

PORTLAND, OREGON,

July 12, 1911.

Senator Sutherland,

U. S. Senator from Utah,

Senate Chamber,

Capitol Bldg., Washington, D. C.

Sir:

I have just read a dispatch in the morning Oregonian from Washington in regard to your speech on the "Oregon System," and I take the liberty of voluntarily writing you to thank you for your address, and also send you this letter and accompanying briefs under separate cover, as you may be interested therein.

I am one of those who take a similar view to that which you have expressed, and have been opposed to the wisdom of the Oregon system all along and have done what I could in opposition thereto.

I have the constitutionality of the matter before the United States Supreme Court in the case of Kiernan vs. Portland et al. It is also involved in the case of the State of Oregon vs the Pacific States Telephone Company, pending before the U. S. Supreme Court.

When the question is in court it is always contended that the action in the admission of Oklahoma and the future admission of Arizona would be decisive of the constitutionality of the system; when the matter is before Congress the action of the State Court

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is held conclusive. The latest decision in the Kiernan case has been published as a public document. There should be more published in opposition thereto. I have not been able to keep in touch with all that has been said and published on the matter, but I have seen that considerable people take a similar view to that you express, and to what I am contending for.

I am taking the liberty of sending you the brief that I have filed in the present Kiernan suit before the Supreme Court of Oregon, where on pages 19 to 32 I have presented this matter as well as I could in the short time I have been able to give it, before the Supreme Court, and if this case is decided against me, as I presume it will be in the State Supreme Court, it will also be taken to the United States Supreme Court as the question arises on this record a little bit more favorably than on the first case, which is in the first Kiernan case that is pending in the U.S. Supreme Court.

I am also taking the liberty of sending you under separate cover Petition for re-hearing filed in the first Kiernan case in the State Supreme Court and which Petition for re-hearing caused the court to write the opinion denying the Petition and discussing this constitutional question.

The question is a vast one and I am painfully conscious that the briefs I have been able to prepare, on account of my limited ability and the short time that I have been able to devote to the subjects, are not all that they should be.

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I would be gratified if you have time and interest sufficient to read the briefs.

Also if you can make me any suggestion, I would be pleased to receive it.

When your speech is printed I would be pleased to receive a copy thereof.

I have been instrumental in testing out in the courts this "Oregon System" and was attorney in the case of Kadderly vs. Portland 44 Oregon 118.

I assure you that the theory as laid down in the books, and as practiced in actual life in Oregon, are different. In theory the legislature and the governor can repeal a law enacted by the people under the initiative, and in theory the laws enacted by the people are subject to what is left of our constitutional guarantees in favor of individuals.

In practice we find the legislative officers and the governor pledging themselves before election that if elected they will not exercise their constitutional powers to amend or repeal any law enacted by the people, leaving that alone for the people to do. Thus pledging themselves in advance not to perform their legislative duty of considering, debating and exercising their own judgment. The judges do not issue these pledges, but under our system out here it is exceedingly difficult, if not impossible, to convince our courts that a law passed by the people under the initiative can violate the constitution, state or federal. A comparison of the decisions of our Supreme Court and the records in the different cases, will demonstrate that our courts approve a very lax compliance with the mode and manner of enacting laws under the

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initiative. In other words our courts seem to find sufficient reasons to approve what the people do and uphold what is done although inconsistent and conflicting.

Notice the “Jolt” which the Supreme Court gave the referendum at the request of Senator Chamberlain and the other “Friends of the Court”, in the old original Kadderly case 44 Oregon. Then notice the way the power of the people has developed in recent years and that the court was always able to sustain a law enacted without giving the notice provided in the mode and manner statutes and adopted by a plurality vote, under the particularly dangerous doctrine which prevails here, of counting the voters who do not vote at all as giving half a vote in favor of the change by the very small but effective device of only requiring a majority of the votes actually cast upon a given measure to carry it, no matter how small the vote cast on a particular measure. This is true even of a constitutional amendment.

At our last election an initiative measure in regard to fishing in the Rogue River was passed. After a great deal of work it was demonstrated before the legislature that the law was unjust, was not understood and the legislature attempted to repeal it. The Governor of the State vetoed the repealing measure, not upon the ground that the repealing measure is unwise but upon the ground that the law enacted by the people should only be amended or repealed by the people.

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In a word we have in Oregon a pure democracy. What ever is the result declared at an election on a question of initiative law or referendum law is wisdom, no matter how unwise it may be in fact. It seems to me that if this "Oregon System" is upheld as constitutional by the U.S. Supreme Court, that we will pass all legislation directly by it; also that we will try all judicial proceedings by the "new wager of ballott" instead of by the ancient "wager of battle."

Under our system the newspapers are the real governmental force in ordinary matters.

I believe this question is the most important one before the American people today. I believe, that if this system is approved by the U.S. Supreme Court, that it will sweep the country and that in a very short time, not only the states but the government of the United States will be changed into a pure democracy, and then, it only needs the arising of some important question to wreck our form of government and cause it to fall. I am doing, and have done, what I can in my humble way to try and preserve the form of government under which this nation has made its great progress. As a result I have received a great deal of adverse comment in the newspapers of Oregon.

Very respectfully,

Ralph R. Duniway