



**DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION**

April 25, 2012

Steve Trout  
Director, Elections Division  
Office of the Secretary of State  
255 Capitol St NE, Suite 501  
Salem, OR 97310

RE: Registration requirements for minor political parties  
DOJ File No. 165200-GG0236-12

Dear Mr. Trout:

You asked me to examine the qualification requirements for minor political parties in ORS 248.008.<sup>1</sup> The specific question involves the Pacific Green Party, a statewide minor political party. The Pacific Green Party qualified as a minor political party in 2008 and nominated candidates for various offices on the 2008 General Election ballot, including the statewide office of Secretary of State. The party was eligible to nominate candidates at the 2010 general election, but failed to nominate any statewide candidates. It did nominate candidates in congressional districts. According to ORS 248.008, the party must again qualify in order to be able to nominate candidates for the general election in 2012. The question is which qualification requirements apply.

According to my analysis of ORS 248.008, the Pacific Green Party is now subject to the registration requirements of ORS 248.008(4)(b). This means that the party must have at least one-half of one percent of the total number of registered electors in this state registered as members of the party. The registration requirement must be met between the May primary election and 90 days before the date of the November 6, 2012 general election. If the party reaches this registration requirement within the time period, it will be eligible to nominate candidates for the 2012 general election. If it does not meet the registration requirements, the Pacific Green Party will cease to be a minor political party on the 90<sup>th</sup> day before the general election. ORS 248.008(5).

The Pacific Green Party qualified as a minor political party in 2008 by the petition process described in ORS 248.008(1)(a). It was a statewide minor party qualified to nominate candidates for any statewide office and any office in an electoral district within the state. The party was eligible to nominate candidates for the 2008 general election without any party registration requirements and did so for the 2008 election. The party had a nominee for the office of Secretary of State; that candidate garnered more than 1% of the vote cast for the office of Secretary of State.

The 2008 general election was the “next general election” after satisfying the requirements for minor party formation. ORS 248.008(2). After 2008, the Pacific Green Party had to comply with the requirements of ORS 248.008(3) and (4), because 2010 was a “subsequent general election”. ORS 248.008(8)(A “subsequent general election” means any general election that is held after the first general election following qualification as a minor political party under subsection (1) of this section.) The 2010 general election was the first subsequent general election after the first eligible election in 2008; 2012 is the second subsequent general election.

For each subsequent general election, there are two ways to remain eligible to nominate candidates for the general election. One option is to meet a smaller registration requirement (one-tenth of one percent of the total votes cast for all candidates for Governor) and to have nominated a candidate at the previous general election who garnered at least 1% of the total vote cast for a presidential or other statewide candidate. ORS 248.008(4)(a). The other option is to meet a higher registration requirement (one-half of one percent of the total number of registered electors in the state). ORS 248.008(4)(b).

Because the Pacific Green Party did have a statewide candidate who garnered enough votes in 2008, and the party met the lower registration requirement in 2010, it was eligible under ORS 248.008(4)(a) to nominate candidates for all partisan offices in 2010. The party did nominate candidates in 2010, but it did not nominate any candidates to statewide offices. Because it did not have any 2010 candidate who could meet the vote requirements in ORS 248.008(1)(b), as required by ORS 248.008(4)(a)(B), the party lost its opportunity to maintain its party status for the 2012 general election with the lower party registration requirement. The qualification through ORS 248.008(4)(a) is simply not available to the Pacific Green Party because it did not have a statewide candidate in 2010 who could have met the vote requirement.

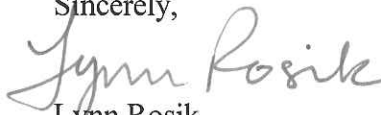
The only remaining option for maintaining party status and eligibility to nominate candidates for 2012 is through the party registration requirements in ORS 248.008(4)(b). This requires the party to have at least one-half of one percent of the total number of registered electors in the state registered as Pacific Green Party members. If this requirement is not met by the 90<sup>th</sup> day before the general election, the party will not be eligible to nominate any candidates in 2012 and it will cease to be a recognized minor political party. ORS 248.008(5).

Representatives of the Pacific Green Party have advanced several arguments why they believe the party still qualifies to use ORS 248.008(4)(a) to determine its eligibility to nominate candidates in 2012. First, there is a contention that the party’s candidate for Secretary of State in 2008 qualifies the party to nominate another candidate for that office in 2012, because 2008 was the last election at which that office was on the ballot for a full term. However, as described above, the party’s eligibility is determined one election to the next, as is clear from the language in ORS 248.008(4)(a) and (b) that the registration requirements are determined “following *each* general election.” The 2008 candidate’s vote totals were recognized by the Secretary of State by the use of ORS 248.008(4)(a) in 2010, allowing the party to nominate candidates even with the smaller number of registered members. The determination in 2012 of eligibility is now made based on how the party’s candidates performed in 2010. Because the party did not nominate a candidate that met either of the requirements of ORS 248.008(1)(b) (either a presidential candidate or a “single state office to be voted on by the party at large”), ORS 248.008(4)(a) is now unavailable to the party as a qualifying mechanism in 2012.

The second contention is that the vote totals from the various candidates in congressional districts in 2010 should be combined to demonstrate that the party met the vote requirements in ORS 248.008(4)(a)(B). The party argues that the language "a candidate or candidates of the party must poll a number of votes" can be read to allow the combining of vote totals from multiple candidates, none of whom ran for a statewide office. The language in ORS 248.008(4)(a)(B) must be read in combination with ORS 248.008(1)(b), since that subsection is referenced in ORS 248.008(4)(a)(B). And subsection (1)(b) specifically states that the one percent vote requirement is applied "for any one of its candidates" for either president or for "any single state office to be voted upon in the state at large". Because the party had no one candidate who ran for a single state office to be voted upon in the state at large, it cannot use the vote totals from any of its 2010 candidates, either alone or in combination, to qualify the party in 2012.

Finally, the party suggested that if it no longer qualifies under ORS 248.008(4)(a) to nominate candidates for statewide office, it should be allowed to maintain its minor party status within the electoral districts for which it did nominate candidates in 2010 (who presumably met the vote total requirements). There is no express language in ORS 248.008 that would permit that result. Because the Pacific Green Party was originally formed as a statewide party, its status as a minor political party is based on the entire state as its electoral district, and the qualification derived from the showing of its candidates at general elections is based on the showing of at least one candidate in a statewide office. Finally, subsection (5) states that if the party fails to meet the requirements to maintain its status as required by subsection (4), the party "ceases to be a minor political party." It does not provide an option for the party to be recognized in a smaller electoral district.

Sincerely,



Lynn Rosik  
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LRR:bw1/tjh/JUSTICE-#3343896

<sup>i</sup> ORS 248.008 is a complex statute. It provides a mechanism for affiliations of electors to create a minor political party and to maintain their party status to nominate candidates at each general election:

- (1) An affiliation of electors becomes a minor political party in the state, a county or other electoral district, qualified to make nominations for public office in that electoral district and in any other electoral district wholly contained within the electoral district, when either of the following events occurs:
  - (a) When the affiliation of electors has filed with the Secretary of State a petition with the signatures of at least a number of electors equal to one and one-half percent of the total votes cast in the electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term. The petition also must state the intention to form a new political party and give the designation of it. The petition must contain only original signatures and must be filed not later than two years following the date the prospective petition is filed. The circulator shall certify on each signature sheet that the circulator witnessed the signing of the signature sheet by each individual whose signature appears on the signature sheet and that the circulator believes each individual is an elector registered in the electoral district. The Secretary of State shall verify whether the petition contains the required number of signatures of electors. The Secretary of State may not accept a petition for filing if it contains less than 100 percent of the required number of signatures. The Secretary of State by rule shall designate

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a statistical sampling technique to verify whether a petition contains the required number of signatures of electors. A petition may not be rejected for the reason that it contains less than the required number of signatures unless two separate sampling processes both establish that the petition lacks the required number of signatures. The second sampling must contain a larger number of signatures than the first sampling. The Secretary of State may employ professional assistance to determine the sampling technique. The statistical sampling technique may be the same as that adopted under ORS 250.105 (Petition filing requirements). Before circulating the petition, the chief sponsor of the petition must file with the Secretary of State a signed copy of the prospective petition. The chief sponsor must include with the prospective petition a statement declaring whether one or more persons will be paid money or other valuable consideration for obtaining signatures of electors on the petition. After the prospective petition is filed, the chief sponsor must notify the filing officer not later than the 10<sup>th</sup> day after the chief sponsor first has knowledge or should have had knowledge that:

- (A) Any person is being paid for obtaining signatures, when the statement included with the prospective petition declared that no such person would be paid.
  - (B) No person is being paid for obtaining signatures, when the statement included with the prospective petition declared that one or more such persons would be paid.
- (b) When the affiliation of electors has polled for any one of its candidates for any public office in the electoral district at least one percent of the total votes cast in the electoral district for all candidates for:
- (A) Presidential elector at the last general election at which candidates for President and Vice President of the United States were listed on the ballot; or
  - (B) Any single state office to be voted upon in the state at large for which nominations by political parties are permitted by law at the most recent election at which a candidate for the office was elected to a full term.
- (2) After satisfying either requirement of subsection (1) of this section, the minor political party may nominate candidates for election at the next general election.
- (3) A filing officer may not accept a certificate of nomination of a candidate nominated by a minor political party for a subsequent general election unless the minor political party has satisfied the requirements of subsection (4)(a) or (b) of this section.
- (4) After a minor political party qualifies to nominate candidates for a general election under subsection (1) of this section, in order to maintain status as a minor political party for a subsequent general election:
- (a)(A) Following each general election, at any time during the period beginning on the date of the next primary election and ending on the 90<sup>th</sup> day before the next general election, a number of electors equal to at least one-tenth of one percent of the total votes cast in the state or electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term must be registered as members of the party; and
  - (B) A candidate or candidates of the party must poll a number of votes described in subsection (1)(b) of this section at each subsequent general election; or
- (b) Following each general election, at any time during the period beginning on the date of the next primary election and ending on the 90<sup>th</sup> day before the next general election, a number of electors equal to at least one-half of one percent of the total number of registered electors in this state must be registered as members of the party.
- (5) An affiliation of electors that fails to maintain its status as a minor political party, as described in subsection (4) of this section, ceases to be a minor political party on the 90<sup>th</sup> day before the date of the next general election.
- (6) During the period beginning on the date of the primary election and ending on the 90<sup>th</sup> day before the date of the general election, the Secretary of State shall determine not less than once each month whether the registration requirements of subsection (4) of this section have been satisfied. If the minor political party changes its name, only those electors who register on or after the effective date of the name change as members of the party under the new party name shall be counted as members of the party under this subsection.

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- (7) An affiliation of electors or a minor political party may not satisfy the one percent requirement referred to in subsection (1)(b) of this section by nominating a candidate who is the nominee of another political party at the same election.
  - (8) For purposes of this section, "subsequent general election" means any general election that is held after the first general election following qualification as a minor political under subsection (1) of this section.