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

SANDRA KUCERA, SARAH THERESE WINDER, KRISTIN ZUBEL, NATALIE BOLTON, PHILLIP SALISBURY SAMANTHA BERG, and TIMOTHY JOHNSON, GREGORY KAFOURY, **Plaintiffs,** **v.** **BILL BRADBURY, Secretary of State,** **Defendant.**	**Case No. ____________** **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF**

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NATURE OF THE CASE.

Plaintiffs include a candidate for Vice-President of the United States, several persons who were actively involved in gathering signatures for the nominating petition for the ticket of Ralph Nader and Sandra Kucera for President and Vice-President of the United States, and several persons who signed the nominating petition as electors, and several Oregon electors who seek the opportunity to exercise their franchise effectively in voting for the Nader/Kucera ticket in the November 2, 2004, general election. Pro Se Plaintiff Kafoury is the co-chair of Nader for President 2004 in Oregon (hereinafter "Nader Campaign.")

The Secretary of State's refusal to recognize the 18,000+ signatures on the nominating petitions, fully validated and verified by the county election offices pursuant to ORS 249.740(5) and ORS 249.008(1), violates the rights of Plaintiffs under Oregon statutes, the Oregon Constitution, and the U.S. Constitution. Defendant's conduct is arbitrary, capricious, lacking basis in fact, lacking findings of fact, lacking conclusions of law, lacking any reasoning or justification whatever. Further, his action violates the rights of Plaintiffs to exercise their rights to free speech and assembly, to peaceably petition the government, to exercise their rights to vote as registered Oregon electors. and to the application of due process and equal protection of law under the Fifth Amendment, made applicable to state action by the Fourteenth Amendment.

Defendant Bradbury is the Secretary of State of Oregon and is responsible for enforcing the election laws of Oregon, including all those statutes and constitutional provisions regulating the nomination of candidates by elector petition. His actions here are entirely contrary to ORS 247,005, which states:

> It is the policy of this state that all election laws and procedurees shall be established and construed to assist the elector in the exercise of the right of franchise.

Plaintiffs seek relief from this Court to nullify the rejection of the signatures and to declare that the Nader Campaign submitted sufficient signatures (15,306) to qualify the Nader/Kucera ticket for the general election ballot, pursuant to ORS 249.740. Plaintiffs seek costs, fees, and other relief that is just and equitable.

Plaintiffs are requesting immediate relief in the form of a preliminary injunction (and a permanent injunction against the same provisions) against Defendant's refusal to certify the Nader/Kucera ticket for the general election ballot.

SUMMARY OF FACTS.

On various dates in August 2004, the group collecting signatures for the nomination of the Kucera/Nader ticket ("Nader Campaign") filed thousands of signature sheets with the election officers for most counties in Oregon. The applicable statute requires that the candidate for nomination by petition submit original sheets to the county elections offices for verification of voter signatures. The counties then return the originals to the Campaign, which in turn must submit the verified originals to the Secretary of State on or before the filing deadline--in this case, August 24, 2004, for placement on the November ballot.

These sheets contained over 27,000 signatures. Within the time permitted, the county election officers returned to the Nader Campaign signature sheets containing over 18,000 voter signatures found to be valid and so verified by the county election officers.

Upon instructions from the Secretary of State, some county election officers removed signature sheets from the verification process and did not return those sheets to the Nader Campaign. The total number of sheets so affected is not known to Plaintiffs or the Nader Campaign. It appears that the Secretary of State directed the county elections officers to remove sheets, where the Secretary of State did not like the appearance of the circulator's signature or where the circulator may have corrected an

error in the date on his own signature on the petition sheet. As argued below, these petitions contained valid signatures and should not have been excluded in the first place. After they completed their verification processes, the county elections offices returned the rest of the signature sheets to the Nader Campaign.

On August 24, 2004, the Nader Campaign submitted the signature sheets containing the valid and verified signatures to the Secretary of State. The Nader Campaign heard nothing from the Secretary of State until September 1, 2004, when the Secretary of State called a press conference where the representative of the Nader campaign was physically excluded from the room.

The Nader Campaign received nothing in writing from the Secretary of State until September 2, 2004, when it received a 1-page telecopied letter from Margie Franz of the office of the Secretary of State, stating that the number of valid signatures counted by the Secretary of State was 15,088 (Exhibit A to the Appeal/Petition). This number is 218 fewer signatures than the 15,306 required for the nomination sought. Neither the Nader Campaign nor Plaintiffs have received documents from the Secretary of State stating why each rejected signature sheet was rejected. .

Plaintiffs have a cursory summary of sheets that were rejected for what are purported to be irregularities in the numbering of some of the submitted petition sheets, and have read in the press that a large number of signatures (in the range of 2,500) were contained on sheets which the Secretary of State contended were not sequentially numbered for each county, as allegedly required by the 2004 State Candidate's Manual: Individual Electors, p. 4. Plaintiffs have been informed in cursory fashion that about 700 other signatures were contained on sheets which the Secretary of State rejected for some perceived deficiency in the circulator's signature or the date accompanying the circulator's signature.

The remainder of the facts are presented within each of Plaintiffs' claims, below. Any claim which results in the resurrection of at least 218 signatures is sufficient to require the certification of the Nader/Kucera ticket for the general election ballot.

ARGUMENT

I. FIRST CLAIM FOR RELIEF: DEFENDANT'S DECISION TO REJECT THE NOMINATING PETITIONS IS UNLAWFUL, BECAUSE IT WAS NOT ACCOMPANIED BY DUE PROCESS, FINDINGS OR FACT, RATIONALES, CONCLUSION OF LAW, OR ORDER CAPABLE OF ENABLING JUDICIAL REVIEW.

Defendant's decision to reject the nominating petitions was not accompanied by any findings of fact or conclusions of law sufficient to enable Plaintiffs (or anyone) to determine the reasons for the rejection. The only document embodying the decision is the one-page telecopied letter from Margie Franz (office of Secretary of State) to Ralph Nader (Exhibit A to the Appeal/Petition). That document contains no findings of fact, no conclusions of law, and no rationales for rejection of any of the signatures submitted by the Nader campaign.

Drew v. Psychiatric Sec. Review Bd., 322 Or 491, 499-500, 909 P2d 1211 (1996), stated:

> Since 1975, a long and consistent line of decisions from the Court of Appeals has held that, in addition to the statutory requirement that findings be supported by substantial evidence, agencies also are required to demonstrate in their opinions the reasoning that leads the agency from the facts that it has found to the conclusions that it draws from those facts. See, e.g., ***Home Plate, Inc. v. OLCC***, 20 Or.App. 188, 530 P.2d 862 (1975) (illustrating requirement); ***McCann v. OLCC***, 27 Or.App. 487, 556 P.2d 973 (1976), rev. den. 277 Or. 99 (1977) (same). This court has followed the lead of the Court of Appeals and adopted the same rule. See ***Ross v. Springfield School Dist. No. 19***, 294 Or. 357, 370, 657 P.2d 188 (1982) ("It is essential that an agency articulate in a contested case the rational connection between the facts and the legal conclusion it draws from them."). An admirable summary of the reasons justifying this Oregon rule may be found in ***Williams v. SAIF***, 310 Or. 320, 329, 797 P.2d 1036 (1990) (Unis, J., specially concurring):
>
> > "There are practical reasons for the requirement expressed in ORS 183.470(2) that an administrative agency state its factual findings and articulate a rational connection between the facts it finds and the legal conclusions it draws from them. Such articulation facilitates meaningful judicial review, ***Ross v.***

> ***Springfield School Dist. No. 19***, 294 Or. 357, 370, 657 P.2d 188 (1982); enables the court on judicial review to give an appropriate degree of credence to the agency interpretation, ***Springfield Education Assn. v. School Dist. No. 19***, 290 Or. 217, 228, 621 P.2d 547 (1980); 'serve[s] to assure proper application of the law in the individual case,' ***Ross v. Springfield School Dist. No. 19,*** 300 Or. 507, 517, 716 P.2d 724 (1986); ***Ross v. Springfield School Dist. No. 19***, supra, 294 Or. at 370 [657 P.2d 188]; prevents judicial usurpation of administrative functions, DAVIS, ADMINISTRATIVE LAW TEXT 321, § 16.03 (3d ed 1972); assures more careful administrative consideration, i.e., protects against careless or arbitrary action, id. at 321-22; provides a source of guidance for agency personnel as well as for persons governed by the statute, ***Ross v. Springfield School Dist. No. 19***, supra, 300 Or. at 517 [716 P.2d 724]; helps develop and maintain the consistency in administration, id.; facilitates the parties' planning, i.e., helps parties plan their cases for rehearings and judicial review, DAVIS, ADMINISTRATIVE LAW TEXT, supra, at 322; and keeps agencies within their jurisdiction. Id."

(Footnote omitted.)

Here, the Secretary of State conducted no proceeding, heard no evidence, found no facts, adopted no rationales, made no conclusions of law. Whether his rejection of the petitions are considered a decision made pursuant to a contested case or other than a contested case, the decision was not made by a process that accorded Plaintiffs any due process or that produced the requisite findings, rationales, and conclusions.

II. SECOND CLAIM FOR RELIEF: DEFENDANT CANNOT LAWFULLY REFUSE TO RECOGNIZE VALID VOTER SIGNATURES ON PETITIONS THAT MAY CONTAIN ERRORS CAUSED BY CIRCULATORS OR OTHERS.

Defendant has apparently rejected over 3,000 valid and verified voter signatures on grounds that some "errors" were made by circulators or by the Nader Campaign in submitting the signature sheets to the Secretary of State. As the arguments below indicate, the "errors" alleged by the Secretary of State to the press were not "errors" at all. Even if they were, such errors under Oregon law do not allow the Secretary of State to refuse to count the valid and verified voter signatures on those petitions.

Defendant has offered no justification for this, and none can be found in the case law. In fact, Oregon cases indicate that voter signatures are not to be invalidated, even when the circulator has violated the law in signing as the circulator. In ***Nelson v.***

Keisling, 155 Or.App. 388, 964 P.2d 284 (1998), *review denied* 328 Or. 246, 987 P.2d 507 (1999), the court ruled that voter signatures could not be excluded from the count, even though the circulators clearly violated the Oregon statute pertaining to the qualifications of a circulator (which at that time required a circulator to be a registered voter).

> In support of his argument, plaintiff relies on two contentions. He first contends that signatures collected in violation of ORS 260.560 and OAR 165-014-0005 (1996) must be invalidated. He then argues that, even if violation of the statute and administrative rule do not require invalidation of the signatures, the collection of the signatures by nonregistered voters constituted fraud and "false verification" and, therefore, provides an independent ground for invalidating the signatures.

155 Or.App. at 391-92. **The court rejected both of these contentions and refused to have the voter signatures not counted.**

Similarly, in ***State ex rel. Sajo v. Paulus***, 297 Or. 646, 688 P.2d 367 (1984), the Oregon Supreme Court refused to allow the disqualification of voter signatures on petitions, even though the petitions violated the Secretary of State rule that residents of each county must sign on separate signature sheets. In ***Lindstrom v. Myers***, 539 P.2d 1049 (Or. 1975), the Court recognized that the petition sheets contained numerous violations of Oregon statutes and rules but refused to disqualify the voter signatures.

III. THIRD CLAIM FOR RELIEF: DEFENDANT'S REJECTION OF SIGNATURE SHEETS BASED ON ALLEGED LACK OF SEQUENTIAL NUMBERING WITHIN COUNTIES IS UNLAWFUL.

Defendant has apparently rejected 1062 sheets containing 2,354 valid and verified voter signatures on the ground that the sheets, as submitted to the counties were not numbered. This rejection is unlawful, for many reasons. First, the Nader Campaign had submitted all signature sheets to the county elections officers sequentially numbered, until they were advised by Office of the Secretary of State to begin submitting signature sheets to various counties with no initial numbering on those sheets. See, Affidavit of Gregory Kafoury; Affidavit of Travis Diskin. Second, the county elections officers

accepted and validated all of the sheets at issue here, and the Secretary of State has no authority to reject such sheets for ad hoc and previously unheard of reasons.

A review of the facts is required here. As stated in the Affidavit of Gregory Kafoury and the Affidavit of Travis Diskin, the Nader Campaign was complying with the only legal requirement for the sequential numbering of the signature sheets, which is contained in the 2004 STATE CANDIDATE'S MANUAL: INDIVIDUAL ELECTORS,[1] p. 4, which states:

> Within each individual county, sequentially number each signature sheet in the space provided; and
>
> Submit signature sheets to the appropriate county elections offices for verification * * *

The Nader Campaign did this, until they learned that the Secretary of State was directing some of the county elections officers to "pull out" and reject hundreds of signature sheets due to the Secretary of State's perception of problems with the signatures of the circulators or the dates accompanying those signatures.

Out of a superabundance of caution, the Nader Campaign wished to submit the signature sheets to the Secretary of State with sequential numbering within each county packet, with no "gaps" in the numbers. **This is not required by any law or any rule, as the requirement quoted above applies only to the submittal of signature sheets to the county and not later to the Secretary of State, but the Nader Campaign wished to avoid giving the Secretary of State any possible excuse for rejecting the signature sheets.** Further, the Manual requires only "sequential" numbering and not **consecutive** numbering. "Sequential" is defined by WEBSTER'S REVISED UNABRIDGED DICTIONARY (1998) as "succeeding or following in order" and by the American Heritage Dictionary of the English Language (4th ed. 2000) as: "forming or characterized by a sequence, as of units or musical notes." A sequence need not be

1. The full document is available at http://www.sos.state.or.us/elections/manuals/indiv.pdf.

consecutive in order to be a sequence. The following list of numbers is a sequence: 1, 3, 4, 7, 9. It is not a consecutive sequence, but no statute or rule requires a consecutive sequence of sheet numbers.

Nevertheless, to avoid any possible problems, representatives of the Nader Campaign, including Travis Diskin, sought advice from the Secretary of State so that the Nader Campaign could avoid or fill the "gaps" in the county-by-county sequential numbering system that was being disrupted by the Secretary of State's own instructions to the counties to "pull out" from those sequences several hundred signature sheets. As stated in the Affidavit of Travis Diskin, he was referred to Summer Davis as the appropriate employee in the Office of the Secretary of State to resolve this question.

Ms. Davis advised Travis Diskin that the Nader Campaign should submit additional completed signature sheets to the counties without sheet numbers at all, so that the so -called "sequential" numbering system could be restored by plugging the new, non-numbered verified sheets into the "gaps" created by Defendant's direction to county elections officers that they "pull out" hundreds of signature sheets from the original sequence. This advice fully contemplated that the Nader Campaign would write sheet numbers upon these unnumbered sheets, after receiving them back in verified form from the county elections officers.

Pursuant to this advice from the Office of the Secretary of State, the Nader Campaign proceeded to submit signature sheets to counties without sheet numbers, and the county elections officers accepted those sheets and verified the signatures on those sheets, all without objection.[2] Upon receiving the verified sheets back from the county elections officers, the Nader Campaign then sought to restore a sequential, consecutive numbering system for each county, before submitting the verified sheets to the Secretary of State (even though there is no legal requirement for applying either

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2. As the Secretary of State was obviously providing advice and outright direction to the county elections officers at the time, his failure to advise or direct them to reject the unnumbered sheets constitutes a further estoppel to his current contention that the unnumbered sheets are invalid.

consecutive or merely sequential numbers to such sheets). The team did so by numbering the unnumbered verified sheets and plugging them into the "gaps." Where there ended up being too few unnumbered verified sheets to fully plug the "gaps," the Nader Campaign took high-numbered sheets off the bottom of the county stack and renumbered them to plug the remaining "gaps."[3] Both numbers remained legible; the original # had a single line drawn through it.

There is no statute or rule prohibiting what the Nader Campaign did with the signature sheets. Even where numbering of petition sheets is required by rule, as in the verification process for statewide initiative petitions, the numbering rule has never been applied or implemented to disqualify whole sheets and elector signatures. See, Affidavit of Ruth Bendl.

The Nader Campaign, out of an abundance of caution, sought and followed the advice of the Office of the Secretary of State. Whether or not that advice was correct, there is no requirement that the signature sheets submitted to the Secretary of State, after verification by the county elections officers, be numbered, either consecutively or sequentially. Nor is there any prohibition against the petitioners or the Nader Campaign writing new numbers on some of the verified sheets returned to them by the county elections officers. In fact, the county elections officers themselves wrote new numbers on many of the sheets. Finally, the entire course of conduct followed by the Nader Campaign was pursuant to the specific advice of the Office of the Secretary of State.

Defendant is estopped from claiming that following his advice regarding numbering of the sheets warrants tossing away some 2,354 valid and verified signatures. Further, Defendant has no authority to reject signature sheets for lack of consecutive or sequential numbering, as there is no such legal requirement applicable to these signature sheets when submitted to the Secretary of State.

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3. Some of the verified sheets received back from the county elections officers show another set of numbers, usually below the line on each sheet for the "SHEET NUMBER." These additional handwritten numbers were written on the sheets by the county elections officers, not by the Nader Campaign.

IV. FOURTH CLAIM FOR RELIEF: DEFENDANT'S REJECTION OF SIGNATURE SHEETS BASED ON ALLEGED DEFECTS IN CIRCULATOR SIGNATURES OR THE DATING OF CIRCULATOR SIGNATURES IS UNLAWFUL.

Defendant has apparently rejected sheets containing more than 700 valid and verified voter signatures on the ground that the sheets display some unidentified defect in the signature of the circulator or the date on the signature of the circulator.

Defendant has not stated which signature sheets were rejected for which reasons. Defendant has not stated the reason for the rejection of any signature sheet.

A. SHEETS WITH NO DISCERNIBLE DATING ERRORS.

It appears that Defendant has rejected sheets containing several hundred signatures, which have no conceivable errors or corrections to the date on the circulator's signature. We assume, then, that the sheets were rejected solely because Defendant does not like the appearance of the circulator's signature.

The Affidavit of Travis Diskin attatches as exhibits signature sheets signed by (1) Timothy Johnson as Ex. C, which bear 41 valid signatures; (2) Terrence Constancio, bearing 60 valid signatures, Ex. D; (3) Ronald Rosenloff bearing (a) 160 verified signatures and (b) another 245 signatures on sheets which were not verified, Exs. F and G; (4) 117 signatures on sheets signed by Juanjuan Wong, Ex. H; (5) 70 signatures on sheets signed by Samantha Theobold, Ex. I; and (6) 76 signatures on sheets signed by Donte Pettet, Ex. J. Plaintiffs can discern no reason for rejection of these sheets, other than the appearance of the circulator's signature. Defendant has provided no rationale for rejection of these circulator signatures.. Plaintiff Timothy Johnson has submitted an affidavit affirming his signatures. Attached to the Affidavit of George Kelley as Exhibits are exemplars for Ronald Rosenloff and Juanjuan Wong which were signed on important documents recently. These appear the same as the signatures each used on the disqualified petition sheets they signed.

In a further interference with plaintiffs' rights, apparently Multnomah County "pulled" sheets signed by circulators Pettet and Rosenloff as early as August 10, 2004,

at the instruction of John Lindback, and never notified plaintiffs of the fact. Thus plaintiffs kept submitting petition sheets from these circulators thereafter in total good faith and reliance that the elector signatures would be verified. See, Diskin Affidavit, Exs. G and K. Had plaintiffs ever been notified that these circulator signatures were somehow "questionable," they would have provided the person or the exemplars weeks ago. As it stands, Johnson, Wong, Rosenloff, Constancio, Pettet and others never had notice of a problem, nor were they given any chance to rebut the apparent "finding" that their signatures were "bad," all to the detriment of their rights, and the rights of electors and the campaign.

BLACK'S LAW DICTIONARY (8TH ED. 2004) defines "signature" as:

1. A person's name or mark written by that person or at the person's direction. [citations omitted]

2. Commercial law. Any name, mark, or writing used with the intention of authenticating a document. UCC §§ 1- 201(b)(37), 3-401(b). [citations omitted] "The signature to a memorandum may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer." Restatement (Second) of Contracts § 134 (1979).

The marks made by the circulators Johnson, Rosenloff, Wong, certainly qualify as "signatures." Further, plaintiffs will submit affidavits of several other circulators, further attesting to the authenticity of their signatures on disqualified sheets.

B. SHEETS WITH DATING ERRORS OR CORRECTIONS TO THE DATE ON THE CIRCULATOR'S SIGNATURE.

1. TRIVIAL DATE CORRECTIONS WHERE THE INTENTION OF THE CIRCUCLATOR IS MANIFESTLY CLEAR.

It appears that Defendant may have rejected some of the sheets due to the way the circulator dated his or her signature or corrected such date that the circulator may have begun to write incorrectly. The Affidavit of Travis Diskin attaches a bundle of signature sheets for which Plaintiffs were never given a reason, never told of a cure or correction for future use, and never given notice of the perceived problem. These are Exhibits E and K to his affidavit.

Plaintiffs can discern no reason for rejection, other than the appearance of the date or the attempt by the circulator to correct the date next to his or her signature. The number of valid and verified voter signatures on these sheets is 69. Gregory Kafoury and Sandra Kucera describe in their respective affidavits the nature of the minor and very legible corrections upon the signature sheets they signed as circulators which were rejected. The signature sheets bearing 69 valid signatures with such minor date corrections is Exhibit E to affidavit of Travis Diskin.

2. SIGNATURE SHEETS UPON WHICH THE DATE IS CORRECTED IN ACCORDANCE WITH THE ANNOUNCED POLICY OF THE SECRETARY OF STATE.

The Affidavit of John Slevin, states that he, as a paid consultant, instructed signature circulators to cross out a date error with a single line, and to the sign the attestation with a new date with a full signature. This is the implementation of the "correction" rule the Secretary of State has informally approved and accepted. The signature sheets bearing 63 valid signatures attached to the Affidavit of Diskin as Ex. K are all conform to the policy and should not have been rejected.

The only applicable dating requirement is that contained in the 2004 STATE CANDIDATE'S MANUAL: INDIVIDUAL ELECTORS, p. 13:

> The circulator shall complete the date when the certification is signed and shall not collect any additional signatures on that sheet after dating the certification.

The rejected signature sheets complied with this dating requirement. The Secretary of State unlawfully rejected those sheets.

V. FIFTH CLAIM FOR RELIEF: DISQUALIFYING SIGNATURE SHEETS ON THE BASIS OF ALLEGED ERRORS BY CIRCULATORS VIOLATES PLAINTIFFS' RIGHTS UNDER THE FIRST AND FIFTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

The implementation of a rule which disqualifies voter signatures on a nominating petition on the basis of alleged (or proven) errors by circulators (in signing, dating, or placing numbers upon the sheets) significantly burdens the collection of signatures by

precluding from the verification process, without a very exacting standard of compelling justification, thousands of signatures, which in effect requires the plaintiffs to collect far more valid signatures than the number proscribed by the Oregon Constitution and statutes. Imposition of this burden violates Plaintiffs' rights under the First and Fifth Amendments to the U.S. Constitution, applicable to the states by the Fourteenth Amendment.

The United States Supreme Court requires that burdens on the process of qualifying candidates for the federal ballot be justified a scheme narrowly tailored to achieve a compelling state interest (know as "exacting scrutiny"). ***Anderson v. Celebrezze***, 460 U.S. 780, 786-88 (1983), stated:

> Nevertheless, as we have recognized, "the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." ***Bullock v. Carter***, 405 U.S. 134, 143, 92 S.Ct. 849, 856, 31 L.Ed.2d 92 (1972). Our primary concern is with the tendency of ballot access restrictions "to limit the field of candidates from which voters might choose." Therefore, "[i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters." Ibid.
>
> The impact of candidate eligibility requirements on voters implicates basic constitutional rights. Writing for a unanimous Court in ***NAACP v. Alabama***, 357 U.S. 449, 460, 78 S.Ct. 1163, 1170, 2 L.Ed.2d 1488 (1958), Justice Harlan stated that it "is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." In our first review of Ohio's electoral scheme, ***Williams v. Rhodes***, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968), this Court explained the interwoven strands of "liberty" affected by ballot access restrictions:
>
>> "In the present situation the state laws place burdens on two different, although overlapping, kinds of rights--the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms."
>
> As we have repeatedly recognized, voters can assert their preferences only through candidates or parties or both. "It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." ***Lubin v. Panish***, 415 U.S. 709, 716, 94 S.Ct. 1315, 1320, 39 L.Ed.2d 702 (1974). The right to vote is "heavily burdened" if that vote may be cast only for major-party candidates at

> a time when other parties or other candidates are "clamoring for a place on the ballot." Ibid.; ***Williams v. Rhodes***, supra, 393 U.S., at 31, 89 S.Ct., at 10. The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens.

The Court then outlined how courts must examine the justifications offered by the state government, concluding that the State must offer sufficient justification for each of the burdens imposed by its rules.

> It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. See ***Williams v. Rhodes***, supra, 393 U.S., at 30-31, 89 S.Ct., at 10; ***Bullock v. Carter***, supra, 405 U.S., at 142-143, 92 S.Ct., at 855; ***American Party of Texas v. White***, 415 U.S. 767, 780-781, 94 S.Ct. 1296, 1305-1306, 39 L.Ed.2d 744 (1974); ***Illinois Elections Bd. v. Socialist Workers Party***, 440 U.S. 173, 183, 99 S.Ct. 983, 989, 59 L.Ed.2d 230 (1979). The results of this evaluation will not be automatic; as we have recognized, there is "no substitute for the hard judgments that must be made." ***Storer v. Brown***, supra, 415 U.S., at 730, 94 S.Ct., at 1279.

460 U.S. at 789-90.

Here, Defendant has proffered no state interest at all and has failed to even address whether his system is narrowly tailored to achieve any legitimate interest at all. What precisely is the compelling or important state interest in sequential numbering of signature sheets submitted to the counties for a nominating petition? What is the state interest in rejecting signature sheets because the Secretary of State does not happen to like the look of the circulator's signature or the way he or she dated their signature? No justifications have been offered.

It is the burden of the state to offer and prove such justifications. In ***McCarthy v. Secretary of the Commonwealth***, 359 NE2d 291, 294 (Mass 1977), the Massachusetts Supreme Court stated:

> This conclusion is particularly evident in a case such as this one where there is no evidence regarding the reasons for rejection of signatures by local registrars and, indeed, no evidence that the registrars fully performed their checking function at all. Given the fundamental importance of affording a fair and reasonable means of ballot access to independent candidates, we further hold that judicial review of the signature certification process is necessary to safeguard the integrity of the electoral process and to effectuate the legislative intent to afford such access. Furthermore, the burden of proof must be placed on the Secretary of the Commonwealth to demonstrate that there were valid reasons for noncertification of signatures, rather than forcing the candidate to negate all potential reasons for rejection for each particular contested signature.

In the years after ***Anderson v. Celebrezze***, the United States Supreme Court adopted even greater constitutional protection for the political aims of persons gathering signatures on petitions, holding that the First Amendment protects the rights of petitioners to communicate with voters. ***Buckley v. American Constitutional Law Found.***, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999) [hereinafter "***ACLF***"]; ***McIntyre v. Ohio Elections Comm'n***, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995); ***Meyer v. Grant***, 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988). Such communication from petitioners to voters is the most highly protected speech and can be restricted only by means narrowly tailored to meet a critical state interest. Simply put, the state provision affecting petitioning must survive "exacting scrutiny" for determination of whether "it is narrowly tailored to serve an overriding state interest." ***McIntyre v. Ohio Elections Comm'n***, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995); ***First Nat. Bank of Boston v. Bellotti***, 435 U.S. 765, 776-777, 98 S.Ct. 1407, 1415-1416, 55 L.Ed.2d 707 (1978).

In ***Meyer v. Grant***, *supra*, the Court struck down state law prohibiting the use of paid signature gatherers because it "makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion." 486 U.S. at 428. In ***ACLF***, the Court concluded that the activity of gathering signatures deserved even more than the "exacting scrutiny" applied in ***McIntyre v. Ohio Elections Comm'n***, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995):

> The complainant in ***McIntyre*** challenged an Ohio law that prohibited the distribution of anonymous campaign literature. The writing in question was a handbill urging voters to defeat a ballot issue. Applying "exacting scrutiny" to Ohio's fraud prevention justifications, we held that the ban on anonymous speech violated the First Amendment. See id., at 347, 357, 115 S.Ct. 1511. "Circulating a petition is akin to distributing a handbill," the Tenth Circuit observed in the decision now before us. 120 F.3d, at 1103. Both involve a one-on-one communication. But the restraint on speech in this case is more severe than was the restraint in ***McIntyre***. Petition circulation is the less fleeting encounter, for the circulator must endeavor to persuade electors to sign the petition. See Tr. of Oral Arg. 21, 25-26. That endeavor, we observed in ***Meyer***, "of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change." 486 U.S., at 421, 108 S.Ct. 1886.

ACLF, supra, 525 U.S. 182, 119 S.Ct. 636, 645-46, 142 L.Ed.2d 599, 614. The Court agreed with the concurring opinion of Justice Thomas.

> Our decision is entirely in keeping with the "now-settled approach" that state regulations "impos[ing] 'severe burdens' on speech ... [must] be narrowly tailored to serve a compelling state interest." See post, at 649 (THOMAS, J., concurring in judgment).

ACLF, supra, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599, 610 n.12. The Court concluded that a state law severely burdens speech when it impairs the collection of petition signatures.

> The Tenth Circuit reasoned that the registration requirement placed on Colorado's voter-eligible population produces a speech diminution of the very kind produced by the ban on paid circulators at issue in Meyer. See 120 F.3d, at 1100. We agree. The requirement that circulators be not merely voter eligible, but registered voters, it is scarcely debatable given the uncontested numbers, see supra, at 642-643, and n.15, decreases the pool of potential circulators as certainly as that pool is decreased by the prohibition of payment to circulators. Both provisions "limi[t] the number of voices who will convey [the initiative proponents'] message" and, consequently, cut down "the size of the audience [proponents] can reach." ***Meyer***, 486 U.S., at 422, 423, 108 S.Ct. 1886; see ***Bernbeck v. Moore***, 126 F.3d 1114, 1116 (C.A.8 1997) (quoting ***Meyer***); see also ***Meyer***, 486 U.S., at 423, 108 S.Ct. 1886 (stating, further, that the challenged restriction reduced the chances that initiative proponents would gather signatures sufficient in number to qualify for the ballot, and thus limited proponents' "ability to make the matter the focus of statewide discussion"). In this case, as in ***Meyer***, the requirement "imposes a burden on political expression that the State has failed to justify." Id., at 428, 108 S.Ct. 1886.

ACLF, supra, 525 U.S. 182, 119 S.Ct. 636, 643-44, 142 L.Ed.2d 599, 611.

Here, all of the restrictions apparently adopted and applied by Defendant similarly impair the First Amendment rights of Plaintiffs. This is particularly true for those seeking to appear on the ballot for President and Vice-President, as the U.S. Constitution precludes the use of write-in votes (since technically all votes are cast for the "electors" to the electoral college). ***Williams v. Rhodes***, supra, 393 U.S. at 37.

Defendant's burdens violate the rights both of prospective candidates, such as plaintiff Kucera, of petition circulators, and of voters. Electors of Oregon have the right to sign petitions for initiatives, referenda, recall, and candidate nominations. Once the State has adopted these processes for political change, the protections of the U.S. Constitution apply when voters seek to exercise this form of franchise.

In addition to First Amendment protections, the opportunity to effectively sign initiatives is also protected by the Fifth and Fourteenth Amendments. In ***Idaho Coalition United for Bears v. Cenarussa***, 342 F.3d 1073, 1076 (9th Cir. 2003), the court recognized that voting on initiative measures is a fundamental right subject to Fifth and Fourteenth Amendment guarantees.

> Voting is a fundamental right subject to equal protection guarantees under the Fourteenth Amendment. *See Reynolds v. Sims,* 377 U.S. 533, 561-62, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) ("Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society."). The ballot initiative, like the election of public officials, is a " 'basic instrument of democratic government,' " *Cuyahoga Falls v. Buckeye Comm. Hope Found.,* 538 U.S. 188, 123 S.Ct. 1389, 1395, 155 L.Ed.2d 349 (2003) (quoting *Eastlake v. Forest City Enters., Inc.,* 426 U.S. 668, 679, 96 S.Ct. 2358, 49 L.Ed.2d 132 (1976)), and is therefore subject to equal protection guarantees.

Denying an elector the opportunity to provide a valid signature on a petition is akin to denying an elector the right to vote in an election. More specifically, it would be akin to requiring that every voter's completed ballot be turned over to a third party (the "collector," who would bundle the ballots into a large envelope, sign it, and deliver it to the election office) and allowing the State to invalidate every ballot contained in a large envelope upon which the collector had made any slip of the pen in writing down the

date or had written his signature in a manner not subjectively pleasing to the Secretary of State.

In Oregon, being a registered voter carries two basic rights--the right to vote and the right to sign petitions. Both are fundamental rights which cannot be impaired by government actions, without narrowly tailored approach to achieving a compelling state interest.

> Indeed, the Supreme Court has recognized that initiatives and elections for public office are the only two means by which "voters can assert their preferences," and laws that operate to restrict ballot access implicate the right to vote. ***Illinois State Board of Elections v. Socialist Workers Party***, 440 U.S. 173, 184, 99 S.Ct. 983, 990, 59 L.Ed.2d 230 (1979) (internal quotation marks omitted); see also ***Buckley***, 525 U.S. 182, 119 S.Ct. at 641-42 ("Initiative-petition circulators also resemble candidate- petition signature gatherers, ... for both seek ballot access").

Molinari v. Powers, 82 F.Supp.2d 57, 76 (E.D.N.Y. 2000)

Further, if the right to petition government for redress of grievances means anything, it must mean that the petitioning process does not confront potential and actual signors with the prospect of having their signatures on petitions invalidated, regardless of the correctness of their actions in signing, because of trivial alleged "errors" by circulators. The right to peaceably petition for redress of grievances, the right to assemble, and the right of free speech are “cognate rights.” ***Thomas v. Collins***, 323 U.S. 516, 530 (1945). Born of the same heritage, they are inseparable and should be treated with equal regard. ***McDonald v. Smith***, 472 U.S. 479, 485 (1985).[4] As the Supreme Court held in ***Meyer v. Grant***, restrictions on such “core political” rights are subject to exacting scrutiny. First Amendment rights have a priority.

> That priority gives these liberties a sanctity and a sanction not permitted dubious intrusions. And it is the character of the right, not of the

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4. The Speech and Press clauses, every bit as much as the Petition Clause, were included in the First Amendment to ensure the growth and preservation of democratic self government. . . . The Framers envisioned the rights of speech, press, assembly, and petitioning as interrelated components of the public's exercise of its Sovereignty.

McDonald v. Smith, *supra*, 486, 489.

> limitation, which determines what standard governs the choice [where individual freedom ends and where state power begins].

Thomas, 323 U.S. at 530.

In addition to acting in a capacity akin to voting, electors signing petitions are engaging in core political speech to the wider public. They are seeking to place upon the ballot, for the consideration of all electors, their candidates. They are thus entitled to the same protections as are petitioners/circulators from impairment by state actions.

Here, each plaintiff elector is being denied the right to effectively sign the petitions of their choice by the *ad hoc* policies of the Secretary of State, as detailed above. These policies deprive the signor of any assurance that her valid signature will be counted. The Secretary of State's policies deprive signors of their right to validly sign petitions, because he is disqualifying those signatures on bases that have nothing to do with the validity of the signature. Instead, he is throwing them out because the circulator has allegedly made some minor "error" in the date on the signature of the circulator that the Secretary of State now deems to be fatal to the signatures on every sheet containing such an "error." He is also throwing away hundreds of sheets with valid signature of electors, because he does not like the way the circulator's signature looks and will not accept any documentation regarding the normal appearance of the circulator's signature (apart from an Oregon voter registration card, the requirement of which has been found conclusively to be an unconstitutional restriction on the initiative process in ***Buckley v. ACLF***, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999).

VI. SIXTH CLAIM FOR RELIEF: DISQUALIFYING SIGNATURE SHEETS ON THE BASIS OF ALLEGED ERRORS BY CIRCULATORS VIOLATES PLAINTIFFS' RIGHTS UNDER THE OREGON CONSTITUTION.

The implementation of a rule which disqualifies voter signatures on a nominating petition on the basis of alleged (or proven) errors by circulators (in signing, dating, or placing numbers upon the sheets) significantly burdens the collection of signatures by

precluding from the verification process, without a compelling justification, thousands of signatures, which in effect requires the plaintiffs to collect far more valid signatures than the number proscribed by the Oregon Constitution and statutes. Imposition of this burden violates Plaintiffs' rights under several provisions of the Oregon Constitution, including Article I, Section 8, and Article II.

Article I, Section 8, states:

> No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

This is analogous to the First Amendment of the U.S. Constitution and is no less infringed by the burdens imposed by Defendant upon Plaintiffs.

Article II, Section 1, states:

> All elections shall be free and equal.

This and Article I, Section 20, are analogous to the Fifth Amendment equal protection guarantee, also discussed in the federal court cases above.

VII. SEVENTH CLAIM FOR RELIEF: REJECTING CIRCULATOR SIGNATURES UNLESS THEY MATCH THE SIGNATURES UPON OREGON VOTER REGISTRATION CARDS VIOLATES PLAINTIFFS' CONSTITUTIONAL RIGHTS, DISCRIMINATES ARBITRARILY BETWEEN OREGON REGISTERED VOTERS AND OTHERS, AND VIOLATES THE OF DUE PROCESS GUARANTEE AND FREEDOM OF TRAVEL GUARANTEES OF OUT-OF-STATE CIRCULATORS.

The implementation of a rule which prohibits signing a circulator signature line with any reasonable variation to the signature as it appears on the circulator's Oregon Voter Registration card, without any opportunity to cure or correct the circulator signature line, violates the rights of Plaintiffs who were circulators to participate in the nominating petition process without burdens on their right to travel across state lines and into Oregon to engage in core political speech and to circulate petition sheets on matters of concern to them.

Defendant's practice of making acceptance of a circulator signature dependent upon examination of an Oregon Voter Registration card violates the First Amendment rights of those individual supporters of the Nader/Kucera ticket who are not registered voters in Oregon and impermissibly discriminates against those Oregon residents who are not registered to vote and in favor of those Oregon residents who are registered to vote.

Defendant's apparent practice seeks to evade the edict of the United States Supreme Court in ***ACLF*** that a state cannot restrict the gathering of signatures on petitions to registered voters of the state. By rejecting circulator signatures that he does not happen to like, while resurrecting such signatures only if they match an Oregon voter registration card, Defendant is violating ***ACLF*** and the constitutional rights of Americans who are not Oregon registered voters.

VIII. REQUESTED RELIEF.

Based on the above discussion, the Court should issue an order:

1. Declaring that Defendant's refusal to certify the Nader/Kucera ticket for the 2004 general election ballot is unlawful and/or unconstitutional, for any of the reasons noted above;

2. Requiring that Defendant fulfill his duty under law to certify the Nader/Kucera ticket for the 2004 general election ballot, without rejecting the valid and verified signatures submitted in support of the nominating petition;

3. Imposing all other and further relief as to which Plaintiffs may be entitled and which the Court may deem just and equitable.

Dated: September 3, 2004 Respectfully Submitted,

/s/ *Daniel W. Meek*

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____
GREGORY KAFOURY
PRO SE

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF by emailing an electronic copy to the email address stated below and by placing a true copy into the U.S. Mail, first class postage prepaid, addressed to the attorney listed below:

Katherine Georges
Assistant Attorney General
400 Justice Building
Salem, OR 97310

Dated: September 3, 2004

____
Linda Williams