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, TIMOTHY JOHNSON, and GREGORY KAFOURY, **Plaintiffs,** **v.** **BILL BRADBURY, Secretary of State,** **Defendant.**	**No. 04C18259** **PLAINTIFFS' REPLY TO MEMORANDUM OF DEMOCRATIC PARTY OF OREGON OPPOSING MOTION FOR INJUNCTIVE RELIEF**

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The Democratic Party of Oregon (DPO) Memorandum in Opposition to Plaintiff's Motion for Injunctive Relief [hereinafter "DPO Memo"] is long on rhetoric, along with various irrelevant and untrue statements and dramatic characterizations.[1] We are skipping the DPO's introduction and are proceeding directly to its substantive arguments, which begin at DPO Memo, p. 6. We address their arguments, however, in the order of our claims.

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.

DPO does not address this claim.

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.

The DPO Memo, pp. 10-14 addresses this claim but fails to accurately portray the Oregon case law cited in PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF.

There, we cited the Oregon cases indicating 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). We also cited ***State ex rel.***

1. Among the irrelevancies is that Ralph Nader did not receive the Pacific Green Party nomination for President. Nader did not seek that nomination.

Sajo v. Paulus, 297 Or. 646, 688 P.2d 367 (1984), and ***Lindstrom v. Myers***, 539 P.2d 1049 (Or. 1975).

The DPO Memo focuses on ***Nelson*** but seeks to have ***Nelson*** stand for a different proposition than it actually expresses. According to the DPO, ***Nelson*** concluded that the violations of statutes and rules by the circulators (petitioners) in that case could not result in invalidating the voter signatures, merely because the statutes and rules applicable to the initiative process somehow do not require compliance in a mandatory way, while the statutes and rules applicable to the candidate nominating process do require compliance in a mandatory way. That is both not true and not the holding of ***Nelson***.

The distinction in ***Nelson*** is not between the initiative process and the candidate nomination process. The crucial point is that ***Nelson*** held that even direct violations of statutory prohibitions by petitioners or circulators did not authorize the Secretary of State to discard otherwise valid voter signatures on petitions.

In ***Nelson***, the signatures had been collected in direct violation of ORS 260.560, which at that time read:

> A person who is not an elector shall not attempt to obtain signatures on an initiative, referendum of recall petition.

This was a mandatory prohibition against non-electors gathering signatures on petitions.[2] Nevertheless, the court in ***Nelson*** concluded that **signatures gathered in direct violation of this prohibition must be counted and not discarded**.

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2. This statute was later repealed, after the United States Supreme Court in ACLF xxx determined that such a restriction violated the First Amendment.

The same is the case here. The county elections officers have already verified and certified the signatures at issue as valid (in literally tens of thousands of sworn, signed statements by the county elections officers).[3] Now, Defendant seeks to discard those valid voter signatures, because (in his view) the circulators did not fully comply with the rule in his State Candidate's Manual: Individual Electors ("SCMIE") about numbering the signature sheets when they were filed with the counties.[4] **Even if this was a direct violation of that rule, neither Defendant nor DPO explains why it would suddenly warrant discarding of over 2,300 verified voter signatures, when in *Nelson* the direct violation of a statute by circulators did not allow the Secretary of State to discard even one voter signature.**

The DPO attempts to argue that in ***Nelson*** the statute forbidding the gathering of signatures on initiative petitions by non-Oregon electors was somehow not mandatory. But it clearly was mandatory, and any signatures collected by such non-Oregon electors were clearly collected in violation of the statute. Further, in ***Nelson*** the court was also dealing with statutes and rules that prohibited the counting of unlawful signatures. ***Nelson*** itself cited the statute applicable to the initiative process (ORS 250.105(2)) as an example where "the legislature expressly has provided for invalidation of signatures upon violation of

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3. Each signature sheet is a sworn, dated affidavit by a county elections officer, that the specified number of voter signatures on the sheet are valid. ORS 249.008(1) states:

> The county clerk shall attach to the petition or minutes a certificate stating the number of signatures believed to be genuine. The certificate is prima facie evidence of the facts stated in it. A signature not included in the number certified to be genuine shall not be counted by the officer with whom the petition is filed.

4. We discuss later the fact that this requirement applies only to the sheets as they are submitted to the county elections officers, and none of the county elections officers rejected the sheets for that reason, even though they were constantly receiving directives from Defendant to discard sheets for other reasons, such as alleged circulator "dating errors."

other statutes." 155 Or App 388 at 394.[5] ORS 250.105(1) also requires that the Secretary of State verify "whether the petition contains the required number of signatures of electors," which certainly implies that the signatures be valid, as it also requires that "[e]ach petition shall be verified." In addition, the State Initiative and Referendum Manual ("SIRM"), adopted as a rule by the Secretary of State, provides that only those signatures collected in compliance with the laws and rules shall be counted. **Note: This is expressly applicable to the initiative process and not to the candidate nominating process.**

> Warning: It is the responsibility of the chief petitioners to ensure that the signature sheets for each county are separated and numbered sequentially before filing the petition signatures for verification. Failure to comply with this requirement may result in rejection of those sheets not filed in occurrence with OAR 165-014-0030.

2004 SIRM, p. 10.[6] OAR 165-014-0030 (applicable to the initiative process but not the candidate nomination process) requires that petitioners "sequentially number the sheets within each county prior to submission to the Secretary of State." Thus, Defendant believes that **initiative petition** signatures on non-numbered sheets can be rejected for that reason. Yet, ***Nelson*** held that even initiative circulator outright violations of statute cannot warrant discarding of voter signatures.

Thus, both under the initiative statutes and rules, and under the candidate nomination statutes and rules, only valid signatures are to be counted. For candidate nominations, ORS 249.008 (1) states:

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5. ORS 250.105(2) states:

> An initiative or referendum petition relating to a state measure shall not be accepted for filing it if contain less than 100 percent of the required number of signatures.

6. It further states that only valid signatures shall be counted. 2004 SIRM, p. 11.

> The county clerk shall attach to the petition or minutes a certificate stating the number of signatures believed to be genuine. The certificate is prima facie evidence of the facts stated in it. A signature not included in the number certified to be genuine shall not be counted by the officer with whom the petition is filed. No signature in violation of the provisions of this chapter shall be counted.

For initiatives, we have cited above the similar statutory and rule-based requirements that only signatures collected lawfully are to be counted.

The true distinction in ***Nelson*** is not between (1) statutes and rules pertaining to the initiative process and (2) statutes and rules pertaining to nominating petitions. Instead, it is between (1) statutes and rules applicable to the validity of the voter signatures and (2) statutes and rules applicable to actions by circulators not involving the validity of the voter signatures. The statutes applicable to the initiative process (ORS Chapter 250) do not state that valid signatures shall be thrown away because circulators have violated the law in collecting them. Similarly, the statutes applicable to the nominating process (ORS Chapter 249) also do not state that valid signatures shall be thrown away because circulators have violated a rule of Defendant that does not pertain to the validity of the voter signatures.

Also note that, while Defendant in the 2004 SIRM (as quoted above) states that failure to number the sheets sequentially can result in rejection of those sheets (and all of the signature they contain), Defendant makes no such statement in the 2004 State Candidate's Manual: Individual Electors (SCMIE) about failing to number the sheets for a nominating petition. In fact, the only warning applicable to circulators in the SCMIE is this:

> Warning: Violations of the circulator requirements may result in conviction of a felony with a fine of up to $100,000 and/or prison for up to five years.

2004 SCMIE, p. 13. Concluding that Defendant somehow intended his warning in the SIRM to apply also to the SCMIE violates the tenet that, when a government actor wishes to impose a requirement, and shows that it knows how to express that intention, the lack of such an expression negates the intention. ***Gladhart v. Oregon Vineyard Supply Co.***, 332 Or 226, 233-34, 26 P3d 817 (2001). It is clear that Defendant know how to express the intention he expressed in the SIRM. Without a similar expression in the SIRM, the court cannot infer it.

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 were not sequentially numbered when submitted to the counties. This rejection is unlawful, for many reasons, none of which were addressed in the DPO Memo except the estoppel argument.

First, There is no legal requirement that the signature sheets submitted to the Secretary of State be sequentially numbered at all. Second, the Nader Campaign did submit 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. Third, 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 new reasons he later dreams up. The sequential numbering requirement applies only to the signature sheets when submitted to the county

elections officers. For all of the sheets at issue, the county elections officers accepted the unnumbered sheets, without objection, as they understood their origin and purpose to "fill the gaps" being created by directions they were receiving from Defendant to pull out and remove certain sheets from the county verification process.

The DPO Memo claims repeatedly that the sequential numbering of the sheets when submitted to the county is necessary to prevent some sort of unidentified fraud. To the contrary, each sheet that the county elections officer verifies is then certified with the signed, sworn affidavit of the county elections officer. The DPO Memo fails to even identify any purpose for the sequential numbering system.

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,[7] 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.

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

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. 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 both Travis Diskin that the Nader Campaign should submit additional completed signature sheets to the counties without sheet numbers at all, so that the 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. The county elections officers themselves wrote additional numbers of some of the sheets, for their internal purposes.

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. The Nader Campaign, out of an abundance of caution, sought and followed the advice of the Office of the Secretary of State, who is accordingly estopped from applying the law to the detriment of the relying party.

In ***ODOT v. Hewett Professional Group***, 321 Or 118, 126, 895 P2d 755 (1995), the court stated:

> This court previously has accepted the general proposition that, under appropriate circumstances, an agency of the government may be

> estopped to assert a claim inconsistent with a previous position taken by it. *See Belton v. Buesing,* 240 Or. 399, 411, 402 P.2d 98 (1965) (accepting abstract proposition, but finding no basis for application of doctrine under the specific facts of that case). For estoppel to be established, the party claiming it must (among other things) have relied on the governmental agency's misstatements, and the party's reliance must have been reasonable. *Committee in Opposition v. Oregon Emergency Correc.,* 309 Or. 678, 686, 792 P.2d 1203 (1990). [FN4] *See also Wiggins v. Barrett & Associates, Inc.,* 295 Or. 679, 697, 669 P.2d 1132 (1983) (one element necessary for reasonable reliance in a claim for equitable estoppel was that it "was within the lawful powers of the [agency]" to make the statements relied on).

Here, Plaintiffs have both alleged and proven by affidavit (and by examination at the hearing) that the Nader Campaign relied upon the government agency's advice (which the agency now contends was wrong). Its reliance was reasonable, particularly as Defendant affirmatively invites those involved in nominating petition campaigns to solicit advice from his staff. The State Candidate's Manual: Individual Electors (SCMIE) affirmatively invites potential users of the nominating petition process to "contact . . . the Elections Division for assistance . . . in filing for candidacy." 2004 SCMIE, Bradbury Letter to Oregonians. Further: "The Elections Division is available to answer any questions you may have." 2004 SCMIE, Introduction.

In other contexts, Defendant recognizes that his staff makes errors in its advice and relieves the victims of those errors from any harmful consequence. In OAR 165-013-0010 states:

> *Penalty Matrix for Other Campaign Finance Violations*
>
> (3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.
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> * * *
>
> *Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations*

(3)(a) *Penalty Matrix*. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

Further, if Defendant believed that submitting non-numbered sheets to the county elections officers was unlawful, the Secretary of State would have notified the county elections officers to reject those sheets, thus alerting the Nader Campaign to the problem. But the Secretary of State provided no such notice to any county elections officer; they all accepted the sheets and processed them, even though they are in constant contact with Defendant. His attempt later to disqualify the sheets that were submitted to the counties without numbers can only be described as devious and unworthy of a public official.

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.

DPO cannot resist trying to shoehorn in references to the inapplicable State Initiative and Referendum Manual rules. Comparing these rules to those in the State Candidate's Manual: Individual Electors demonstrate that, when Defendant wishes to prohibit a particular practice, he knows how to do it but, in the case of nominating petitions, did not.

A leading example is the rejection of circulator signatures because they consist of initials. The rule against initials is not contained in the State Candidate's Manual: Individual Electors (SCMIE) at all. It appears only in the 2004 State Initiative and Referendum Manual, p. 28. This is positive evidence that the "no-initials rule" does not apply to nominating petitions, as the rule is expressly stated for initiative and referendum petitions but not at all for nominating petitions.

Defendant has apparently rejected sheets containing in the range of 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. These include hundreds of sheets that appear to have been rejected on the basis of the "no initials" rule, which does not even apply to these petitions.

Defendant has not stated which signature sheets were rejected for these 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 marks made by the circulators certainly qualify as "signatures." Further, Plaintiffs are submitting affidavits of several of these circulators, further attesting to the authenticity of their signatures on these sheets, even though such attestations is not required.

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

It appears that Defendant 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 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.

Here, the DPO Memo seeks to lower the standard of constitutional scrutiny by citing cases which do not at all involving the petitioning process. The cases cited by Plaintiffs are those where people collect valid signatures of voters in order to accomplish a political purpose, such as placing a measure on the ballot or nominating a candidate for the ballot.

The DPO Memo cannot deny the applicability of the cases we have cited. Nor does it mention our discussion of the most recent applicable Ninth Circuit authority, ***Idaho Coalition United for Bears v. Cenarussa***, 342 F.3d 1073, 1076 (9th Cir. 2003). Instead, Defendant offers cases that deal with the mechanics of elections or nominations where there is no collection of petition signatures. These are non-petitioned-for candidate election law cases which analyze regulations in light of their burden on the right to run for office. Among these cases are: ***Burdick v. Takushi***, 504 U.S. 428 (1992) (Hawaii's lack of a write-in procedure for qualifying candidates); ***Storer v. Brown***, 415 U.S. 724 (1974) (California's "sore loser" regulation requiring candidates to have been registered with a party for at least one year prior to submitting their petition for candidacy); ***Timmons v. Twin Cities Area New Party***, 520 U.S. 351 (1997) (Minnesota's anti-fusion prohibition against a candidate being listed on the ballot as the

candidate for more than one party). These cases do not apply where the state restrictions significantly burden **petitioning rights**, including the right to petition for nomination of a candidate.

Even so, DPO never offers any coherent justification for the sequential numbering rule or for any of Defendant's *ad hoc* policies on evaluating circulator signatures or dates on their signatures.

In addition, the fact that Defendant allowed the county elections officers to continue to accept, without objection, non-numbered signature sheets, and entirely failed to notify the Nader Campaign that such sheets would later be rejected, Defendant further violated Plaintiffs' rights to due process notice prior to the deprivation of a protected liberty interest. The same is true of Defendant's conduct in instructing the county elections officers to "pull out" and not verify signature sheets from certain circulators, supposedly because of problems with the circulator's signature (although Defendant has yet to identify even one single such problem). This allowed the Nader Campaign to continue to submit hundreds of signature sheets, containing over 500 signatures, collected by these "secretly banned" circulators. No government official notified the Nader Campaign of this ban, thus precluding the simple step of the filing of affidavits with the counties to remedy any perceived "problem" with the circulator's signature.

This is a classic and massive due process violation. Even if there were any substantive justification for implementing any of Defendant's *ad hoc* policies, Defendant provided no notice about any of them to the Nader Campaign or to any petitioners or circulators prior to September 2, 2004, long after the deadline for

submitting the signatures. This lack of notice is a separate constitutional fundamental flaw in Defendant's scheme.

Merely shepardizing ***Bell v. Burson***, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90 (1971) turns up hundreds of cases in which the courts have ruled invalid the deprivation of liberty or property interests not preceded by notice and opportunity to avoid the deprivation. ***Fuentes v. Shevin***, 407 U.S. 67, 82, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1983), stated:

> If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone.' ***Stanley v. Illinois***, 405 U.S. 645, 647, 92 S.Ct 1208, 1210, 31 L.Ed.2d 551.
>
> This is no new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the form of a hearing 'appropriate to the nature of the case,' ***Mullane v. Central Hanover Tr. Co.***, 339 U.S. 306, 313, 70 S.Ct. 652, 657, 94 L.Ed. 865, and 'depending upon the importance of the interests involved and the nature of the subsequent proceedings (if any),' ***Boddie v. Connecticut***, 401 U.S. 371, 378, 91 S.Ct. 780, 786, 28 L.Ed.2d 113, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. E.g., ***Bell v. Burson***, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90; ***Wisconsin v. Constantineau***, 400 U.S. 433, 437, 91 S.Ct. 507, 510, 27 L. Ed.2d 515; ***Goldberg v. Kelly***, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287; ***Armstrong v. Manzo***, 380 U.S., at 551, 85 S.Ct., at 1191; ***Mullane v. Central Hanover Tr. Co.***, supra, 339 U.S. at 313, 70 S.Ct. at 656; ***Opp Cotton Mills v. Administrator***, 312 U.S. 126, 152 153, 61 S.Ct. 524, 535 536, 85 L.Ed. 624; ***United States v. Illnois Central R. Co.***, 291 U.S. 457, 463, 54 S.Ct. 471, 473, 78 L.Ed. 909; ***Londoner v. City & County of Denver***, 210 U.S. 373, 385 386, 28 S.Ct. 708, 713 714, 52 L.Ed. 1103.

There is no question that the opportunity to be a chief petitioner on an initiative, to circulate an initiative, or to sign an initiative is a fundamental liberty interest. Nor is there doubt that such interests require notice and opportunity to context prior to deprivation. An exception to the general rule requiring predeprivation notice and hearing is justified only in extraordinary situations. ***United States v. James Daniel Good Real Property***, 510 U.S. 43, 44, 114 S.Ct. 492, 126 L.Ed.2d 490 (1993). There was no emergency here. The case in the context most resembling the current circumstances is perhaps ***Raetzel v. Parks***, 762 F. Supp. 1354 (D. Ariz 1990), in which the court invalidated the state's process for handling challenges to absentee votes without notice to the disqualified voter.

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

We offer no additional discussion here.

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 DPO Memo does not address this claim.

Dated: September 8, 2004

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PLAINTIFFS' REPLY TO MEMORANDUM OF DEMOCRATIC PARTY OF OREGON OPPOSING MOTION FOR INJUNCTIVE RELIEF by delivering a true copy to the attorney listed below:

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Dated: September 8, 2004

_____
Daniel W. Meek