 120 S Ct 2402, 147 L Ed. 2d 502 (2000) (Stevens, J., dissenting). To be sure, the process is still *called* a “primary,” as it was in the 1901 laws at issue in *Ladd*. But today’s direct primary elections are not in any sense the same thing. The Supreme Court’s 1901 conclusion concerning whether Article II, section 2, of the Oregon Constitution permits limiting participation in selecting party *delegates* is not controlling on whether that provision permits limiting participation in today’s direct primary elections.

Second, the *Ladd* court’s policy-based reasoning as to preventing interference by “other party members” is not implicated here. In *Ladd*, the court reasoned that “electors of one party” have no right “to vote at some other party primary” and could not possibly

want to do so “unless prompted by sinister or evil motives”; thus, it concluded that “[t]he exclusion of other party members from participating in such elections is not an infringement or denial of a constitutional right or privilege.” 40 Or at 180.

But “the exclusion of other party members” is not at issue in this case. Plaintiff’s position is not that Article II, section 2, of the Oregon Constitution requires that “the electors of one party” be permitted to “vote at some other party primary,” as *Ladd* described. Rather, the problem primarily concerns the more than 37% of Oregonians who are not affiliated with any party at all, and who are thereby prohibited from casting a vote for anyone in the direct primary election. That is an issue *Ladd* did not address. Indeed, it could not have addressed that issue, precisely because the electorate looked so different in 1901 than it does today. In 1901 unaffiliated voters were statistically insignificant. Today, they are the single largest cohort of voters in the state.

In fact, the notion of partisan loyalty as discussed by the *Ladd* court was rooted directly in the Lockwood Act itself. The Act required not only that voters be a member of the party at issue but also required a *substantive* allegiance to that party, through a mandate

that the voter “swear or affirm” that they voted for a majority of the candidates of that party at the last election or would do so at the next election. 1901 Or. Laws p.317, at §14.

Today no such fealty is required. Oregon voters are now free to change their party affiliation as often and as capriciously as they like, up until the 20th day before the election. *See* ORS 247.203. (And then they may vote for whomever they wish at the general election, irrespective of party.) Unlike under the 1901 laws, nothing in Oregon law today prevents a voter from changing affiliation purely for the purpose of participating in an opposing party’s primary election.

Excluding constitutionally qualified voters from primary elections for their representatives is contrary to Article II, section 2, of the Oregon Constitution. And it fundamentally threatens the right to vote because, “[a]s a practical matter, the ultimate choice of the mass of voters is predetermined when the nominations [by the major political parties] have been made.” *Morse*, 517 US at 205–206. The problem is not a matter of the “sinister or evil motives” that might prompt one party’s voter to meddle in an opposing party’s nomination, as *Ladd* envisioned. The problem—one that could never have been raised or discussed in *Ladd*—is that ORS 254.365

excludes nearly 4 in 10 registered but unaffiliated Oregon voters from what is often the single most impactful step in deciding who represents them in government at every election cycle. Here, the question at issue is whether Article II, section 2, permits the legislature to do so. The answer is no, and nothing in *Ladd* justifies any conclusion to the contrary.

4. The trial court’s proffered “balancing test” has no application in this case.

The trial court, apparently in the alternative to its conclusion that *Ladd v. Holmes* governs this case, stated: “I find that the [statute’s] restrictions on participation in the party-affiliated primary selection of candidates is a minor restriction on the individual’s voting constitutional rights, on the voters’ constitutional rights. And therefore, the statute places a justifiable, non-discriminatory restriction on an individual’s voting right and does not violate Article II, section 2.” ER 58.

The court said it reached that conclusion based on the “balancing” analysis drawn from federal First and Fourteenth Amendment case law, explaining that the test required “balancing *** an individual’s right to participate in an election” against “the freedom of association by the various political parties” to select their

preferred candidate. ER 57. But this is not a First or Fourteenth Amendment case, and the “balancing test” described by the trial court has no application here.

The Supreme Court of the United States has explained the kinds of cases to which that analysis *does* apply: “When deciding whether a state election law violates First and Fourteenth Amendment associational rights,” federal courts “weigh the ‘character and magnitude’ of the burden the State’s rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” *Timmons v. Twin Cities Area New Party*, 520 US 351, 358, 117 S Ct 1364, 137 L Ed 2d 589 (1997). “Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s ‘important regulatory interests’ will usually be enough to justify ‘reasonable, nondiscriminatory restrictions.’” *Id.*

Here, the trial court applied the “lesser burden” test described above. But plaintiffs in this case are not challenging ORS 254.365 on the basis of the First or Fourteenth amendments, nor any other

federal provision. Because no such federal constitutional challenge is at issue, no test like that described in *Timmons* applies.

Rather, the sole basis on which the statute is challenged is Article II, section 2, of the Oregon Constitution. Oregon's courts have never applied any "balancing" analysis in determining whether a statute violates the right to participate in elections under Article II, section 2. Indeed, in matters of state constitutional rights, Oregon's courts have mostly rejected the use of "balancing" tests. As the Oregon Supreme Court has explained, "the state cannot avoid a constitutional command by 'balancing' it against another of the state's interests or obligations, such as protection of the 'vital interests' of the people; rather, any constitutional limitations on the state's actions must be found within the language or history of the constitution itself." *State v. Hirsch*, 338 Or 622, 639, 114 P3d 1104, 1113 (2005). *See also, e.g., State v. Ciancanelli*, 339 Or 282, 285, 121 P3d 613 (2005) ("we reject categorically" any "balancing test" for infringements on the exercise of free expression); *Deras v. Myers*, 272 Or 47, 65, 535 P2d 541, 550 (1975) ("it is possible that sound analysis in the interpretation of constitutions does not permit any balancing

whatsoever between a constitutional provision and a statute which directly impinges upon it.”).

In sum, the trial court’s ultimate basis for granting defendants’ motion for summary judgment (and denying that of the plaintiffs) has no basis in Oregon law. Article II, section 2, does not call for a “balancing” of “an individual’s right to participate in an election” against the state’s interest in permitting “freedom of association by the various political parties,” as the trial court described. Further, the court’s conclusion that the statute imposes only “a minor restriction on the individual’s voting constitutional rights” (ER 58) does not solve the problem that ORS 254.365 presents. Even setting to the side the trial court’s dubious characterization (the exclusion of nearly 4 in 10 registered voters from an election can hardly be called only a “minor restriction” on the constitutional right to vote), a violation of Article II, section 2, of *any* degree is just that: a constitutional violation. The trial court’s contrary conclusion was unfounded in Oregon law. It should be reversed.

III. CONCLUSION

By excluding a plurality of Oregon voters from voting in primary elections for the public officers who will represent them,

ORS 254.365(1) is incompatible with Article II, section 2, of the Oregon Constitution. The trial court's judgment upholding the statute should be vacated with instructions to declare ORS 254.365(1) unconstitutional.

Dated: July 8, 2026

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I 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.

I hereby certify that on July 8, 2026, I filed the foregoing by causing it to be electronically filed with the APPELLATE COURT ADMINISTRATOR through the appellate court's eFiling system.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

MARK PORTER, and OUR PRIMARY	)	
VOICE,	)	TRIAL COURT CASE NUMBER:
	)	25CV38061
Plaintiffs,	)	
	)	
vs.	)	
	)	
TOBIAS READ, Secretary of	)	
State of the State of Oregon;	)	
THE STATE OF OREGON,	)	<u>TRANSCRIPT OF PROCEEDINGS</u>
	)	
Defendants.	)	

SUMMARY JUDGMENT HEARING

BEFORE THE HONORABLE NATASHA ZIMMERMAN

DATE: DECEMBER 31, 2025

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Proceedings recorded by electronic sound recording.
Transcript produced by: Amy Pratt

WITNESSES					
PLAINTIFFS	DIR	CRS	REDIR	RECRS	VD
NONE	---	---	---	---	---
DEFENDANTS	DIR	CRS	REDIR	RECRS	VD
NONE	---	---	---	---	---
MATTERS OF SPECIAL IMPORTANCE					
DESCRIPTION					VOL/PG
TAKEN UNDER ADVISEMENT					50
EXHIBITS					
PLAINTIFFS	DESCRIPTION		OFFERED	ADMITTED	
NONE	---		---	---	
DEFENDANTS	DESCRIPTION		OFFERED	ADMITTED	
NONE	---		---	---	

1 SALEM, OREGON; FRIDAY, JANUARY 30, 2026

2 -000-

3 (Call to Order of the Court at 10:02 a.m.)

4 THE COURT: All right. We are here in 25CV38061, Mark
5 Porter and Our Primary Voice vs. Tobias Read and the State of
6 Oregon. And we're here for argument regarding summary judgment
7 motions. So I'm going to have parties identify themselves for
8 the record. So Plaintiffs' counsel.

9 MR. STERINGER: Good morning, Your Honor. Bob
10 Steringer, representing the Plaintiffs.

11 MR. LANDAU: Good morning, Your Honor. Aaron Landau,
12 also representing Plaintiff.

13 THE COURT: All right. Okay, good.

14 MR. CASTELLI: Morning. Tom Castelli for the State
15 Defendants.

16 MR. JONES: Good morning, Your Honor. Alex Jones, also
17 for the State Defendants.

18 THE COURT: Okay. All right. So I have had an
19 opportunity to review the filings regarding this motion. With
20 that understanding, I'll turn to Plaintiffs.

21 MR. STERINGER: Thank you, Your Honor. May it please
22 the Court, we appreciate the opportunity to speak with you this
23 morning about the summary judgment motions that we have filed on
24 behalf of the Plaintiffs in this case. Plaintiff Mark Porter is
25 here in the courtroom for our record.

1 And I think the fundamental point behind our motion is
2 fairly straightforward. Article II, Section 2 of the Oregon
3 Constitution guarantees that Plaintiff Mark Porter and over a
4 million other non-affiliated voters can vote in all elections.
5 But the Oregon legislature has adopted an election law that
6 prohibits them from voting in the first round of voting for all
7 state and local offices that have been deemed partisan by the
8 State legislature.

9 And it's important to note at the outset that those
10 basic points really are not contested in this case. It is
11 admitted by the State that primary elections are elections that
12 are within the scope of Article II, Section 2, and it is
13 admitted that state law prohibits non-affiliated voters from
14 voting in those elections.

15 And so the real question before the Court, the
16 question we're asking the Court to answer is how could it
17 possibly be that non-affiliated voters can be banned from voting
18 in elections for candidates vying to represent them at various
19 levels of government?

20 And the State has offered a couple different defenses
21 of the status quo. The first argument that they make, it's an
22 argument that we anticipated, and it is that the Oregon Supreme
23 Court in 1901 decided a case called *Ladd vs. Holmes*, and that
24 case dealt with Article II, Section 2. We fully briefed that
25 argument. We've had two shots at it. So I'll be relatively brief

1 in discussing that and welcome any questions that the Court has.

2 The State interprets *Ladd* as holding that the
3 legislature can impose limits on voting based on partisan
4 registration regardless of the office being filled or the
5 structure of the election. And if that interpretation is
6 correct, we are here to preserve our argument that *Ladd* was
7 wrongly decided and we understand we'll have to take that up
8 with the Oregon Supreme Court.

9 THE COURT: Is it the Plaintiffs' position that there
10 are no restrictions that the legislature can impose on
11 electorates?

12 MR. STERINGER: Any restrictions that can be imposed
13 on a qualified voter must be set out in the Oregon Constitution
14 or necessarily implied by the Oregon Constitution. That's what
15 the plain language of Article II, Section 2 requires.

16 And the main message we want to deliver to the Court
17 about *Ladd* is that the Court need not adopt the State's
18 interpretation of *Ladd* because in fact, *Ladd* is easily
19 distinguishable based on the election that was at issue in that
20 case and distinguishing that from the elections that we now have
21 over a hundred years later.

22 The critical fact that we have to recognize with *Ladd*
23 is that it was dealing with elections for delegates to political
24 party conventions. In *Ladd* they were not dealing with the direct
25 elections of the city council or the mayor. This act was focused

1 on city elections. They weren't dealing with the elections for
2 the actual individuals who would represent the general
3 electorate. They were only focused on the election of these
4 delegates to political conventions.

5 And so the Court should distinguish *Ladd* on the basis
6 as holding only that for the elections of delegates to political
7 conventions, that those can be limited to the members of the
8 respective political parties because the individuals being
9 elected as delegates are not public officials and they won't
10 represent anybody but the members of the political party that
11 would be at issue.

12 That should be distinguished from elections like we
13 have now where we're directly electing the individuals who are
14 going to represent the general electorate. And those elections
15 must be open to anybody who meets the qualifications to vote
16 under Article II, Section 2.

17 And once the Court distinguishes *Ladd*, if the Court
18 were to do that, the State really has no argument that is based
19 in the text of Article II, Section 2 or any other provision of
20 the Oregon Constitution to support the continued exclusion of
21 non-affiliated voters from voting in the first round of voting
22 for so many of their elected officials.

23 The State concedes that there is nothing in the Oregon
24 Constitution that expressly permits the exclusion of non-
25 affiliated voters. So instead of pointing to something in the

1 text of Article II, Section 2, the State's fallback position I
2 think can charitably be described as prudential concerns.

3 And what they really mean is that if the Court
4 enforces Article II, Section 2 as it is written, that the
5 current election system might not work very well because it's
6 not designed to allow non-affiliated voters to vote in primary
7 elections. They're asking the Court to worry about things like
8 what ballot will the non-affiliated voters get and would they
9 get to vote in multiple party primaries and practical questions
10 like that.

11 And our point is that gets it exactly backwards. We
12 understand that the legislature has created a system that in our
13 view unconstitutionally deprives a large group of voters from
14 voting in elections. But if the Court were to declare the real
15 meaning of Article II, Section 2 as requiring that those people
16 be allowed to vote, then we understand the legislature may have
17 to take some action to fix that.

18 THE COURT: So can you tell me what your definition of
19 voting or participating in an election is?

20 MR. STERINGER: Our definition would be that any
21 election that involves the selection of candidates for public
22 office to represent the individual members of the electorate
23 would qualify as an election under Oregon law. That's at least
24 that much. We also know that we have elections for ballot
25 measures, for example, which also would come within the scope --

1 THE COURT: Or non-affiliated party members. So
2 judges, for example, are on the ballot. City council, mayors,
3 there are a number of other bodies that are elected at primary
4 or that are on primary ballots that non-affiliated or non-major
5 party affiliated voters have the right to participate in every
6 single election.

7 So I guess I'm just trying to understand how if
8 Article II, Section 2 protects the right to vote, and in fact
9 those individuals, every individual who is qualified under
10 Article II, Section 2 is able to participate, maybe not in every
11 single candidate or every single position, however is able to
12 participate. How is that a violation of their constitutional
13 rights because they are voting and they are participating in the
14 election?

15 MR. STERINGER: I understand that question. I think
16 it's an important -- I understand why we need to address that.
17 And I think the best way to look at that is we would not say, I
18 hope, that the legislature could deny individuals the right to
19 vote on a particular matter simply because they're given the
20 right to vote on different matters.

21 It's not that the question isn't a matter of do they
22 get a ballot. The question is do individuals get to vote for the
23 candidates and the people who are going to represent them at
24 different levels of government? And so yes, it is true that at
25 primary elections there often are matters on a ballot that non-

1 affiliated voters are allowed to vote on. But what they're
2 denied the opportunity to vote on are state legislators, the
3 governor, all of a number of the statewide elected officials.
4 Not all of them, but some of them.

5 THE COURT: Well, only to the extent that those are in
6 individualized party. If you have non-party affiliated
7 candidates, then anyone could vote on those, right? Is that
8 correct?

9 MR. STERINGER: That's where I had to make the
10 distinction with statewide officials because we have some that
11 are deemed nonpartisan and we have some that are deemed
12 partisan. I think the labor commissioner, I believe, is a
13 nonpartisan race and non-affiliated voters are able to vote for
14 the candidates at both the primary and the general election. But
15 what we have now is a system wherein any race that the
16 legislature has deemed to be a partisan race or position, non-
17 affiliated voters are not allowed to vote at the first round.

18 THE COURT: Well, but they are if there was a
19 candidate who was not associated with the parties.

20 MR. STERINGER: Those candidates would not be on the
21 primary ballot though.

22 THE COURT: Okay.

23 MR. STERINGER: And the problem is that the practical
24 problem, this is the consequence of this, it's not the reason we
25 have -- it's not the legal argument. It's the consequence of

1 this is that non-affiliated voters in many races are denied the
2 opportunity to vote for candidates at the point where it really
3 matters in districts that are heavily won by one party or
4 another.

5 THE COURT: Right? But that's not a constitutional
6 protection issue.

7 MR. STERINGER: That's not necessarily the
8 constitutional or a legal issue, but that's the practical effect
9 of what the legislature has done here by denying non-affiliated
10 voters the right to vote at the first cutoff in deciding who's
11 going to be on the general ballot.

12 THE COURT: So isn't, though, having a semi-closed
13 election an attempt to address that and allow those particular
14 parties the opportunity to open their selection of candidates to
15 non-affiliated voters?

16 MR. STERINGER: We certainly don't see it that way. We
17 see that as an accommodation that the legislature has made to
18 parties to give them the opportunity to broaden their electoral
19 base if they wish to do that. But that does nothing to protect
20 the rights of individual voters who are qualified to vote under
21 Article II, Section 2.

22 And as we said in our brief, it just cannot be that
23 the right to vote under Article II, Section 2 is subject to the
24 beneficence of one of the parties deciding to allow them to vote
25 in their primary. Article II, Section 2 either guarantees the

1 right to vote or it doesn't, and it can't be conditioned on what
2 private parties decide they want to do.

3 THE COURT: Well, I think it somewhat depends on the
4 definition of participating or participating in that election or
5 voting, because if you're allowed to vote but not for every
6 single candidate, then I am not sure how I see that that's a
7 violation of Article II, Section 2.

8 MR. STERINGER: Well, let me give an example --

9 THE COURT: And let me say because there are
10 restrictions on who you can vote for. I can't vote for a city
11 counselor who doesn't represent the individuals in my district.
12 I can't vote for a house member who doesn't represent
13 individuals in my district. So I have restrictions on my ability
14 to vote. I can't vote for a school board member outside of the
15 district that I live in.

16 So there are restrictions, and I'm not sure that those
17 are contemplated or how those are contemplated in Article II,
18 Section 2. And so if there are restrictions, at what point is a
19 party who is not a government actor, at what point is that a
20 violation of their rights as a party to participate in an
21 election? At what point is that a violation of someone else's
22 Article II, Section 2 rights when they do have the right to
23 participate in the election?

24 MR. STERINGER: And to give an extreme example, we
25 would hope that the Court would agree that if a primary election

1 was set up where all of the positions on that particular primary
2 ballot were deemed partisan and therefore non-affiliated voters
3 were unable to vote for any of those candidates, they wouldn't
4 even be on the ballot. That's another point here, let me come
5 back to that.

6 But at the primary election, there also was a ballot
7 measure that had been initiated or referred that somehow the
8 fact that the voter qualified to vote under Article II, Section
9 2 gets to vote on the ballot measure, that somehow cures their
10 inability to vote for candidates for offices who are going to
11 represent them directly.

12 And I take Your Honor's point about geographic limits.
13 Those are implied in the Oregon Constitution though. And that's
14 why I said earlier what we're looking for would be any
15 restrictions on voting that would be specified in the
16 Constitution or implied in the Constitution. And we have the
17 geographic limits implied in the Constitution by registration
18 requirements that you register in a certain area and it speaks
19 to voting for county offices and that sort of thing.

20 So I think it's easy to distinguish geographic limits
21 on the right to vote from partisan limits on the right to vote,
22 which are not implied by the Oregon Constitution. You can't see
23 any recognition of political parties at all in the Oregon
24 Constitution.

25 So I did want to go back to the point about the fact

1 that you get a ballot. We also need to recognize that non-
2 affiliated voters, it's not that the candidates are on the
3 ballot, that they're even made aware of the ballots of the
4 candidates for these partisan offices. They won't even get a
5 ballot unless there happens to be something on the ballot that
6 is a nonpartisan office --

7 THE COURT: Right. Just in the same way that you
8 wouldn't get a ballot unless you are eligible to vote in that
9 election. So if for example, there is a location restriction, so
10 you can't vote because it's not in your district, you
11 wouldn't -- and there is nothing else on the ballot for your
12 district, you wouldn't get a ballot.

13 MR. STERINGER: Right.

14 THE COURT: I'm not sure. So I think it depends. So if
15 there's a violation of Article II, Section 2, it doesn't depend
16 on whether you receive a ballot or not receive a ballot. It
17 depends on whether you are eligible to vote in the election
18 because it should be completely non-partisan or not, not whether
19 you receive a ballot or not receive a ballot.

20 MR. STERINGER: And I think that it is entirely
21 consistent with our position that the State can limit an
22 individual's ability to vote to the candidates for offices that
23 will represent those individuals. That is directly implied by
24 geographic limits that are permitted in the Oregon Constitution.
25 And that's all we're asking for.

1 If there is an election for an office that directly
2 represents the general electorate or an electorate that includes
3 somebody who's qualified to vote under Article II, Section 2,
4 then they should be allowed to vote for that office. And we
5 understand, as I said, there are practical challenges associated
6 with that.

7 And the best example that we could come up with to
8 provide an analogy would be for probably a hundred plus years
9 after the founding of the country, states would allow
10 legislative districts to be of wildly different sizes. So they
11 might be the same geographic size, but if a district overlaid a
12 city, there might be a hundred thousand people in it. And if it
13 was in a rural area, there might be 10,000 people in it. And for
14 over a hundred years that was permitted.

15 And it wasn't until 1965 in the *Reynolds vs. Sims* case
16 that the U.S. Supreme Court called that out as being, well, they
17 announced the one person one vote rule and said no, you can't
18 have districts with wildly different numbers of voters within
19 them because that has the effect of diluting the votes of the
20 people who are in districts with larger numbers of people.

21 And when they encountered that, they could have said,
22 but the districts are already drawn, so how are the states
23 possibly going to run their elections when they've already got
24 districts set up that way? Are they going to have to create
25 multi-member districts? Are they going to have to redraw the

1 districts? All of those are perfectly legitimate questions, but
2 that's for the legislative branch to fix after the courts have
3 declared what the constitutional rights are that govern the way
4 elections should be structured.

5 And that's really no different from the situation
6 here. We're asking the Court to declare that Article II, Section
7 2 guarantees the right of individuals who meet the criteria for
8 voting, the qualifications for voting that are set out directly
9 in Article II, Section 2 in every election for offices, public
10 offices that will represent them, and the legislature may have
11 to make changes to accommodate that.

12 And in doing so, they have any number of models that
13 they can follow, including every other state on the west coast
14 that has figured out how to stop disenfranchising the plurality
15 of voters in their state in what is often the decisive round of
16 voting for their elected representatives.

17 So plain language of Article II, Section 2 guarantees
18 the right of individuals who meet those qualifications to vote
19 in every election. ORS 245.0365 denies them that right. And this
20 Court is not bound by the *Ladd vs. Holmes* decision of the Oregon
21 Supreme Court, which should be distinguished based on the type
22 of election that was at issue there, which did not involve the
23 election of public officials and which allowed the people who
24 would be represented by the candidates for the offices that were
25 at issue there, delegates to political conventions, it

1 guaranteed that everybody who would be represented by those
2 people actually got to vote in the election.

3 That's not what we have here. And so we're asking the
4 Court to grant Plaintiffs' motions for summary judgment and deny
5 the cross motions.

6 THE COURT: Okay, thank you.

7 MR. STERINGER: Thank you, Your Honor.

8 THE COURT: Defense.

9 MR. JONES: Thank you, Your Honor. May it please the
10 Court, Alex Jones for Defendants. So the purpose of a party
11 primary election is to select candidates who will represent that
12 party at the general election. And Oregon law allows each major
13 political party to choose whether or not to allow non-affiliated
14 voters to participate in that process or whether to require them
15 to register with that party as being affiliated with that party
16 before doing so.

17 And Plaintiffs argue that the Oregon Constitution
18 prohibits parties from doing that. And that argument, it
19 misreads the text of Article II, Section 2 itself and it
20 directly contradicts the Supreme Court's binding holding in *Ladd*
21 *v. Holmes*.

22 THE COURT: So you've heard the Plaintiff talk about
23 how *Ladd* is distinguishable from our current election system. So
24 tell me how the Plaintiff is misreading the plain language of
25 Article II, Section 2.

1 MR. JONES: Well, Article II, Section 2 in Plaintiffs'
2 arguments, they focus on the phrase not otherwise provided for
3 by this constitution. Plaintiffs seem to read this in their
4 briefing as that the legislature cannot impose requirements or
5 qualifications on voting that are not otherwise provided for by
6 this constitution. But that phrase is talking about a totally
7 different part of the analysis.

8 THE COURT: So what is it talking about then?

9 MR. JONES: It's talking about which elections are
10 subject to Article II, Section 2 in the first place. The full
11 phrase says entitled to vote in all elections not otherwise
12 provided for by this constitution. And so the Supreme Court has
13 talked about this in *Ladd v. Holmes* and in cases cited in *Ladd*
14 *v. Holmes* where that's the threshold question of is this really
15 an election for the purposes of this provision at all?

16 And so for example, in *Ladd v. Holmes*, the Court
17 looked at the primary elections there and said, first of all, is
18 this an election? Is it provided somewhere else in the
19 constitution? Is it governed by something else? For example,
20 they mentioned school elections which were governed by a
21 different part of the constitution, but they said these primary
22 elections, they are elections, they're not otherwise provided
23 for somewhere else in the constitution. So these are the
24 elections we're talking about when we're talking about Article
25 II, Section 2 and that part of the analysis we don't disagree

1 with Plaintiffs here. That the elections here, the primaries at
2 issue here, are elections not otherwise provided for by the
3 Constitution. And so they're subject to Article II, Section 2,
4 just as the elections were in *Ladd v. Holmes*.

5 THE COURT: So then if they are subject to Article II,
6 Section 2, how can the legislature impose restrictions on the
7 ability to vote in those elections?

8 MR. JONES: Because as the Court explained in *Ladd v.*
9 *Holmes*, when it moved to that second part of the analysis, was
10 this requirement nonetheless valid, it goes on to interpret what
11 that means entitled to vote in all elections and what the extent
12 and meaning of that right is. And the Court explains the right
13 of all electors to vote does not extend to all elections
14 authorized by law but is dependent largely upon the place of
15 residents and the nature of the election to be held.

16 THE COURT: But the nature of the election in the
17 primary elections is -- so how would you frame the nature of a
18 primary election so that restricting voting in it doesn't
19 violate Article II, Section 2?

20 MR. JONES: Because the nature and the purpose of the
21 primary election, a party primary election, is to select
22 candidates to represent that party at the general election. *Ladd*
23 *v. Holmes*, it talks about this as being a process for the
24 ultimate purpose is to afford party representation on the
25 official ballot.

1 And so it says that requiring someone to affiliate
2 with a party before participating in that is valid under Article
3 II, Section 2, because that law is providing for a party
4 election as the Court says to speak more precisely, elections
5 had at party primaries.

6 So the process here is still about selecting a
7 candidate for that party at the ultimate election. In the
8 indirect primaries they were at issue in *Ladd v. Holmes*, the
9 structure was different. You were selecting the delegates who
10 then select the candidates at the convention. But the delegate's
11 job is to select those candidates.

12 And so when plaintiffs argue in their briefing about
13 how that was different because the role of delegates is
14 something that only party members have an interest in, well
15 their whole job is to select the candidates. And so if
16 plaintiffs are arguing that that's something only party members
17 have an interest in, that only supports the idea that parties
18 should be allowed to choose whether or not to allow non-party
19 members to participate in that selection process.

20 THE COURT: But since we now have a semi-closed
21 election system, isn't that very different from what the system
22 was under the *Ladd* 1901 structure?

23 MR. JONES: Well the distinction between closed and
24 semi-closed, if anything it makes it more inclusive. I mean back
25 in the case of *Ladd v. Holmes*, that was a closed system.

1 THE COURT: But what I mean, it's not a question of
2 whether it's a similar system or a more open system, it's are
3 there facts distinguishable so that *Ladd* really isn't a driving
4 or should be the driving analysis because our system is so
5 different now than what the system was in 1901 that really it's
6 not appropriate to find that to be binding on the Court at this
7 point in terms of the analysis of Article II, Section 2?

8 MR. JONES: Those distinctions do not change the
9 outcome here. And that's true for two reasons on two levels.
10 First of all, the Court in that case specifically rejects this
11 idea that party affiliation requirements are unconstitutional
12 for party primaries.

13 And while plaintiffs try to point to the differences
14 between elections then and now, they don't point to anything in
15 *Ladd v. Holmes* itself or otherwise in Oregon Supreme Court case
16 law that suggests that any of the distinctions they point to
17 were what made the difference in that case or that the outcome
18 would be any different.

19 For example, the Court didn't say that it was
20 different or that it was okay to have that requirement there
21 because it was an indirect primary. It didn't say that, well,
22 delegates aren't really public officers what candidates are. It
23 didn't say that indirect primaries aren't elections in the same
24 way that direct primaries are. It didn't say any of that.

25 It just said that this provides for a party election

1 for elections had at party primaries, which are to for party
2 representation on the official ballot. And that much is still
3 true today. The structure is different, but the purpose is still
4 to get a party candidate on that ballot. And so it's still the
5 same purpose, different structure, but fundamentally the same
6 purpose.

7 And the second reason that, or the second sort of
8 level on which Plaintiffs' attempt to distinguish *Ladd v. Holmes*
9 fails is that that case more broadly rejects the logic behind
10 Plaintiffs' reading of Article II, Section 2.

11 In general, Plaintiffs argued that, well, all
12 elections means all elections, you have to be able to vote in
13 all elections. And the Supreme Court rejects that kind of
14 reading of the text in *Ladd v. Holmes* when it says the right of
15 all electors to vote does not extend to all elections, but is
16 dependent largely upon the place of residence and the nature of
17 the election to be held.

18 So it gives the example, for example, of city
19 elections where if you have to be a resident of the city before
20 voting for offices in that city, that's valid. Likewise, if you
21 have to be affiliated with a party before you vote for
22 candidates for that party, that's also valid even though neither
23 of those things is expressly provided for in the Constitution.

24 And Plaintiffs argue that, well, geographic
25 requirements are implicitly required for even though it doesn't

1 really talk about cities, but Plaintiffs still can't reconcile
2 that with the result in *Ladd v. Holmes*, which was where in that
3 case there's nothing in the Constitution that provides for
4 requiring someone to register with a party or be affiliated with
5 a party before voting for delegates in an indirect primary, but
6 it still was valid.

7 And so if that has to be provided for in the
8 Constitution, then that would've been unconstitutional, but it
9 wasn't. And Plaintiffs, they haven't put forward an argument for
10 why that --

11 THE COURT: Well, unless *Ladd* was wrongly decided with
12 respect to that point.

13 MR. JONES: I'm sorry, Your Honor.

14 THE COURT: Unless *Ladd* was wrongly decided when it
15 comes to that point.

16 MR. JONES: If that's Plaintiffs' argument then, then
17 that's not a basis for this Court to disregard the binding
18 interpretation of Article II, Section 2 that the Supreme Court
19 held in that case because that interpretation still is binding
20 and is irreconcilable with Plaintiffs' reading of Article II,
21 Section 2 as this more expansive thing.

22 So for example, in that case, there's nothing in the
23 Constitution that provides that you can restrict party or that
24 you can require party affiliation for any kind of primary,
25 direct or indirect. And Plaintiffs haven't put into anything in

1 the Constitution that expressly provides for that or that
2 implicitly provides for that.

3 But they've offered all these different reasons why
4 direct primaries should be treated differently from indirect,
5 but none of that is in *Ladd v. Holmes*, none of that is in the
6 case law. And it goes against the Supreme Court's whole reading
7 of Article II, Section 2 in that case.

8 And Plaintiffs talked about what they referred to as
9 sort of prudential arguments or prudential concerns and about
10 what the result of this actual result that what Plaintiffs are
11 asking for would be, and they're referring to the cross-party or
12 multi-party voting where a member of one party would be allowed
13 to vote in another party's primary or would be allowed to vote
14 in multiple primaries at the same time despite being already
15 registered with a different party.

16 And our point in bringing that up is not that that
17 would be an unacceptable result, but to show the breadth of
18 Plaintiffs' reading and really the stakes of what they're
19 arguing for would be, because their reading of Article II,
20 Section 2 is so expansive that they can't get away from those
21 results.

22 And they argue that, well, the legislature could avoid
23 this and they had different options to stop this from happening,
24 but the only options that they put forth in their argument in
25 their briefing would be to essentially abolish party primaries.

1 In their reply they argue, well, the legislature could just have
2 it be a nonpartisan primary system or get rid of party primaries
3 altogether. And --

4 THE COURT: Well, it could not be an election. I mean
5 the parties have chosen to participate in the state's elections
6 because the state is holding those elections for other purposes,
7 for non-party positions, for bond measures, for a number of
8 other things.

9 And so it's the parties who have chosen to participate
10 in the State elections, not that these are some kind of private
11 entity that somehow the Plaintiff is asserting they have a right
12 to participate in. I mean, you would agree with that, right?
13 That it is the State election that the private parties have
14 chosen to participate in. So that is their choice.

15 And certainly if Article II, Section 2 preserves the
16 right to participate and vote, fully vote for every position in
17 a primary election, then those parties could elect not to
18 participate in those primaries and have some other process to
19 choose candidates for their parties. But they have chosen to
20 participate in a State election.

21 MR. JONES: Your Honor, major political parties are
22 required by law to hold the primary election to nominate their
23 candidates for the general election.

24 THE COURT: Right. And they have chosen that process.
25 That's the process that's been chosen. There are certainly other

1 processes like caucuses. There are other processes that are not
2 primaries, that are not elections as defined or as asserted in
3 Article II, Section 2.

4 MR. JONES: Under the law right now, the parties are
5 required to do that. It's not their choice under the law.

6 THE COURT: I understand that, but what I'm
7 talking -- but you are missing my point completely. I'm talking
8 about what's preserved under Article II, Section 2 and a voter's
9 rights, because a voter's rights certainly is more integral to
10 the constitutional rights than a party's rights and obligations
11 to participate. Isn't it? That individual voter's rights?

12 MR. JONES: Your Honor, I would answer the question
13 that distinction there because people, members of parties, are
14 voters too, and they have rights too.

15 THE COURT: I understand that. But the party as an
16 entity certainly doesn't have more rights under the
17 Constitution, under Article II, Section 2 of the Constitution,
18 than the individual voters, whether they're party affiliated or
19 not, do they?

20 MR. JONES: As an entity separate from the voters? No.
21 But the members of a party, when they get together to choose who
22 they are going to nominate to represent that party on the
23 general election ballot, that is a way in which those people are
24 exercising their right collectively to ensure that their voice
25 is heard.

1 THE COURT: And that must be consistent with the
2 Constitution, right? That process must be consistent with the
3 Constitution.

4 MR. JONES: That is true. And the Oregon Supreme
5 Court, much like courts in states across the country, have
6 recognized this as a valid way to balance those rights of
7 different voters. And it's not violating the right of anyone
8 to (indiscernible) an election.

9 THE COURT: But they haven't actually weighed in on
10 the current process. They weighed in 1901. Is there any more
11 recent case law where the Oregon Supreme Court has evaluated the
12 current voting process or the process as it looks now as
13 compared to what was in 1901?

14 MR. JONES: There is no more recent case directly
15 evaluating that, Your Honor, but there are cases that refer back
16 to *Ladd v. Holmes* as an example of a reasonable regulation that
17 is authorized under the State Constitution, and Plaintiffs have
18 not cited any case in Oregon or elsewhere that goes against
19 that. And so -- go ahead, Your Honor.

20 THE COURT: No, go ahead.

21 MR. JONES: So what Plaintiffs are asking for is
22 really unprecedented in that it's not just going against binding
23 precedent of the Oregon Supreme Court, but they're asking for
24 something that is asking this Court to go against over a hundred
25 years of cases that recognize the other way. And Plaintiffs

1 argued, well, for example, the U.S. Supreme Court has overturned
2 longstanding case law, but this Court is still bound by the
3 Oregon Supreme Court. And so it's not really an open question
4 for this Court to decide.

5 THE COURT: Well, unless it's distinguishable from
6 *Ladd*.

7 MR. JONES: Unless it were, but as we've talked about,
8 it really isn't. And the Plaintiffs haven't really come up with
9 a coherent way to make their reading of Article II, Section 2
10 fit with what was held permissible in *Ladd v. Holmes*. They need
11 to carve out the distinction between delegates and candidates
12 that are not what *Ladd v. Holmes* relied on, and they don't point
13 to anything in that case law that points to that.

14 And Plaintiffs -- the distinction that, to respond to
15 something that my friend on the other side, as he phrased it, he
16 said that the distinction is that if it's an election for
17 someone for an office that's representing that person, then they
18 have to be allowed to vote in that. But when you're voting for a
19 candidate to appear on the general election ballot, you are not
20 voting for someone who's going to be an officer in that way
21 representing you. You're voting for someone who's going to
22 represent that party on the ballot. So even under Plaintiffs'
23 formulation of who's being represented here, they're conflating
24 the distinction between the primary and the general election and
25 what that election is for. And by saying, well, the delegate is

1 not really representing you, preventing the general electorate,
2 but the candidate is, they're missing the more fundamental
3 distinction between a selection of the candidate and the
4 selection of the actual officer who becomes governor or mayor or
5 whatever it is.

6 And this is a distinction that courts in states across
7 the country have pointed to again and again as recognizing why
8 these are fundamentally different types of elections. So even if
9 they are elections, it's still -- there's that fundamental
10 difference in the nature of what the election is doing. And
11 that's something that the Supreme Court has recognized as
12 fundamentally, basically implied as part of what the extent of
13 the right to vote is here. And Plaintiffs haven't really
14 grappled with that distinction, instead focusing on lesser
15 distinctions between the process of selecting that candidate
16 rather than the difference between the candidate and the actual,
17 for example, governor, themselves.

18 THE COURT: So then how is the election, the election
19 that's contemplated, how in that explanation is a party
20 affiliated election or primary to elect a candidate to represent
21 that party in the general election, an election under Article
22 II, Section 2, if what you've just said is true?

23 MR. JONES: Because it's still an election as Ladd v.
24 Holmes has interpreted Article II, Section 2. It's still --

25 THE COURT: So it's just a very broad definition of

1 election, and then the legislature has the right to restrict
2 access to those elections?

3 MR. JONES: Not unlimited power to restrict access to
4 those elections. But if it's an election provided for by law and
5 it's not otherwise provided for by the Constitution, then it
6 falls under Article II, Section 2. But what *Ladd* says is that
7 based on the nature of those elections, there are requirements
8 that you can put in place before that that aren't necessarily
9 spelled out in the Constitution itself. And so again, we're not
10 disputing that this is an election, but one election is not the
11 same as another kind of election, as shown by the, for example,
12 differences in geographic requirements. And as the *Ladd* court
13 says, the nature of the election itself -- and Plaintiffs
14 haven't pointed to a fundamental difference in the nature of the
15 election between what happened in that case and what's happening
16 here.

17 THE COURT: Okay.

18 MR. JONES: I didn't reserve rebuttal time at the
19 beginning, but --

20 THE COURT: I think we've got two hours, so I didn't
21 necessarily ask anyone to reserve time. I figure two hours
22 hopefully will be enough for everyone to get out whatever you
23 need to say.

24 MR. JONES: I think I've gotten out most of what I had
25 planned to say, Your Honor, unless you have further questions.

1 THE COURT: Is there anything in support of your cross
2 motion that you want to separately point out? Just want to make
3 sure I've heard everything.

4 MR. JONES: Separate from what I've already covered, I
5 don't think there's anything I would want to highlight here
6 other than that for the reasons I've stated and the reasons we
7 talk about in our briefing, Plaintiffs' argument just fails as a
8 matter of law because it's not reconcilable with the Supreme
9 Court's reading of the constitutional provision that they're
10 relying on. And so for that reason, the Court should grant
11 summary judgment in Defendant's favor and deny Plaintiffs'
12 motion.

13 THE COURT: So can you -- and I apologize, I do have
14 a question I just thought of. So can you address, so is it
15 because of the Court's -- Supreme Court's interpretation in *Ladd*
16 that ORS 254.365 doesn't violate Article II, Section 2? Or is
17 there some other reasoning that that statute is an acceptable
18 restriction on an individual voter's rights to participate in an
19 election?

20 MR. JONES: I think, Your Honor, if your question is
21 essentially if *Ladd v. Holmes* didn't exist, then what would the
22 answer be? I think even if that case didn't directly control
23 here or if that case didn't exist, I think the reading of that
24 constitution and the logic of it would still have to lead this
25 Court to the same conclusion if this question were presented

1 anew. And that's shown by all the other cases that have
2 addressed the same question over the years, talking about both
3 direct and indirect primaries. Different courts have come to
4 that conclusion in different ways. Some of them have said that,
5 well, primary elections aren't really elections in the same way
6 that the general election is. Other courts, like Oregon Supreme
7 Court, have said, well, it's an election, but it's a
8 fundamentally different kind of election. And if you're voting
9 for a party candidate, then it makes sense to allow the party to
10 have some control over that.

11 THE COURT: But that's *Ladd*.

12 MR. JONES: That is the reasoning of *Ladd*.

13 THE COURT: Okay. And has that been adopted? And you
14 said there's been no case law since *Ladd* in Oregon?

15 MR. JONES: That addresses that? No.

16 THE COURT: Okay. And so when you're talking about
17 other case law, you're talking about other states who have
18 interpreted the direct versus indirect language and the types of
19 elections. Is that correct?

20 MR. JONES: Yes.

21 THE COURT: Okay. And so is there one state that you
22 assert is like Oregon's system and that we should be following
23 more than any others?

24 MR. JONES: For example, Your Honor, if you can give
25 me a moment -- for example, under the West Virginia

1 Constitution, which we talked about in *Bayer v. Gore*, which we
2 cite on page 18 of our motion, that state has a constitutional
3 provision entitling citizens to vote at all elections held
4 within the counties in which they respectively reside. And the
5 West Virginia Supreme Court there held that that requirement did
6 not violate people's right to vote because it's still a party
7 election. And Plaintiffs' argument sort of distinguishing,
8 trying to distinguish the Oregon Constitution from all these
9 other states, again relies on that phrase "not otherwise
10 provided for by the Constitution." But again, they're taking
11 that phrase out of context from Article II, Section 2. It
12 doesn't say the requirements have to be otherwise provided for
13 by the Constitution. It says it's talking about the elections
14 that are otherwise provided for by the Constitution. So to the
15 extent that they're relying on that, that is not a basis to
16 distinguish Oregon's constitution from other states.

17 And Plaintiffs also tried to distinguish some of these
18 cases by pointing to, by saying, well, those states'
19 constitutions have provisions that allow, that expressly allow
20 the legislature to regulate elections. And the same is true in
21 the Oregon Constitution under Article II, Section 8, where it
22 says the legislative assembly shall enact laws prescribing the
23 manner of regulating and conducting elections. And I can pull up
24 the full text here. Article II, Section 8: The legislative
25 assembly shall enact laws to support the privilege of free

1 suffrage, prescribing the manner of regulating and conducting
2 elections and prohibiting under adequate penalties all undue
3 influence therein from power, bribery, tumult, and other
4 improper conduct. And so the Oregon Supreme Court has looked at
5 this in cases and said the legislature has the power to impose
6 reasonable regulations on elections. So it doesn't have to be
7 something that's expressly spelled out in the Constitution
8 itself, but they have this power to regulate elections for the
9 purpose of to support the privilege of free suffrage. And that
10 is essentially what the legislature has done here. They have
11 enacted a regulation to balance the rights of voters who are not
12 affiliated with a party and those who are affiliated with the
13 party and want to express their voice collectively through that
14 party process and to have some control over how that collective
15 voice is expressed.

16 And again, we're not saying that the Constitution
17 under Article II, Section 8 or otherwise requires us to have the
18 system that we have now or that it would be unconstitutional to
19 do what Plaintiffs are asking for. The legislature could do
20 that, but this is at the very least a reasonable regulation
21 that's within the range of options that the legislature has to
22 balance people's rights to participate in elections.

23 THE COURT: Okay. All right. Thank you.

24 MR. JONES: Thank you.

25 THE COURT: Rebuttal.

1 MR. STERINGER: I think I'll work my way backwards
2 through some of the issues that my colleague has just discussed.
3 First, to make the obvious point that we have an established
4 framework for interpreting the Oregon Constitution. And at no
5 level of that framework are courts asked to look to what other
6 states have done in interpreting their different constitutional
7 provisions or even identical constitutional provisions as
8 applied to different legislative schemes. The resort to other
9 jurisdictions' decisions is just singularly unhelpful to the
10 Court here in deciding how to interpret the Oregon Constitution.

11 It is true that the Oregon Constitution has a
12 provision that grants to the legislature the authority to adopt
13 regulations for the administration of elections. But in doing
14 so, the legislature must comply with all provisions of the
15 Oregon Constitution, including Article II, Section 2, and that's
16 why we're here today.

17 My colleague said that we haven't sufficiently
18 distinguished the legislative scheme in *Ladd* from the
19 legislative scheme that is applicable today. And I think that
20 the phrase that the Defense keeps referring to from *Ladd* about
21 how the nature of the election matters, I think points us to
22 exactly how the Court should distinguish *Ladd*. It should
23 distinguish *Ladd* because the nature of the election that was at
24 issue there was an election for the delegates to a party
25 convention. And so that necessarily would trigger a limitation

1 in participation to the members of the party who would be
2 represented at that convention.

3 THE COURT: And I appreciate that. I guess I'm
4 concerned that, so even if I found that the facts of *Ladd* were
5 distinguishable, the discussion of what an election is and
6 whether there are different types of elections certainly would
7 at a minimum be a guiding principle for how to interpret what
8 our current primary election system looks like. And it's true
9 that if the party system allowing the primary to elect the
10 candidate that would represent that party in the general
11 election is really not selecting the person who will directly
12 represent the voter, I guess I'm struggling with that concept.
13 It's true that even though the results in certain parts of the
14 state and in certain parts of the country of a primary tend to
15 dictate the results of a general election, there is a
16 distinction between those two things. Right? I mean, one is a
17 party election and it is the party candidate who is being
18 elected and then presented as the representative of that party
19 for that position. And then that position has -- I mean,
20 certainly in Oregon, a lot of positions have more than two
21 candidates in the general election.

22 There are other parties, not just the two big parties
23 in Oregon that have candidates in the general election, and all
24 voters who are qualified under Article II, Section 2 can
25 participate in that general election, who would then elect those

1 votes, would then elect that individual who represents them
2 directly. So I guess I'm struggling a little bit with that
3 concept that we're still protecting those rights to vote for the
4 candidate that directly represents you, because in fact that
5 primary, the party primary, that portion of the primary that is
6 directed towards the parties isn't the direct election of a
7 representative. It's an election of a candidate.

8 And so I need you to a little bit tell me in fact how
9 Article II, Section 2 is violated when that is the current
10 system that we have.

11 MR. STERINGER: And I think that's where it's really
12 important to understand the development of election frameworks
13 over time and the fact that in earlier history of the State, we
14 had a process for the nomination of candidates by political
15 parties that was conducted within the private auspices of the
16 parties themselves. The parties would get together in these
17 conventions. Your Honor talked about caucuses that might've been
18 kind of a different way that that could be done, but they got
19 together as private entities that would select who their
20 candidates for office would be. We don't have that anymore.

21 In the direct primary system, parties, the Democratic
22 Party of Oregon, the Oregon GOP, they have no say as private
23 entities who represents them as candidates in offices. We've
24 gotten rid of that system and instead have created a two-step
25 election process where anybody who is registered with a

1 particular party is able to offer themselves up as candidates
2 and can be candidates for office, for positions that are going
3 to directly represent the electorate.

4 So let me give you, I guess, a very close example
5 getting back to nonpartisan primaries. Okay, so let's take a
6 county commissioner race in a county that does not make that a
7 partisan office. What you'll often have is a primary election
8 where you can have anywhere from one to a hundred candidates
9 offer themselves up for election to that position. And what the
10 primary election does is narrow that down to two individuals who
11 will then go on to the general election. We would not say that
12 the primary election in that case is not an election subject to
13 Article II, Section 2, simply because the persons who come out
14 of that primary election are not directly elected at that time
15 to the position of county commissioner. We recognize that as the
16 first step in a two-step process for electing people to a
17 position. Each of them is an election under the Oregon
18 Constitution. And each of them should have the same electorate
19 involved in casting votes at each of those two steps. By
20 creating a direct primary system, the legislature has
21 essentially done the same thing, but they have bifurcated it in
22 a way to exclude non-affiliated voters from having any
23 participation in that first step.

24 THE COURT: Only as selection of those particular
25 parties, though.

1 MR. STERINGER: Well, those are the only parties who
2 are allowed to put candidates on the primary ballot. And we have
3 the concession of the State that it is an election.

4 THE COURT: But those are -- so I guess I am
5 struggling. So how does that mean it's a constitutional
6 violation?

7 MR. STERINGER: It's a constitutional violation
8 because an individual like Plaintiff Porter, who meets all of
9 the requirements of Article II, Section 2 for voting in an
10 election, is denied the opportunity to vote in that election for
11 candidates who are bound to be his representative in the
12 legislature.

13 THE COURT: That's different from what you argued
14 before, because you didn't say candidates, you said the
15 individual who would be representing. And so I think there is a
16 distinction between a candidate. So it's not that direct person,
17 it is the candidate for that particular party that would be
18 representing that party for that position. So it seems to me
19 there's a distinction there. And you previously said, well, they
20 have to be able to participate in the election for every
21 position that would directly represent them. And there is a
22 distinction between the party election system, the primary
23 system, and as you said, the non-partisan positions.

24 Here's the distinction. If one candidate in the non-
25 party system has over 50 percent of the votes at the primary,

1 they are directly elected.

2 MR. STERINGER: That is correct.

3 THE COURT: And so there is a reason that there are no
4 restrictions on who can participate in those particular position
5 elections for those particular positions, because in fact, at
6 the primary level, those individual candidates, anyone could be
7 elected to any of those positions because of that 50 percent
8 rule.

9 It's very different from a party primary election
10 where we are narrowing within each party the candidate who will
11 represent that party in the general election, because there can
12 be no -- it doesn't matter if that candidate got a hundred
13 percent of the votes, they still would have to participate in
14 the next election where that is the direct election for the
15 representative of the voters in that district or in whatever
16 limitation that position has.

17 So I think there's a distinction there, and I may have
18 gone far afield from what you were trying to assert, and I
19 apologize, but I'm just trying to work through what are
20 similarities and what are differences in my analysis so I can
21 say, okay, I understand how this is truly an Article II, Section
22 2 election and what restrictions are reasonable and are not
23 reasonable restrictions within those elections.

24 MR. STERINGER: Sure. And Your Honor, of course, is
25 absolutely correct about what can happen in a non-partisan

1 primary election. It is also true as a practical matter that in
2 many legislative districts around the State of Oregon, that the
3 same as the practical effect of the outcome of the primary
4 election is going to decide who is going to be elected to that.

5 THE COURT: But isn't the legislature better suited
6 than to address that outcome issue, because the outcome issue is
7 completely different than a legal analysis. Right? I mean, if it
8 is constitutionally sound, but we don't like the outcome, then
9 we don't go to the courts for that. We go to the legislature and
10 say, redraw this because we don't like the outcomes we're
11 getting even though they are legally sound.

12 MR. STERINGER: Understood, Your Honor, I agree with
13 that as a general principle, but the legal principle here is
14 that we have a concession on the part of the State, which I
15 don't think anybody could deny, that primary elections are
16 elections that are subject to Article II, Section 2. And so it
17 is incumbent on the State really to identify some sort of
18 constitutional basis for denying non-affiliated voters the right
19 to vote in those elections.

20 THE COURT: And Article II, Section 8, tell me why
21 that is not sufficient, where that clearly does allow for
22 legislative acts that would impact elections. So how is that
23 insufficient?

24 MR. STERINGER: It specifies how elections are to be
25 administered. It doesn't specify -- it doesn't grant the

1 legislature the power to redefine who is eligible to vote. That
2 is expressly provided in Article II, Section 2, and we'd
3 probably rely on the maxim of construction that you give effect
4 to the specific over the general. We have a specific provision
5 in the Oregon Constitution that says who can vote in elections,
6 and the general power of the legislature to provide for the
7 administration of elections can't be used to detract from what
8 the constitution expressly provides.

9 And specifically provides the fact that the *Ladd*
10 decision -- I'm trying to think of exactly how to rephrase what
11 Mr. Jones described as *Ladd* not framing its analysis in a way
12 that would contemplate the type of elections that we have now. I
13 think that's our point for why *Ladd* should be distinguished.

14 Of course, the Court in 1901 didn't have the ability
15 to predict what the legislature would do over the course of time
16 and how it would structure elections into the future. And so it
17 did not specifically establish a rule that is applicable beyond
18 the structure of the election that was in front of it when it
19 made its decision. And so I think we just want to emphasize that
20 point that *Ladd* should be interpreted as being limited to the
21 facts that were in front of it, because that's all the Court was
22 able to do in those circumstances, and it didn't have the
23 ability to announce a rule that would apply to elections that
24 are organized the way they are now, where we have direct primary
25 elections as opposed to the convention system that existed in

1 1901.

2 And I think maybe the last thing I want to address
3 from Mr. Jones's argument was the idea that the Plaintiffs are
4 asking for an expansive interpretation of Article II, Section 2
5 in a way that should somehow cause the Court to be concerned. I
6 don't think that the interpretation that we're requesting is
7 properly described as expansive. We're simply saying that if
8 there's an election that has candidates for an office that will
9 represent the voter who is qualified to vote under Article II,
10 Section 2, they're entitled to vote in that election. It's that
11 simple.

12 And I think that's actually fairly narrow. It
13 addresses the idea that we're somehow arguing that a person
14 who's registered to vote in Salem somehow has the ability to
15 vote in the election for the Pendleton City Council. We're not
16 arguing that. I think that is the sort of implied limit that is
17 easily applied to the right to vote, that your right to vote is
18 limited to candidates for offices that will represent you
19 directly. That's all we're asking for. And Article II, Section 2
20 guarantees that. So we need this Court to declare that statutes
21 that prevent individuals who meet the requirements of Article
22 II, Section 2, prevent them from voting in elections for
23 offices -- candidates for offices that will represent them, are
24 unconstitutional. And that's why we're asking that our
25 Plaintiffs' motion for summary judgment be granted and the cross

1 motion be denied.

2 THE COURT: Okay, thank you.

3 Surrebuttal?

4 MR. JONES: Just briefly, Your Honor.

5 THE COURT: Okay.

6 MR. JONES: A few points about the -- My colleague on
7 the other side talked about how today parties themselves as
8 entities don't have a direct say in who their candidates will
9 be, and that's left to the voters themselves to directly decide.
10 In the indirect primary system, that was an issue in *Ladd v.*
11 *Holmes*, it's still ultimately the voters who are members of that
12 party who have control over what that is, because it's up to the
13 delegates at the convention and the delegates are selected by
14 the party members. And so it's still a process through which the
15 voters are exercising control over that. And so the level --
16 and they still haven't offered a way for the level of that
17 control, direct or indirect, positively makes a difference here.

18 And I would just point out that Plaintiffs' argument
19 about the scope of their interpretation, Article II, Section 2,
20 it seems to sort of shift back and forth between the idea that
21 it has to either be expressly provided for in Article II,
22 Section 2 or it's not okay, or sometimes they acknowledge that
23 there are some implicit requirements that are okay. And so they
24 argue that, well, geographic requirements are implicitly okay,
25 but they don't, again, they can't come up with a reason for why

1 the party affiliation requirement in *Ladd* was implicitly okay
2 and what part of the constitution authorizes that if that's not
3 expressly provided for in Article II, Section 2.

4 And finally, in response to Plaintiffs' argument that
5 their interpretation is not expansive and that it's just a
6 narrow issue, again, even if they could sort of cabin off the
7 idea of geographic restrictions on where you can vote or what
8 offices you can vote for, they still can't explain away this
9 issue of cross-party and multi-party voting and how the State
10 would have to either allow that to happen or essentially abolish
11 party primaries themselves. And so this would, again, emphasize,
12 be a pretty drastic overhaul of the system that we have now. And
13 although that's not dispositive to the constitutional analysis
14 here as to whether or not that would be permissible, it's
15 something to keep in mind as Plaintiffs try to cabin their
16 argument here, because it shows really just again how expansive
17 their reading of Article II, Section 2 is, and they haven't
18 pointed to anything to support that expansiveness in the case
19 law here or elsewhere. And beyond that, I think I've basically
20 covered --

21 THE COURT: Well, beyond that, I want to go back to
22 that then. So if I agree that *Ladd* is distinguishable in terms
23 of the type of voting system we had at that point, or the type
24 of election we had at that point, whether it's an Article II
25 vote election or not is not the question. If what we're looking

1 at is so different than what was happening in 1901, then really
2 we haven't had any analysis, and frankly we haven't had any
3 analysis of whether the statutes that are put in place regarding
4 the direct primary system, direct party primary elections, are
5 consistent with the voter's rights in Article II, Section 2.
6 It's never been evaluated. And so I guess I'm struggling a
7 little bit with you saying, well, it's expanding or not
8 expanding Article II, and gee, they're really asking you to kind
9 of throw out the whole system, and that's not appropriate, when
10 in fact it has never been evaluated because there's no case law,
11 excuse me, that evaluates whether these statutes that put the
12 current system in place and restrict, for example, a party's
13 ability to participate or require that the parties participate
14 in the current primary system, that's never been tested as to
15 whether that violates Article II, Section 2.

16 And so how -- I guess I'm pushing back a little
17 against your comments that I shouldn't look at that or shouldn't
18 be persuaded by that because it would overhaul a system. If in
19 fact if those statutes violate the Constitution, then it is in
20 fact the Court's role to say these statutes violate the
21 Constitution. I'm not saying they do, but if they do, it's not
22 persuasive to the Court to say, well, gee, these statutes are
23 pretty complicated, or this puts in place a complicated system,
24 and so you shouldn't throw it out if it violates the
25 Constitution, then in fact it's the Court's role to say, these

1 statutes violate the Constitution, whether they're complicated
2 or a simple structure that are put in place by those statutes.
3 Wouldn't you agree with that?

4 MR. JONES: I would certainly agree that if something
5 violates the Constitution, then the fact that the results would
6 be complicated doesn't change that. But when we point to the
7 broader implications of what they're asking for would be, that's
8 not to say that because it would have these big impacts, it's
9 therefore unconstitutional. But it is a way of illustrating on
10 one level how far their interpretation of Article II, Section 2
11 is from what the Court decided in *Ladd v. Holmes* and how.

12 THE COURT: Right. But *Ladd v. Holmes* didn't have an
13 opportunity to evaluate the current system that we have. You
14 would agree with that? We have a different system than we had
15 under that in 1901.

16 MR. JONES: That's true.

17 THE COURT: And so *Ladd v. Holmes* didn't evaluate the
18 current system in terms of whether it is consistent or not
19 consistent with the rights protected under Article I, Section 2
20 or Article II, Section 2. And so I can say, well, it's the same
21 system or the rights are the same and therefore it doesn't
22 violate because *Ladd* says it doesn't violate. Or I can say,
23 well, it's a different system, but the broad implications of the
24 broad holding of *Ladd vs. Holmes* applies and therefore it
25 doesn't violate, or I could say it violates and that Holmes

1 never, that *Ladd* didn't have the opportunity to really evaluate
2 the current system. And whether the current system violates
3 Article II, Section 2, I mean all of those are within the
4 purview of the Court, right?

5 MR. JONES: Yes, Your Honor. So I think as Your Honor
6 put it earlier, even if *Ladd* doesn't directly control here, it's
7 still something that's addressing Article II, Section 2. And
8 it's still something that this Court should look to for at the
9 very least, interpretive guidance for how to apply that. And the
10 Court in applying that provision would still have to look to how
11 the Supreme Court looked at that in general. So if the Court
12 could again look at, as you said, it say this directly applies
13 because it's really close to this or you look at more broadly
14 the reasoning still refutes what or is incompatible with what
15 Plaintiffs are saying. But I think even beyond that, even you
16 could find a way around the reasoning there. I think you'd
17 still -- the Court would still look to what the Supreme Court
18 had said there as just the broader interpretive guidance for
19 what is the principle here that's being guaranteed under this
20 provision and how this Court's decision reflect that more
21 generally.

22 Even if there are ways that Plaintiffs or this Court
23 could get around that or find ways that to distinguish that it
24 still would at least directionally be going right against what
25 the Court was saying there. So in pointing out the expansiveness

1 of Plaintiffs' argument here, it's showing the extent to which
2 there would be that tension at the very least. And we think of
3 course, that it's more than tension, that it's the reasoning and
4 the conclusion in that case does dictate the outcome here. But
5 at the very least, Plaintiffs have not come up with a way to get
6 around that that's not in severe tension with everything the
7 Court has said on this issue.

8 THE COURT: All right, thank you. I hope I didn't cut
9 off any other thoughts you had. Was there anything else?

10 MR. JONES: No, Your Honor. I think that was it for
11 me.

12 THE COURT: Okay. All right. All right.

13 Anything further for Plaintiffs?

14 MR. STERINGER: I appreciate the opportunity to talk
15 again because there is just one thing that I wanted to say about
16 *Ladd*, if that's okay and it's covered in the briefs. But when
17 the Court is thinking about *Ladd* and what the Oregon Supreme
18 Court was trying to do there, I think it is helpful to remember
19 that the context of *Ladd*, in addition to everything else we've
20 said, was a system where virtually everybody was a member of one
21 party or another, a major party. And the Court was very
22 concerned that when each of the parties was having its own
23 convention, it was driven by this notion that just to pick one
24 of the parties, that the only reason that a member of the
25 Republican Party might want to vote in the primary to elect

1 delegates to the Democratic Party would be if that Republican
2 wanted to create mischief. And that is what justified the
3 legislative decision there to limit participation based on
4 partisan affiliation.

5 That is another way in which we're in a much different
6 situation here where we don't live in a world anymore, where
7 almost all Oregon electors are members of one of the parties.
8 and their desire to vote in primary elections at the first round
9 of the election of their representatives is not one that's born
10 out of mischief trying to create problems for one party or
11 another. It's simply to exercise a right to vote that is
12 guaranteed to be done by the Oregon Constitution. And so I just
13 wanted to add that note about *Ladd* because I think it's another
14 important point in deciding how helpful it really is to the
15 Court in analyzing our current electoral system. Thank you.
16 Thank you, Your Honor.

17 THE COURT: All right, well I'm going to need to take
18 a little bit of time with what we've talked about and do a
19 little more dive in history, I think. And so I want to give a
20 date certain rather than just kind of have it open and
21 expansive. I found that that does not work for my work style. So
22 I have two proposed dates to come back for a reading of my
23 decision and that would be February -- excuse me, January 30th,
24 which is a Friday. I have time at 2:30, or later that afternoon.
25 And then February 2nd, which is a Monday, and I have time, let's

1 see, I have a 9 o'clock hearing, so I have time from 10 on that,
2 either the morning or afternoon. So is there one of those times
3 that is preferable to the parties?

4 I see somebody in the back who's got --

5 MR. STERINGER: So Your Honor, I may be in trial
6 February 2nd, so I would ask that we do January 30th, if that's
7 possible.

8 MR. JONES: Yeah, that day would be fine.

9 THE COURT: Does that work? So is 2:30, does that work
10 for the parties or would later in the afternoon work better?

11 MR. STERINGER: Whatever --

12 MR. JONES: That time works for Defendants, Your
13 Honor.

14 THE COURT: 2:30.

15 MR. STERINGER: Or later?

16 MR. JONES: Or later, whatever works.

17 MR. CASTELLI: I was making sure you were available
18 later.

19 MR. STERINGER: Same, Your Honor. Yes. Available
20 January 30th, 2:30 or later.

21 THE COURT: Okay. So if 2:30 works, let's do 2:30. I
22 think I've got a plea and sentence at 2. We should --

23 Is that at 2? So we should be done by 2:30. Yeah.

24 All right, so 2:30 we'll work then on the 30th and
25 we'll have a decision at that point.

1 Okay?

2 THE COURT: Thank you.

3 MR. JONES: Thank you, Your Honor.

4 MR. STERINGER: All right. Thank you.

5 MR. CASTELLI: Thank you, Your Honor.

6 (Proceedings adjourned at 11:25 a.m.)

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

MARK PORTER, and OUR PRIMARY	)	
VOICE,	)	TRIAL COURT CASE NUMBER:
	)	25CV38061
Plaintiffs,	)	
	)	
vs.	)	
	)	
TOBIAS READ, Secretary of	)	
State of the State of Oregon;	)	
THE STATE OF OREGON,	)	<u>TRANSCRIPT OF PROCEEDINGS</u>
	)	
Defendants.	)	

HEARING

BEFORE THE HONORABLE NATASHA ZIMMERMAN

DATE: JANUARY 30, 2026

PAGES 53 TO 58

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Proceedings recorded by electronic sound recording.
Transcript produced by: Amy Pratt

WITNESSES					
PLAINTIFFS	DIR	CRS	REDIR	RECRS	VD
NONE	---	---	---	---	---
DEFENDANTS	DIR	CRS	REDIR	RECRS	VD
NONE	---	---	---	---	---
MATTERS OF SPECIAL IMPORTANCE					
DESCRIPTION					VOL/PG
COURT'S RULING					55
EXHIBITS					
PLAINTIFFS	DESCRIPTION		OFFERED	ADMITTED	
NONE	---		---	---	
DEFENDANTS	DESCRIPTION		OFFERED	ADMITTED	
NONE	---		---	---	

1 SALEM, OREGON; FRIDAY, JANUARY 30, 2026

2 -000-

3 (Call to Order of the Court at 8:34 a.m.)

4 THE COURT: Okay. We are here in 25CV38061, Mark
5 Porter and Our Primary Voice vs. Tobias Read, State of Oregon.
6 And we are here after argument for cross-summary judgment
7 motions by the parties.

8 So I've written down a few notes. I'm going to try and
9 read these, and I can answer questions, I guess, if they come
10 up. So I have reviewed the briefs. I've gone back and read the
11 case law and done a little bit more research just so I can make
12 sure I have fully informed myself in terms of this issue.

13 I'm going to start by saying it isn't clear to me that
14 the party-affiliated portion of the primary elections truly fits
15 the definition of elections as contemplated by Article II,
16 Section 2 of the Oregon Constitution, because it is not a vote
17 for the candidate from a party, but a vote to select the
18 candidate within a party. Therefore, I wouldn't find that ORS
19 254.365 violates Article II, Section 2, either facially or as
20 applied.

21 However, Defense appears to have conceded the issue
22 that this is an election as contemplated in Article II, Section
23 2. So I went forward with the analysis accepting that concession
24 by the Defense.

25 Defendant points to the 1901 *Ladd vs. Holmes* decision

1 as it's the only Oregon Supreme Court opinion seemingly on
2 point. Plaintiff asserts that the facts are distinguishable here
3 from the election scheme or process that had been in place in
4 1901. And I agree that there are differences in the election
5 process from that process in 1901. However, I do find that the
6 constitutional analysis of *Ladd vs. Holmes* is controlling.

7 In that case, the Court found that the law providing
8 for party elections and limiting privileges to party members,
9 giving the parties the right to expand their party election or
10 giving the right to expand the party election to non-party
11 members, does not violate Article II, Section 2. And so I would
12 find again, under *Ladd vs. Holmes*, that the current statutory
13 framework does not violate Article II, Section 2.

14 However, Plaintiff does urge a different analysis. And
15 so I also looked under the Plaintiffs' analysis in terms of
16 whether Article II, Section 2 is violated by the current
17 statutory scheme.

18 So I looked at the federal analysis, both Supreme
19 Court case law under *California Democratic Party vs. Jones*, 530
20 U.S. 567, 2000, and the *Clingman vs. Beaver*, which is a 2005
21 case. Additionally, the *Timmons vs. Twin Cities Area New Party*
22 in 1997, just to try and understand the types of constitutional
23 restrictions that may or may not be appropriate under the Oregon
24 Constitution.

25 And I do find that there can be that there may be

1 restrictions on constitutional rights, and they need to be
2 analyzed whether those restrictions place -- what type of burden
3 those restrictions place on the constitutional right. So if the
4 burden, there may be a regulation, if the burden on the
5 protected right weighs in favor of the burden.

6 So if the restriction on a constitutional right
7 imposes a severe burden on that constitutional right, that
8 constitutional restriction or the restriction of the
9 constitutional right must be narrowly tailored to serve a
10 compelling state interest. If the burden on the constitutional
11 right serves a regulatory interest, that may not be enough to
12 justify the restriction on the constitutional right.

13 So here it appears that the question is whether the
14 semi-closed primary system in Oregon is a severe burden or a
15 reasonable, non-discriminatory restriction on the constitutional
16 right to participate in an election.

17 Here it appears that the balancing that I am looking
18 at is an individual's right to participate in an election, but
19 the election for a party-affiliated candidate, rather than the
20 candidate for the actual position, is being balanced with the
21 freedom of association by the various political parties, the
22 ability of the party members to select the candidate that best
23 represents that party, their missions and values of that
24 particular party, and whether there should be any restriction to
25 limit malfeasance of non-party members to vote for a least, or

1 less, electable candidate for that party.

2 In looking at those particular state interests, I find
3 that the restrictions on participation in the party-affiliated
4 primary selection of candidates is a minor restriction on the
5 individual's voting constitutional rights, on the voters'
6 constitutional rights. And therefore, the statute places a
7 justifiable, non-discriminatory restriction on an individual's
8 voting right and does not violate Article II, Section 2.

9 Therefore, Plaintiffs' motion for summary judgment is
10 denied. Defendants' motion for summary judgment is granted, and
11 Defense counsel shall prepare an order consistent with that
12 ruling.

13 Anything further for Plaintiff?

14 MR. STERINGER: No, thank you, Your Honor. We really
15 appreciate the thought that the Court has put into this.

16 THE COURT: Okay. Thank you.

17 For Defense?

18 MR. JONES: No, Your Honor. We will prepare an order.

19 THE COURT: Okay. All right. We'll be off the record.
20 Thank you both. Thank you all.

21 MR. STERINGER: Thank you, Your Honor.

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CERTIFICATION

I, Amy Pratt, hereby certify that I am a court-approved transcriber authorized by the Oregon Court of Appeals to transcribe hearings from the official electronic sound recording of the proceedings in the above-entitled matter.

Amy S. Pratt

APRIL 1, 2026

Amy S. Pratt, Court-Approved Transcriber
Court Reporter / Proofreader

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

MARK PORTER, and OUR PRIMARY
VOICE,

Plaintiffs,

v.

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

Defendants.

Case No. 25CV38061

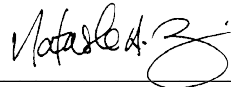
GENERAL JUDGMENT

ORS 20.140 - State fees deferred at filing

GENERAL JUDGMENT

In accordance with the Court's Order Granting Defendants' Cross-Motion for Summary Judgment, the Court declares that ORS 254.365 is not unconstitutional under Article II, section 2, of the Oregon Constitution, either facially or as applied to Plaintiffs, and the Court now enters judgment in this proceeding in favor of Defendants and against Plaintiffs.

2/19/2026 2:27:38 PM



Circuit Court Judge Natasha A. Zimmerman

Submitted by: Alexander C. Jones
Assistant Attorney General
Attorneys for Defendants

CERTIFICATE OF READINESS

This proposed **GENERAL JUDGMENT** is ready for judicial signature because:

1. ☐ Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
2. ☒ Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.
3. ☐ I have served a copy of this order or judgment on each party entitled to service and:
 - a. ☐ No objection has been served on me.
 - b. ☐ I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - c. ☐ After conferring about objections, [role and name of objecting party] agreed to independently file any remaining objection.
4. ☐ Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

1 5. ☐ This is a proposed judgment that includes an award of punitive damages and
2 notice has been served on the Director of the Crime Victims' Assistance Section as required by
3 subsection (5) of this rule.

4 6. ☐ Other:_____.

5 DATED this 17 day of February, 2026.

6
7 s/ Alexander C. Jones
8 THOMAS H. CASTELLI #226448
9 ALEXANDER C. JONES #213898
10 Assistant Attorneys General
11 Trial Attorney
12 Tel (971) 673-1880
13 Fax (971) 673-5000
14 thomas.castelli@doj.oregon.gov
15 alex.jones@doj.oregon.gov
16 Of Attorneys for Defendants
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify that on February 17, 2026, I served the foregoing **GENERAL JUDGMENT** upon the parties hereto by the method indicated below, and addressed to the following:

C. Robert Steringer

Dunn Carney Allen Higgins & Tongue LLP

851 SW Sixth Avenue, Suite 1500

Portland, OR 97204

Of Attorneys for Plaintiff

☐ HAND DELIVERY

☐ MAIL DELIVERY

☐ OVERNIGHT MAIL

☐ SERVED BY E-FILING

☒ SERVED BY EMAIL:

bob.steringer@harrang.com

bsteringer@dunncarney.com;

aaron.landau@harrang.com;

aaron.landau@millernash.com

s/ Alexander C. Jones

THOMAS H. CASTELLI #226448

ALEXANDER C. JONES #213898

Assistant Attorneys General

Trial Attorney

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thomas.castelli@doj.oregon.gov

alex.jones@doj.oregon.gov

Of Attorneys for Defendants

REGISTER OF ACTIONS
CASE No. 25CV38061

Mark Porter, Our Primary Voice vs Tobias Read, State of Oregon

§
§
§
§
§
§

Case Type: **Review - Government Actions**
Date Filed: **06/25/2025**
Location: **Marion**
Court of Appeals: **A190160**

PARTY INFORMATION

Defendant	Read, Tobias	Attorneys Thomas H Castelli <i>Retained</i> 971 673-1880(W)
	Secretary of State	Alexander C Jones <i>Retained</i> 503 378-4402(W)
Defendant	State of Oregon	Thomas H Castelli <i>Retained</i> 971 673-1880(W)
		Alexander C Jones <i>Retained</i> 503 378-4402(W)
Plaintiff	Our Primary Voice	C Robert Steringer <i>Retained</i> 503 224-6440(W)
		J AARON LANDAU <i>Retained</i> 541 234-7622(W)
Plaintiff	Porter, Mark	C Robert Steringer <i>Retained</i> 503 224-6440(W)
		J AARON LANDAU <i>Retained</i> 541 234-7622(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS		
02/20/2026	Judgment - General (Judicial Officer: Zimmerman, Natasha A.) Party(Porter, Mark; Read, Tobias; Our Primary Voice; State of Oregon) Created: 02/20/2026 11:45 AM	
OTHER EVENTS AND HEARINGS		
06/25/2025	<u>Complaint</u> Created: 06/26/2025 11:28 AM	
06/25/2025	Service Read, Tobias State of Oregon Created: 06/26/2025 2:18 PM	Served Served
06/26/2025	<u>Assignment - Trial Judge</u> (Judicial Officer: Zimmerman, Natasha A.) <i>emailed to atty 6.26.25</i> Created: 06/26/2025 2:19 PM	
06/26/2025	<u>Proof - Service</u> <i>Acceptance of Service 6/26/25</i> Created: 06/26/2025 4:44 PM	
06/26/2025	<u>Summons</u> Created: 06/26/2025 4:44 PM	
06/26/2025	<u>Summons</u>	

07/15/2025 Created: 06/26/2025 4:44 PM
[Complaint - Amended](#)
First

07/18/2025 Created: 07/16/2025 8:12 AM
[Association Counsel](#)

07/18/2025 Created: 07/21/2025 10:19 AM
[Association Counsel](#)

07/22/2025 Created: 07/21/2025 10:19 AM
[Complaint - Amended](#)
Second

08/08/2025 Created: 07/23/2025 11:44 AM
[Answer](#)

10/13/2025 Created: 08/08/2025 3:02 PM
[Motion - Summary Judgment](#)

10/13/2025 Created: 10/13/2025 3:34 PM
[Declaration](#)
in support of Mo SJ

10/13/2025 Created: 10/13/2025 3:34 PM
[Declaration](#)
in support of Mo SJ

11/05/2025 Created: 10/13/2025 3:34 PM
[Motion - Time Extension](#)
to Respond to Mo SJ

11/13/2025 Created: 11/05/2025 4:46 PM
[Hearing - Status Check](#) (8:30 AM) (Judicial Officer Zimmerman, Natasha A.)
Attorneys may appear by phone; call 1-971-323-0609; enter conference code 976 761 491#

11/14/2025 Created: 09/16/2025 4:13 PM
[Order](#) (Judicial Officer: Zimmerman, Natasha A.)
Granting unopposed Mo Ext Time
Signed: 11/14/2025
Created: 11/14/2025 9:07 AM

11/21/2025 [Response](#)
to Mo SJ; Cross-Mo SJ
Created: 11/24/2025 9:06 AM

11/26/2025 [Notice](#)
of Change of Firm and Address
Created: 11/26/2025 8:53 AM

12/15/2025 [Reply](#)
Support Mo SJ; Response in Opposition to Cross-Mo SJ
Created: 12/16/2025 7:55 AM

12/31/2025 [Hearing - Summary Judgment](#) (10:00 AM) (Judicial Officer Zimmerman, Natasha A.)
Parties to Appear in Person; 2 hr hrg
Result: Held
Created: 11/13/2025 9:58 AM

01/30/2026 [Hearing](#) (2:30 PM) (Judicial Officer Zimmerman, Natasha A.)
re: Decision from hearing on 12/31/25.
Result: Held
Created: 12/31/2025 11:32 AM

02/20/2026 [Order](#) (Judicial Officer: Zimmerman, Natasha A.)
Granting Defs' Cross-Mo SJ, denying Ptf's Mo SJ
Signed: 02/19/2026
Created: 02/20/2026 11:44 AM

02/20/2026 [Digitized Judgment Document](#) (Judicial Officer: Zimmerman, Natasha A.)
General Judgment
Signed Date: 02/19/2026
Created: 02/20/2026 11:46 AM

02/20/2026 [Notice - Judgment Entry](#)
Created: 02/20/2026 11:47 AM

02/20/2026 [Closed](#)
Created: 02/20/2026 11:49 AM

03/02/2026 [Notice - Appeal](#)
A190160 - Hrgs: Record of oral proc (only recorded hrgs were 12/31/25, 1/30/26) - No exhibits
Created: 03/02/2026 4:46 PM

03/20/2026 [Request - Extension](#)
by Transcript Coordinator, for prep/service of transcript
Created: 03/20/2026 5:42 PM

03/20/2026 [Assignment - Transcriber](#)
Hrgs, Worksheet, Case Summary, NOAP, RQEX sent via FTP; Worksheet efiled in COA/eserved on Atty Steringer & DOJ
Created: 03/20/2026 5:55 PM

03/23/2026 [Order](#) (Judicial Officer: Authority, Administrative)
Granting Extension, now due 5/14/26
Signed: 03/23/2026
Created: 03/23/2026 8:19 AM

04/07/2026 [Certificate](#)
Prep/service of transcript
Created: 04/24/2026 1:24 PM

04/08/2026 [Request](#)
for Trial court file & documentary exhibits (none)
Created: 04/24/2026 1:26 PM

04/24/2026 [Notice](#)
Trial court file uploaded to shared drive - No exhibits
Created: 04/24/2026 1:46 PM

FINANCIAL INFORMATION

	Attorney Steringer, C Robert			
	Total Financial Assessment			10.00
	Total Payments and Credits			10.00
	Balance Due as of 07/07/2026			0.00
02/03/2026	Transaction Assessment			10.00
02/03/2026	Phone Payment	Receipt # 2026-04589-TP	Donna Moser	(10.00)
	Plaintiff Porter, Mark			
	Total Financial Assessment			513.00
	Total Payments and Credits			513.00
	Balance Due as of 07/07/2026			0.00
06/26/2025	Transaction Assessment			281.00
06/26/2025	xWeb Accessed eFile	Receipt # 2025-431549	Porter, Mark	(281.00)
10/13/2025	Transaction Assessment			111.00
10/13/2025	xWeb Accessed eFile	Receipt # 2025-687671	Porter, Mark	(111.00)
12/16/2025	Transaction Assessment			111.00
12/16/2025	xWeb Accessed eFile	Receipt # 2025-829942	Porter, Mark	(111.00)
01/12/2026	Transaction Assessment			10.00
01/12/2026	Phone Payment	Receipt # 2026-01490-TP	Donna Moser	(10.00)