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IN THE SUPREME COURT OF THE STATE OF OREGON

SANDRA KUCERA, an elector of Oregon and candidate for Vice President of the United States, SARAH THERESA WINDER, KRISTEN 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-Adverse Party,

v.

BILL BRADBURY, Secretary of State,

Defendant-Relator,

and

DEMOCRATIC PARTY OF OREGON,  
JOHN NEEL PENDER and JAMES EDMUNSON,

Intervenors.

Supreme Court No. S

**MANDAMUS PROCEEDING**

EXCERPT OF RECORD

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## EXCERPT OF RECORD

Pursuant to ORAP 5.50, relator submits the following, as indexed below.

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IN THE CIRCUIT COURT FOR 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 a 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. \_\_\_\_\_

**MOTION FOR PRELIMINARY INJUNCTION**

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Pursuant to ORCP 79 plaintiffs hereby apply for a preliminary injunction against Bill Bradbury, the Oregon Secretary of State:

1. Prohibiting the printing of 2004 general election ballot without including Ralph Nader and Sandra Kucera on the ballot; and
2. Ordering 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.

A preliminary injunction is required to uphold the substantial rights of 18,000 electors whose signatures have been verified on petitions seeking to place Ralph Nader (presidential candidate) and Sandra Kucera (Vice-Presidential candidate) on the Oregon ballot.

The candidates and electors face irreparable harm of 18,000 electors are disenfranchised and disqualified from exercising their First Amendment rights including rights of association and voting rights. There is no monetary remedy adequate to address the harm plaintiffs and others will suffer in the absence of the requested injunction.

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This motion is supported by the complaint on file with the Court and  
1 plaintiffs memorandum in support of motion for injunctive relief, the Affidavits  
2 of Travis Diskin, Norman Frink, John Slevin (2), Sandra Kucera, Timothy  
3 Johnson, Gregory Kafoury and Ruth Bendl filed herewith.  
4

5  
6 Dated: September 3, 2004

Respectfully Submitted:

7 /s/ Daniel W. Meek  
8 (Conformed with permission)  
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21 Suite 202  
22 Portland, Oregon 97204

23  
24  
25 Of Attorneys for Plaintiffs  
26 KUCERA, WINDER, ZUBEL,  
BOLTON, SALISBURY, BERG,  
AND JOHNSON

Gregory Kafoury  
Pro Se

ER-4

STATE OF OREGON  
Marion County Circuit Courts  
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IN THE CIRCUIT COURT OF 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 a 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  
  
APPEAL OF  
SECRETARY OF STATE  
ACTION; EXPEDITED  
HEARING  
REQUESTED (ORS  
246.910)  
  
PETITION FOR  
REVIEW OF  
ADMINISTRATIVE  
ACTION (ORS 183.484)  
  
(not subject to  
mandatory arbitration)

Plaintiffs allege:

1 1. Pursuant to ORS 246.910, Plaintiffs appeal the decision of the Secretary of  
2 State, announced to the press on September 1, 2004, to refuse to certify  
3 the ticket of Ralph Nader and Sandra Kucera for appearance on the  
4 November 2, 2004, ballot as candidates for President and Vice-President of  
5 the United States nominated by individual electors pursuant to ORS  
6 249.740.

7 2. To the extent appropriate, Plaintiffs further seek review under ORS  
8 183.484 of the Secretary of State's above-described action.

9 VENUE

10 3. Venue is proper in Marion County. ORS 246.910(1).

11 JURISDICTION

12 4. This court has jurisdiction to hear a challenge to any act or failure to act  
13 by the Secretary of state under any election law, or by any order, rule,  
14 directive or instruction made by the Secretary of State, pursuant to ORS  
15 246.910(1).

16 5. This court has jurisdiction to review administrative orders in other than  
17 contested cases pursuant to ORS 183.484.

18 PARTIES

19 6. Plaintiff Sandra Kucera is an Oregon elector and registered voter in  
20 Washington County. She resides at 12190 SW Winterhawk Lane,  
21 Beaverton, OR 97007. She is a candidate for Vice-President of the United  
22 States and is identified as such on the petitions filed under ORS 249.740  
23 for the nomination by individual electors of the slate of Ralph Nader for  
24 President and Sandra Kucera for Vice-President of the United States. She  
25 was also a circulator for the nominating petition. As an elector, a  
26 circulator, and a candidate, she is adversely affected and aggrieved by the

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1 refusal of the Secretary of State to accept the valid signature sheets of  
2 electors on petitions for nomination of her slate pursuant to ORS 249.740.  
3 This refusal causes her the immediate and irreparable harm by depriving  
4 her of her rights and opportunities to (1) appear on the Oregon general  
5 election ballot as a candidate for Vice-President of the United States, (2) to  
6 exercise her rights under the Oregon and United States Constitutions to  
7 engage in speech and to petition the government, (3) to participate in open  
8 and free elections, and (4) to exercise her franchise effectively in voting for  
9 Ralph Nader and Sandra Kucera in the 2004 general election.

10 7. Plaintiff Sarah Therese Winder is an Oregon elector and registered voter in  
11 Clackamas County. She resides at 47 Eaglecrest Drive, Apt. 33, Lake  
12 Oswego OR 97035. She signed a petition for the nomination of Ralph  
13 Nader and Sandra Kucera as President and Vice-President of the United  
14 States pursuant to ORS 249.740. She was also a circulator of the  
15 nominating petition. She is adversely affected and aggrieved by the  
16 refusal of the Secretary of State to accept the valid signature sheets of  
17 electors on petitions for this nomination. This refusal causes her and  
18 others the immediate and irreparable harm of losing their rights and  
19 opportunities (1) to exercise their rights under the Oregon and United  
20 States Constitutions to engage in speech and to petition the government,  
21 (2) to participate in open and free elections, and (3) to exercise their  
22 franchise effectively in voting for Ralph Nader and Sandra Kucera in the  
23 2004 general election.

24 8. Plaintiff Kristin Zubel is an Oregon elector and registered voter in  
25 Washington County. She resides at 16245 N.W. Schendel, Apt. H,  
26 Beaverton, OR 97006. She signed a petition for the nomination of Ralph

Page

1 Nader and Sandra Kucera as President and Vice-President of the United  
2 States pursuant to ORS 249.740. She was also a circulator of the  
3 nominating petition. She is adversely affected and aggrieved by the  
4 refusal of the Secretary of State to accept the valid signature sheets of  
5 electors on petitions for this nomination. This refusal causes her and  
6 others the immediate and irreparable harm of losing their rights and  
7 opportunities (1) to exercise their rights under the Oregon and United  
8 States Constitutions to engage in speech and to petition the government,  
9 (2) to participate in open and free elections, and (3) to exercise their  
10 franchise effectively in voting for Ralph Nader and Sandra Kucera in the  
11 2004 general election.

12 9. Plaintiff Natalie Bolton is an Oregon elector and registered voter in  
13 Multnomah Washington County. She resides at 3203 SW Spring Garden  
14 Street, Portland, OR 97219. She signed a petition for the nomination of  
15 Ralph Nader and Sandra Kucera as President and Vice-President of the  
16 United States pursuant to ORS 249.740. She was also a circulator of the  
17 nominating petition. She is adversely affected and aggrieved by the  
18 refusal of the Secretary of State to accept the valid signature sheets of  
19 electors on petitions for this nomination. This refusal causes her and  
20 others the immediate and irreparable harm of losing their rights and  
21 opportunities (1) to exercise their rights under the Oregon and United  
22 States Constitutions to engage in speech and to petition the government,  
23 (2) to participate in open and free elections, and (3) to exercise their  
24 franchise effectively in voting for Ralph Nader and Sandra Kucera in the  
25 2004 general election.

26 10. Plaintiff Phillip Salisbury is an Oregon elector and registered voter in

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1 Multnomah County. He resides at 1865 S.E. Oak Street, Portland, OR  
2 97214. He signed a petition for the nomination of Ralph Nader and  
3 Sandra Kucera as President and Vice-President of the United States  
4 pursuant to ORS 249.740. He is adversely affected and aggrieved by the  
5 refusal of the Secretary of State to accept the valid signature sheets of  
6 electors on petitions for this nomination. This refusal causes him and  
7 others the immediate and irreparable harm of losing their rights and  
8 opportunities (1) to participate in open and free elections and (2) to  
9 exercise their franchise effectively in voting for Ralph Nader and Sandra  
10 Kucera in the 2004 general election.

11 11. Plaintiff Samantha Berg is an Oregon elector and registered voter in  
12 Multnomah County. She resides at 1865 S.E. Oak Street, Portland, OR  
13 97214. She signed a petition for the nomination of Ralph Nader and  
14 Sandra Kucera as President and Vice-President of the United States  
15 pursuant to ORS 249.740. She is adversely affected and aggrieved by the  
16 refusal of the Secretary of State to accept the valid signature sheets of  
17 electors on petitions for this nomination. This refusal causes her and  
18 others the immediate and irreparable harm of losing their rights and  
19 opportunities (1) to participate in open and free elections and (2) to  
20 exercise their franchise effectively in voting for Ralph Nader and Sandra  
21 Kucera in the 2004 general election.

22 12. Plaintiff Timothy Johnson is a resident of the State of Washington and is  
23 not an Oregon elector. His address is P.O. Box 403, Longview, WA 98632.  
24 He circulated the nominating petition, but the 41 signatures on sheets he  
25 submitted were rejected by the Secretary of State for unstated reasons.  
26 He is adversely affected and aggrieved by the refusal of the Secretary of

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1 State to accept the valid signature sheets of electors on petitions for this  
2 nomination. This refusal causes him and others the immediate and  
3 irreparable harm of losing their rights and opportunities to exercise their  
4 rights under the Oregon and United States Constitutions to engage in  
5 speech and to petition the government.

6 13. Gregory Kafoury resides in Portland, in Multnomah County, Oregon, is an  
7 elector, and is the Oregon Co-Chair of Nader for Oregon 2004, and has  
8 suffered First Amendment harms in the same manner as alleged by other  
9 plaintiffs.

10 14. Defendant Bill Bradbury is the Secretary of State, responsible for  
11 implementation and application of the statutes and rules pertaining to the  
12 nomination of candidates.

13 FACTUAL ALLEGATIONS

14 15. On various dates in August 2004, the group collecting signatures for the  
15 nomination of the Nader/Kucera ticket [hereinafter "Nader Campaign"]  
16 filed thousands of signature sheets with the election officers for most  
17 counties in Oregon. These sheets contained over 27,000 signatures.

18 16. Within the time permitted, the county election officers returned to the  
19 Nader Campaign signature sheets containing over 18,000 voter signatures  
20 found to be valid and so verified by the county election officers. 15,306  
21 valid signatures are required for placement on the ballot. As set forth  
22 below, the Secretary of State rejected more than 3,000 signatures that had  
23 been validated and verified by the counties.

24 17. Upon instructions from the Secretary of State, some county election  
25 officers removed signature sheets from the verification process and did not  
26 return those sheets to the Nader Campaign. The total number of sheets

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1 so affected is not known to Plaintiffs or the Nader Campaign.

2 18. After they county election officers completed their verification process, the  
3 county elections offices returned the rest of the signature sheets to the  
4 Nader Campaign.

5 19. On August 24, 2004, the Nader Campaign submitted the signature sheets  
6 containing the valid and verified signatures to the Secretary of State.

7 20. The Nader Campaign heard nothing from the Secretary of State until  
8 September 1, 2004, when the Secretary of State called a press conference,  
9 where the representative of the Nader campaign was physically excluded  
10 from the room.

11 21. The Nader Campaign received nothing in writing from the Secretary of  
12 State until September 2, 2004, when it received a 1-page telecopied letter  
13 from Margie Franz of the office of the Secretary of State, stating that the  
14 number of valid signatures counted by the Secretary of State was 15,088  
15 (Exhibit A).

16 22. This number is 218 fewer signatures than the 15,306 required for the  
17 nomination sought.

18 23. Despite repeated requests, neither the Nader Campaign nor Plaintiffs have  
19 received documents from the Secretary of State stating why each rejected  
20 signature sheet was rejected.

21 24. Neither the Nader Campaign nor Plaintiffs have received documents from  
22 the Secretary of State stating the number of signatures on the sheets  
23 rejected for any particular reason.

24 25. Plaintiffs have read in the press that a large number of signatures (in the  
25 range of 2,000) were contained on sheets which the Secretary of State  
26 contended were not consecutively numbered for each county, as allegedly

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1 required by the 2004 State Candidate's Manual: Individual Electors, p. 4.

2 26. Plaintiffs have read in the press that other signatures (in the range of 700)  
3 were contained on sheets which the Secretary of State rejected for some  
4 perceived deficiency in the circulator's signature or the date accompanying  
5 the circulator's signature.

6  
7 **FIRST CLAIM FOR RELIEF: DEFENDANT'S DECISION TO REJECT THE**  
8 **NOMINATING PETITIONS IS UNLAWFUL, BECAUSE IT WAS NOT**  
9 **ACCOMPANIED BY APPROPRIATE FINDINGS OR CONCLUSION OF LAW.**

10 27. Plaintiffs reallege ¶¶ 1-25.

11 28. Defendant's decision to reject the nominating petitions was not  
12 accompanied by any findings of fact or conclusions of law sufficient to  
13 enable Plaintiffs (or anyone) to determine the reasons for the rejection.

14 29. Such deficiency renders the decision unlawful.

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

18 30. Plaintiffs reallege ¶¶ 1-25.

19 31. Defendant has apparently rejected over 3,000 valid and verified voter  
20 signatures on grounds that some errors were made by circulators or by  
21 the Nader Campaign in submitting the signature sheets to the county  
22 elections officers or to the Secretary of State.

23 32. Such errors by circulators or others, with or without opportunity for  
24 administrative cure of alleged defects, do not allow the Secretary of State  
25 to refuse to count or recognize the valid and verified voter signatures on  
26 such signature sheets.

33. The Secretary of State's refusal to count the valid and verified signatures  
submitted on the Nader/Kucera petitions is beyond his authority, is

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1 arbitrary and capricious, and is otherwise unlawful.

2  
3 THIRD CLAIM FOR RELIEF: DEFENDANT'S REJECTION OF SIGNATURE  
4 SHEETS BASED ON ALLEGED LACK OF SEQUENTIAL NUMBERING WITHIN  
5 COUNTIES IS UNLAWFUL.

6 34. Plaintiffs reallege ¶¶ 1-25.

7 35. Defendant has apparently rejected sheets containing in the range of 2,000  
8 valid and verified voter signatures on the ground that the sheets, as  
9 submitted to the Secretary of State, were not sequentially numbered.

10 36. The only requirement for the numbering of signature sheets is 2004 State  
11 Candidate's Manual: Individual Electors, p. 4, which requires:

12 Within each individual county, sequentially number each  
13 signature sheet in the space provided; and

14 Submit signature sheets to the appropriate county elections  
15 offices for verification \* \* \*

16 37. This requirement does not apply to the sheets as they are submitted to the  
17 Secretary of State.

18 38. The Nader Campaign did sequentially number the signature sheets for  
19 each individual county, until they learned that, at the direction of the  
20 Secretary of State, the county election officers were removing entire sheets  
21 from the verification process, thus destroying the sequential, consecutive  
22 numbering of the sheets.

23 39. In mid August, 2004, The Nader Campaign contacted the officer of the  
24 Secretary of State with responsibility for administration of the process for  
25 nomination of candidates by petition, Summer Davis, who advised the  
26 Nader Campaign to submit additional signature sheets to the counties  
without sheet numbers, so that a sequential numbering system could be  
restored by the Nader Campaign, once it had received the verified  
signature sheets back from the counties.

Page

1 40. Press reports indicate that the Secretary of State has claimed that some of  
2 the signature sheets contained other numbers placed on the sheets at  
3 various times.

4 41. The Secretary of State has not stated which sheets are affected by such  
5 other numbers or why their appearance renders the sheets subject to  
6 rejection. For instance, Plaintiffs know that the Nader Campaign  
7 submitted a number of sequentially numbered sheets to Yamhill County.  
8 Meanwhile, the Secretary of State seems to be claiming all sheets  
9 submitted to Yamhill County were unnumbered.

10 42. The Secretary of State's rejection of sheets on grounds pertaining to sheet  
11 numbering is unlawful, as the Nader Campaign complied with the  
12 numbering requirements.

13 42A. The Secretary of State's claim that numbered sheets allows for  
14 administrative ease in evaluating or rejecting sheets is belied by the fact  
15 that the Secretary of State has not used the numbers to identify the  
16 sheets or signatures that have been rejected.

17 **FOURTH CLAIM FOR RELIEF: DEFENDANT'S REJECTION OF SIGNATURE**  
18 **SHEETS BASED ON ALLEGED DEFECTS IN CIRCULATOR SIGNATURES OR**  
19 **DATES ON CIRCULATOR SIGNATURES IS UNLAWFUL.**

20 43. Plaintiffs reallege ¶¶ 1-25.

21 44. Defendant has apparently rejected sheets containing in the range of 700  
22 valid and verified voter signatures on the ground that the sheets display  
23 some defect in the signature of the circulator or the date on the signature  
24 of the circulator.

25 45. Defendant has not stated which signature sheets were rejected for these  
26 reasons.

46. Defendant has not stated the reason for the rejection of any signature

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1 sheet for these reasons.

2 47. It appears that Defendant has rejected sheets containing several hundred  
3 signatures, solely because Defendant does not like the appearance of the  
4 circulator's signature.

5 48. There is no requirement pertaining to the appearance of a circulator's  
6 signature.

7 49. Defendant has apparently rejected sheets containing hundreds of  
8 signatures on the basis of the appearance of the circulator's signature,  
9 even though it is in fact the circulator's signature.

10 50. It appears that Defendant has rejected sheets containing several hundred  
11 signatures, solely because Defendant does not like the way the circulator  
12 dated his or her signature.

13 51. The signature sheets rejected were properly dated by the circulators.

14 52. The Secretary of State's rejection of sheets on ground pertaining to the  
15 appearance of and/or date on the circulator's signature is unlawful, as the  
16 Nader Campaign complied with the applicable requirements.

17  
18 FIFTH CLAIM FOR RELIEF: DISQUALIFYING SIGNATURE SHEETS ON THE  
19 BASIS OF ALLEGED ERRORS BY CIRCULATORS VIOLATES PLAINTIFFS'  
RIGHTS UNDER THE FIRST AND FIFTH AMENDMENTS OF THE UNITED  
STATES CONSTITUTION.

20 53. Plaintiffs reallege ¶¶ 1-25.

21 54. The implementation of a rule which disqualifies voter signatures on a  
22 nominating petition on the basis of alleged (or proven) errors by  
23 circulators (in signing, dating, or placing numbers upon the sheets)  
24 significantly burdens the collection of signatures by precluding from the  
25 verification process, without a very exacting standard of compelling  
26 justification, thousands of signatures, which in effect requires the

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1 plaintiffs to collect far more valid signatures than the number proscribed  
2 by the Oregon Constitution. Imposition of this burden violates Plaintiff's  
3 rights under the First Amendment to the U.S. Constitution.

4 55. The implementation of a rule which disqualifies voter signatures on a  
5 nominating petition on the basis of alleged (or proven) errors by  
6 circulators (in signing, dating, or placing numbers upon the sheets)  
7 significantly burdens the collection of signatures by precluding from the  
8 verification process, without a very exacting standard of compelling  
9 justification, thousands of signatures. Imposition of this burden violates  
10 Plaintiffs' rights under the Fifth Amendment to the U.S. Constitution.

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

13 56. Plaintiffs reallege ¶¶ 1-25.

14 57. The implementation of a rule which disqualifies voter signatures on a  
15 nominating petition on the basis of alleged (or proven) errors by  
16 circulators (in signing, dating, or placing numbers upon the sheets), with  
17 no opportunity for administrative cure of alleged defects, significantly  
18 burdens the collection of signatures by precluding from the verification  
19 process, without a very exacting standard of compelling justification,  
20 thousands of signatures, which in effect requires the plaintiffs to collect  
21 far more valid signatures than the number proscribed by the Oregon  
22 Constitution.

23 58. Imposition of this burden violates Plaintiff's rights under Article I, Section  
24 8, of the Oregon Constitution.

25 59. Imposition of this burden violates Plaintiff's rights under Article I, Section  
26 20, and under Article II, Section 1, of the Oregon Constitution.

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1 SEVENTH CLAIM FOR RELIEF: REJECTING CIRCULATOR SIGNATURES  
2 UNLESS THEY MATCH THE SIGNATURES UPON OREGON VOTER  
3 REGISTRATION CARDS VIOLATES PLAINTIFFS' CONSTITUTIONAL RIGHTS,  
4 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.

5 60. Plaintiffs reallege ¶¶ 1-25.

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

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

21  
22 EIGHTH CLAIM FOR RELIEF: PLAINTIFFS ARE ENTITLED TO RECOVER  
COSTS AND REASONABLE ATTORNEY FEES FOR THIS ACTION.

23 63. Plaintiffs reallege ¶¶ 1-25.

24 64. Plaintiffs are seeking primarily to defend the integrity of the nomination by  
25 individual elector petition process in Oregon and the rights of all  
26 Oregonians to sign petitions which seek to place before voters the names

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1 of candidates for public office on the ballot. This effort is one to benefit all  
2 Oregonians and not to benefit Plaintiffs as individuals.

- 3 65. Plaintiffs are entitled to an award of reasonable attorney fees and costs  
4 against the Secretary of State pursuant to the substantial benefit doctrine.  
5 *Armatta v. Kitzhaber*, 327 Or 250 (1998); *Deras v. Myers*, 272 Or 47, 535  
6 P2d 541 (1975); *Gilbert v. Hoisting & Port. Engrs.*, 237 Or 130, 138, 384  
7 P2d 136 (1963), modified 390 P2d 320 (1964); *Umrein v. Heimbigner*, 53 Or  
8 App 871, 632 P2d 1367 (1981).

9  
10 ALLEGATIONS PERTAINING TO NEED FOR INJUNCTIVE RELIEF

- 11 66. Plaintiffs' rights to nominate candidates of their choice for public office  
12 and of political expression and association are being and will continue to  
13 be irrevocably and irreparably injured, and Plaintiffs have no adequate  
14 remedy at law for the injuries complained of.
- 15 67. The people of Oregon will not be harmed by this Court granting the  
16 injunctive relief requested, but the greater public interest and welfare will  
17 be served by granting the relief requested--namely, enjoining Defendant's  
18 action rejecting valid signature sheets for the nomination of the  
19 Nader/Kucera ticket.

20 WHEREFORE, Plaintiffs pray for the following relief:

- 21 (1) An order declaring that Defendant's refusal to certify the  
22 Nader/Kucera ticket for the 2004 general election ballot is  
23 unlawful and/or unconstitutional, for any of the reasons stated  
24 in the above claims;
- 25 (2) An order of preliminary injunction, ordering that Defendant  
26 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) An order of permanent injunction, ordering the same relief as

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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 procedures 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

ER-22  
*appeals to  
state to  
sheets not  
returned by  
county*

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.

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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,<sup>1</sup> 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

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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.<sup>2</sup> 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."<sup>3</sup> 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 attaches 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 CIRCULATOR 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.

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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):

*McIntyre*  
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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.

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*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

*Oakley  
initiative  
measures*

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).<sup>4</sup> 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

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:

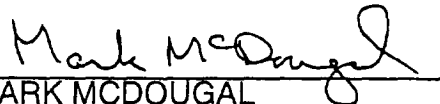
1. Declaring that Defendant's refusal to certify the Nader/Kucera ticket for the 2004 general election ballot is unlawful and/or unconstitutional, for any of the reasons noted above;
2. Requiring that Defendant fulfill his duty under law to certify the Nader/Kucera ticket for the 2004 general election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

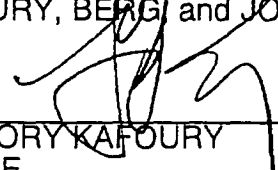
*/s/ DANIEL W. MEEK*

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GREGORY KAFOURY  
 PRO SE

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 a 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. 04C-18259  
Honorable Paul J. Lipscomb

DEFENDANTS' MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION

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## INTRODUCTION

1  
2 The issue in this case is the right of Ralph Nader and Sandra Kucera to be placed on the  
3 ballot as independent candidates for the President and Vice President of the United States in the  
4 November, 2004 General Election.

5 Defendant Secretary of State has determined that the candidates have not qualified for the  
6 ballot. Their campaign turned in only 15, 088 valid signatures, failing to meet the statutory  
7 requirement of 15, 306 valid signatures to qualify for the ballot.

8 Plaintiffs Ralph Nader and Sandra Kucera have brought suit to challenge the Secretary's  
9 decision. Plaintiffs also include individual electors who signed or circulated the candidates'  
10 nominating petitions. Plaintiffs lack any viable objection to the procedures employed by the  
11 Secretary of State to determine whether the Nader/Kucera campaign has submitted sufficient  
12 valid signatures to qualify for placement on the ballot. The challenged election regulations are  
13 reasonable and nondiscriminatory. Plaintiffs also cannot be heard to claim surprise or lack of  
14 notice that the requirements are rigorously enforced, particularly in light of the importance of the  
15 2004 presidential election.

16 Plaintiffs contend that the Secretary erred in rejection of signatures, and that if he did not,  
17 his decision to disqualify them from the ballot violates the First, Fifth and Fourteenth  
18 Amendments of the United States Constitution and Article I, sections 8 and 20, and Article II,  
19 section 2, of the Oregon Constitution.

20 The dispositive legal issue in this case is whether the Secretary can reject signature sheets  
21 that are submitted on unnumbered pages. State law requires all signature sheets to be  
22 sequentially numbered by the petitioner prior to submittal to the county clerks for signature  
23 verification to prevent the possibility of fraud and tampering in the election process. The  
24 Secretary rejected 2292 signatures because submitted on unnumbered pages. If the court  
25 concludes that the Secretary erred, and that he should count the signatures on unnumbered  
26 sheets, the court need not reach any other issue in this case. It is undisputed that Nader/Kucera

1 would qualify for the ballot if unnumbered pages are counted, since they need only an additional  
2 218 signatures to qualify.

3 On the other hand, if the court holds that the Secretary properly rejected signatures filed  
4 on unnumbered signature sheets, a separate hearing will be held to challenge the individual  
5 signatures rejected for other violations of state election laws.

#### 6 BACKGROUND

7 A candidate for public office may be nominated to partisan office by other than a major  
8 political party in Oregon. As in many other states, a minor political party, assembly of electors  
9 or individual electors may nominate one candidate for each partisan public office to be filled at  
10 the general election. The nomination process begins by preparing and filing a certificate of  
11 nomination as provided in ORS 249.712 to 249.850.

12 Individual electors filed a certificate to nominate Ralph Nader and Sandra Kucera as  
13 independent candidates for President and Vice President for the 2004 General Election. The  
14 certificate was filed and approved by the Elections Division, and the chief sponsors collected  
15 signatures.

16 State election law requires that each elector signing a certificate of nomination made by  
17 individual electors shall include the "residence mailing address" of the elector. ORS 249.740(2).  
18 In addition, the circulator is also required to certify on each signature sheet that the individuals  
19 signed the sheet in the presence of the circulator and that the circulator believes each individual  
20 is an elector registered in the electoral district. ORS 249.740(4). The purpose of these  
21 requirements is to prevent forgeries and fraud. The legislature has provided that "[n]o signature  
22 in violation of the provisions of this chapter shall be counted." ORS 249.008(1).

23 The legislature has also directed the Secretary of State to promulgate rules to "prescribe a  
24 system for numbering all signature sheets" for certificates of nomination by individual electors,  
25 as well as for nominating or recall petitions, minutes of an assembly of electors and minor  
26 political party formation petitions. ORS 249.009(1)(b).

1 By rule, the Secretary has adopted the 2004 State Candidate Manual: Individual Electors  
2 (Manual) and associated forms as the forms and procedures to be used by nonaffiliated  
3 candidates filing and running by individual electors for state elective office. OAR 165-010-  
4 0005(5). The Manual expressly provides that “before submitting the signature sheets to the  
5 appropriate county elections official for signature verification, the chief sponsor  
6 must...[w]ithin each individual county, *sequentially number each signature sheet* in the space  
7 provided.” Manual at 4.

8 To qualify for the ballot based upon a certificate of nomination by individual electors, a  
9 certificate is required to contain a number of signatures of electors in the electoral district equal  
10 to not less than one percent of the total votes cast in the electoral district for which the  
11 nomination is intended to be made, for all candidates for presidential electors at the last general  
12 election. ORS 249.740(1). The number of signatures Nader/Kucera needed to qualify for the  
13 ballot was 15,306.

14 Before a petition for candidate nomination by individual electors is submitted to the  
15 Secretary of State for filing, it must be submitted to the county clerk for verification of the  
16 genuineness of signatures. The county clerk verifies on each signature sheet the number of  
17 signatures that are genuine signatures of registered voters within the county. The certificate is  
18 prima facie evidence of the facts stated in it. A signature not included in the number certified  
19 to be genuine by the county elections official “shall not be counted” by the Secretary of State  
20 when the petition is filed. ORS 249.008(1).

21 The Secretary of State issued instructions to all county clerks to follow for verifying the  
22 signature sheets for the Nader for President petition. Lindback Aff; Ex. 2. The instructions  
23 direct the counties to screen and disqualify signature sheets that had circulator signature and  
24 date problems. The instructions defined what problems to look for regarding circulator  
25 signatures and dates. In the event of any question, the clerks were instructed to fax any  
26 problem sheet to the Elections Division for review, prior to verification of signatures, so that

1 the Secretary could determine whether to disqualify the entire sheet based on the particular  
2 circulator signature or date problem.

3 The Election Division worked with county election officials throughout the signature  
4 verification process, and answered their questions regarding which signature sheets should be  
5 disqualified. Lindback Aff., ¶ 16.

6 Each county elections official certifies the total number of genuine signatures submitted  
7 on each signature sheet, and returns the signature sheets to the chief sponsor of the certificate  
8 of nomination. If the petition contains the number of signatures needed to qualify for the ballot  
9 or more, the chief sponsor files the completed nominating petition with the Elections Division.

10 The Elections Division then reviews the signature sheets for compliance with state  
11 election law requirements to maintain uniformity and consistency in the interpretation and  
12 application of the state elections laws on a statewide basis. Lindback Aff., ¶ 20.

13 Objections to the signatures were filed by the Service Employees International Union.  
14 The union objected that a substantial number of signature sheets had been submitted to the  
15 counties without page numbers in violation of the state election laws. The union raised other  
16 objections as well.

17 Objections to the signatures were filed by Roy Pulvers, on his own behalf as an  
18 individual elector, and on behalf of the Democratic Party of Oregon, on many of the same  
19 bases.

20 The Elections Division reviewed the signature sheets submitted. The Elections Division  
21 rejected 718 signatures for failing to comply with state election law requirements, such as  
22 sheets that violated the circulator sign and date rules and sheets that were totally uncertified by  
23 a county. An additional 10 signatures disqualified because they were duplicates. Lindback  
24 Aff., ¶ 21.

25 Regarding unnumbered sheets, the Elections Division contacted all county clerks to  
26 determine the total number of signature sheets that had been submitted to county clerks without

1 page numbers. Many counties rejected unnumbered signature sheets, requiring petitioners to  
 2 number all sheets at the counter prior to submittal. In other cases, petitioners mailed  
 3 unnumbered sheets to the county, or personally turned in unnumbered sheets but left before the  
 4 unnumbered sheets were detected by the county clerk. In those circumstances, the county clerk  
 5 numbered the sheets. Based upon the information provided by each county, 2292 signatures  
 6 were disqualified because they were submitted on unnumbered sheets. Lindback Aff., ¶ 26.

7 The number of valid signatures that the Nader/Kucera campaign needed to qualify the  
 8 candidates for the ballot was 15,306. The Secretary of State determined that the total number  
 9 of qualified signatures submitted was 15,088, leaving Nader/Kucera 218 short of the 15, 306  
 10 valid signatures needed to qualify for the ballot. Lindback Aff., ¶ 28.

### 11 COMPLAINT

12 Plaintiffs' first claim for relief is an appeal of the Secretary's disqualification of the  
 13 Nader/Kucera nominating petition for insufficient valid signatures, pursuant to ORS 246.910,  
 14 which provides that "a person adversely affected by any act, or failure to act by the Secretary of  
 15 State ...under any election law ... may appeal therefrom to the circuit court for the county in  
 16 which the act or failure to act occurred..."

17 Plaintiffs' second claim for relief is a petition for judicial review of an order in an other  
 18 than contested case, pursuant to ORS 183.484.

### 19 ARGUMENT

20 I. **The Secretary of State's decision to reject signatures as invalid is not required to**  
 21 **contain findings of fact or conclusions of law.**

22 Plaintiffs first claim asserts the Secretary's decision is unlawful and invalid, because it  
 23 did not contain findings of fact or conclusions of law. Plaintiffs' Memorandum in Support of  
 24 Injunctive Relief at 2-4. Plaintiffs are wrong. Findings of fact and conclusions of law are not  
 25 required in a final order in other than a contested case, under ORS 183.484, which is the claim  
 26

1 asserted by plaintiffs. See *Wilbur Residents for a Clean Neighborhood v. Dept. of*  
 2 *Environmental Quality*, 176 Or. App. 353, 30 P.3d 1228 (2001).

3 **II. The Secretary can lawfully reject signatures on candidate nominating petition**  
 4 **signature sheets for violations of state election laws.**

5 Plaintiffs next claim that, even if a signature was submitted that contained errors that  
 6 violate state election laws, the Secretary had no authority to reject the signature as a penalty for  
 7 the violation. Plaintiffs cite *Nelson v. Keisling*, 155 Or. App. 388, 964 P.2d 284 (1998), *review*  
 8 *den.*, 328 Or. 246, 987 P.2d 507 (1999), *State ex. Rel Sajo v. Paulus*, 297 Or. 646, 688 P.2d 367  
 9 (1984) and *Lindstrom v. Myers*, 539 P.2d 1049 (Or. 1975). None of those cases are apposite  
 10 here, since they address the initiative signature gathering process, not the requirements for  
 11 candidate nominations or recall petitions, which are governed by ORS Chapter 249.

12 Moreover, *Nelson* supports defendant's position, not plaintiffs. In *Nelson*, the court held  
 13 that the violation of ORS 260.560, which at that time required a signature gatherer to be a  
 14 registered voter, did not require the invalidation of signatures collected, where ORS 260.995  
 15 provided a civil penalty for violations of Chapter 260 for which no other penalty is provided, and  
 16 the legislature had not expressly provided for invalidation of signatures as a remedy for  
 17 violations of Chapter 260. In so holding, the court contrasted initiative petitions under Chapter  
 18 260 with candidate nominating and recall petitions under Chapter 249, stating that "[t]he  
 19 legislature expressly has provided for invalidation of signatures upon violation of other statutes.  
 20 See, e.g., ORS 249.008(1) ("no signature in violation of the provisions of this chapter shall be  
 21 counted."). *Nelson* at 394.

22 This case involves candidate nominating petitions submitted by individual electors,  
 23 which are governed by ORS Chapter 249, and the legislature has expressly provided for  
 24 invalidation of signatures upon violation of that chapter.

25 Accordingly, the Secretary does have authority to not count signatures – indeed, he is  
 26 *required* to not count signatures – for violations of ORS Chapter 249.

1 **III. The Secretary did not err in rejecting signatures submitted to county clerks on**  
2 **unnumbered pages.**

3 The requirements for a petition for nomination of a candidate are set forth in ORS  
4 Chapter 249. ORS 249.740 addresses the requirements of a nominating certificate by individual  
5 electors that must be filed prior to a candidate's name being placed on the ballot. It provides:

6 249.740. Certificates of nomination made by individual electors;  
7 statement regarding payment of petition circulators; certification of  
8 signature sheets.

9 (1) A certificate of nomination made by individual electors shall  
10 contain a number of signatures of electors in the electoral district  
11 equal to not less than one percent of the total votes cast in the  
12 electoral district for which the nomination is intended to be made,  
13 for all candidates for presidential electors at the last general  
14 election.

15 (2) Each elector signing a certificate of nomination made by  
16 individual electors shall include the residence mailing address of  
17 the elector. Except for a certificate of nomination of candidates for  
18 electors of President and Vice President of the United States, a  
19 certificate of nomination made by individual electors shall contain  
20 the name of only one candidate.

21 (3) Before beginning to circulate the certificate of nomination, the  
22 chief sponsor of the certificate shall file a signed copy of the  
23 prospective certificate with the filing officer referred to in ORS  
24 249.722. The chief sponsor of the certificate shall include with the  
25 prospective certificate a statement declaring whether one or more  
26 persons will be paid money or other valuable consideration for  
obtaining signatures of electors on the certificate. After the  
prospective certificate is filed, the chief sponsor shall notify the  
filing officer not later than the 10th day after the chief sponsor first  
has knowledge or should have had knowledge that:

(a) Any person is being paid for obtaining signatures, when the  
statement included with the prospective certificate declared that no  
such person would be paid.

(b) No person is being paid for obtaining signatures, when the  
statement included with the prospective certificate declared that  
one or more such persons would be paid.

(4) The circulator shall certify on each signature sheet that the  
individuals signed the sheet in the presence of the circulator and  
that the circulator believes each individual is an elector registered  
in the electoral district.

1 (5) The signatures contained in each certificate of nomination  
 2 made by individual electors shall be certified for genuineness by  
 the county clerk under ORS 249.008.

3 (6) As used in this section, "prospective certificate" means the  
 4 information, except signatures and other identification of  
 certificate signers, required to be contained in a completed  
 5 certificate of nomination.

6 In turn, ORS 249.008 provides the procedures for verification of signatures by the county  
 7 clerks, as required by ORS 249.740(5), prior to filing with the Secretary. It provides in pertinent  
 8 part:

9 "Except as provided in subsection (2) of this section, before a  
 10 nominating petition, minutes of an assembly of electors, or petition  
 by individual electors is offered for filing, the county clerk of each  
 11 county in which the signatures were secured shall compare the  
 signatures of electors on the petition or minutes with the signatures  
 12 of the electors on the elector registration cards. Any petition or  
 minutes submitted for verification under this section shall contain  
 13 only original signatures. The county clerk shall attach to the  
 petition or minutes a certificate stating the number of signatures  
 14 believed to be genuine. *The certificate is prima facie evidence of  
 the facts stated in it. A signature not included in the number  
 15 certified to be genuine shall not be counted by the officer with  
 whom the petition is filed. No signature in violation of the  
 16 provisions of this chapter shall be counted.*" (Emphasis added).

17 The Legislative Assembly has required the Secretary of State to adopt rules under  
 18 Chapter 249 to:

19 "(a) *Design the form of nominating or recall petitions,  
 20 certificates of nomination by individual electors, minutes of an  
 assembly of electors or minor political party formation petitions;  
 21 and*

22 (b) *Prescribe a system for numbering all signature sheets of  
 23 nominating or recall petitions, certificates of nomination by  
 individual electors, minutes of an assembly of electors or minor  
 24 political party formation petitions.*"

1 The Secretary has by rule adopted the 2004 State Candidate Manual: Individual Electors  
 2 (Manual), as the forms and procedures to be used for certificates of nomination by individual  
 3 electors for the 2004 election. OAR 165-010-0005(5). The Manual provides at page 4 that

4 "Before submitting the signature sheets [for a candidate  
 5 nominating petition] to the appropriate county election official for  
 signature verification, *the chief sponsor must:*

- 6
- sort the signature sheets by county;
  - *within each county, sequentially number each signature sheet in the space provided;*
  - submit signature sheets to the appropriate county elections offices for verification, in sufficient time for the verification process to be finished before submitting the completed nominating petition to the Elections Division."  
 (Emphasis added).

7

8

9

10 As noted above, the Oregon legislature has imposed a penalty for noncompliance with the  
 11 provisions of ORS Chapter 249, such that "[n]o signature in violation of the provisions of this  
 12 chapter shall be counted." ORS 249.008(1). The Oregon courts have recognized that  
 13 invalidation of signatures by the Secretary is proper when the legislature expressly provides for  
 14 invalidation of signatures upon violation of a particular election statute, citing ORS 249.008(1)  
 15 as an example of clear legislative intent to disqualify signatures under ORS Chapter 249. *Nelson*  
 16 *v. Keisling*, 155 Or. App. at 394.

17 In view of this language, which specifies the result of noncompliance and leaves the  
 18 Secretary without discretion, the page numbering requirement is mandatory, and noncompliance  
 19 invalidates the unnumbered pages. Thus, the Secretary properly rejected the unnumbered pages,  
 20 and did not count the signatures on those pages.

21 The courts in other states with similar requirements for candidate nominating petitions  
 22 have held that the page numbering requirement is mandatory, and that failure to comply requires  
 23 invalidation of the unnumbered sheets.

24 The states of Illinois and New York have similar requirements. Illinois law requires  
 25 consecutive numbering of petitions. Section 10-4 of the Illinois Code, which sets forth  
 26 requirements of a nominating petition that must be filed prior to a candidate's name being placed

1 on the ballot, provides in part: “[the petition] sheets \*\*\* shall be neatly fastened together in  
2 book form \*\*\* and the sheets shall then be numbered consecutively.” 10 ILCS 5/10-4. It also  
3 imposes a penalty for noncompliance: “no signature shall be valid or be counted in considering  
4 the validity or sufficiency of such petition unless the requirements of this Section are complied  
5 with.” *Id.*

6 The Illinois state courts have held that misnumbering or no-numbering is fatal, at least if  
7 it involves more than a few sheets. *See Hagen v. Stone*, 660 N.E.2d 189 (Ill. App. 1995); *Wollan*  
8 *v. Jacoby*, 653 N.E.2d 1303, 1307 (Ill. App. 1995); *cf. King v. Justice Party*, 672 N.E.2d 900,  
9 903 (Ill. App. 1996) (court excuses a minor misnumbering, 2 missing numbers and 16  
10 unnumbered pages interspersed within 4,427 sheets, which was less than one-half of one  
11 percent).

12 New York law reaches the same result. Election Law § 6-134 requires that:

13 “Sheets of a designating petition shall be delivered to the board of  
14 elections in the manner prescribed by regulations that shall be  
15 promulgated by the state board of elections, provided, however,  
16 that the sheets of any volume of a petition shall be numbered.”

17 The provisions of this section “shall be liberally construed, not inconsistent with substantial  
18 compliance thereto and the prevention of fraud.” *Id.*, (10).

19 New York courts have interpreted that rule as mandatory and have invalidated petitions  
20 for nomination based on a failure to substantially comply with the requirement. *Jaffe v. Visconti*,  
21 242 A.D.2d 345 (N.Y. 2 Dept. 1997) (failure of prospective candidate to number pages of her  
22 petition for designation as candidate was not substantial compliance with statutory requirements  
23 and thus supported invalidation of petition); *Braxton v. Mahoney*, 468 N.E.2d 1111 (N.Y. App.  
24 1984) (same); *Hoy v. Westall*, 145 N.Y.S.2d 2 (N.Y. Sup. 1955) (consecutive numbering of  
25 sheets on a petition to have a candidate designated for primary election is mandatory, and failure  
26 to comply renders petition invalid even without proof of fraud in fact).

1           The requirement to consecutively number sheets of a nominating petition is designed for  
2 a dual purpose: to readily locate any sheet or page of the petition to which objections may be  
3 made or filed, and second, to avoid the possibility of fraud which may result from the insertion  
4 of sheets in a filed petition. *Hoy v. Westall*, 145 N.Y.S.2d at 4; *Sheehan v. Scaringe*, 121  
5 Misc.2d 110, 467 N.Y.S.2d 558 (N.Y. Sup. 1983). Consistent with this goal, signatures on those  
6 pages which violate the numbering requirement will be invalidated. *Frawley v. Regan*, 77  
7 A.D.2d 937 (N.Y. 2 Dept. 1980).

8           Here, the chief sponsor submitted 1062 signature sheets containing 2292 signatures on  
9 unnumbered pages. Objections were actually made with the Secretary of State to the signatures  
10 submitted, and it was difficult to locate or identify the pages of the petition to which objections  
11 had been made. In addition, if the Secretary allowed a candidate to present over 15% of the  
12 qualifying signatures on unnumbered pages, it would make it impossible to prevent the  
13 possibility of fraud which may result from the insertion of signature sheets in a filed petition.  
14 Additional signature sheets could be added to the unnumbered sheets, without detection, after the  
15 signatures were filed.

16           Because "no signature in violation of the provisions of this chapter shall be counted,"  
17 ORS 249.008(1), the Secretary disqualified all signature sheets that were submitted to county  
18 clerks on unnumbered pages.

19           Plaintiffs argue the Secretary erred in rejecting unnumbered pages for three reasons, none  
20 of which has merit. *See* Plaintiffs' Memo at 6-9. First, plaintiffs argue that the Nader Campaign  
21 complied with state elections law, because "the Nader Campaign had submitted all signature  
22 sheets to the county elections officials sequentially numbered, until they were advised by the  
23 Office of the Secretary of State to begin submitting signature sheets to various counties with no  
24 initial numbering on those sheets." Plaintiffs' Memo at 6. In fact, the Nader Campaign did not  
25 submit their signature sheets numbered to all counties. Many counties reported, during the  
26 Secretary's investigation, that they rejected unnumbered sheets, when they caught them, and

1 required petitioners to stand at the counter and number the sheets prior to accepting them.

2 Lindback Aff. at ¶ 25.

3 Second, plaintiffs argue that once the county clerks accept the sheets for signature  
4 verification, the Secretary has “no authority” to reject any signature after it has been verified as  
5 genuine by a county clerk. Plaintiffs’ Memo at 7. Plaintiffs cite no authority. The authority of  
6 the county clerks is limited, by statute, to comparing “the signatures of electors on the petition...  
7 to the signatures of the electors on the voter registration card,” ORS 249.008(1), to determine if  
8 the signatures match. After the signature verification process, the clerks return the signature  
9 sheets to the chief petitioner for filing with, and review by, the Secretary of State for compliance  
10 with the requirements of state election laws. The Secretary of State is “the chief elections  
11 officer” of the state, and it is his responsibility to “maintain uniformity in the application,  
12 operation and interpretation” of the election laws. ORS 246.110.

13 Finally, plaintiffs argue that the Secretary should be “estopped” from enforcing the  
14 unnumbered signature page rule, because Summer Davis, an employee at the Election Division  
15 office, purportedly said to Travis Diskin that unnumbered signature sheets could be submitted to  
16 county clerks. *See* Affidavit of Travis Diskin. Plaintiffs cite no authority. Ms. Davis denies that  
17 she made the statement or that she would ever advise anyone to submit unnumbered pages to the  
18 county clerks. Affidavit of Summer Davis.

19 The Oregon Supreme Court has accepted the general proposition that, under appropriate  
20 circumstances, an agency of the government may be estopped to assert a claim inconsistent with  
21 a claim previously taken by it. *See State ex rel. Hewett Professional Group*, 321 Or. 118, 126,  
22 895 P.2d 755 (1995). For estoppel to be established, however, the party claiming it must, among  
23 other things, have relied on the government agency’s misstatements, and the parties’ reliance  
24 must have been reasonable. *Id.* One element necessary for reasonable reliance in a claim for  
25 equitable estoppel is that it “was within the lawful powers of the [agency]” to make the

1 statements relied upon. *Id.*, citing, *Wiggins v. Barrett & Associates, Inc.*, 295 Or. 679, 697, 669  
2 P.2d 1132 (1983).

3 Moreover, in taxpayer cases, the courts have held that a taxpayer, to succeed on a claim  
4 of estoppel, must show "proof positive" that they were misled by the state, and "mere testimony  
5 that the government orally misguided" the individual is "by itself, insufficient to show 'proof  
6 positive' that the individual was misled." *Schellin v. Dept. of Revenue*, 15 OTR 126, 2000 Ore.  
7 Tax LEXIS 33, \* 10-11 (2000). This is because "[t]here are many possibilities of  
8 misunderstanding with oral communications," and it is "easy to become confused even when  
9 correct information is given." *Id.* Moreover, when written materials containing accurate  
10 information are given to taxpayers, taxpayers may not rely on an understanding based upon oral  
11 discussions which are to the contrary. *Smith v. Dept. of Revenue*, 13 OTR 206, 210 (1994).

12 Here, any reliance by plaintiffs on Ms. Davis's alleged oral statements is not reasonable,  
13 because the election Manual itself does not permit chief sponsors to submit unnumbered sheets  
14 to the county clerks. *See*, Manual at 4. Thus, they cannot rely on any claimed oral discussions to  
15 the contrary, or estop the Secretary from enforcing the page numbering requirements.

16  
17 **IV. The challenged procedures do not contravene the First and Fifth Amendments of  
the U.S. Constitution.**

18 **A. The challenged procedures should not be subjected to strict scrutiny.**

19 Plaintiffs' First Amendment argument relies on the presumption that strict scrutiny  
20 applies in this case. Plaintiffs' Memo at 13. That presumption is erroneous. Strict scrutiny does  
21 not apply to all elections regulations restricting ballot access, and under the controlling  
22 precedents it does not apply in these circumstances.

1 The controlling standards are set forth succinctly in *Timmons*: elections regulations that  
2 severely burden First Amendment interests are subjected to strict scrutiny, lesser burdens receive  
3 less exacting review, and reasonable, nondiscriminatory regulations are generally sustained.<sup>1</sup>

4 Plaintiffs erroneously presume that the challenged procedures severely burden First  
5 Amendment interests merely because the procedures result in disqualification of some otherwise  
6 valid elector signatures. *Timmons* itself makes clear, however, that disqualification from the  
7 electoral process for failure to comply with mandatory procedures does not constitute a severe  
8 burden on First Amendment interests.

9 The plaintiff in *Timmons* challenged Minnesota's "antifusion" law, which prohibited a  
10 candidate from appearing on the ballot as the candidate for more than one party. The plaintiff—  
11 a political party—contended that the law severely burdened its First Amendment rights, in that it  
12 disqualified the plaintiff's chosen candidate. The Supreme Court disagreed that this constituted a  
13 severe burden:

14 "That a particular individual may not appear on the ballot as a  
15 particular party's candidate does not severely burden that party's  
associational rights."<sup>2</sup>

16 In support of that proposition, the court in *Timmons* cited and quoted a particularly pertinent  
17 passage from *Burdick v. Takushi*:

18 "It seems to us that limiting the choice of candidates to those who  
19 have complied with state election law requirements is the  
20 prototypical example of a regulation that, while it affects the right  
to vote, is eminently reasonable."<sup>3</sup>

21 Like *Takushi*, this case involves the issue of limiting the choice of candidates to those  
22 who have complied with state election law requirements. The challenged requirements for  
23 candidate nominating petitions by individual electors are reasonable, nondiscriminatory ballot

24 <sup>1</sup> *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358-59, 117 S. Ct. 1364, 137 L.Ed.2d  
25 589 (1997).

26 <sup>2</sup> *Timmons*, 520 U.S. at 359.

<sup>3</sup> *Burdick v. Takushi*, 504 U.S. 428, 440 n. 10, 112 S. Ct. 2059, 119 L.Ed.2d 245 (1992).

1 access regulations. They do not severely burden plaintiffs' First Amendment interests, although  
2 they may result in disqualification of noncompliant signature sheets. Accordingly, the  
3 challenged regulations should not be subjected to strict scrutiny.

4 **B. The challenged procedures should be sustained under the First and Fifth**  
5 **Amendments as reasonable and nondiscriminatory.**

6 Plaintiffs challenge the Secretary's procedures in three respects: (1) rejection of  
7 unnumbered sheets; (2) the signature verification procedures; and (3) the procedures to  
8 determine compliance with the date requirement. In each respect, the Secretary's procedures are  
9 reasonable and nondiscriminatory

10 **1. The page numbering requirement is justified.**

11 Plaintiffs challenge the Secretary's policy of rejecting unnumbered signature sheets.

12 It is essential that the Secretary exert oversight to ensure compliance with the statutory  
13 requirements for filing a candidate nominating petition by individual electors. The county clerks  
14 are required to verify which signatures are genuine, by comparing "the signatures of the electors  
15 on the petition...with the signatures of the electors on the elector registration card." ORS  
16 249.008(1). However, *before* submittal to the county clerks for signature verification, the state  
17 election rules require that the chief sponsor "*must*" sequentially number all signature sheets  
18 submitted.

19 The purpose of the page numbering requirement is dual: it allows officials to readily  
20 locate and identify any sheet or page of a petition to which objections may be made or filed, and  
21 second, it avoids the possibility of fraud which may occur by the insertion of additional pages in  
22 the filed petition. *Lindback Aff.*, ¶ 27. The page numbering rule "prevents tampering, thereby  
23 preserving not only the integrity of the nominating petitions submitted, but also the election  
24 process in general." *Jones v. Dodendorf*, 546 N.E.2d 92, 95 (Ill. 1989). One legitimate  
25 objective of the numbering requirement is to identify specific sheets, so that any person looking  
26 at the candidate's petition may be able to identify specific pages or refer to information on a

1 specific page by reference to a page number. *Id.* Another legitimate objective of the numbering  
2 requirement is “to prevent persons from tampering with the petition.” *Id.* Without such a rule,  
3 there would be no way “to effectively ascertain whether additional pages were later inserted or  
4 whether original pages were missing.” *Id.*

59

5 In contrast, the burden imposed on a candidate by requiring him to number his signature  
6 pages prior to submittal is minor. As the Seventh Circuit has noted, the page numbering  
7 requirement “imposes no significant burden on candidates and aids election officials in coping  
8 with the flux of paper.” *May v. Cowen*, 958 F.2d 168, 170 (7<sup>th</sup> Cir. 1992).

9 The pages rejected by the Secretary in this case were not numbered at the time of  
10 submittal.<sup>4</sup> There was no way to ascertain effectively whether additional pages were later  
11 inserted or whether original pages were missing. The page numbering rule is justified by the  
12 interest of the state in preventing fraud or tampering in the electoral process, and the requirement  
13 to number all signature pages prior to submittal to the county for verification of signatures  
14 imposes no significant burden on a candidate or those circulating a nominating petition.

15 Under an appropriately differential standard of review, each of the challenged procedures  
16 is reasonable, non discriminatory, and justified by the state interests advanced. The rejection of  
17 unnumbered pages does not contravene the First, Fifth or Fourteenth Amendment.

18 **2. The signature verification procedures are justified.**

19 With respect to signature verification, it is essential that the Secretary exercise some  
20 oversight to ensure compliance with the statutory requirement of a circulator’s certification.<sup>5</sup>  
21 Despite the volume of petition sheets that must be reviewed, the Secretary’s staff ensures that  
22  
23

24 \_\_\_\_\_  
25 <sup>4</sup> Here, the Secretary has only rejected those sheets which he has determined were originally  
26 submitted to county clerks unnumbered; he has not rejected any sheets on the basis of numbers  
that were changed or altered. *Lindback Aff.* at ¶ 26.

<sup>5</sup> See ORS 250.045(7) (setting forth requirement).

1 each sheet bears a purported signature on the line provided for the circulator's certification. If  
2 the line is blank, or if it is completed with a stamp, the sheet is disqualified.<sup>6</sup>

3 Beyond that, if the purported signature appears to represent initials or is otherwise not  
4 readily identifiable as a signature, a further effort is made to confirm that the mark is indeed the  
5 circulator's signature. In the interest of efficiency, however, extraneous evidence is generally  
6 excluded, and instead reference is made only to the voter registration files and to the purported  
7 circulator's signature on other petition sheets. An exception allows extraneous exemplars to  
8 verify the signature of a circulator who is not a registered voter. Those procedures reasonably  
9 balance the need for efficiency with the need for some oversight of the process by the Secretary.

10 Moreover, the Secretary is not constitutionally required to use only qualified handwriting  
11 experts to verify signatures. Personnel with ultimate responsibility for signature verification do  
12 have some training in matching a signature to an exemplar, but the Secretary's practice in any  
13 event is to accept a petition sheet if it is possible to conclude that the purported circulator's  
14 signature matches the exemplar. This procedure is constitutionally adequate in the  
15 circumstances.

16 **3. The procedures to determine compliance with the date requirement**  
17 **are justified.**

18 Since December 2002, the petition sheet form has included a line for the date of the  
19 circulator's signature. The Secretary reasonably considers completion of that line mandatory.

20 Moreover, although the date requirement may seem clear enough, actual experience  
21 provides a host of scenarios requiring interpretation and application of the rule to unanticipated  
22 circumstances. In making case-by-case determinations, the Secretary has sought to organize the  
23 recurrent scenarios into categories and to develop consistent principles.

24  
25  
26 <sup>6</sup> *2004 State Initiative and Referendum Manual* at 28 (providing that stamps and initials will not  
be accepted in lieu of signature).

1 As a broad proposition, the Secretary considers that the face of the petition should  
2 demonstrate that it was properly completed. Therefore, whether a given defect disqualifies a  
3 sheet generally depends on (1) whether the face of the sheet discloses how the sheet was  
4 completed, and (2) if so, whether it was completed properly. If both of those questions can be  
5 answered in the affirmative, then the sheet is accepted. Applying those principles, the Secretary  
6 has developed the following rules applicable to specific scenarios.

7 First, where the circulator's signature is dated before the elector signatures, the face of  
8 the sheet discloses that it was filled out improperly. The circulator's certification—certifying  
9 that the elector signatures were affixed in the circulator's presence, and that the circulator  
10 believes each signer to be an eligible voter—properly can be made only after the signatures are  
11 affixed. Sheets on which the circulator's signature predates the elector signatures are therefore  
12 disqualified.

13 A related problem occurs where the circulator has post-dated the signature to a date after  
14 the submission deadline. In such cases, the sheet again discloses how it was filled out, but  
15 discloses that it was filled out improperly. In such a case, the post-dated signature, like a post-  
16 dated check, appears to defer responsibility for the signature into the future. The Secretary,  
17 however, interprets the rule to require a circulator to take responsibility for the signature as of the  
18 date the sheet is submitted. Post-dated sheets are therefore disqualified. (This rule is softened,  
19 in effect, by one of the recent adjustments to the Secretary's procedures, discussed below. The  
20 Secretary now treats a post-dated *year* as a simple error and so accepts such sheets, if they are  
21 otherwise proper.)

22 A different problem is presented by sheets on which a date has been stricken out. In  
23 those cases, the sheet does not disclose on its face how it was completed. The circulator may  
24 have signed, dated in error, stricken the erroneous date, and himself corrected the error. But it is  
25 also possible that a facially improper date was stricken by someone other than the circulator and  
26

1 fraudulently replaced with a facially proper date. Because it is not possible to tell in such cases  
2 whether the circulator has complied with the date requirement, the sheet is disqualified.

3 Moreover, with respect to sheets on which a date has been stricken and changed, an  
4 initial next to the change is of no assistance to the Secretary. The applicable rules indeed are  
5 clear that an initial is unacceptable in lieu of a signature. That is because the Secretary has no  
6 ready mechanism for verifying the authenticity of an initial. Accordingly, an initialed alteration  
7 is considered no different from a bare alteration. Such a sheet is similarly disqualified.

8 The Secretary has, however, made the following adjustments in his interpretation and  
9 application of the date requirement since the complaint was filed in this case. These adjustments  
10 have been applied to the initiatives submitted during the current election cycle, including the  
11 petitions at issue. First, where one date is stricken and another written in, but where either date  
12 would be facially proper, the sheet is not disqualified. Second, where the "date" is expressed as  
13 a range of dates (*e.g.*, "4/6-8/94"), and where it was clearly written all at one time, it is  
14 considered signed on the last date in the range and is accepted if otherwise facially proper.

15 Third, where it is clear that the circulator has reversed the month and the date (dated "European-  
16 style"), the sheet is accepted if the date is otherwise facially proper. Finally, where a petition  
17 was not in circulation during the year given by the circulator, the year is assumed to be a simple  
18 error and the sheet is accepted if the date would be facially proper, assuming the correct year.

19 Those changes in policy have been applied to all sheets submitted in support of the petitions at  
20 issue, and they address several of the instances about which plaintiffs have complained.

21 The balance of plaintiffs' objections to the Secretary's application of the date requirement  
22 go to the idiosyncratic minutia of specific sheets. Whether the Secretary erroneously construed a  
23 slash through a zero as a strike-out on a specific sheet, for example, is hardly a matter warranting  
24 federal constitutional review.

25 The date requirement itself, however, as well as each of the applications noted above, are  
26 reasonable and nondiscriminatory. Moreover, they are not mere technical hoops to jump

1 through, but rather are intended to demonstrate the circulator's actual compliance with the  
 2 certification oath. The requirements are amply justified by the state interest in protecting the  
 3 integrity of the initiative by preventing fraud. Any minimal burden imposed by the date  
 4 requirement is amply justified.

5 V. **The challenged procedures do not contravene Article I, sections 8 and 20, or**  
 6 **Article II, section 2, of the Oregon Constitution.**

7 Defendants' analysis applies to plaintiffs' state law claims as well, because plaintiffs  
 8 solely rely on their federal constitutional arguments to support their state constitutional claims,  
 9 which they assert are "analogous to" their federal claims under the First, Fifth and Fourteenth  
 10 Amendments. Plaintiffs' Memo at 20.

#### 11 CONCLUSION

12 The Secretary properly rejected signatures or signature sheets based on lack of  
 13 numbering, circulator signature and dating problems. The Oregon legislature has expressly  
 14 imposed the penalty of invalidation of signatures for noncompliance with the requirements of  
 15 ORS Chapter 249: "[n]o signature in violation of the provisions of this chapter shall be  
 16 counted." ORS 249.008(1). This requirement is mandatory, not discretionary, and the Secretary  
 17 properly did not count signatures that violate Chapter 249.

18 DATED this 8<sup>th</sup> day of September, 2004.

19 Respectfully submitted,

20 HARDY MYERS  
 21 Attorney General

22   
 23 KATHERINE G. GEORGES #84231

24 DAVID E. LEITH #93341  
 25 Assistant Attorneys General  
 26 Trial Attorneys  
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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 a 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. 04C-18259  
Honorable Paul J. Lipscomb

AFFIDAVIT OF JOHN LINDBACK

STATE OF OREGON )  
County of Marion ) ss.

I, John Lindback, being first duly sworn, depose and say:

1. I am the Director of the Elections Division in the Oregon Secretary of State's office and have served in that capacity for approximately the past three years. My responsibilities as the Director of the Elections Division include overseeing the process to

1 determine whether a certificate for nomination of a candidate by individual electors qualifies the  
2 candidate for placement on the ballot.

3 2. I make this affidavit to summarize, to the extent pertinent, the procedures to  
4 determine whether to qualify a candidate for the ballot in Oregon by a nomination petition filed  
5 by individual electors.

6 **Commencing Certificate of Nomination by Individual Electors**

7 3. A candidate for public office may be nominated to partisan office by other than a  
8 major political party. A minor political party, assembly of electors or individual electors may  
9 nominate one candidate for each partisan public office to be filled at the general election by  
10 preparing and filing a certificate of nomination as provided in ORS 249.712 to 249.850.

11 4. Before beginning to circulate the certificate of nomination, the chief sponsor of  
12 the certificate shall file a signed copy of the prospective certificate with the Elections Division  
13 for approval. ORS 249.740.

14 5. Once the chief sponsors receive approval of the proposed certificate, they may  
15 begin gathering signatures on the approved signature sheets. A proposed certificate for  
16 nomination of Ralph Nader and Sandra Kucera as independent candidates for President and Vice  
17 President of the United States in the 2004 General Election was approved for circulation for  
18 signatures.

19 6. Each elector signing a certificate of nomination made by individual electors shall  
20 include the residence mailing address of the elector. ORS 249.740(2).

21 7. The circulator is also required to certify on each signature sheet that the  
22 individuals signed the sheet in the presence of the circulator and that the circulator believes each  
23 individual is an elector registered in the electoral district. ORS 249.740(4). The sign and date  
24 rules are designed to prevent fraud.

25 8. The legislature has provided that "[n]o signature in violation of the provisions of  
26 this chapter shall be counted." ORS 249.008(1).

1                   **Submission of Signatures to the County Clerk for Verification**

2           9.       To qualify for the ballot based upon a certificate of nomination by individual  
3 electors, a certificate is required to contain a number of signatures of electors in the electoral  
4 district equal to not less than one percent of the total votes cast in the electoral district for which  
5 the nomination is intended to be made, for all candidates for presidential electors at the last  
6 general election. ORS 249.740(1).

7           10.      Before a petition for candidate nomination by individual electors is submitted to  
8 the Secretary of State for filing, it must be submitted to the county clerk for verification of the  
9 genuineness of signatures. The county clerk verifies on each signature sheet the number of  
10 signatures that are genuine signatures of registered voters within the county. The certificate is  
11 prima facie evidence of the facts stated in it. A signature not included in the number certified to  
12 be genuine by the county elections official "shall not be counted" by the Secretary of State when  
13 the petition is filed. ORS 249.008(1).

14           11.      The legislature has directed the Secretary of State to promulgate rules to  
15 "prescribe a system for numbering all signature sheets" for certificates of nomination by  
16 individual electors, nominating or recall petitions, minutes of an assembly of electors and minor  
17 political party formation petitions. ORS 249.009(1)(b).

18           12.      By rule, the Secretary has designated the 2004 State Candidate Manual:  
19 Individual Electors (Manual) and associated forms as the forms and procedures to be used by  
20 nonaffiliated candidates filing and running by individual electors for state elective office, such as  
21 Ralph Nader. OAR 165-010-0005(5). A copy of the Manual is attached as Exhibit 1.

22           13.      The Manual expressly provides that "before submitting the signature sheets to the  
23 appropriate county elections official for signature verification, the chief sponsor must...[w]ithin  
24 each individual county, sequentially number each signature sheet in the space provided."  
25 Manual at 4.

26

1           14.    The plaintiffs obtained a copy of the instructions which the Secretary sent to all  
2 county clerks. A copy of those instructions is attached as Exhibit 2 (from Travis Diskin  
3 Affidavit).

4           15.    The Secretary of State issued instructions to all county clerks to follow for  
5 verifying the signature sheets for the Nader for President petition. A copy of those instructions is  
6 attached as Exhibit 3. The instructions direct the counties to screen and disqualify signature  
7 sheets that had circulator signature and date problems. The instructions defined what problems  
8 to look for regarding circulator signatures and dates. In the event of any question, the clerks  
9 were instructed to fax any problem sheet to the Elections Division for review, prior to  
10 verification of signatures, so that the Secretary could determine whether to disqualify the sheet  
11 based on the particular circulator signature or date problem.

12           16.    The Election Division worked with county election officials throughout the  
13 signature verification process, and answered their questions regarding which signature sheets  
14 should be disqualified.

15                           **Review of Nominating Petition by Elections Division**

16           17.    Each county elections official certifies the number of genuine signatures  
17 submitted on each signature sheet, and returns the signature sheets to the chief sponsor of the  
18 certificate of nomination with the total number of valid signatures.

19           18.    If the petition contains the total number of signatures needed to qualify for the  
20 ballot or more, the chief sponsor files the completed nominating petition with the Elections  
21 Division, along with the original petition sheets. The chief sponsor is not required to submit the  
22 sheets to the Secretary of State in sequential numbered order, only to the county clerk.

23           19.    The Nader/Kucera campaign filed all signatures certified to be genuine by the  
24 county elections officials with the Elections Division.

1           20.    The Elections Division then reviewed the signature sheets for compliance with  
2 state election law requirements. The purpose of the review by the Elections Division is to  
3 maintain uniformity and consistency in the interpretation of the elections law.

4           21.    The Elections Division rejected 718 signatures for failing to comply with state  
5 election law requirements, such as sheets that violated the circulator sign and date rules and  
6 sheets that were totally uncertified by a county. An additional 10 signatures disqualified because  
7 they were duplicates. Other signatures were rejected for failure to provide an elector residence  
8 address, since the use of a post office box is not acceptable, or for errors in a county's calculation  
9 of the number of genuine signatures on each page.

10          22.    Objections to the signatures were filed with the Secretary of State by the Service  
11 Employees International Union. Copies of those objections are attached as Exhibits 4-7. The  
12 union objected on a number of grounds, including duplicate signatures, improper circulator  
13 signatures, dating problems, and use of post office address instead of residence address. In  
14 addition, the union objected that a substantial number of signature sheets had been submitted to  
15 the counties without page numbers in violation of state election laws.

16          23.    Objections to the signatures were filed by Roy Pulvers, on his own behalf as an  
17 individual elector, and on behalf of the Democratic Party of Oregon, on many of the same  
18 grounds. Copies of those objections are attached as Exhibits 8-14.

19          24.    The petitioners also submitted letters. Copies of their letters are attached as  
20 Exhibits 15-17.

21          25.    The Elections Division reviewed the objection that unnumbered signature sheets  
22 had been filed. The Elections Division contacted the county clerks to determine the total number  
23 of signature sheets submitted to county clerks without page numbers. Many counties rejected  
24 unnumbered signature sheets, requiring petitioners to number all sheets prior to submittal. In  
25 other cases, petitioners mailed in unnumbered sheets, or turned in unnumbered sheets and left  
26

1 before the error was detected by the county clerk. In those circumstances, the counties numbered  
2 the sheets.

3 26. Based upon the information provided by each county, signature sheets containing  
4 2292 signatures were disqualified solely for the reason that they were submitted unnumbered to  
5 counties.

6 27. The purpose of the rule requiring the petitioner to consecutively number all  
7 signature sheets prior to submittal to county clerks for signature verification is twofold: it allows  
8 officials to readily locate any sheet or page of the petition to which objections may be made or  
9 filed, and second, to avoid the possibility of fraud which may occur by tampering with sheets  
10 after county certification. The numbers are necessary to allow the counties to create a database  
11 in order to check for duplicates. Requiring numbered pages prior to submittal also shows that all  
12 pages have been submitted by the chief sponsor of the petition, and it prevents tampering by  
13 insertion of additional signatures after a petition has been filed. Here, the chief sponsors  
14 submitted 1062 unnumbered signature sheets -- most submitted in the last few days before the  
15 filing deadline -- contrary to the requirement in the Manual that signature sheets "*must*" be  
16 numbered by a chief sponsor "*before*" submittal to the county election officials for signature  
17 verification.

18 28. The number of valid signatures that the Nader/Kucera campaign needed to qualify  
19 the candidates for the ballot was 15,306. The Secretary of State determined that the total number  
20

21

22

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24

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27

of qualified signatures submitted was 15,088, leaving Nader/Kucera 218 short of the 15, 306  
valid signatures needed to qualify for the ballot.

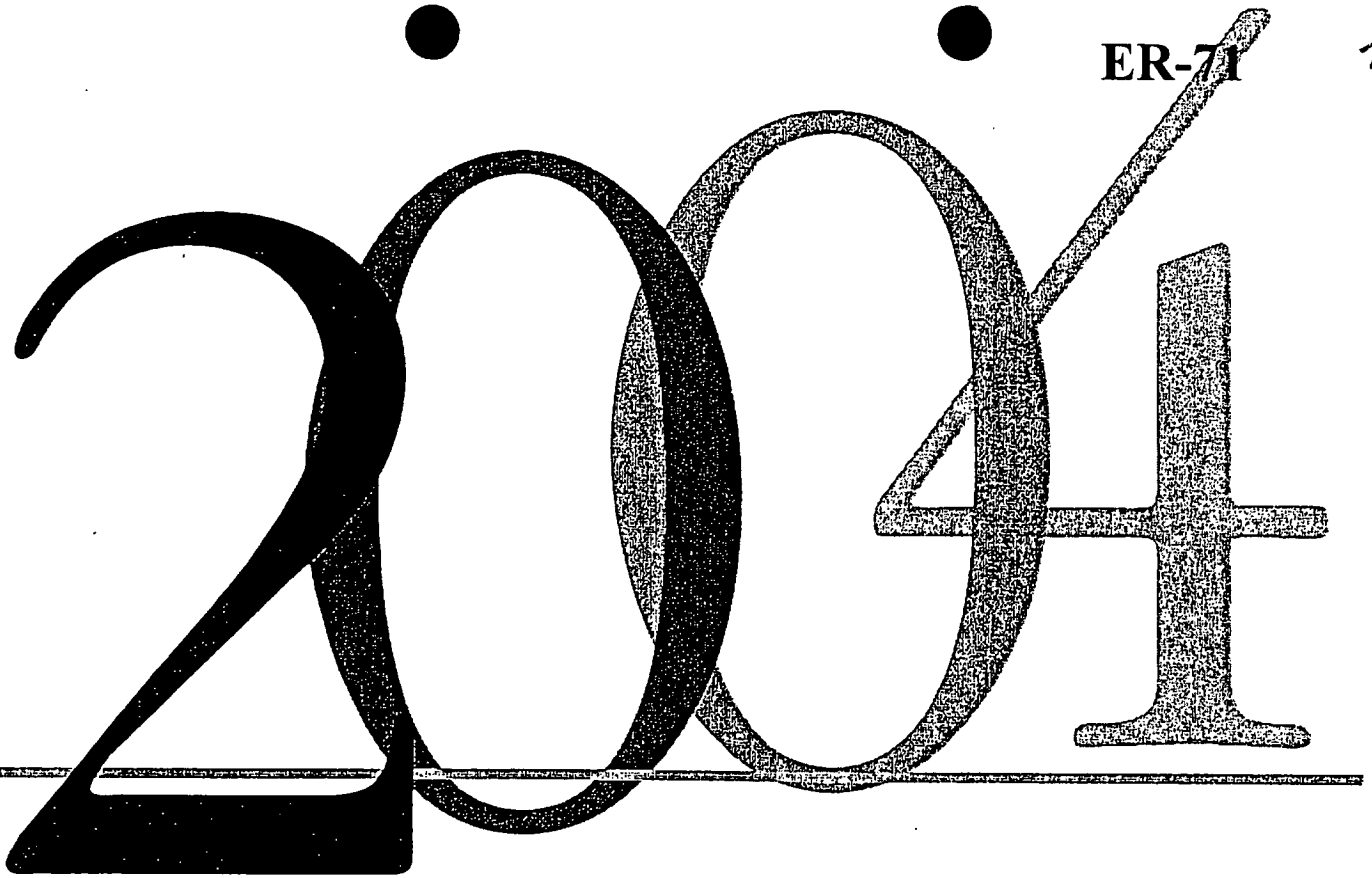
DATED this 7<sup>th</sup> day of September, 2004.

John Lindback  
JOHN LINDBACK

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of September, 2004.



Shannon M Ross  
Notary Public for Oregon  
My Commission Expires: May 07, 2008



# State Candidate's Manual: Individual Electors

Published by  
Elections Division  
141 State Capitol  
Salem, OR 97310-0722

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Secretary of State

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# Notice

The 2004 State Candidate's Manual:  
Individual Electors and associated  
forms are adopted by  
Oregon Administrative Rule  
No. 165-010-0005.

OFFICE OF THE SECRETARY OF STATE

BILL BRADBURY  
SECRETARY OF STATE



**ER-73**  
ELECTIONS DIVISION

JOHN LINDBACK  
DIRECTOR

141 STATE CAPITOL  
SALEM, OREGON 97310-0722  
ELECTIONS—(503) 986-1518

Dear Oregonian,

It is a pleasure to provide the *2004 State Candidate's Manual: Individual Electors*. Oregon continually strives to open its elections system to the broadest citizen participation possible. For individuals interested in running for partisan elective office, this manual provides information for candidates filing for partisan office by individual electors. Candidates nominated in this manner are designated as "independent" on the ballot and may not have been a member of any political party for 180 days before the filing deadline. This manual also reviews the rights and responsibilities of candidates and campaign committees.

The information in this manual is presented in two parts. The first part outlines the process for candidates filing by certificate of nomination. The second part is general information for all state partisan candidates, including definitions of terms used throughout the manual.

A companion campaign finance manual is available at your county elections office or the Elections Division of the Secretary of State's Office. Candidates participating in the 2004 General Election should carefully study both publications.

Contact your county elections official or the Elections Division for assistance in registering to vote, voting or filing for candidacy.

Best,

Bill Bradbury  
Secretary of State

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Filing Forms

# OFFICE REQUIREMENTS FOR PARTISAN FEDERAL AND STATE CANDIDATES

Note: All Candidates Must Be U.S. Citizens and electors.

OFFICE	AGE	RESIDENCY	TERM LIMITS	TERM OF OFFICE	VACANCIES
PRESIDENT	35	Natural born citizen and resident within U.S. for 14 years prior to election. U.S. Const., Art II, §1	May serve two consecutive terms	4 years	Succession order: 1. Vice President 2. Congress to appoint officer. U.S. Const., Art II, §1
U.S. SENATOR	30	U.S. citizen for 9 years prior to election and inhabitant of state at time of election. U.S. Const., Art. I, §3		6 years	Governor shall call special election to fill vacancy. U.S. Const., Art I; ORS 188.120
U.S. REPRESENTATIVE	25	U.S. citizen for 7 years prior to election and inhabitant of state at time of election. U.S. Const., Art. I, §2		2 years	Governor shall call special election to fill vacancy. U.S. Const., Art I; ORS 188.120
GOVERNOR	30	U.S. citizen and resident of state for 3 years prior to election. Ore. Const., Art V, §2	8 years in any period of 12 years Ore. Const., Art V, §1	4 years	Succession order: 1. Secretary of State 2. State Treasurer 3. President of the Senate 4. Speaker of the House Ore. Const., Art V, §8a
SECRETARY OF STATE	18	Resident of State	8 years in any period of 12 years Ore. Const., Art VI, §1	4 years	Governor appoints qualified person to serve until successor is elected at next general election. Ore. Const., Art. V, §16
STATE TREASURER	18	Resident of State	8 years in any period of 12 years Ore. Const., Art VI, §1	4 years	Governor appoints qualified person to serve until successor is elected at next general election. Ore. Const., Art. V, §16
ATTORNEY GENERAL	18	Resident of State	8 years in lifetime	4 years	Governor appoints qualified person to serve until successor is elected at next general election. Ore. Const., Art. V, §16; ORS 180.040
STATE SENATOR	21	Inhabitant of district for 1 year prior to election. Ore. Const., Art IV, §8		4 years	Appointment process by Board of County Commissioners from party nominees. ORS 171.051
STATE REPRESENTATIVE	21	Inhabitant of district for 1 year prior to election. Ore. Const., Art. IV, §8		2 years	Appointment process by Board of County Commissioners from party nominees. ORS 171.051

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## INTRODUCTION

The *2004 State Candidate's Manual: Individual Electors* is intended to provide individuals interested in filing for candidacy for partisan state office by petition of the procedures and regulations necessary to file for office. This manual provides a comprehensive overview of the candidate filing process.

Candidates nominated in this manner are designated as "independent" on the ballot and may not have been a member of any political party for 180 days before the filing deadline.

All references in this manual to the Elections Division are to the Elections Division of the Secretary of State's Office. The Elections Division is available to answer any questions you may have. If you need assistance, call the Elections Division at (503) 986-1518 or write Elections Division, 141 State Capitol, Salem, Oregon 97310. You may also email the Elections Division at [soselect@state.or.us](mailto:soselect@state.or.us), or visit our website [www.sos.state.or.us/elections](http://www.sos.state.or.us/elections).

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# CERTIFICATE OF NOMINATION BY INDIVIDUAL ELECTORS

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**Filing Certificate of Nomination by Individual Electors (ORS 249.720(1)(e) and 249.740)**

The following information for nonaffiliated (independent) candidates is provided in the order in which the activities generally occur and includes explanations and time frames for each activity.

**ALL CANDIDATES FOR PUBLIC OFFICE**

Qualifications for various public offices differ. Before filing, review the constitutional and statutory requirements of the office for which you plan to declare your candidacy.

Candidates for partisan offices file under ORS chapter 249.

February 26, 2004, is the last day for a candidate filing by petition of individual electors to register as non-affiliated to meet the requirement that the candidate not be a member of a major or minor political party within 180 days of the filing deadline.

*Warning: If a person has filed nominating petitions or declarations of candidacy for more than one lucrative office without first filing a written withdrawal, all filings by the person are invalid. ORS 249.013(3)*

**SECRETARY OF STATE**

Whenever requested, the Elections Division provides the approved candidate filing forms:

- ♦ Certificate of Nomination by Individual Electors (SEL 114);
- ♦ Petition for Independent Nomination Signature Sheet (SEL 122);
- ♦ Statement One or More/No Petition Circulators Will Be Paid (SEL 300); and
- ♦ Statement of Organization (one of the following must be filed):

-Candidate's Statement of Organization (SEL 220).

- OR -

-Statement of Organization Designation of Political Committee and Appointment of Treasurer and Directors (SEL 221).

If the chief sponsor of a nominating petition by individual electors are receiving contributions or making expenditures that will not be reported by the prospective candidates, the individuals are required to establish a political committee by filing a Statement of Organization Designation of Political Committee and Appointment of Treasurer and Directors (SEL 221) and must file contribution and expenditure reports.

*Warning: All signature sheets must be approved in writing by the Elections Division before circulating. Failure to do so will result in the rejection of those signature sheets.*

**CHIEF SPONSOR OF CERTIFICATE**

**Step 1:**

The candidate files a Candidate's Statement of Organization (SEL 220) with the Elections Division unless the candidate:

- serves as the candidate's own treasurer;
- does not already have an open principal campaign committee; and
- does not expect to receive or spend more than \$300 for the entire election.

If the candidate meets these three requirements, the candidate is not required to file a Statement of Organization or contribution and expenditure reports. However, if at any time that candidate exceeds \$300 in either contributions or expenditures, the candidate must then file a Statement of Organization and contribution and expenditure reports. The \$300 includes personal funds spent for any campaign-related costs, such as any expense incurred in circulating a nominating petition and paying a voters' pamphlet statement filing fee.

*Note: Most candidates for federal office in Oregon must file their campaign finance information with the Federal Elections Commission (1-800-424-9560). Candidates for United State Senator must file their campaign finance information with the Secretary of the Senate (202-224-0322) at: Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510-7116.*

#### When to File

Within three business days of receiving a contribution or making an expenditure, but no later than when the Certificate of Nomination by Individual Electors (SEL 114) is filed. See the 2004 Campaign Finance Manual for specific guidelines and instructions.

If the candidate has an established principal campaign committee the candidate or treasurer must file an amended Candidate's Statement of Organization (SEL 220) not later than the date of the filing of candidacy, to reflect any changes (designation of office sought, applicable election, etc.). A candidate may have only one principal campaign committee.

*Note: If filing for a new office involves changing filing officers, e.g., county to state, refer to the "Changing Office" section of the 2004 Campaign Finance Manual.*

#### Step 2:

Before circulating the nominating petition, the chief sponsor files a prospective petition with the Elections Division. See pages 12 and 13 of this manual for signature sheet requirements.

#### CHECKLIST FOR FILING A CERTIFICATE OF NOMINATION

Below is a checklist of all the components required to file a certificate of nomination. Check that you have not overlooked any of the components and that all of the forms have been completed in their entirety.

- Certificate of Nomination by Individual Electors (SEL 114);
- Statement One or More/No Petition Circulators Will Be Paid (SEL 300); and
- Petition for Independent Nomination Signature Sheet (SEL 122) with line one signed and completed by the candidate.

#### SECRETARY OF STATE

As soon as possible, the Elections Division reviews the prospective petition for the required information. When the prospective petition complies with all requirements, the Elections Division will give written approval to circulate the petition and will advise the chief sponsor of the number of signatures required.

#### CHIEF SPONSOR OF CERTIFICATE

##### Step 1:

Before circulating the nominating petition for signatures, the chief sponsor reviews with the circulators the requirements for circulating the petition. See page 13. The guidelines are:

- ♦ All signers must be active registered voters within the candidate's electoral district;
- ♦ All signers on any one petition sheet must be registered in the same county;
- ♦ All signatures must be original signatures;
- ♦ All signatures must be personally witnessed by the petition circulator and the circulator's certification must be completed and dated after all signatures have been collected; and
- ♦ No additional signatures may be added to that signature sheet once the circulator has signed the certification and dated the sheet.

**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.**

##### Step 2:

Before submitting the signature sheets to the appropriate county elections official for signature verification, the chief sponsor must:

- ♦ Sort the signature sheets by county;
- ♦ 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, in sufficient time for the verification process to be finished before submitting the completed nominating petition to the Elections Division.

**COUNTY ELECTIONS OFFICIAL**

As soon as possible, the county elections official certifies the signatures and returns the signature sheets to the chief sponsor of the certificate of nomination with the total number of valid signatures.

**CHIEF SPONSOR OF CERTIFICATE**

The chief sponsor files the completed nominating petition with the Elections Division. The petition consists of:

- ♦ New Filing of Certificate of Nomination by Individual Electors (SEL 114), either:
  - Endorsed on the filing form by the nominee;
  - OR-
  - Endorsed on an attached acceptance statement from the nominee; and

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*Note: If the acceptance statement is not submitted with the certificate of nomination it may be submitted up to the filing deadline day.*

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- ♦ Verified signature sheets with the sufficient number of signatures.

**When to File**

No sooner than September 15, 2003, and no later than 5:00 p.m., August 24, 2004, for the 2004 General Election.

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# GENERAL INFORMATION

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**General Information**

The following information gives a general overview of other procedures relating to candidates filing for office, including submitting a voters' pamphlet statement, withdrawal of candidacy, contribution and expenditure reporting, conduct of elections, signature sheet requirements and definitions of election law terminology.

**State Voters' Pamphlet (ORS Chapter 251)**

A federal or state candidate may file a statement for inclusion in the state voters' pamphlet. A county candidate, metropolitan service district candidate or candidate of a city with a population of 50,000 or more may file a statement for inclusion in the state voters' pamphlet if no county voters' pamphlet is published.

**SECRETARY OF STATE**

The Secretary publishes and distributes the state voters' pamphlet. Candidate information to be published includes:

- ◆ Candidate photograph;
- ◆ Office for which the candidate has filed;
- ◆ Candidate's name and party affiliation;
- ◆ Candidate's required information (occupation, occupational background, educational background and prior governmental experience);
- ◆ Candidate's optional information (the candidate's statement of reasons for seeking nomination or election); and
- ◆ Name of the candidate or the candidate's principal campaign committee that provided the candidate's information.

**Voters' Pamphlet Distribution**

The mailing of the voters' pamphlet must be completed no later than October 13, 2004, for the 2004 General Election.

**CHECKLIST FOR FILING A VOTERS' PAMPHLET STATEMENT**

Below is a checklist of all the components required to file a voters' pamphlet statement. Check that you have not overlooked any of the components and that all of the forms have been completed in their entirety.

- One original and two identical copies of Candidate's Statement for State Voters' Pamphlet (SEL 430);
- A Statement of Endorsement (SEL 400) if the candidate's statement uses the name or title of another person or organization as supporting or endorsing the candidate. A separate Statement of Endorsement must be filed for each person or organization named, unless the statement of the person or organization is a quotation, identified by source and date, which has been previously published;
- Phone numbers and fax numbers, if available, for possible contact by the Elections Division for any corrections;
- Appropriate voters' pamphlet filing fee; and
- Two identical 5" X 7" black and white photographs (ORS 251.075):
  - shall be a conventional photograph with a plain background;
  - shall show the face or the head, neck and shoulders of the candidate;
  - shall not be more than four years old when the portrait is filed;
  - shall not include the hands or anything held in the hands of the candidate;
  - shall not show the candidate wearing a judicial robe, hat or a military, police or fraternal uniform; and
  - shall not show the uniform or insignia of any organization.

**When to Submit Forms and Photographs**

No later than 5:00 p.m. on August 24, 2004, for the 2004 General Election.

**SECRETARY OF STATE****Step 1:**

The Elections Division reviews "required information" submitted on Candidate's Statement for State Voters' Pamphlet (SEL 430), photographs and statements of endorsement for compliance.

The review must be completed no later than the third business day after the voters' pamphlet filing deadline, 5:00 p.m., August 27, 2004.

**Step 2:**

If any of the reviewed material is insufficient, the Elections Division shall attempt to contact the candidate regarding the insufficiencies no later than the fifth business day after the voters' pamphlet filing deadline, 5:00 p.m., August 31, 2004.

**STATE CANDIDATES**

Upon notification of insufficiencies, the candidate may provide corrections to the Elections Division no later than the seventh business day after the voters' pamphlet filing deadline, 5:00 p.m., September 2, 2004. If revisions are not received by the seventh day, the Elections Division will take the appropriate action pursuant to ORS 251.087(5).

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**Withdrawal of Candidacy or Nomination (ORS 249.830)**


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**ALL CANDIDATES**

In order to withdraw from candidacy or nomination, a candidate must file a Withdrawal of Candidacy or Nomination (SEL 150).

**When to Withdraw**

No later than 5:00 p.m. on August 27, 2004, for the 2004 General Election.

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**Contribution and Expenditure Reporting (ORS Chapter 260)**


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Every candidate and prospective candidate is required to establish a principal campaign committee within three business days of receiving or spending any money to support the candidacy unless the candidate:

- serves as the candidate's own treasurer;
- does not already have an open principal campaign committee; and
- does not expect to receive or spend more than \$300 for the entire election.

If the candidate meets these three requirements, the candidate is not required to file a Statement of Organization or file contribution and expenditure reports. However, if at any time the candidate exceeds \$300 in contributions or expenditures, the candidate must file a Statement of Organization and contribution and expenditure reports.

This includes expenditures of personal funds by the candidate or treasurer, such as payment of the filing fee if the candidate files by declaration, any costs related to circulating a nominating petition, and any voters' pamphlet costs.

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*Note: Most candidates for federal office in Oregon must file their campaign finance information with the Federal Elections Commission (1-800-424-9560). Candidates for United State Senator must file their campaign finance information with the Secretary of the Senate (202-224-0322) at: Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510-7116.*

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*Note: If filing for a new office involves changing filing officers, e.g., county to state, refer to the "Changing Office" section of the 2004 Campaign Finance Manual.*

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**ALL CANDIDATES**

A candidate or the candidate's treasurer files contribution and expenditure reports for the election. "Candidate" includes:

- ◆ A candidate who files for office;
- ◆ A candidate who withdraws or is disqualified;
- ◆ An individual who files a prospective petition for candidacy, even if signatures are never filed; and
- ◆ An individual who has received a contribution or made an expenditure to secure the nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot.

Oregon election law requires all candidates or their principal campaign committees to submit timely and accurate contribution and expenditure reports. All candidates and committees must maintain detailed records of all contributions received and expenditures made. The statutes on campaign finance establish accounting periods and filing deadlines for reports of contributions and expenditures and specify the information that must be included in the reports. In addition, the statutes provide for civil penalties up to \$10,000 for filing late or insufficient reports.

*Note: If a candidate receives contributions or makes expenditures greater than \$2000 before May 18, 2004, the candidate must file contribution and expenditure reports for the 2004 Primary Election.*

A candidate or committee that does not expect to receive or spend more than \$2,000 to support a candidacy may qualify to file a Certificate of Limited Contributions and Expenditures (PC 7). See the *2004 Campaign Finance Manual* for information on who is eligible to file a certificate.

The candidate and treasurer are jointly responsible for the committee and for filing the contribution and expenditure reports.

If the treasurer violates any campaign finance regulations, the candidate is also in violation.

State candidates and committees that receive and expend more than \$50,000 in an election must file their detailed reports by electronic transmission.

See the *2004 Campaign Finance Manual*:

- ◆ To determine when your committee is required to file reports;
- ◆ For the appropriate forms for filing the reports; and
- ◆ For instructions on how to complete the contribution and expenditure report forms; and
- ◆ For format requirements for filing reports electronically.

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## Conduct of Elections (ORS Chapter 254)

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**SECRETARY OF STATE**

The Elections Division prepares and files with the county elections official a statement of candidates and measures for placement on the ballot.

The statement must be filed no later than 5:00 p.m. on September 2, 2004, for the 2004 General Election.

For 2004 only, the statement for Presidential and Vice Presidential candidates must be filed no later than September 8, 2004.

**COUNTY ELECTIONS OFFICIAL****Step 1:**

The county elections officials conduct the election on November 2, 2004.

Step 2:

The county elections official delivers the abstract of election results for national and state offices to the Elections Division no later than November 22, 2004, for the 2004 General Election.

### SECRETARY OF STATE

The Elections Division completes the post-election procedures:

- ♦ Canvasses county abstracts and issues proclamation declaring results of the election; and
- ♦ Issues certificates of election to national and state candidates. The post-election procedures must be completed no later than December 2, 2004, for the 2004 General Election.

## Signature Sheet Requirements (ORS 249.740)

All signature sheets must be approved in writing by the Elections Division before circulating. Failure to do so will result in the rejection of those signature sheets.

### SIGNATURE SHEET REQUIREMENTS

Each signature sheet shall include:

- ♦ Candidate's name, office for which the candidate is running and district or position number;
- ♦ Statement that one or more/no petition circulators will be paid;
- ♦ Statement that signers on any one signature sheet must be active registered voters from the same county;
- ♦ Area for placing the petition identification number;
- ♦ Area for placing the signature sheet number;
- ♦ Petition circulator's certification stating that each person who signed the petition did so in the circulator's presence and the circulator believes each signer is an elector;

- ♦ Area for providing date when circulator signed certification;
- ♦ Area for placing the county elections official's certification;
- ♦ Ten (10) signature lines unless a variation is approved by the Secretary of State; and
- ♦ Each signature line will include spaces for:
  - Signature (required);
  - Printed name; \*
  - Residence address; and\*
  - Date of signing petition. \*

The fields are required to be on the signature sheets. However, an elector's printed name, residence address and date they signed the petition are not mandatory under Oregon law. These information fields, while optional, provide valuable assistance to county elections officials who are performing the signature verification. If these fields are not completed, the signatures may still be submitted for signature verification. If the county elections official can determine from the signature alone that the elector was an active registered voter at the time the elector signed the petition, that signature will count toward the total signature requirement for the petition. If no date is provided by the elector, the signatures are considered valid only if the county elections official determines that the elector was an active registered voter during the period beginning the date the petition was approved for circulation through the date of signature verification.

**Warning:** Circulators are advised to encourage signers to complete the optional information whenever possible. Failure to provide the optional information increases the possibility that the signature cannot be confirmed to be that of an active registered voter, and thus reduces the chances of the petition having adequate verifiable signatures to complete the nominating petition.

**SIGNATURE SHEET FORMAT**

The format to be followed in preparing candidate signature sheets shall be:

- ◆ Standard 8-1/2" x 11" size paper;
- ◆ At least 20 pound (weight) uncoated paper;
- ◆ Printed on white or pastel colored paper stock to render text readable and enable election officials to readily verify signatures; and
- ◆ Size and style of type are left to the discretion of the petitioner, as long as it is deemed readable and approved for circulation by the Elections Division.

*Warning: Logos, slogans, advertisements, party affiliation, etc. or any symbol or language which may be construed as advocacy are not permitted on the cover or signature sheet. Failure to comply with this requirement may result in rejection of those sheets and disqualification of those signatures.*

*Warning: Any proposed variation to an approved signature sheet must be resubmitted and approved by the Elections Division before circulating. Failure to do so will result in the rejection of those signature sheets.*

**Petition Signer Requirements (ORS 249.740)**

Electors' signatures on candidate nominating petitions must be verified by the appropriate county elections official before filing the completed petition with the Elections Division. Requirements for signers include:

- ◆ Signers on any one signature sheet must be active registered voters in the same county; and
- ◆ Each signer must be an active registered voter of the candidate's electoral district at the time of signing the petition.

**Circulator Requirements (ORS 249.740)**

The circulator of the candidate nominating petition must sign the circulator's certification, stating that:

"I hereby certify every person who signed this sheet did so in my presence and I believe each person is a qualified voter of the state of Oregon."

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.

*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.*

**Signature and Distribution Requirements (ORS 249.740)**

For any office, the number of verified signatures required to place a candidate on the ballot by individual electors is *one percent* of votes cast in the electoral district for which the nomination is intended, for all candidates for presidential electors at the last presidential election. The number of valid signatures needed for a statewide office is 15,306.

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# DEFINITIONS

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## Definitions

As used in state election manuals, unless the context requires otherwise, the following terms mean:

**Act** - An act is a bill that has been passed by both houses of the legislature and has either been signed by the governor, or not vetoed by the governor within the time provided for the governor to veto or sign the bill. A bill becomes an Act when it has been signed by the Governor or has become law without the Governor's signature.

**Appropriate Elections Filing Officer/Official** - The person with whom the candidate or political committee files the appropriate forms:

- ♦ State Candidate or Measure - Elections Division, Secretary of State's Office;
- ♦ County Candidate or Measure - County Elections Official;
- ♦ City Candidate or Measure - City Recorder / Auditor; or
- ♦ District Candidate or Measure - County Elections Official. (For a district located in more than one county, the County Elections Official of the county in which the administrative office of the district is located.)

**Assembly of Electors** - A gathering of registered voters in one place at one time to nominate candidates to partisan office.

**Business Days** - Regular work days (calendar days excluding weekends and legal holidays as provided in ORS 187.010 and 187.020.)

**Candidate** - An individual whose name is printed or expected to be printed on the ballot, an individual who campaigns for write-in votes, or an individual who collects or spends money to secure nomination or election to office at any time, even if the specific office is not indicated and the candidate's name does not appear on a ballot. "Candidate" for purposes of ORS chapter 260 does not include a candidate for precinct committee person.

**Chief Petitioner** - The individual responsible for the preparation and organization of an initiative, recall or referendum petition. No more than three persons may be designated as

chief petitioners for any one initiative or referendum petition.

**Circulator** - Any person who carries cover and signatures sheets to obtain and witness the collection of signatures.

**City Offices** - The elected public offices of a city which may be voted on only by the registered voters of the city. City offices typically include a Mayor, four City Councilors, a municipal Judge and other officers the city council considers necessary for the conduct of business. (The offices may vary depending upon the city's charter and ordinances. Contact the city elections filing officer if you have any questions regarding city offices.)

**Committee** - A political committee.

**Committee Director** - Any person who directly and substantially participates in decision-making on behalf of a political committee concerning the solicitation or expenditure of funds and the support of or opposition to candidates or measures. The officers of a political party shall be considered the directors of any political party committee of that party, unless otherwise provided in the party's bylaws.

**Committee Identification Number** - The six-digit number assigned to Oregon political committees registered with the Elections Division.

**Completed Petition** - The prospective initiative or referendum petition where the chief petitioners have submitted 100 percent of the signatures required for verification.

**County Offices** - The elected public offices of a county which may be voted on only by the registered voters of the county. County offices typically include County Commissioners, County Assessor, County Clerk, County Sheriff, County Surveyor and County Treasurer.

(The offices may vary depending upon the county's charter and ordinances. Contact the county elections filing officer if you have any questions regarding county offices.)

**District Offices** - The elected public offices of a special district (such as a school or water district) which may be voted on only by the registered voters of the special district. District offices typically include a board of directors. (The offices may vary depending upon the district's statutory requirements. Contact the county elections filing officer if you have any questions about district offices.)

**Electoral District** - An area within the state, county, city or district that is designated to be governed or represented by a particular elected public office.

**Electors** - Active registered voters in the State of Oregon.

**Federal Offices** - A candidate filing for President, Vice President, United States Senator or United States Representative.

**Filing Officer** - See "Appropriate Elections Filing Officer/Official."

**Independent Candidate** - A candidate filing for a partisan office by Assembly of Electors or Individual Electors. An independent candidate cannot have been a member of any political party during the last 180 days before the deadline for filing the certificate of nomination.

**Initiative Petition** - An initiative petition, including complete text, cover and signature sheet, which has received written approval to circulate from the Elections Division but has not yet qualified for the ballot.

**Local Office or Measure** - Any office or measure to be voted upon by the registered voters of a county, city or special district.

**Measure** - Includes any of the following submitted to the people for their approval or rejection at an election:

- ♦ An Act or part of an Act of the Legislative Assembly;
- ♦ A county, city or special district legislation;
- ♦ A proposed law;

- ♦ A proposition or question; or
- ♦ A proposed revision or amendment to the Oregon Constitution.

**Measure Committee** - A political committee organized exclusively to support or oppose one or more measures certified to a ballot in Oregon. Measure committee includes the committee designated by the chief petitioners of an initiative or referendum petition.

**Nonpartisan Office** - An office for which the candidate does not run under the name of any political party. Nonpartisan offices include: Judge (Supreme Court, Court of Appeals, Tax Court and Circuit Court, County Judge who exercises judicial functions), Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries, any elected office of a metropolitan service district under ORS chapter 268, Justice of the Peace, Sheriff, County Clerk, County Treasurer, County Assessor, County Surveyor, District Attorney and any office designated nonpartisan by a home rule charter. Special District offices are also nonpartisan. (Contact the appropriate elections official for further clarification.)

**OAR** - Oregon Administrative Rules.

**ORS** - Oregon Revised Statutes.

**Partisan Office** - An office for which the candidate may be nominated by a major or minor political party or as an independent candidate.

**Person** - An individual, corporation, limited liability company, labor organization, association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity.

**Political Committee** - A combination of two or more individuals, or a person other than an individual, that has received a contribution or made an expenditure for the purpose of supporting or opposing a candidate, measure or political party.

Expenditure does not include a contribution to a candidate or political committee required to report the contribution or an independent expenditure that is required to be reported. Political committee also includes an individual who solicits and receives a contribution.

**Political Party Committee** - A political committee organized by a political party which has appropriately filed its organizational documents with the Secretary of State under ORS 248.007 or 248.009.

**Principal Campaign Committee** - A political committee formed by an individual running for public office.

**Prospective Petition** -

- ♦ **Candidate:** The information and filing forms, except signatures and other identification of petition signers, required to be contained in a completed petition.
- ♦ **Local (City, County, District):** The information and filing forms, except signatures and other identification of petition signers, required to be contained in a completed petition.
- ♦ **Statewide:** A prospective initiative petition, which has been filed and accepted by the Elections Division's office, but has not received written approval to circulate, from the Elections Division.

**Public Office** - Any national, state, county, city or district office or position, except a political party office, filled by electors.

**Recall Petition** - A petition by electors to place a question on a special recall election ballot regarding whether a specified public officer should be removed from office.

**Referendum Petition** - A petition by electors to approve or reject legislation adopted by the Oregon legislature or the governing body of a county, city or district.

**Registered Voter** - A resident of the State of Oregon who:

- ♦ is a U. S. citizen;
- ♦ is 18 years of age or older; and
- ♦ is registered more than 20 calendar days before the election.

**Regularly Published Publication** - A publication published on a recurring basis according to a time schedule that bears no relation to an election.

**State Measure** - A measure to be voted on by the registered voters of the entire state.

**State Offices** - Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, Judge (Supreme Court, Court of Appeals, Tax Court, Circuit Court and any County Judge who exercises judicial functions), State Senator, State Representative or District Attorney.

**Statewide Offices** - The elected public offices of the State of Oregon which are voted on by all the registered voters of the state (Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, Supreme Court Judge, Court of Appeals Judge and Tax Court Judge).

**Text** - Actual language of proposed new constitutional, statutory, charter or ordinance amendment to be initiated or referred.

**Treasurer** - A person appointed by a candidate or political committee to manage and report the contributions and expenditures of the candidate or political committee. A treasurer shall perform all the duties prescribed for a candidate or political committee under ORS 260.005 and 260.035 to 260.156.

Hi Everyone,

Following are procedures we need all counties to follow when verifying the signature sheets for the Nader for President petition.

1. Counties will initially screen for potential problems with circulator signature and dating of signature sheets.
2. Counties will highlight with a highlighter the areas of concern on the signature sheet. Do not verify any signatures on the sheets that have any potential problems or issues. Once the Secretary of State's office makes a determination on these sheets, the county will be contacted and advised on whether to verify these signatures or to reject the sheet.
3. The areas to review for concern are:
  - The circulator signature line is blank or the circulator has signed using initials only. (First name initial with the full last name is sufficient)
  - There is no date on the circulator date signed line
  - Circulator date has been crossed out or modified.
  - The circulator signed and dated before the dates of some or all of the the signers.
  - Circulator name is a signature stamp.
  - Circulator signature is photocopied or carbon copied
  - White out is used on the circulator name or date area.
  - There are two different circulator names on the certification.
  - The original signature of a circulator has been crossed out, and a new circulator's signature is inserted
4. Once the counties have screened for these items the county will fax any sheets of concern to the Secretary of State Elections Division attention Margie Franz at 503-373-7414. John Lindback, Lynn Rosik and Margie Franz will make the final determination on these sheets.
5. Counties will retain and not return any signature sheets to the Nader Campaign that may have any potential problems until the Secretary of State has resolved these issues and notified the county.
6. On signature sheets that have no issues and appear to be sufficient, the counties will verify the signatures and cross through any blank signature lines on the signature sheets with a marker so that no other signers may be added to that sheet after the county has verified the sheets.
7. Counties will verify all signatures submitted only on signature sheets that do not have any issues. The county will retain a copy of all signature sheets submitted and return the original sheets with the counties certification to the Nader Campaign.

If you should have any questions or concerns please contact either Margie Franz or John Lindback. Thank you.

**ER-92**

**From:** John W LINDBACK  
**To:** AllClerks; Huser, Betty  
**Date:** 8/4/2004 11:17:12 AM  
**Subject:** Procedures for Nader petition

Good morning everyone:

Attached is a Word document that outlines the procedures we need counties to follow for processing the Nader petitions. It's very important that our procedures be uniform for all the obvious reasons, including the strong likelihood of litigation. If you have questions about any of this, please call. But what we're asking you to do is an initial "screening" for possible circulator signature and date problems and to not verify signatures on those "problem" sheets until we can review them here and decide whether or not the entire sheet should be disqualified.

Please read the procedures carefully. I'd appreciate if it the county clerk would closely monitor staff processing of these petitions. The Nader candidacy has resulted in litigation in several other states and there is no reason to expect things will be any different in Oregon. Vigilance is required.

Thanks much.  
jlindback

John Lindback, Director  
Elections Division  
Oregon Secretary of State's Office

**CC:** All Agency

ER-93

Hi Everyone,

Following are procedures we need all counties to follow when verifying the signature sheets for the Nader for President petition.

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If you should have any questions or concerns please contact either Margie Franz or John

**ER-94**

Lindback. Thank you.

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

Case No. 04C-18259  
Honorable Paul J. Lipscomb

SECOND AFFIDAVIT OF JOHN  
LINDBACK

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 a 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.

STATE OF OREGON )  
County of Marion ) ss.  
)

I, John Lindback, being first duly sworn, depose and say:

1. I am the Director of the Elections Division in the Oregon Secretary of State's office and have served in that capacity for approximately the past three years. My responsibilities as the Director of the Elections Division include overseeing the process to determine whether elections petitions qualify for the ballot.



1 circulator's signature simply appears like initials, then the signature is accepted. But if the  
2 exemplar shows a different signature, then the initialed petition sheet is disqualified.

3 6. I do not consider myself an expert in handwriting analysis, nor is that considered  
4 a requirement for my position. That said, in early 2002 the staff of the Elections Division,  
5 including myself, received classroom training from document experts employed by the State  
6 Crime Laboratory on issues related to signature verification. In addition, I attended a similar  
7 training session by State Crime Laboratory personnel at the 2002 summer conference of the  
8 Oregon Association of County Clerks.

9 7. It bears emphasis that our practice is to accept a purported circulator's signature if  
10 there is any reasonable way to do so.

11 8. The certification requirement and signature verification process do help disclose  
12 suspicious signatures and likely fraud. For example, in 2000 Kelly Highley was convicted of  
13 signature fraud, after Yamhill County personnel examining the signatures suspected forgeries on  
14 sheets certified by Ms. Highley. Even in the most recent initiative cycle we have observed  
15 several potential cases of criminal signature fraud which we are pursuing with the Criminal  
16 Justice Division of the Attorney General's Office.

#### 17 **Procedures to Confirm Compliance with the Date Requirement**

18 9. In December 2002, the Secretary of State promulgated amendments to the 2002  
19 *Candidates Manual*. Those amendments included the new requirement that the circulator date  
20 the certification on each sheet. New petition sheet forms were included with these amendments,  
21 adding a field for entry of the date. An excerpt of the pertinent text, as amended—including the  
22 updated form—is attached as Exhibit 1 to this affidavit. At that time, the date requirement also  
23 was added with respect to other types of elections petitions.

24 10. Because the date is considered a part of the circulator's certification, failure to  
25 properly complete it constitutes a failure to certify the petition sheet. In those circumstances, the  
26 defective petition sheet is disqualified.

1           11.     Similarly, in furtherance of the purpose to prevent fraud, the Secretary has  
2 interpreted the requirement of a dated signature to disqualify sheets bearing alterations (such as  
3 stricken material), but has permitted corrections of a dating error by re-dating and re-signing.

4           12.     In implementing the date requirement, we have encountered numerous scenarios  
5 that we had not originally anticipated. Applying the date requirement to each of those scenarios,  
6 our guiding principle is to ask whether the face of the sheet tells a clear story of how the sheet  
7 was completed and, if so, whether it was completed properly.

8           13.     Where there is no date, obviously the sheet is not completed properly. It is  
9 disqualified.

10          14.     Where the sheet is dated before the elector signatures, the sheet itself tells the  
11 clear story of how it was completed, but that clear story discloses that the sheet was completed  
12 improperly. The circulator cannot properly certify that the elector signatures on the sheet were  
13 affixed in the circulator's presence, and that the circulator believes each signor to be an eligible  
4 voter, until after the elector signatures have been affixed.

15          15.     Similarly, a "post-dated" certification (a certification bearing a date after  
16 submission of the petition sheets to the Secretary of State), on its face, tells a clear story of how  
17 it was completed, but it is not completed properly. Where the certification is post-dated, it  
18 appears that the circulator seeks to defer responsibility for certification. For our purposes, we  
19 require the circulator's present certification. We do, however, treat a post-dated *year* as a simple  
20 error and therefore overlook it.

21          16.     Where information is stricken on the date line, and other information has been  
22 substituted, the face of the sheet does not tell a clear story demonstrating that it was filled out  
23 properly. One possible scenario (the "innocent slip of the pen" scenario) is that the circulator  
24 signed it, dated it erroneously, realized the error, struck the error, and redated correctly. But  
25 another possibility is that the circulator signed improperly—perhaps before witnessing the  
26 elector signatures—conveyed the sheets to another person, and that the other person fraudulently

1 altered the circulator's certification. Because it is impossible to tell that the sheet was completed  
2 properly, the sheet is disqualified.

3 17. On the other hand, where a date has been stricken and another written in, the sheet  
4 is accepted if either date would be proper. Also, where the date has been expressed as a range,  
5 but it is clear from the face of the sheet that it was dated all at once, the sheet is accepted if the  
6 last date in the range would be proper. In addition, where it is apparent that the circulator has  
7 used the "European" format for dating, switching the position of the month and the date, the  
8 sheet is accepted if the date is otherwise proper. Finally, if there is an error in the year given by  
9 the circulator, and the sheet was not in circulation during the year given, it is treated as a simple  
10 error and the sheet is accepted if the date is otherwise proper.

11 18. These rules were openly applied in November 2003, during the verification  
12 process for the referendum that became Measure 30.

13 19. When initiative petitions submitted for early verification during the current  
14 election cycle included substantial numbers of sheets disqualified for noncompliance with the  
15 date requirement, I invited all chief petitioners who had received approval to circulate 2004  
16 initiative petitions to a meeting. At that meeting on June 2, 2004, I explained in detail our  
17 procedures and interpretations of the date requirement. I also distributed copies of a sheet  
18 detailing "acceptable" and "not acceptable" deviations from simple compliance.

19 20. In early July 2004, a number of supporters of various initiative petitions brought  
20 suit in federal court challenging, among other things, the date requirement. The plaintiffs in that  
21 case were represented by plaintiffs' counsel in this case, Ms. Meek and Mr. McDougal. Plaintiff  
22 Kafoury was present during the proceedings, held during July. As co-chair of the campaign,  
23 Mr. Kafoury was on notice at least by that time that compliance with the date requirement is  
24 mandatory.

25 21. Moreover, on July 30, 2004, I (and Brenda Bayes of my office) discussed  
26 candidate petition requirements with Travis Diskin of the Nader campaign. Ms. Bayes

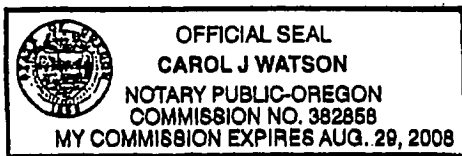
1 memorialized that telephone conference with a note to our file. That memo is attached as  
2 Exhibit 2 to this affidavit.

3 22. During that conversation, Mr. Diskin asked about the requirements for the  
4 circulator's certification. We explained that the circulator must sign and date the certification.  
5 We specifically explained that the circulator must not use initials. We further explained that if  
6 an error is made with the date, the circulator should simply re-sign and re-date the sheet, but  
7 should not strike out material. That information is memorialized in paragraph 3 of Ms. Bayes'  
8 memo.

9 DATED this 8th day of September, 2004.

10  
11 John Lindback  
12 JOHN LINDBACK

13 SUBSCRIBED AND SWORN to before me this 8th day of September, 2004.



Carol J. Watson  
Notary Public for Oregon  
My Commission Expires: 8-29-08

## SIGNATURE SHEET FORMAT

The format to be followed in preparing candidate signature sheets shall be:

- ♦ Standard 8-1/2" x 11" size paper;
- ♦ At least 20 pound (weight) uncoated paper;
- ♦ Printed on white or pastel colored paper stock to render text readable and enable election officials to readily verify signatures; and
- ♦ Size and style of type are left to the discretion of the petitioner, as long as it is deemed readable and approved for circulation by the Elections Division.

*Warning: Logos, slogans, advertisements, party affiliation, etc. or any symbol or language which may be construed as advocacy are not permitted on the cover or signature sheet. Failure to comply with this requirement may result in rejection of those sheets and disqualification of those signatures.*

*Warning: Any proposed variation to an approved signature sheet must be resubmitted and approved by the Elections Division before circulating. Failure to do so will result in the rejection of those signature sheets.*

## Petition Signer Requirements (ORS 249.740)

Electors' signatures on candidate nominating petitions must be verified by the appropriate county elections official before filing the completed petition with the Elections Division. Requirements for signers include:

- ♦ Signers on any one signature sheet must be active registered voters in the same county; and
- ♦ Each signer must be an active registered voter of the candidate's electoral district at the time of signing the petition.

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The circulator of the candidate nominating petition must sign the circulator's certification, stating that:

"I hereby certify every person who signed this sheet did so in my presence and I believe each person is a qualified voter of the state of Oregon."

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.

*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.*

## Signature and Distribution Requirements (ORS 249.740)

For any office, the number of verified signatures required to place a candidate on the ballot by individual electors is *one percent* of votes cast in the electoral district for which the nomination is intended, for all candidates for presidential electors at the last presidential election. The number of valid signatures needed for a statewide office is 15,306.



July 30, 2004

Conversation between John Lindback, Brenda Bayes and Travis Diskin with the Nader campaign. 102

Spoke with Travis Diskin with the Nader campaign. Travis had the following question.

1. What if an elector signs the signature sheet to nominate Ralph Nader by Individual Electors more than one time? Will the elector be penalized?

The electors' signature will only be counted once. The elector is not penalized for a candidate petition signature sheet.

2. What if the signer registers to vote the same day they sign the petition?

If the completed voter registration card is submitted no later than 5:00 pm on that same day to the county elections office and the elector has made sure they completed the card then the signature will count. If the voter registration card is not complete or the card is not delivered to the county elections day that same day the signature will not count.

3. What about the circulator certification? What steps do I need to make sure the circulator does or doesn't do?

The circulator must sign their full name and date the certification. Do not use initials. Sign the circulators full legal name. If the date of the certification is wrong the circulator should sign their name again and redate the certification. Do not cross out the circulator name or the date. Do not try and modify the date. Simply resign and redate the signature sheet.

*Brenda Bayes*

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

SANDRA KUCERA, an elector of the State of Oregon and candidate for Vice President of the United States,

No.

SARAH THERESE WINDER; KRISTIN ZUBEL and NATALIE BOLTON, each an elector of the State of Oregon 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 and as a circulator of said nominating petition,

DEMOCRATIC PARTY OF OREGON'S MOTION TO INTERVENE PURSUANT TO ORCP 33

(Oral Argument Requested)

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,

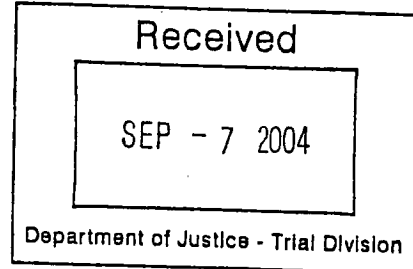
v.

BILL BRADBURY, Secretary of State,

Defendant,

DEMOCRATIC PARTY OF OREGON,  
JOHN NEEL PENDER and JAMES EDMUNSON,

Intervenors.



1 Pursuant to ORCP 33 C, the Democratic Party of Oregon (DPO) and its Executive  
2 Director, John Neel Pender, and its Chairman, James Edmunson, respectfully move to intervene  
3 in the discretion of the Court. Intervenors seek to participate as parties aligned with the position  
4 of defendant Bill Bradbury, the Oregon Secretary of State, and in opposition to the position of  
5 Plaintiffs. This motion is supported by the Declaration of Roy Pulvers and an Answer filed  
6 pursuant to ORCP 33 D. Counsel for defendant Bill Bradbury do not oppose this motion.  
7 Counsel for plaintiffs have not stated their position. Intervenors request 10 minutes for oral  
8 argument.

9 The DPO is a "major political party" under Oregon law (ORS 248.006, 248.007), and  
10 Democratic Party candidates John Kerry and John Edwards will be on the ballot in Oregon for  
11 the November 2004 election for President of the United States and Vice President of the United  
12 States. The DPO and its official representatives have an interest in the integrity of the Oregon  
13 electoral process and in the composition of the ballot for candidates for national office.  
14 Intervenors are actively engaged in the presidential election campaign process. In addition, Mr.  
15 Pender and Mr. Edmunson are active registered voters (electors) in the State of Oregon, who  
16 share the same interests as well as their own individual interests as voters.

17 The DPO, through its legal counsel Roy Pulvers, who also is an elector in the State of  
18 Oregon, appeared in front of the Oregon Secretary of State by filing an initial letter on August 25,  
19 2004, registering Complaints regarding the signature sheets gathered to nominate Ralph Nader  
20 and Sandra Kucera for President and Vice President, respectively. That letter was followed by a  
21 series of letters through August 31, 2004 supplementing the original complaints.

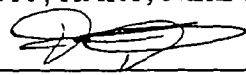
22 Because the DPO appeared in front of the Secretary of State in this matter, and because  
23 the interests of the DPO and its officials are manifest and important in the context of a lawsuit  
24 brought by the Nader campaign to overturn the Secretary's decision and force a place on the  
25 presidential election ballot, the motion to intervene pursuant to Rule 33 C should be granted.

26 ///

1 The intervention will not unduly delay or prejudice the adjudication of the rights of the original  
2 parties.

3 Respectfully submitted this 3rd day of September, 2004.

4 LINDSAY, HART, NEIL & WEIGLER, LLP

5 By:   
Roy Pulvers, OSB No. 83357

6  
7 TONKON TORP, LLP  
Don H. Marmaduke, OSB No. 53072

8 Trial Attorneys:  
9 Roy Pulvers, OSB No. 83357  
Don H. Marmaduke, OSB No. 53072

10 Attorneys for Democratic Party of Oregon  
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378 ER-10765

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, )

Case No. 04C18259

OPINION AND ORDER

Plaintiffs, )

v. )

BILL BRADBURY, Secretary of State, )

Defendant. )

Oregon law rests considerable discretion with the Secretary of State for the

**ER-108**

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.

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

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

In addition to these statutes, and as required by ORS 249.009, the Secretary has promulgated certain written rules specifying the format of signature sheets that must be used for nominating petitions, as well as the numbering system to be utilized. Other administrative rules have been adopted to facilitate the circulator certification and elector signature verification

processes set forth in ORS 249.740(4) and (5).

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

"All signatures must be personally witnessed by the petition circulator and the circulator's certification must be completed and dated after all signatures have been collected; and

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

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

- "Sort the signature sheets by county;
- 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, in sufficient time for the verification process to be finished before submitting the completed nominating petition to the Elections Division."

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

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

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

Specifically, the only additional requirements for petition circulators are two: "The circulator of the candidate nominating petition must sign the circulator's certification . . ." And "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 rule warns that violation of these circulator requirements may result in conviction of a felony with a fine up to \$100,000 and/or prison for up to five years. But, no penalty of disqualification of the signatures of electors collected is provided for in the administrative rule.

This rule and the prescribed penalty, as set forth in the Manual, is consistent with the legislative policy set forth in ORS 247.005 as noted above; "all election laws and procedures shall be established and construed to assist the elector in the exercise of the right of franchise." It is also consistent with the policy position adopted by the Secretary of State in Nelson v. Keisling, 155 Or App 388, 964 P2d 284 (1988) rev. den. 328 Or 246, 987 P2d 507 (1999).

Nelson arose in a somewhat different context, but the principle is the same. Despite violations of the then- applicable circulator rules, the Secretary then took the position that the verified signatures of the electors collected by those circulators should not be invalidated.

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

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

Mr. Lindback, both by Affidavit and by live testimony, also described another unwritten 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.)

These unwritten rules, however longstanding, are not supported by the written

administrative rules as set forth in the Manual, and they are inconsistent with ORS 247.005, as well as with the prior policy of the Elections Division as set forth above. Additionally, it was obvious from the testimony of Mr. Lindback that the Secretary's unwritten rules were not applied either uniformly or consistently in actual practice.

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

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

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<sup>1</sup> The only potential statutory authority for this additional disqualification procedure would seem to be ORS 249.004 which permits filing officers to verify the validity of the contents of documents filed with the officer under Chapter 249. However, "the validity of the contents of the documents" at issue here would be the verified signatures of the electors and the county clerks' certification of the total number of verified signatures. Once the electors' signatures have been verified as valid by the county clerk, there would be no policy reason to seek to disqualify them for alleged defects in the circulator certifications that would not run afoul of ORS 247.005: "It is the policy of this state that all election laws and procedures shall be established and construed to assist the elector in the exercise of the right of the franchise." In any event, ORS 249.004 was not cited as authority for the Secretary's disqualification of the previously verified

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

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

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

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

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electors' signatures which had already been certified to him by the county clerks. The only purpose cited by Mr. Lindback was "to maintain uniformity and consistency in the interpretation of the elections law" in accordance with ORS 246.110. Affidavit of John Lindback at page 5.

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

Hon. Paul J. Lipscomb  
Presiding Judge

STATE OF OREGON  
Marion County Circuit Courts  
SEP 13 2004  
ENTERED

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STATE OF OREGON  
Marion County Circuit Courts  
SEP 13 2004  
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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 a 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. 04C-18259  
Honorable Paul J. Lipscomb

GENERAL JUDGMENT

This case came before the Court upon plaintiffs' Motion for a Preliminary Injunction and heard on September 8, 2004. By stipulation of the parties, the request for preliminary relief was combined with trial on the merits, including live testimony, testimony by affidavits, oral argument and extensive legal briefing by the parties, including intervenor-defendant, Democratic Party of Oregon. The Court issued its Order and Opinion dated September 9, 2004 with

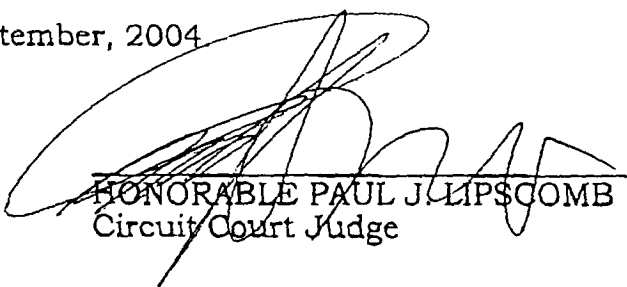
1 regard to plaintiffs' third and fourth claims for relief as set forth in said opinion  
2 and order, and finding that <sup>its ruling on the fourth claim for relief is</sup> dispositive of the merits without reaching  
3 constitutional claims, now enters judgment as follows:

4 Now, hereby, it is ORDERED and ADJUDGED:

5 1. Defendant Secretary of State is hereby ordered to certify the results of  
6 the nominating petitions of Ralph Nader and Sandra Kucera for independent  
7 candidate to the appropriate elections authorities and to order the preparation  
8 of ballots for President and Vice-President for the 2004 General Election which  
9 contain the names of Ralph Nader and Sandra Kucera as independent  
10 candidates for President and Vice-President.

11 2. Plaintiffs are entitled to recover their costs and disbursements incurred  
12 herein.

13 DATED this <sup>13<sup>th</sup></sup> day of September, 2004

  
HONORABLE PAUL J. LIPSCOMB  
Circuit Court Judge

18 Submitted by: Mark McDougal  
19 Kafoury & McDougal  
20 Attorneys for Plaintiff