

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

SANDRA KUCERA, an elector of Oregon )  
 and candidate for Vice President of the )  
 United States, SARAH THERESE )  
 WINDER, KRISTIN ZUBEL, and )  
 NATALIE BOLTON, each an elector of )  
 Oregon and signor of petition for )  
 nomination of Ralph Nader for President )  
 of the United States and Sandra Kucera as )  
 Vice-President of the United States and as a )  
 circulator of said nominating petition, )  
 PHILLIP SALISBURY and SAMANTHA )  
 BERG, each an elector of and signor of )  
 a petition for nomination of Ralph Nader )  
 for President of the United States and )  
 Sandra Kucera as Vice-President of the )  
 United States, TIMOTHY JOHNSON, a )  
 circulator of said nominating petition who )  
 is not an elector of Oregon, GREGORY )  
 KAFOURY, an individual, an elector of )  
 Oregon and Co-Chair, Nader for )  
 President 2004 in Oregon, )  
 Plaintiffs, )  
 v. )  
 BILL BRADBURY, Secretary of State, )  
 Defendant. )

Case No. 04C18259

OPINION AND ORDER

Oregon law rests considerable discretion with the Secretary of State for the administration of our election laws. ORS 246.110 provides that the Secretary is the chief elections officer of this state and that it is the Secretary’s responsibility to maintain uniformity in the application, operation, and interpretation of the election laws. ORS 246.120 instructs the Secretary to prepare and distribute “detailed and comprehensive written directives” to each county clerk and to assist and instruct each county clerk on election procedures. Under ORS 246.150, the Secretary of State is also authorized to adopt written rules to facilitate and assist in maintaining a maximum degree of correctness, impartiality, and efficiency in the administration of the election laws.

1           However, the Secretary’s discretion is not unlimited, and the rules, regulations, and  
2 written directives promulgated by the Secretary of State must be consistent with the statutes  
3 adopted by the legislative body for the conduct of elections in Oregon. And, notably, in ORS  
4 247.005, the Oregon State Legislature has declared that “it is the policy of this state that all  
5 election laws and procedures shall be established and construed to assist the elector in the  
6 exercise of the right of franchise.”

7           The specific issues raised in this case relate to the statutory provisions of ORS 249.740  
8 for the Nomination of Candidates by Individual Electors, and to the rules adopted by the  
9 Secretary of State to implement that statutory procedure. As pertinent here, ORS 249.740(4)  
10 provides that the circulator of each signature sheet shall certify that the individual electors whose  
11 signatures are affixed thereon had signed the sheet in the presence of the circulator, and that the  
12 circulator believes each individual is an elector registered in the electoral district. ORS  
13 249.740(5) then further provides that the signatures contained in each certificate of nomination  
14 made by individual electors shall be certified for genuineness by the county clerk pursuant to  
15 ORS 249.008. And ORS 249.008(1) sets forth the statutory procedures for the county clerk to  
16 follow in verifying the genuineness of the signatures of the individual electors on the signature  
17 sheets. After comparing each elector’s signature on the petition with the elector’s signature on  
18 the voter registration cards, the county clerk is directed to attach to the petition a certificate  
19 stating the number of signatures believed to be genuine.

20           In addition to these statutes, and as required by ORS 249.009, the Secretary has  
21 promulgated certain written rules specifying the format of signature sheets that must be used for  
22 nominating petitions, as well as the numbering system to be utilized. Other administrative rules  
23 have been adopted to facilitate the circulator certification and elector signature verification  
24 processes set forth in ORS 249.740(4) and (5).

25           Those administrative rules were adopted in accordance with ORS 246.150 and are printed  
26 in written form as the 2004 State Candidate Manual: Individual Electors as set forth in OAR 165-  
27 010-0005(5). (A copy of the Manual is attached as Exhibit 1 to the original Affidavit of John  
28 Lindback in this case.)

          The Introduction to the Manual declares that the Manual is intended to provide  
individuals interested in filing for candidacy for partisan office by petition notice of “the  
procedures and regulations necessary to file for office. This Manual provides a comprehensive  
overview of the candidate filing process.” That process is then set forth by the administrative  
rule process in the body of the Manual.

          On page 4, under the heading Chief Sponsor of Certificate, Step 1 specifies that the chief  
sponsor reviews with the petition circulators the requirements for circulating the petition. As  
pertinent here, the rules provide:

1 “All signatures must be personally witnessed by the petition circulator and the  
2 circulator’s certification must be completed and dated after all signatures have  
3 been collected; and

- 4 • No additional signatures may be added to that signature sheet once the  
5 circulator has signed the certification and dated the sheet.”

6 Step 2 specifies that before submitting the signature sheets to the appropriate county  
7 elections official for signature verification, the chief sponsor must:

- 8 • “Sort the signature sheets by county;
- 9 • Within each individual county, sequentially number each signature sheet in the  
10 space provided; and
- 11 • Submit signature sheets to the appropriate county elections offices for verification,  
12 in sufficient time for the verification process to be finished before submitting the  
13 completed nominating petition to the Elections Division.”

14 Next, on page 5, the Manual specifies that “as soon as possible the county elections  
15 official certifies the signatures and returns the signature sheets to the chief sponsor of the  
16 certificate of nomination with the total number of valid signatures.” Thereafter, “the chief  
17 sponsor files the completed nominating petition with the Elections Division” of the Secretary of  
18 State. The petition consists of both a Certificate of Nomination by Individual Electors and  
19 “Verified signature sheets with the sufficient number of signatures.”

20 The above general description details the process prescribed by the rule for the  
21 preparation, circulation, and verification and filing of the nomination petitions as set forth by the  
22 administrative rules of the Secretary of State. There are only a few more specific additional  
23 regulations detailing Signature Sheet Requirements, Petition Signer Requirements, Circulator  
24 Requirements, and Signature and Distribution Requirements. These are set forth on pages 12 and  
25 13 of the Manual, and all relate back to the statutory requirements set forth in ORS 249.740 as  
26 discussed above.

27 Those more detailed and specific rules do provide that failure to obtain written approval  
28 before circulating the forms for the signature sheets “will result in the rejection of those sheets.”  
29 Notably, however, no other similar rule authorizes the wholesale rejection of signature sheets for  
30 errors other than signature sheet format violations.

31 Specifically, the only additional requirements for petition circulators are two: “The  
32 circulator of the candidate nominating petition must sign the circulator’s certification . . . .” And  
33 “The circulator shall complete the date when the certification is signed and shall not collect any  
34 additional signatures on that sheet after dating the certification.” The rule warns that violation of

1 these circulator requirements may result in conviction of a felony with a fine up to \$100,000  
2 and/or prison for up to five years. But, no penalty of disqualification of the signatures of electors  
3 collected is provided for in the administrative rule.

4 This rule and the prescribed penalty, as set forth in the Manual, is consistent with the  
5 legislative policy set forth in ORS 247.005 as noted above; “all election laws and procedures  
6 shall be established and construed to assist the elector in the exercise of the right of franchise.” It  
7 is also consistent with the policy position adopted by the Secretary of State in Nelson v. Keisling,  
8 155 Or App 388, 964 P2d 284 (1988) rev. den. 328 Or 246, 987 P2d 507 (1999). Nelson arose  
9 in a somewhat different context, but the principle is the same. Despite violations of the then-  
10 applicable circulator rules, the Secretary then took the position that the verified signatures of the  
11 electors collected by those circulators should not be invalidated.

12 In this case, however, the Elections Division of the Secretary has taken a very different  
13 position. Mr. Lindback testified that each circulator must sign the circulation certificate with a  
14 full signature and that each full signature on each page submitted by the circulator must be  
15 verifiable by comparison with the circulator’s own voter’s registration if one exists, or with some  
16 other exemplar if a voter’s registration form does not exist, and that initialed signatures cannot be  
17 verified as signatures unless the voter’s registration also shows only an initialed signature. No  
18 written rule, however, justifies these additional requirements, although Mr. Lindback asserts that  
19 this reflects his office’s longstanding historical practice.

20 Mr. Lindback’s testimony at the hearing was not entirely consistent with his Second  
21 Affidavit submitted in this case. That Affidavit declares that alternative exemplars are only  
22 permitted to verify the signatures of non-registered circulators. “This is a narrow exception to  
23 the longstanding rule that extraneous proof - beyond the circulator’s voter registration and on  
24 other petitions in the Secretary’s possession - of a circulator’s signature generally is not  
25 permitted.” At the hearing, Mr. Lindback testified that his office actually attempts to verify  
26 circulators’ signatures with alternative exemplars if time permits.

27 Mr. Lindback, both by Affidavit and by live testimony, also described another unwritten  
28 rule practiced by his office:

“It is also a longstanding rule that initials may not be used in lieu of a signature.  
Of course, some people’s actual signatures appear similar to initials. If the  
circulator’s signature, as shown on the voter registration card or on another  
permissible exemplar, confirms that the circulator’s signature simply appears like  
initials, then the signature is accepted. But if the exemplar shows a different  
signature, then the initialed petition sheet is disqualified.” (Second Affidavit of  
Mr. Lindback.)

1           These unwritten rules, however longstanding, are not supported by the written  
2 administrative rules as set forth in the Manual, and they are inconsistent with ORS 247.005, as  
3 well as with the prior policy of the Elections Division as set forth above. Additionally, it was  
4 obvious from the testimony of Mr. Lindback that the Secretary’s unwritten rules were not applied  
5 either uniformly or consistently in actual practice.

6 Mr. Lindback also testified that pursuant to his written instructions to the county clerks, as set  
7 forth in Exhibits 2 and 3 to the Affidavit of John Lindback, Director of the Elections Division,  
8 the county clerks were to screen petition sheets for circulator signature and dating problems  
9 before verifying the electors signatures appearing thereon, and were further instructed to verify  
10 only those elector signatures submitted “on signature sheets that do not have any issues.”  
11 Presumably, these written instructions, prepared in August of 2004 for the Nader signature  
12 campaign, were distributed under the authorization set forth in ORS 246.120. However, these  
13 instructions are inconsistent with both the state elections policy established by the Legislature in  
14 ORS 247.005, and with the Secretary’s own written rules as set forth in the Manual, as well as  
15 with the Secretary’s policy position set forth in Nelson v. Keisling.

16           Interestingly, while some counties, most notably Multnomah, complied with these new  
17 written instructions, other counties apparently did not. Then, after the non-complying counties  
18 submitted their verified elector signature certificates on the signature petitions, Mr. Lindback and  
19 his staff went through those petitions again in Salem and disqualified and removed additional  
20 signature sheets that had verified elector signatures certified by the county clerk. This was done  
21 solely because of perceived signature and dating problems with the circulators’ certifications.  
22 There appears to be no statutory or administrative rule authority for that novel action by the  
23 Secretary at the post-verification stage.<sup>1</sup>

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24           <sup>1</sup> The only potential statutory authority for this additional disqualification procedure  
25 would seem to be ORS 249.004 which permits filing officers to verify the validity of the contents  
26 of documents filed with the officer under Chapter 249. However, “the validity of the contents of  
27 the documents” at issue here would be the verified signatures of the electors and the county  
28 clerks’ certification of the total number of verified signatures. Once the electors’ signatures have  
29 been verified as valid by the county clerk, there would be no policy reason to seek to disqualify  
30 them for alleged defects in the circulator certifications that would not run afoul of ORS 247.005:  
31 “It is the policy of this state that all election laws and procedures shall be established and  
32 construed to assist the elector in the exercise of the right of the franchise.” In any event, ORS  
33 249.004 was not cited as authority for the Secretary’s disqualification of the previously verified  
34 electors’ signatures which had already been certified to him by the county clerks. The only  
35 purpose cited by Mr. Lindback was “to maintain uniformity and consistency in the interpretation  
36 of the elections law” in accordance with ORS 246.110. Affidavit of John Lindback at page 5.

1 The Nader campaign eventually was informed by the Secretary of State's Election  
2 Division that they fell 218 elector signatures short of qualifying their candidate for nomination by  
3 petition.

4 It is not disputed by the Secretary that if the elector signature sheets that had been verified  
5 by county clerks and certified to the Secretary had not been disallowed by the Secretary, the  
6 Nader campaign would have had more than enough "Verified signature sheets with the sufficient  
7 number of signatures," as required by the administrative rules as set forth in the Manual. And  
8 many more additional signature petitions were never even processed for verification at the  
9 counties because of the Secretary's instructions in August, 2004 to scrutinize for circulator  
10 certification "issues" before verifying elector signatures on the Nader nominating petitions.  
11 Neither action was authorized by administrative rule or statute, and each was inconsistent with  
12 both the state elections policy as established by the Legislature, ORS 247.005, and with the prior  
13 policy of the Secretary of State as expressed Nelson v. Keisling, supra.

14 It follows without more<sup>2</sup> that Plaintiffs are entitled in this Court to the relief sought in  
15 their Petition. It is unnecessary to reach Plaintiffs' additional constitutional claims as the  
16 statutory claims are dispositive in their favor. Therefore, this Court orders the Secretary to  
17 forthwith certify the Nader nomination as an independent candidate for the 2004 general election  
18 ballot.

19 Dated this 9<sup>th</sup> day of September, 2004.

20 \_\_\_\_\_  
21 Hon. Paul J. Lipscomb  
22 Presiding Judge  
23

24 \_\_\_\_\_  
25 <sup>2</sup> Plaintiffs also complained of the manner in which the Secretary administered the rules  
26 related to the sequential numbering requirement. That requirement, however, is specifically  
27 authorized by both statute, ORS 249.009, and by an appropriate written administrative rule, as set  
28 forth in the Manual at page 4.