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2 **IN THE CIRCUIT COURT OF STATE OF OREGON**
3 **FOR THE COUNTY OF MARION**
4

5 **INDEPENDENT PARTY OF OREGON,**
6 **a minor political party,**
7 **JOEL HAUGEN, an individual, and**
8 **WORKING FAMILIES PARTY, a minor**
9 **political party,**

10 **Plaintiffs,**

11
12 **v.**

13
14
15 **THE STATE OF OREGON, BILL**
16 **BRADBURY,**
17 **Secretary of State of the State of Oregon,**
18
19 **Defendant.**

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**EXPEDITED HEARING REQUESTED
(ORS 246.910(4))**

**APPEAL OF SECRETARY OF STATE
ACTION (ORS 246.910)**

**PETITION FOR REVIEW OF
NONCONTESTED CASE
ADMINISTRATIVE ACTION
(ORS 183.484)**

(not subject to mandatory arbitration)

20
21
22 Plaintiffs allege:

23 **INTRODUCTION**

24 1. Plaintiffs seek declaratory and injunctive relief from the decision of the Secretary of
25 State, announced in the manner described herein, to refuse to correctly implement the
26 statutory terms of ORS 254.135(3); seek a declaration that the plain meaning of said
27 statute allows plaintiff Haugen, a candidate for partisan office, to have appear
28 opposite his name on the November 2008 general election ballot the name of the
29 "Independent Party"; seek a declaration that the plain meaning of said statute
30 allows Buckley, a candidate for partisan office, to have appear opposite his name
31 on the November 2008 general election ballot the name of the "Working Families
32 Party"; and seek review under ORS 183.484 of the Secretary of State's above-
33 described action to the extent necessary to obtain relief.

1 **VENUE**

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

3 **JURISDICTION**

4 3. This court has jurisdiction of this cause under ORS 183.484(1), ORS 246.910,
5 and ORS 28.010.

6 **PARTIES**

7 4. Plaintiff Joel Haugen is an Oregon elector and registered Republican in Columbia
8 County, who intends to remain a registered Republican. He resides in
9 Scappoose, Oregon.

10 A. Haugen participated in the May 2008 partisan primary election of the
11 Republican Party and is the nominated candidate of the Republican Party of
12 Oregon for the U.S. House of Representatives in the First Congressional
13 District of Oregon, and he has received a Certificate of Election from
14 Defendant as the winner of the Republican Primary, and has taken all steps
15 necessary to accept said nomination.

16 B. Haugen was nominated by the Independent Party of Oregon as its candidate
17 for the same federal office, accepted the Independent Party's nomination,
18 and signed the Certificate of Nomination filed by the party with Defendant.

19 C. As an elector and a candidate, he is adversely affected and aggrieved by the
20 refusal of the Secretary of State to correctly implement ORS 254.135(3) so
21 that the name of the Independent Party shall appear on the elections ballot
22 opposite his name.

23 5. The Independent Party of Oregon is a minor political party, duly formed under
24 the laws of the State of Oregon, having sufficient registered members (over

1 23,000) and otherwise in compliance with all requirements to nominate
2 candidates for all partisan state and local offices at the November 6, 2008,
3 general election. ORS 248.008, *et seq.*

4 6. The Working Families Party is also a duly formed minor political party qualified
5 to nominate candidates for partisan offices and Peter Buckley is an incumbent
6 member of the Oregon House, seeking re-election, who has been nominated by
7 both the Democratic Party and the Working Families Party for the same partisan
8 office, Oregon House District 5. Both the party and the candidate are harmed and
9 adversely affected and aggrieved by the refusal of the Secretary of State to
10 correctly implement ORS 254.135(3)(C) in regard to their duly nominated
11 candidates who are also the candidates of major political parties.

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

15 **GENERAL ALLEGATIONS**

16 8. Candidates for partisan offices may be nominated by, and accept the nominations
17 of, more than one political party by any lawful process applicable to such political
18 party, and said practice is referred to as "cross-nomination."

19 9. The appearance of the names of candidates and the design of general election
20 ballot are set out at ORS 254.135 which states in relevant part:

21 (3)(a) The name of each candidate nominated shall be printed upon
22 the ballot in but one place, without regard to how many times the
23 candidate may have been nominated. The name of a political party
24 shall be added opposite the name of a candidate for other than
25 nonpartisan office according to the following rules:

26 * * *
27

1 (C) For a candidate who is a member of a political party who is
2 nominated by a political party of which the candidate is not a member,
3 the name of the political party that nominated the candidate shall be
4 added opposite the name of the candidate;

5 * * *

6
7
8 (E) For a candidate who is nominated by a political party of which the
9 candidate is a member, the name of the political party of which the
10 candidate is a member shall be added opposite the name of the
11 candidate.

12
13 (b) If a candidate is required to select the name of a political party to
14 be added on the ballot under paragraph (a) of this subsection, the
15 candidate shall notify the filing officer of the selection not later than
16 the 61st day before the day of the election.

- 17
18 10. Both mandatory subsections (C) and (E) apply to nominated candidates Haugen
19 and Buckley.
- 20 11. By e-mail, representatives of the Independent Party sought clarification from
21 Defendant as to whether Haugen, a candidate who is has received nominations
22 for the same office at the same election from both a political party with which he
23 is not a registered member and from the party with which he is a registered
24 member, may exercise a choice as to whether subsection (C) or (E) applies to the
25 name of the party which is to appear opposite his name on the general election
26 ballot.
- 27 12. On July 29, 2008, Brenda Bayes, Deputy Elections Director, responded by e-mail
28 (Attachment A, pp. 1-2):

29 If Joel Haugen accepts the nomination of his party (Republican) and
30 the Independent Party chooses him as their nominee as well, because
31 he accepted his parties nomination he is listed only once on the ballot
32 (ORS 254.135 (3)(a)) under his party registration (Republican - he
33 does not get to choose which party) as provided by:

34
35 ORS 254.135
36

1 (E) For a candidate who is nominated by a political
2 party of which the candidate is a member, the name
3 of the political party of which the candidate is a
4 member shall be added opposite the name of the
5 candidate.
6

7 Now, if he were to not accept his parties nomination and did
8 accept the nomination of the Independent Party- A vacancy in
9 nomination would exist for the Republican party and they could
10 select a nominee to be placed on the ballot and Mr. Haugen
11 could then be listed as the Independent Party nominee as
12 provided in:
13

14 ORS 254.135
15

16 (C) For a candidate who is a member of a political party who is
17 nominated by a political party of which the candidate is not a
18 member, the name of the political party that nominated the
19 candidate shall be added opposite the name of the candidate;
20

21 If you have any question please let me know. Have a good day.
22

- 23 13. Representatives of the Independent Party made repeated requests of Ms Bayes for
24 the basis of the conclusion that subsection (E) always trumps and contravenes
25 subsection (C), when both provisions are mandatory and both apply equally to
26 Plaintiff Haugen and received no answer. Undersigned began archival and legal
27 research immediately and contacted Defendant's office on August 8, with
28 additional extensive comments. Elections Director John Lindback responded
29 (Attachment A, pp. 3-4):

30 Good afternoon Linda:
31

32 Brenda is on personal leave this week. I know that, prior to her departure,
33 she was a bit frustrated because she felt that she had clearly answered your
34 question in prior emails and she was being asked to answer the same
35 question over and over. We have conferred with our attorney and have not
36 been inclined to change this office's interpretation of the statute based on
37 your prior emails.
38

39 Is the attachment to your email below something that you researched and
40 wrote? It's not clear what it is, where it came from and who wrote it. I will

1 forward your email to our advice attorney in the AG's office when I receive
2 an answer to that question.

3
4 Thanks.
5 jlindback
6

7 14. On Monday, August 11, Defendant sent a final response confirming its position.
8 Attachment A, pp. 5-6.

9 15. Haugen does not wish to withdraw his acceptance of the nomination of the
10 Republican Party, as Defendant insists he must do in order to have the name of
11 the Independent Party appear opposite his name on the ballot.

12 16. Should the Defendant's interpretation be upheld, Haugen must withdraw his
13 acceptance of the nomination of the Republican Party no later than August 29,
14 2008.

15 17. Plaintiffs Haugen and the Independent Party contend that correct application of
16 the law requires that, since Haugen is the nominee two political parties and both
17 subsections (C) and (E) apply to him, the name of the Independent Party should
18 be added opposite his name on the general election ballot, either through exercise
19 of the candidate's choice or through the simultaneous application of both
20 subsections which apply to his nomination status, i.e, (C) and (E).

21 A. If the candidate's choice of party label is to be printed, Haugen would
22 choose "Independent Party."

23 B. If subsections (C) and (E) are applied simultaneously, Haugen's name on
24 the ballot would be opposite the party label "Independent Party; Republican
25 Party," or vice-versa.

1 18. Plaintiff Working Families Party contends that the correct application of the law
2 requires that, if subsections (C) and (E) are applied simultaneously, Buckley's
3 name on the ballot would be opposite the party label "Democratic; Working
4 Families" or vice-versa.

5 19. Plaintiffs are seeking primarily to (1) defend the rights of all candidates to have
6 the law correctly implemented law and (2) vindicate the rights of all Oregonians
7 to receive ballots designed in accordance with law and providing accurate
8 information about the source of each candidate's nominations. Thus, Plaintiffs
9 seek to benefit all Oregonians and not to benefit Plaintiffs specially as
10 individuals. Plaintiffs are therefore entitled to an award of attorney fees under
11 the authority of *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975), and *Armatta v.*
12 *Kitzhaber*, 327 Or 250, 959 P2d 49 (1998).

13 **FIRST CLAIM FOR RELIEF: DECLARATORY RELIEF**

14
15 20. Plaintiffs reallege and incorporate herein the allegations contained in ¶¶ 1-19.

16 21. Pursuant to ORS 28.010 to 28.160, Plaintiffs are entitled to a declaration that,
17 when a candidate is nominated by two political parties in Oregon so that ORS
18 254.135(3)(C) and (E) both apply, the name of the party of which the candidate is
19 not a member shall be added opposite the name of such candidate through
20 exercise of the candidate's choice or through application of both subsections
21 which apply to his nomination status.

22 **SECOND CLAIM FOR RELIEF: THE SECRETARY'S DECISION WAS**
23 **ARBITRARY AND CONTRARY TO LAW (ORS 183.484)**

24
25 22. Plaintiffs reallege and incorporate herein the allegations contained in ¶¶ 1-19.

1 23. The Secretary has an unpromulgated practice or rule under which he insists that
2 ORS 254.135(3)(a)(E) always supersedes ORS 254.135(3)(a)(C) in all situations
3 when both apply, without regard to the instructions of the candidate and without
4 regard to the mandatory language of ORS 254.135(3)(a) and its subsection (C).

5 24. Defendant's interpretation of ORS 254.135 was not announced through a
6 contested case and is arbitrary and contrary to statute; hence it is beyond the
7 scope of Defendant's authority.

8 25. Plaintiffs are entitled for reasonable attorney's fees on this claim. ORS 183.487.

9 **THIRD CLAIM FOR RELIEF: FAILURE TO ENFORCE ELECTIONS LAWS**
10 **(ORS 246.910)**

11 26. Plaintiffs reallege and incorporate herein the allegations contained in ¶¶ 1-19.

12 27. ORS 249.046 requires that those who seek the nominations of the Democratic or
13 Republican parties ("major" parties) for partisan office must have been members
14 of said parties for 180 days prior to seeking nomination in the respective partisan
15 primaries of these parties.

16 28. Defendant's interpretation of the mandatory provisions of ORS 254.135 has the
17 practical effect that a candidate who is duly nominated by both a major party (of
18 which she is a member) and another party will always have added opposite her
19 name on the ballot the name of the major party only and never the name of any
20 other party which has nominated her. This interpretation is contrary to the plain
21 instruction of ORS 254.135 and unlawful.
22

23 **INJUNCTIVE RELIEF**

24 29. Plaintiffs reallege and incorporate herein the allegations contained in ¶¶ 1-19.

25 30. Time is of the essence:
26

1 A. Haugen does not wish to withdraw his acceptance of the nomination of the
2 Republican Party, as Defendant insists he must do by August 29, 2008, in
3 order to appear on the ballot opposite the name of the Independent Party.

4 B. Under ORS 254.135(3)(b) candidates must exercise choice of party name to
5 appear opposite their names by September 4, 2008, in this election cycle.

6 31. Injunctive relief is necessary to cause the correct printing of ballots for the
7 November 6, 2008, election. Plaintiffs are entitled to preliminary and permanent
8 injunctive relief preventing the Secretary, and those acting at his direction or in
9 concert with him, from refusing to implement this statute correctly.

10 32. Plaintiffs, cross-nominated candidates, and all other Oregon voters will continue
11 to suffer from violations of the law as long as ORS 254.135 is not correctly
12 applied, and Plaintiffs have no adequate remedy at law for the injuries
13 complained of.

14 33. The people of Oregon will not be harmed by this Court granting the injunctive
15 relief requested, but the greater public interest and welfare will be served by
16 granting the relief requested--namely, enjoining Defendant's unlawful actions
17 regarding ballot design.

18 WHEREFORE, Plaintiffs pray for the following relief:
19

- 20 (1) An order declaring that, when a candidate is nominated by two
21 political parties in Oregon so that ORS 254.135(3)(a)(C) and (E) both
22 apply, the name of the party of which the candidate is not a member
23 shall be added opposite the name of such candidate through exercise
24 of the candidate's choice or through application of both of these
25 subsections which apply to his nomination status.
26
27 (2) An order of preliminary injunction, ordering Defendant to cease
28 refusing to add the name of the Independent Party opposite the name
29 of Joel Haugen on the general election ballot and cease refusing to add

1 the name of the Working Families Party opposite the name of Peter
2 Buckley on the general election ballot.

3
4 (3) An order of preliminary injunction, ordering Defendant to cease
5 demanding or requiring that Plaintiff Haugen withdraw his acceptance
6 of nomination from the Republican Party as a condition precedent to
7 printing the name of the Independent Party opposite his name on the
8 general election ballot.

9
10 (4) An order of permanent injunction, ordering the same relief as
11 requested in paragraphs (2) and (3) above.

12
13 (5) An order awarding plaintiffs their reasonable costs and expenses in
14 this action, including reasonable attorney fees,

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1 (6) An order imposing all other and further relief as to which plaintiffs
2 may be entitled and which the Court may deem just and equitable.
3

4
5 Dated: August 12, 2008

Respectfully Submitted,

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