

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,

Marion County Circuit
Court No. 04C18259

Plaintiffs-Adverse Parties,

v.

SC S51756

BILL BRADBURY, Secretary of State,

Defendant-Relator,

and

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

Intervenors Below.

**PEREMPTORY WRIT
OF MANDAMUS
AND
APPELLATE JUDGMENT**

TO: The Honorable Paul J. Lipscomb, Circuit Court Judge for Marion County.

The court has directed that a peremptory writ of mandamus issue.

WHEREFORE, in the name of the State of Oregon, you hereby are commanded to vacate your order of September 9, 2004, requiring the Secretary of State to certify the Nader nomination as an independent candidate for the Oregon 2004 general election ballot, and to enter judgment in favor of defendant-relator.

Dated this 22nd day of September 2004.

KINGSLEY W. CLICK
State Court Administrator

By: John Kosheala
Authorized Representative of
the State Court Administrator

c: Daniel W. Meek
Mark McDougal
Gregory Kafoury

c: Mary Hazel Williams
Roy Pulvers
Margaret S. Olney

c: Kaye E. McDonald
Hon. Paul J. Lipscomb

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Relator

[XX] No costs allowed.

APPELLATE JUDGMENT

Effective Date: September 22, 2004

Supreme Court Seal
(Seal)



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,

Marion County Circuit
Court No. 04C18259

Plaintiffs-Adverse Parties,

v.

SC S51756

BILL BRADBURY, Secretary of State,

Defendant-Relator,

and

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

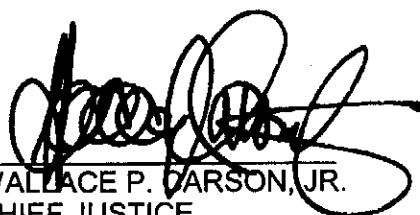
Intervenors Below.

**ORDER ALLOWING
PETITION FOR
PEREMPTORY WRIT
OF MANDAMUS**

Upon consideration by the court.

The petition for peremptory writ of mandamus is allowed.

Dated this 22nd day of September 2004.


WALLACE P. CARSON, JR.
CHIEF JUSTICE

c: Daniel W. Meek
Mark McDougal
Gregory Kafoury

c: Mary Hazel Williams
Roy Pulvers
Margaret S. Olney

c: Kaye E. McDonald
Hon. Paul J. Lipscomb

IN THE SUPREME COURT OF THE
STATE OF OREGON

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Marion County Circuit
Court No. 04C18259

Plaintiffs-Respondents,

v.

SC S51764

BILL BRADBURY, Secretary of State,

Defendant-Appellant,

and

**ORDER DISMISSING
APPEAL**

DEMOCRATIC PARTY OF OREGON,

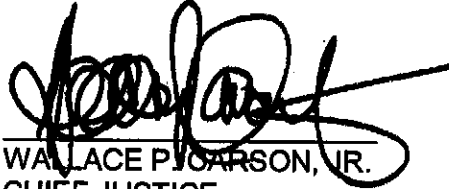
**APPELLATE
JUDGMENT**

Intervenor below.

Upon consideration by the court.

In light of this court's decision in the related mandamus proceeding, *Kucera v. Bradbury*, S51756, this appeal is dismissed as moot and the Circuit Court's judgment is vacated. The appellate judgment is issued forthwith. Rule 9.25 of the Oregon Rules of Appellate Procedure is waived.

Dated this 22nd day of September 2004.


WALLACE P. CARSON, JR.
CHIEF JUSTICE

c: Daniel W. Meek
Mark McDougal
Gregory Kafoury
Kaye E. McDonald
Business Support Services

c: Mary Hazel Williams
Roy Pulvers
Margaret S. Olney
Hon. Paul J. Lipscomb

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party(ies): None

APPELLATE JUDGMENT

No costs allowed.

Effective Date: September 22, 2004

Supreme Court Seal



SER-406

**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 Parties,

v.

BILL BRADBURY, Secretary of State,

Defendant-Relator,

and

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

Intervenors Below.


**Marion County Circuit
Court No. 04C18259**

SC S51756

**ORDER DENYING
MOTION TO STAY,
AND TO RECONSIDER**

Adverse Parties' motion to stay and to reconsider is denied.

Dated this 23rd day of September 2004.


**WALLACE H. CARSON, JR.
CHIEF JUSTICE**

- c: Daniel W. Meek**
- Mark McDougal**
- Gregory Kafoury**
- Kaye E. McDonald**
- Mary Hazel Williams**
- Roy Pulvers**
- Margaret S. Olney**
- Hon. Paul J. Lipscomb**
- Hon. Bill Bradbury**

FILED: SEPTEMBER 22, 2004

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 THERESE 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 Parties,

v.

BILL BRADBURY, Secretary of State,

Defendant-Relator,

and

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

Intervenors Below.

(CC 04C18259; SC S51756)

En Banc

Original proceeding in mandamus.*

Submitted September 17, 2004.

Kaye E. McDonald, Assistant Attorney General, Salem, filed the petition and supplemental memorandum for defendant-relator. With her on the petition and memoranda were Hardy Myers, Attorney General, and Mary H. Williams, Solicitor General.

Daniel W. Meek, Portland, filed the memorandum in opposition for plaintiffs-adverse parties.

Margaret Olney, Smith, Diamond & Olney, Portland, filed the memorandum for amici curiae Service Employees International Union and Oregon Education Association.

DURHAM, J.

Combined peremptory writ and appellate judgment to issue forthwith. ORAP 9.25, providing for petitions for reconsideration, is waived on the court's own motion. ORAP 1.20(5).

*On petition for a writ of mandamus from an order of the Marion County Circuit Court, Paul Lipscomb, Judge.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Defendant-Relator

- No costs allowed.
 - Costs allowed, payable by:
 - Costs allowed, to abide the outcome on remand, payable by:
-

1 DURHAM, J.

2 Oregon's Secretary of State Bill Bradbury seeks a writ
3 of mandamus from this court requiring Judge Lipscomb of the
4 Marion County Circuit Court to vacate an order that he entered in
5 the underlying proceeding, which we describe below in detail.
6 The order required the Secretary of State to certify the
7 nomination of Ralph Nader as an independent candidate on Oregon's
8 November 2, 2004, general election ballot. For the reasons set
9 out below, we direct that a peremptory writ of mandamus issue
10 requiring the trial court to withdraw that order.

11 THE NADER CAMPAIGN'S PETITION FOR NOMINATION BY INDIVIDUAL
12 ELECTORS

13 Oregon law provides for the nomination of candidates
14 for partisan public office by a major political party, ORS
15 249.078, a minor political party, an assembly of electors, or
16 individual electors, ORS 249.705. ORS 249.740 describes the
17 procedure for nomination of candidates by individual electors:

18 "(1) A certificate of nomination made by
19 individual electors shall contain a number of
20 signatures of electors in the electoral district equal
21 to not less than one percent of the total votes cast in
22 the electoral district for which the nomination is
23 intended to be made, for all candidates for
24 presidential electors at the last general election.

25 "(2) Each elector signing a certificate of
26 nomination made by individual electors shall include
27 the residence mailing address of the elector. Except
28 for a certificate of nomination of candidates for
29 electors of President and Vice President of the United
30 States, a certificate of nomination made by individual
31 electors shall contain the name of only one candidate.

1 "(3) Before beginning to circulate the certificate
2 of nomination, the chief sponsor of the certificate
3 shall file a signed copy of the prospective certificate
4 with the filing officer referred to in ORS 249.722.
5 The chief sponsor of the certificate shall include with
6 the prospective certificate a statement declaring
7 whether one or more persons will be paid money or other
8 valuable consideration for obtaining signatures of
9 electors on the certificate. After the prospective
10 certificate is filed, the chief sponsor shall notify
11 the filing officer not later than the 10th day after
12 the chief sponsor first has knowledge or should have
13 had knowledge that:

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

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

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

27 "(5) The signatures contained in each certificate
28 of nomination made by individual electors shall be
29 certified for genuineness by the county clerk under ORS
30 249.008.

31 "(6) As used in this section, 'prospective
32 certificate' means the information, except signatures
33 and other identification of certificate signers,
34 required to be contained in a completed certificate of
35 nomination."

36 Under ORS 249.740(5), the county clerk must certify for
37 genuineness the signatures of electors in the county that
38 accompany the certificate of nomination by individual electors.
39 ORS 249.008 requires the county clerk of each county, before the

1 filing of the certificate of nomination by individual electors,
2 to verify the elector signatures and to certify the number of
3 signatures believed to be genuine. ORS 249.008 provides in part:

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

22 "(2) If the total number of signatures presented
23 to a county clerk for verification is 15,000 or more,
24 the county clerk may use a statistical sampling
25 technique authorized by the Secretary of State to
26 verify the signatures. The sample shall be drawn from
27 at least 100 percent of the number of signatures
28 required for nomination."

29 ORS 249.009(1) authorizes the Secretary of State to
30 adopt administrative rules prescribing the form of certificates
31 of nomination by individual electors and a system for numbering
32 all signature sheets of certificates for nomination by individual
33 electors.

34 "The Secretary of State by rule shall:

35 "(a) Design the form of nominating or recall
36 petitions, certificates of nomination by individual
37 electors, minutes of an assembly of electors or minor

1 political party formation petitions; and

2 "(b) Prescribe a system for numbering all
3 signature sheets of nominating or recall petitions,
4 certificates of nomination by individual electors,
5 minutes of an assembly of electors or minor political
6 party formation petitions."

7 The Secretary of State has exercised the authority that
8 ORS 249.009(1) grants by designating as an administrative rule
9 the "2004 State Candidate's Manual: Individual Electors"
10 (SCMIE). OAR 165-010-0005(5). We discuss below in greater
11 detail the rules that the SCMIE contains.

12 Plaintiffs are supporters of a campaign (the "Nader
13 campaign") that seeks to nominate Ralph Nader and Sandra Kucera
14 as President and Vice President, respectively, of the United
15 States on the November 2, 2004, Oregon general election ballot
16 through the nomination by individual electors procedure described
17 in ORS 249.740. According to the record, ORS 249.740(1)
18 obligated the Nader campaign to file not less than 15,306
19 signatures of Oregon electors with its certificate of nomination
20 by individual electors under ORS 249.740(1). However, the
21 Secretary of State determined that numerous signature sheets that
22 the Nader campaign filed with its certificate of nomination
23 contained errors in the certification or dating of the sheets by
24 circulators or in the numbering of the sheets by Nader campaign
25 representatives. In addition, a number of county clerks, acting
26 on instructions from the Secretary of State, declined to verify

1 elector signatures on sheets that reflected errors that the
2 Secretary of State identified. In some cases, they removed the
3 noncomplying signature sheets from the group of signatures
4 certified for genuineness under ORS 249.740(5). Plaintiffs do
5 not agree that the asserted errors in the signature sheets exist
6 or, if they do exist, that they affect the validity of the
7 elector signatures or the certificate of nomination by individual
8 electors.

9 Due to his conclusion that numerous signature sheets
10 did not comply with applicable legal requirements, the Secretary
11 of State declined to count the elector signatures on the
12 noncomplying signature sheets in determining whether sufficient
13 valid elector signatures supported the certificate of nomination.
14 On September 2, 2004, the Secretary of State notified Nader that
15 his campaign had submitted 15,088 qualified signatures, which was
16 218 signatures short of the required number. The Secretary of
17 State advised Nader, "Consequently, there are not sufficient
18 qualified signatures for you to gain ballot access for this
19 office."

20 PLAINTIFFS' LEGAL ACTION

21 On September 3, 2004, plaintiffs filed in Marion County
22 Circuit Court an appeal of the action of the Secretary of State

1 under ORS 246.910¹ and a petition for review of administrative
 2 action under ORS 183.484.² Plaintiffs alleged eight claims for

1 ¹ ORS 246.910 provides:

2 "(1) A person adversely affected by any act or
 3 failure to act by the Secretary of State, a county
 4 clerk, a city elections officer or any other county,
 5 city or district official under any election law, or by
 6 any order, rule, directive or instruction made by the
 7 Secretary of State, a county clerk, a city elections
 8 officer or any other county, city or district official
 9 under any election law, may appeal therefrom to the
 10 circuit court for the county in which the act or
 11 failure to act occurred or in which the order, rule,
 12 directive or instruction was made.

13 "(2) Any party to the appeal proceedings in the
 14 circuit court under subsection (1) of this section may
 15 appeal from the decision of the circuit court to the
 16 Court of Appeals.

17 "(3) The circuit courts and Court of Appeals, in
 18 their discretion, may give such precedence on their
 19 dockets to appeals under this section as the
 20 circumstances may require.

21 "(4) The remedy provided in this section is
 22 cumulative and does not exclude any other remedy
 23 against any act or failure to act by the Secretary of
 24 State, a county clerk, a city elections officer or any
 25 other county, city or district official under any
 26 election law or against any order, rule, directive or
 27 instruction made by the Secretary of State, a county
 28 clerk, a city elections officer or any other county,
 29 city or district official under any election law."
 30

31 (Emphasis added.)

1 ² ORS 183.484(1) provides:

2 "Jurisdiction for judicial review of orders other
 3 than contested cases is conferred upon the Circuit
 4 Court for Marion County and upon the circuit court for
 5 the county in which the petitioner resides or has a
 6 principal business office. Proceedings for review under
 7

1 relief. We summarize those claims for relief, because they are
2 relevant to our disposition here.

3 The first claim for relief alleged that the Secretary
4 of State's "decision to reject the nominating petitions was not
5 accompanied by any findings of fact or conclusions of law
6 sufficient to enable Plaintiffs (or anyone) to determine the
7 reasons for the rejection" and that "[s]uch deficiency renders
8 the decision unlawful."

9 The second claim for relief alleged that the Secretary
10 of State "has apparently rejected over 3,000 valid and verified
11 voter signatures" due to "some errors" committed by persons who
12 circulated signature sheets or by the Nader campaign. Plaintiffs
13 alleged that the refusal of the Secretary of State to count those
14 signatures "is beyond his authority, is arbitrary and capricious,
15 and is otherwise unlawful."

16 The third claim for relief alleged that the Secretary
17 of State had rejected signature sheets "containing in the range
18 of 2,000 valid and verified voter signatures on the ground that
19 the sheets, as submitted to the Secretary of State, were not
20 sequentially numbered." Plaintiffs asserted that the Nader
21 campaign had complied with applicable requirements for numbering

1 this section shall be instituted by filing a petition
2 in the Circuit Court for Marion County or the circuit
3 court for the county in which the petitioner resides or
4 has a principal business office."

1 sheets and that the Secretary of State's action was unlawful.

2 The fourth claim for relief alleged that the Secretary
3 of State had rejected signature sheets containing "in the range
4 of 700 valid and verified voter signatures on the ground that the
5 sheets display some defect in the signature of the circulator or
6 the date on the signature of the circulator." Plaintiffs
7 asserted that the Secretary of State had "not stated which
8 signature sheets were rejected for these reasons" and "has not
9 stated the reason for the rejection of any signature sheet
10 * * *." Plaintiffs alleged that the Secretary of State's
11 rejection of signature sheets due to the appearance of or date
12 pertaining to a circulator's signature was unlawful.

13 The fifth claim for relief alleged that the Secretary
14 of State's implementation of a rule that disqualified voter
15 signatures on a nominating petition on the basis of alleged or
16 proven errors by petition circulators, in signing, dating, or
17 placing numbers on the sheets, violated the First and Fifth
18 Amendments to the United States Constitution.³

1 ³ The First Amendment to the United States Constitution
2 provides:

3 "Congress shall make no law respecting an
4 establishment of religion, or prohibiting the free
5 exercise thereof; or abridging the freedom of speech,
6 or of the press; or the right of the people peaceably
7 to assemble, and to petition the Government for a
8 redress of grievances."

9 The Fifth Amendment to the United States Constitution provides:

1 The sixth claim for relief alleged that the Secretary
 2 of State's implementation of a rule that disqualified voter
 3 signatures on a nominating petition on the basis of alleged or
 4 proven errors by petition circulators -- in signing, dating, or
 5 placing numbers on the sheets with no opportunity for
 6 administrative cure of alleged defects -- violated Article I,
 7 sections 8 and 20, and Article II, section 1, of the Oregon
 8 Constitution.⁴

1 "No person shall be held to answer for a capital,
 2 or otherwise infamous crime, unless on a presentment or
 3 indictment of a Grand Jury, except in cases arising in
 4 the land or naval forces, or in the Militia, when in
 5 actual service in time of War or public danger; nor
 6 shall any person be subject for the same offence to be
 7 twice put in jeopardy of life or limb; nor shall be
 8 compelled in any criminal case to be a witness against
 9 himself, nor be deprived of life, liberty, or property,
 10 without due process of law; nor shall private property
 11 be taken for public use, without just compensation."

1 ⁴ Article I, section 8, of the Oregon Constitution
 2 provides:

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

8 Article I, section 20, of the Oregon Constitution provides:

9 "No law shall be passed granting to any citizen or
 10 class of citizens privileges, or immunities, which,
 11 upon the same terms, shall not equally belong to all
 12 citizens."

13 Article II, section 1, of the Oregon Constitution provides: "All
 14 elections shall be free and equal."

1 The seventh claim for relief alleged that the Secretary
2 of State's implementation of a rule that disqualified a
3 circulator's signature if it varied from the signature on the
4 circulator's Oregon voter registration card discriminated against
5 Oregon voters who are not registered to vote and violated the
6 First Amendment right of plaintiffs to travel across state lines
7 into Oregon to engage in core political speech and to circulate
8 petition sheets.

9 Plaintiffs' eighth claim for relief sought reasonable
10 attorney fees and costs for the action. Plaintiffs also
11 requested declaratory and injunctive relief nullifying the
12 Secretary of State's action.

13 Along with their complaint, plaintiffs filed a motion
14 for preliminary injunction requiring the Secretary of State "to
15 certify the Nader/Kucera ticket for the 2004 general election
16 ballot * * *." Plaintiffs supported the motion with affidavits
17 from several circulators of the certificate of nomination
18 signature sheets.

19 THE TRIAL COURT PROCEEDING

20 The case came before the trial court on September 8,
21 2004, on plaintiffs' motion for preliminary injunction. The
22 court granted the motion of the Democratic Party of Oregon and
23 two of its officers to intervene in support of the Secretary of
24 State. The court denied a request by Service Employees

1 International Union (SEIU) to intervene as a party, but allowed
2 SEIU to appear as amicus curiae. The parties stipulated that the
3 court could combine the hearing on the motion for preliminary
4 injunction, including live testimony, affidavits, and all
5 arguments, with a trial on the merits.

6 On September 9, 2004, the court filed its opinion and
7 order, which we discuss below in greater detail. In the opinion,
8 the court reviewed the pertinent statutes and administrative
9 rules governing nominations by individual electors and focused
10 its analysis on plaintiffs' fourth claim for relief, described
11 above.

12 The court concluded that the Secretary of State had no
13 authority, under applicable statutes and rules, to instruct
14 county clerks to screen signature sheets for various problems
15 related to the signature of the circulator and the date of the
16 circulator's signature. Those problems included the action of
17 some circulators in certifying the signature sheets with the
18 signer's initials or to cross out or attempt to modify the date
19 of the circulator's certification. The court also concluded that
20 the Secretary of State's instructions to county clerks to screen
21 elector signature sheets for circulator signature and dating
22 problems before verifying the elector signatures were

1 inconsistent with ORS 247.005,⁵ with the Secretary of State's
2 written rules in the SCMIE, and "with the Secretary's policy
3 position set out in Nelson v. Keisling[, 155 Or App 388, 964 P2d
4 284 (1998), rev den, 328 Or 246, 987 P2d 507 (1999)]." We
5 analyze those bases for the court's conclusion below.

6 Ultimately, the court concluded that the Secretary of
7 State had exceeded his authority by (1) instructing county clerks
8 not to verify elector signatures if the signature sheets
9 displayed circulator certification problems; and (2) disapproving
10 elector signature sheets that county clerks had certified if the
11 signature sheets displayed similar circulator certification
12 problems.

13 The court rejected plaintiffs' third claim for relief,
14 which alleged that the Secretary of State had exceeded his
15 authority in rejecting signature sheets that had not been
16 numbered sequentially. The court did not address or resolve
17 other claims for relief in its order and opinion.

18 On September 13, 2004, the court entered a general
19 judgment that stated:

20 "This case came before the Court upon plaintiffs'
21 Motion for a Preliminary Injunction and heard on

1 ⁵ ORS 247.005 provides:

2 "It is the policy of this state that all election
3 laws and procedures shall be established and construed
4 to assist the elector in the exercise of the right of
5 franchise."

1 September 8, 2004. By stipulation of the parties, the
2 request for preliminary relief was combined with trial
3 on the merits, including live testimony, testimony by
4 affidavits, oral argument and extensive legal briefing
5 by the parties, including intervenor-defendant,
6 Democratic Party of Oregon. The Court issued its Order
7 and Opinion dated September 9, 2004 with regard to
8 plaintiffs' third and fourth claims for relief as set
9 forth in said opinion and order, and finding that its
10 ruling on the fourth claim for relief is dispositive of
11 the merits without reaching constitutional claims, now
12 enters judgment as follows:

13 "Now, hereby, it is ORDERED and ADJUDGED:

14 "1. Defendant Secretary of State is hereby
15 ordered to certify the results of the nominating
16 petitions of Ralph Nader and Sandra Kucera for
17 independent candidate to the appropriate elections
18 authorities and to order the preparation of ballots for
19 President and Vice-President for the 2004 General
20 Election which contain the names of Ralph Nader and
21 Sandra Kucera as independent candidates for President
22 and Vice-President.

23 "2. Plaintiffs are entitled to recover their
24 costs and disbursements incurred herein."

25 POST-JUDGMENT PROCEEDINGS

26 The Secretary of State filed his petition for writ of
27 mandamus on September 15, 2004. With the petition, he also filed
28 an emergency motion requesting expedited review of the petition
29 and a decision from this court by September 22, 2004, if
30 possible, so that elections officials could proceed with the
31 printing of accurate ballots for the November 2, 2004, general
32 election.

33 On September 16, 2004, this court allowed the motion to
34 expedite review and set an accelerated briefing schedule. In

