

September 18, 2020

Stacie Geaney
Lake County Clerk
Via e-mail at: sgeaney@co.lake.or.us

RE: Removal of Two Election Dropbox Sites and Disproportionate Effect on People with Disabilities

Dear Ms. Geaney:

I am an attorney at Disability Rights Oregon. Disability Rights Oregon is the federally-designated Protection and Advocacy organization for the state of Oregon. Our mission is to protect the rights of people with disabilities. I write to you today as a representative of Disability Rights Oregon, in its capacity to represent Oregonians with disabilities, not as a representative of any specific individual, or of any organization other than Disability Rights Oregon.

I recently read that your office has made substantial changes to its election plan for the November 2020 election: that the county will no longer allow Lake County voters to drop off their ballots at locations in Christmas Valley and Paisley. The county will now only accept the in-person drop off of ballots at 513 Center Street, in Lakeview, either at a box inside the clerk's office or an outdoor box outside the county building. I believe that this proposed action violates both the text and the spirit of Oregon Election law, as well as imposing an unreasonable burden on voters with disabilities who reside in the area of Christmas Valley and Paisley.

Lake County should not burden voters who have disabilities by providing unequal access to the ballot dropboxes for those who cannot drive by reason of their disabilities. When a government entity sets policies for voting it may not "[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others." 28 CFR 35.130(b)(1)(ii). Christmas Valley is 101 road miles from Lakeview, Oregon and has about 1300 residents. Paisley is 45 road miles from Lakeview and has about 240 residents. Neither town is connected to Lakeview by any kind of public transit. People with disabilities are disproportionately likely to be unable to drive a car or to lack the means to afford a car.¹ About 27% of people in Lake County have a disability.² Imposing an obligation to

¹ U.S. Dep't of Transp., *Travel Patterns of American Adults with Disabilities*, at <https://www.bts.gov/topics/passenger-travel/travel-patterns-american-adults-disabilities>

² Or. Office on Disability & Health, *Disability in Oregon* (2013), at 16 *at*

travel a long distance by car on voters who cannot or do not wish to vote by mail disproportionately harms the rights of people with disabilities.

Although I understand that the county clerk's rationale may be that people with disabilities should just vote earlier by mail, the effect of that decision is to allow people without disabilities the opportunity to vote in the last week of the election while effectively denying the opportunity of some people with some disabilities the opportunity to vote in the last week of the election. Many people all over Oregon take advantage of the opportunity to vote in the final days of the election for a wide variety of reasons, including late-developing information. For instance, the final presidential debate takes place on October 22, twelve days before the election. A former secretary of state estimates that the majority of votes in Oregon were actually cast "in person" through a dropbox.³ A nondiscriminatory system does not punish last-minute voting for some voters while permitting it for others.⁴

The circumstances presented by the November 2020 election make the assumption that all voters will be able to vote far in advance of the election particularly unreasonable. The clerk will mail most ballots between 20 and 14 days before the election.⁵ First, there is a well-publicized concern around the United States Postal Service reducing services and experiences delays in delivering ballots to voters and in returning them once cast. In Oregon, those delays impose significant challenges, because any ballot not received by mail on November 3, 2020 will not be counted. Oregon does not accept ballots mailed before Election Day but received afterwards. Whether those ballots will arrive with ample time to cast and return them on a delayed schedule remains to be seen. Second, the Brattain Fire is burning a short distance from Paisley, causing numerous area residents to evacuate their homes. Some voters may lose their homes to the fire, which means their ballots may be delayed or that the voter will have to request a new ballot. All this means that many voters will be more likely to need extra time to complete their ballots and that expecting people to complete their ballots far in advance of the election is particularly unreasonable this year.

The county clerk's proposal is also not consistent with the spirit or the letter of Oregon election law. Procedures for ballot drop boxes are set by rule by the Oregon Secretary of State's office.

<https://www.ohsu.edu/sites/default/files/2019-01/2013%20ODH%20Annual%20Report.pdf>

³ Hillary Borrud, Voter Turnout Remains Low in Special Election As Many Wait Until the Last Minute, The Oregonian, Jan. 20, 2018, https://www.oregonlive.com/politics/2018/01/voter_turnout_remains_low_in_s.html

⁴ Many cases invalidate voting protocols that impose a disparate impact on a protected group's access to voting, even when voting is not made impossible. See, e.g., *Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 1034 (9th Cir. 2020) (holding Arizona policy prohibiting third-party assistance invalid as disparately impacting the voting of Native, Black, and Hispanic voters who were "significantly less likely than non-minorities to own a vehicle [and] more likely to rely upon public transportation").

⁵ Or. Sec. of State, Vote by Mail Procedures Manual, at 32, at https://sos.oregon.gov/elections/Documents/vbm_manual.pdf

ORS 254.470. Under existing Oregon rules, the procedures of Oregon elections are set by the Vote by Mail Manual. OAR 165-007-0030. The Vote by Mail Manual states that each “county must have no less than 2 dropsites for every countywide election,” at least one of which must be the county elections office.⁶ Lake County’s apparent plan is to have two ballot boxes at the *same dropsite*, namely 513 Center Street in Lakeview, Oregon, which jointly houses the Lake County Courthouse and the Lake County Clerk’s office.

Having the only two ballot boxes for an entire county in the exact same place, especially in the context of a county that is more than 8,000 square miles in area and larger than the entire state of Connecticut, is not a reasonable construction of Oregon election law. Putting two ballot boxes at the same street address is not the same thing as having two different dropsites. Even if one accepted that having two dropboxes at the same physical location counted as two different dropsites, the county clerk’s decision-making does not include the required calculations of “voter convenience” and “access for the physically disabled,” “concentrations of population,” and “geographic areas.”⁷ Putting two dropboxes in a town of roughly 2300 (Lakeview) and none in a community of 1300 (Christmas Valley) is not a reasonable allocation of election resources.

I would strongly suggest that Lake County restore both drop boxes in Christmas Valley and Paisley, in order to come into compliance with state election law and federal nondiscrimination law. Lake County has not, to my knowledge, identified any costs or other effects of operating three dropsites in Lakeview, Christmas Valley, and Paisley that present an undue burden to the county. The fact that the county was previously able to operate all dropsites demonstrates that there is no undue burden associated with doing so.

I am happy to discuss this matter further by email at tstenson@droregon.org or by phone at 503-243-2081 x223. Please respond by the close of business on September 25, 2020 to let me know if you plan to restore the Christmas Valley and Paisley drop boxes for the November 2020 election.

Sincerely,



Thomas Stenson
Deputy Legal Director
Disability Rights Oregon

⁶ Vote by Mail Procedures Manual, at 12

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