

August 6, 2012

Via Hand Delivery

Clerk
Clackamas County Circuit Court
807 Main Street
Oregon City, OR 97045

Re: Tim Reeves, et al. v. Wes Wagner, et al.,
Clackamas County Circuit Court Case No. CV 12010345

Dear Clerk:

Enclosed for filing please find an original "***Defendants Knight, Tabor, Vetanen, Weston, Skyba and Karlock's Rule 21 Motions Against Plaintiffs' Second Amended Complaint***".

Please return the enclosed postcard acknowledging your receipt and filing of this document.

If you have any questions you may contact me at (503)206-6002 or colin.andries@andrieslaw.com.

Sincerely,



Colin Andries, Esq.
Andries Law Offices, LLC

Enclosures

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5 IN THE CIRCUIT COURT OF THE STATE OF OREGON
6 FOR THE COUNTY OF CLACKAMAS

7 TIM REEVES, ERIC SAUB, GREG)
8 BURNETT, CARLA PEALER as the)
9 LIBERTARIAN PARTY OF OREGON,)
10 AND DAVID TERRY, M. CARLING,)
AND RICHARD BURKE as Members of)
the LIBERTARIAN PARTY OF OREGON)

11 Plaintiffs,

12 vs.

13 WES WAGNER, HARRY JOE TABOR,)
14 MARK VETANEN, BRUCE KNIGHT,)
JEFF WESTON, JIM KARLOCK,)
15 RICHARD SKYBA, individuals, and)
LIBERTARIAN PARTY OF OREGON)

16 Defendants.

Case No. CV 12010345

DEFENDANTS KNIGHT, TABOR,
VETANEN, WESTON, SKYBA AND
KARLOCK'S RULE 21 MOTIONS
AGAINST PLAINTIFFS' SECOND
AMENDED COMPLAINT

ORAL ARGUMENT REQUESTED:

17 **ORAL ARGUMENT REQUEST INFORMATION**

18 Pursuant to UTCR 5.050, Defendant hereby requests oral argument of this
19 motion.

- 20 A. Time required for oral argument: 30 minutes
21 B. Official court reporting services: Not requested
22 C. Appearance by telecommunication: Not requested
23 D. Names of all parties served with this motion: See Certificate of Service
24 E. All known attorneys in this matter are less than 25 miles from the courthouse.

25 Defendants Harry Joe Tabor ("Tabor"), Mark Vetanen ("Vetanen"), Bruce Knight
26 ("Knight"), Jeff Weston ("Weston"), Richard Skyba ("Skyba") and Jim Karlock
("Karlock") are represented by Colin G. Andries of Andries Law Offices, LLC, 1001 SW

1 Fifth Ave., Suite 1100, Portland, OR 97204. Defendant Libertarian Party of Oregon
2 (“LPO”) is represented by C. Robert Stringer of Harrang Long Gary Rudnick PC, 1001
3 SW Fifth Ave., 16th Floor, Portland, OR 97204. Defendant Wes Wagner (“Wagner”) is
4 represented by James E. Leuenberger of James E. Leuenberger, P.C., 4500 SW Kruse
5 Way, Suite 100, PO Box 1684, Lake Oswego, OR 97035. Plaintiffs are represented by
6 Tyler Smith and Nathan Goin of Tyler Smith & Associates, P.C., 181 N. Grant Street,
7 Suite 212, Canby, OR 97013.

8 **UTCR 5.010 CERTIFICATE OF COMPLIANCE**

9 Pursuant to UTCR 5.010(1)(b), the parties are not required to confer because this
10 motion is brought on the grounds that the court lacks jurisdiction.

11 **MOTIONS**

12 **MOTION 1:** Defendants Knight, Tabor, Vetanen, Weston, Skyba and Karlock
13 move for an order pursuant to ORCP 21A(1) dismissing plaintiff’s entire complaint
14 because the declaratory judgment sought by plaintiffs falls outside the exclusive remedies
15 provided by the Oregon Administrative Procedures Act (the “APA”) and therefore the
16 court lacks subject matter jurisdiction.

17 **Points and Authorities**

18 On September 29th, 2011, in response to a request from plaintiff’s counsel for
19 “interpretation by the SOS,” Mr. Stephen Trout, Director of Elections for the Secretary of
20 State issued an order stating that the Secretary of State’s office recognizes Wes Wagner
21 as Chair of the Libertarian Party of Oregon (the “September 29th Order”). See **Exhibit 1**
22 – “Sept. 29, 2011 Letter from Stephen Trout”; and **Exhibit 2** – “E-mail Correspondence
23 between Tyler Smith and Stephen Trout”. In the Second Amended Complaint (the
24 “Complaint”), Plaintiffs seek declaratory relief pursuant to ORS Ch. 28 asking the Court
25 to reverse the agency’s decision by first naming Plaintiffs as officers and board members
26 of the Libertarian Party of Oregon (the “LPO”) and then taking other declaratory actions

1 resulting from the appointment of officers and board members. However, the Secretary
2 of State's determination is subject to the comprehensive judicial review process of the
3 APA; a review process which cannot be circumvented or avoided by filing for a
4 declaratory judgment. "ORS 183.480(2) and numerous decisions of this court make clear
5 that judicial review of final agency orders shall be solely as provided in the APA." *Lake*
6 *County v. State*, 142 Or. App. 162, 165 (1996). Because Plaintiffs filed for a declaratory
7 judgment, rather than timely petitioning for judicial review, this court lacks jurisdiction.

8 **I. Plaintiffs Did Not Seek Timely Judicial Review of the September 29th Order**

9 *a. The Role of the Secretary of State*

10 The Secretary of State is Oregon's chief elections officer with the responsibility to
11 uniformly apply, operate and interpret Oregon's election laws. ORS § 246.110. In this
12 capacity, the Secretary of State performs many functions crucial to the electoral process,
13 including but not limited to: certifying initiatives, accepting and rejecting candidates and
14 recognizing political parties. While ORS § 248.011 requires the Secretary of State to
15 refrain from enforcing ORS § 248.005 (which allows political parties to adopt rules to
16 insure fair representation of members), when issues arise in relation to the election
17 process, the Secretary of State can, and has, made determinations that directly relate to
18 political parties. *See, e.g., Friedman v. Paulus*, 70 Or. App. 612 (1984) (rejecting
19 candidate because candidate's party did not qualify as a minor political party). Similar to
20 *Friedman*, the September 29th Order directly related to the Secretary of State's role as
21 chief elections officer, because it is responsible for recognizing the validity of candidates.

22 *b. The September 29th Order is a Final Order*

23 The September 29th Order is a final order from the Secretary of State and requires
24 review pursuant to the judicial review provisions of the APA. ORS § 183.480 states that:

25 "(1) ... any person adversely affected or aggrieved by an order or any party to an
26 agency proceeding is entitled to judicial review of a final order..."

1 (2) Judicial review of final orders of agencies shall be solely as provided by ORS
2 183.482, 183.484, 183.490 and 183.500.”

3 Under ORS § 183.310(6) an order means “any agency action expressed orally or in
4 writing directed to a named person or named persons, other than employees, officers or
5 members of an agency.” A “final order” is a “final agency action expressed in writing.”
6 ORS 183.310(6)(b).

7 Pursuant to the plain language of ORS § 183.310, the September 29th Order is a
8 final order qualifying for review under the provisions of the Oregon APA. First, the
9 Secretary of State is an agency under the definition set forth in ORS 183.310(1), because
10 it is a state department authorized to make rules and issue orders. Next, the letter
11 qualifies as an action expressed in writing, because Mr. Trout is expressing a decision
12 made by the Secretary of State (the action) and put it in letter format (the writing). Third,
13 the letter was addressed to and delivered to “Messrs. Wagner and Reeves,” thus it was
14 directed to named persons that were not “employees, officers or members of an agency.”
15 Therefore, the September 29th, Order satisfies the ORS § 183.310 definition of an order.

16 As discussed, a “final order” is a final agency action expressed in writing. In this
17 situation, the agency acknowledges in writing that they will not be making a further
18 determination on the subject when it states “We currently recognize, and will continue to
19 recognize Wes Wagner...”. **Exhibit 1**. From the plain reading of the letter, it is the
20 agency’s intent that this order be their final decision on the matter. Additionally, in
21 looking at ORS § 183.310(6)(b), which provides the two criteria for determining that
22 something is **not** a final order, this is a final order because: a) it does not precede a
23 separate, final action; and b) does not contemplate further consideration of the subject
24 matter of the statement. As a result, the September 29th Order is a final order and
25 pursuant to ORS 183.480(2), review of the order can only be as provided in ORS
26 183.482, 183.484, 183.490 or 183.500.