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

INDEPENDENT PARTY OF OREGON, a minor political party, JOEL HAUGEN, an individual, and WORKING FAMILIES PARTY, a minor political party, **Plaintiffs,** **v.** **THE STATE OF OREGON, BILL BRADBURY, Secretary of State of the State of Oregon,** **Defendant.**	**Case No. 08C 20329** **PLAINTIFFS' SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTIVE RELIEF** **Hearing:** **August 20, 2008** **3:30 pm**

I. INTRODUCTION.

Plaintiffs intend to rely upon the following additional case authority, texts, and scholarly works at hearing. Appended hereto are pages identified as Appendix 1-10, which were referenced in, but omitted from the Motion and Memorandum in Support of Preliminary Injunction filed August 12, 2008.

II. SUPPLEMENTAL AUTHORITY.

A. "A" MEANS "ANY" IN COMMON USAGE AND IN ORS 254.135(3)(a).

From 1957 until 1995, the ballot design statute (predecessor to and former ORS 254.135(3)) required that, for a candidate for partisan office, only one political party label could appear on the general election ballot: "There shall be added opposite the name of each candidate * * * the name of the candidate's political party or political designation." In 1995, the language under consideration here was substantially revised to its present form:

1995 ORS 254.135(3)(a):

> (3)(a) The name of each candidate nominated shall be printed upon the ballot in but one place, without regard to how many times the candidate may have been nominated. ~~There~~ **The name of a political party** shall be added opposite the

> name of a candidate for other than nonpartisan office ~~the name of the candidate's political party or political designation~~ **according to the following rules** * * *.

App 10.

Plaintiffs contend that the above change to ORS 254.135(3)(a) from the specific "the name of the candidate's political party," to the indefinite article "the name of *a* political party," in the second sentence requires that the word "a" be given its ordinary meaning of "any."

Defendant insists that ORS 254.135(3)(a) must be read as if the bold language is present:

> (3)(a) * * *. The name of ~~a~~ **one and only one** political party shall be added opposite the name of a candidate for other than nonpartisan office according to the following rules * * *.

Defendant asserts that "a" means "only one;" plaintiffs contend that if that is what the legislature intended, it easily could have used the word "one," as for example, "the name of *one* political party shall be added * * *" and then established a ranking system if more than one of the following factual patterns applied to the same candidate. It did not do so, but enacted the statute as it now appears. Defendant is forced to give an unconventional meaning to the indefinite article "a" in the foregoing sentence, ignore "shall" in above section and in at least one of the following subsections, and add words to imply some directive that a ranking system exists.

As set out in our Motion and Memorandum (August 12, 2008), statutes are to be construed with words having their ordinary meanings. The burden is upon the Defendant in this case to produce "clear evidence that the legislature intended some other meaning." ***Sunflower v. Bladorn***, 168 OrApp 206, 219-220, 1 P3d 513, 520 (2000). "A" Means "any" in common usage, as set out in numerous cases and dictionary references (Plaintiffs' Motion and Memorandum, pp. 19-23). "A" has this plain meaning in ORS 254.135(3)(a), following

universally accepted rules of legislative drafting, and in particular, the BILL DRAFTING MANUAL OF THE OREGON OFFICE OF LEGISLATIVE COUNSEL.

The 1995 change in the ballot design was part of a larger package of statutory revisions in Senate Bill 183, all generally revising the treatment of minor political parties. The change in ballot design at issue here was stated exactly as shown above in the Senate Bill when introduced. Senate Bill 183 (1995) as introduced, Attachment A, pp. 6-7. The language remained unchanged when the bill was engrossed and subsequently passed in the House and into law.

The summary stated:

> Prohibits election officials from enforcing political party rules. Provides exception. Modifies rules for qualifying and maintaining status as minor political party. Clarifies signature requirements on certain candidate nominating petitions. Prohibits candidacy for more than one precinct committeeperson office. Specifies how candidate nominated by one or more political parties is listed on ballot.

Attachment A at p. 1. There is nothing in the legislative history which shows the Legislature intended an unusual meaning to the word, "a."

The analytical process for arriving at the meaning of statutory text is well-established. The court begins with the ordinary meaning of the disputed term. See, e.g., ***Smurfit Newsprint Corp. v. Dept. of Rev.***, 329 Or 591, 597, 997 P2d 185 (2000) ("At the first level of analysis, we examine the text and context, giving words of common usage their plain, natural, and ordinary meaning."); ***State v. Higgins***, 165 OrApp. 442, 445, 998 P2d 222 (2000) ("[w]ords of common usage should be given their 'plain, natural and ordinary meaning'"); ***State v. Perry***, 165 OrApp 342, 347, 996 P2d 995 (2000) ("The words of a statute are given their plain, natural and ordinary meaning.").

"The rule is frequently stated in terms of a presumption, that we are bound to give a statutory term its ordinary meaning unless there is clear evidence that the legislature intended some other meaning." ***Sunflower v. Bladorn***, *supra*; ***SAIF v. Meredith***, 104 OrApp 570, 574,

802 P2d 95 (1990) ("in the absence of a clear legislative intent to the contrary, the court is bound to give to the words of a statute their natural and ordinary meaning"); ***Welliver Welding Works v. Farmen***, 133 OrApp 203, 208, 890 P2d 429 (1995) ("We are generally constrained to assume that the legislature intended the words of a statute to be given their common, ordinary meaning unless there is a clear indication that some other meaning was intended.").

> Generally, in the absence of a statutory definition, we assume that the legislature intended the words of the statute to carry their ordinary meanings. ***State v. Murray***, 340 Or 599, 604, 136 P3d 10 (2006). The principal source for determining ordinary meaning is a dictionary of common usage. *Id.* ("Absent a special definition, we ordinarily would resort to dictionary definitions, assuming that the legislature meant to use a word of common usage in its ordinary sense.").
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> We begin, then, with the dictionary.

State v. Cox, 219 OrApp 319, 322, 182 P3d 259, 261 (2008).

In Plaintiffs' Motion and Memorandum in Support of Preliminary Injunction, pp. 19-23, we relied upon citations to numerous dictionaries, BLACK'S LAW DICTIONARY, 1, 1324 (5th ed 1979), WORLD COMPACT DESK DICTIONARY AND STYLE GUIDE (2d ed 2002), WEBSTER'S II NEW COLLEGE DICTIONARY 1 (2001), and 4 TREATISE ON CONST. (3d ed 2006) to show that the ordinary meaning of "a" is "any." We now add case law citations to RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY and WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY for the same definition. We offered case law from Oregon and 11 other states[1] and two federal courts (in Nevada and Illinois), each decision holding that "a" means "any." We offer additional authority from 7 more jurisdictions[2], all concluding that "a" means "any."

In ***Robinson v. Detroit***, 462 Mich 439, 461-462, 613 NW2d 307 (2000), quoting with approval, ***Hagerman v. Gencorp Automotive***, 457 Mich 720, 753-754, 579 NW2d 347

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1. Colorado, Connecticut, Kansas, Maine, Michigan, New Jersey, New York, Pennsylvania, South Dakota, Tennessee and West Virginia.

2. Arkansas, florida, Illinois, Maryland, Massachusetts, Texas and Virginia.

(1998), the Michigan Supreme Court analyzed the difference in the use of the terms "a" and "the" in the context of statutory construction:

> Traditionally in our law, to say nothing of our classrooms, we have recognized the difference between "the" and "a." "The" is defined as "definite article. 1. (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an) * * *." RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY, p. 1382. Further, we must follow these distinctions between "a" and "the" as the Legislature has directed that "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language * * *," M.C.L. §8.3a; MSA 2.212(1). Moreover, there is no indication that the words "the" and "a" in common usage meant something different at the time this statute was enacted * * *."

The Maryland Supreme Court agreed:

> The issue is one of statutory construction, and we are thus required to ascertain and effectuate the legislative intent. As noted, the relevant statutory provision--§35C(a)(5)--defines "household member" as a person who lives with or is a regular presence in "*a* home of a child at the time of the alleged abuse." (emphasis added by court). Use of the indefinite article "a," as opposed to the definite article "the," itself indicates a legislative recognition that, for purposes of the child abuse statute, a child may have more than one home.

Wright v. State, 349 Md 334, 355, 708 A2d 316, 326 (1998).

See ***Phelps v. Commonwealth*****,** 654 SE2d 926, 927 (Va 2008):

> "A" is an indefinite article "[u]sed as a function word before most singular nouns * * * when the individual in question is undetermined, unidentified, or unspecified." [WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993)] at 1. The ordinary meaning of the word "a" means "any" or "each." *Id*.

See ***National Union Bank v. Copeland***, 141 Mass 257, 4 NE 794, 795-96 (1886) ("[T]he particle `a' is not necessarily a singular term. It is often used in the sense of `any,' and is then applied to more than one individual object."); ***Chavira v. State***, 167 TexCrim 197, 319 SW2d 115, 120 (1958) ("a" means the same as "any"); ***First American Nat. Bank v. Olsen***, 751 SW2d 417, 421 (1987) (same); ***Application of Hotel St. George Corporation***, 207 NYS2d 529 (SupCtKings Co 1960) (same); ***State v. Hershkowitz***, 714 So2d 545, 547 (Fla 3d DCA 1998) ("a" means "any"); ***United States Fidelity & Guar. Co. v. State Farm Mut. Auto. Ins. Co.***, 369 So2d 410, 412 (Fla 3d DCA 1979) ("an" means "any").

B. DEFENDANT PRESENTS NO "CLEAR EVIDENCE" THAT THE OREGON LEGISLATURE INTENDED AN UNUSUAL MEANING TO THE WORD "A" IN THIS STATUTE.

As noted, there is a presumption that "a" means "any" in statutes, unless there is clear evidence the Legislature intended some other special meaning for this common word. ***Sunflower v. Bladorn***, *supra.* The Defendant cannot meet this burden of producing "clear evidence"--that is, evidence "manifesting an unmistakable intention" [***City of Clatskanie v. McDonald***, 95 Or 670, 674, 167 P 560, 562, (1917)]. The 1995 amendments follow the usual practice for legislative drafting.

The Office of Legislative Counsel provides legal and publication services to the Oregon Legislative Assembly, and drafts measures and amendments for legislators, among other duties. Legislative Counsel has a BILL DRAFTING MANUAL[3] "to encourage uniformity in the form, style and language of legislative measures."[4] It relies (as do many state legislatures, federal agencies, and foreign governments) upon the "gold standard," the textbooks by drafting scholar F. Reed Dickerson, LEGISLATIVE DRAFTING (1954) and THE FUNDAMENTALS OF LEGAL DRAFTING (1965). The conventions set out by Professor Dickerson have been standard practive for decades. The Oregon BILL DRAFTING MANUAL states that use of "[s]imple words such as `a,' an,' or `the'" is preferred in legislation because of the "gain in clarity." *Id.* at Ch 4, § 6, p. 26.

> The greatest generality is accomplished with the least modification of the operative word * * *. "A person" is at least as general as "any person." or "every person."

There is no suggestion that the original drafters of SB 183, which became the text here at issue, had any reason or intent to abandon the simple clarity of meaning accomplished by

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3. http:// www.lc.state.or.us/draftingmanual.htm

4. See Legislative Counsel's webpage: http://www.lc.state.or.us.

choice of the word "a." When the drafters of the bill state "a political party," they meant "any" or "every."

There are literally hundreds of examples in Oregon law which follow the BILL DRAFTING MANUAL practice of giving "a" its ordinary and general meaning of "any." ORS 419B.926(1) states that "(1) On its own motion or on the motion of *a* party, the court may stay the effect of any order or judgment made by it pending appeal * * *" (emphasis supplied). In this statute, without question, "a" must mean "any" and not "one and only one party." The same construction is obvious in ORS 801.127: "`Arterial' or `arterial highway' means a highway that is used primarily by through traffic," as it leads to an absurd result to construe this as defining but "one and only one" such highway in the entire state--"a" obviously means "any." The examples are too numerous to list.

In fact, trying to substitute the words "one and exclusively one" in place of "a" or "an" often leads to absurd results in statutory construction and is avoided.

> Recognizing that a contrary interpretation of the article "a", if adopted generally, would lead to no end of absurd statutory constructions, those courts that have considered the issue have held that the usual and ordinary meaning of "a" is not "one and only one", but rather "any number of" or "at least one"--not "one and no more", but rather "one or more" (see, ***Matter of Hotel St. George Corp***., 207 NYS2d 529, 531, citing ***Lindley v. Murphy***, 387 Ill 506, 517, 56 NE2d 832 837-838; ***State v. Martin***, 60 Ark 343, 349-351, 30 SW 421, 422-423; cf, ***Lewis v. Spies***, 43 AD2d 714, 715-716, 350 NYS2d 14). For that reason, the article "a" generally is not to be read in the singular sense unless such an intention is clearly conveyed by the language and structure of the statute (see, ***Matter of Hotel St. George Corp***., *supra*, at 531, citing 1 CJS, A, p. 1; ***State v. Martin***, *supra*, 60 Ark, at 349-351, 30 SW at 422-423; see also, ***State ex rel. Cities Serv. Oil Co. v. Board of Appeals***, 21 Wis2d 516, 529, 124 NW2d 809, 816; ***Lindley v. Murphy***, *supra*, 387 Ill, at 517, 56 NE2d, at 838; see generally, 97 NY JUR 2d, *Statutes*, § 129).

Cook v. Carmen S. Pariso, Inc., 287 AD2d 208, 213, 734 NYS2d 753, 757-58 (NYAD 4 Dept 2001).

"A" uniformly means "any" in a number of statutes within the Defendant's purview as well. Reading "a" to mean "only one" would lead to absurd results in these other Oregon election law statutes.

> ORS 248.002. Definitions
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> As used in this chapter:
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> * * *
>
> (3) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Constitution.
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> (4) "Member" means an individual who is registered as being affiliated with the political party.

Certainly Defendant does not construe these definitions in the statutes that he administers and implements as referring to "one and only one" elector or member of a political party in the state. Yet, Defendant now claims that similarly constructed phrase, "[t]he name of a political party shall be added opposite the name of a candidate for other than nonpartisan office according to the following rules" means, "the name of one and only one political party shall be added opposite the name of a candidate for other than nonpartisan office according to the following rules."

There is no evidence that legislative drafters ignored the statements in the BILL DRAFTING MANUAL OF THE OREGON OFFICE OF LEGISLATIVE COUNSEL that "a" is to be

used for clarity and means "any." Nor is there evidence that the Legislature ignored the many court instructions that words are to be used with ordinary meaning.

Dated: August 19, 2008

Respectfully Submitted,

LINDA K. WILLIAMS
OSB No. 78425
10266 S.W. Lancaster Road
Portland, OR 97219
(503) 293-0399 fax 245-2772

Attorney for Plaintiffs
Independent Party, Haugen
and Working Families Party

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing: SUPPLEMENTAL AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION (1) e-mail and (2) first class mail to all parties listed below, deposited in the U.S. Postal Service at Portland, Oregon, with first class postage prepaid.

Hardy Myers
David Leith
Oregon Department of Justice
1162 Court Street N.E.
Salem, OR 97301-4096
503.378.6313
David Leith@doj.state.or.us

Dated: August 19, 2008

Linda K. Williams